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CRIME ON THE INTERNET

by Jay C. Howell

The sudden and overwhelming presence of the internet has ushered in a dramatic new age of information. It has also brought with it some particular challenges for law enforcement and the American criminal justice system. In the past decade, every state in the union has scrambled to come up with new state laws that address criminal behavior that originates on the internet. News stories of child pornography and cyberstalking are now commonplace. As our courts struggle to effectively regulate internet behavior, new compromises are being reached by our lawmakers and our appellate courts.

Our stalking statute, first enacted in 1992, has now been amended to include “cyberstalking.” The new law defines the crime as communicating words, images, or language by or through the use of electronic mail or electronic communication and directed at a specific person. The communication must cause some substantial emotional distress to the victim and serve no legitimate purpose. The crime is a misdemeanor, but if the perpetrator makes a credible threat with the intent to place the victim in reasonable fear of death or bodily injury, it is a felony.

In another recent development, the 2000 Florida legislature passed a law which imposes a felony criminal penalty against anyone 18 years of age or older who transmits a lewd or lascivious exhibition over a computer online service, internet service, or local bulletin board service, when the individual knows or should know, or has reason to believe that the transmission is viewed on a computer or television monitor by a person in the state of Florida who is less than 16 years of age.

The advent of high computer technology in the home has presented our society with new issues concerning the civil responsibility for the transmission of disturbing messages, photographs, and videos on

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the internet. Recently, a civil case was filed here in Florida against American On Line (AOL), a well-known internet service provider (ISP), and Richard Lee Russell, an individual. The case was brought by a mother on behalf of her minor son. The complaint alleged that Russell lured the minor child, then 11 years old, and two other minor males to engage in sexual activity with each other and with Russell. The complaint alleged that Russell photographed and videotaped these acts and used AOL's "chat rooms" to market and sell the videotapes over the internet.

The boy's mother claimed that, though she complained to AOL, AOL took no action to suspend or terminate Russell's AOL service. There was no allegation in the case that Russell actually transmitted images of the child over the internet.

The trial court granted AOL's motion to dismiss the lawsuit. AOL argued that the tort claims made under Florida law against AOL were barred by a federal statute, The Communications Decency Act. The federal statute prohibits lawsuits that treat an internet service provider as the publisher or speaker of messages simply transmitted over its services by subscribers. The Florida Supreme Court agreed with the trial judge that the federal statute was controlling.

The language of the federal law states that no provider or user of an internet computer service shall be treated as the publisher or speaker of information provided by another entity. Since AOL only provided the internet service, it cannot be held liable for the offensive content of the "chat room" communications.

Stay tuned for upcoming new laws and appellate court decisions which attempt to wrestle with the legal issues brought about by the internet information age. Ultimately, our highest courts are going to

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be called upon to establish guidelines that will determine how much of the information on the internet will be subject to legal control.