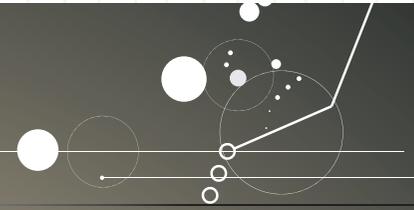




# cyber chat



## Protecting Teachers Online: When Students Cross The Line Part 2

By Dr. Barbara Spears

In the last issue, Cyber Chat looked at the question of legal issues around online behaviour and posed the question raised by James Braithwaite of the Australian Federal Police: when do students cross the line to criminality with their online behaviours and what does this mean for teachers when dealing with these behaviours? This Cyber Chat continues with this theme by exploring fights that can occur both on and off school grounds, and are filmed and posted online.

Fights between young people before, during or after school have always occurred. The internet, however, has altered the way schoolyard fights are now viewed. With almost every child having a mobile phone with a camera, the filming of fights or assaults and the posting of them to the internet has become commonplace. As schools rush to have them removed from social media sites, the speed of the internet and the reach of it defy total removal. The media has recently reported on several cases of fights being filmed, with some going viral, demonstrating just how easy it is to become a truly international 'event'.

In doing so, it highlights that the borders and boundaries of states and nations do not exist in cyberspace and that our children and young people are no longer passively interacting with the technology but are active creators and publishers of material. This has implications for jurisdictions and how they might interpret this behaviour in a legal sense. Braithwaite, in his presentations for teachers, states that "whilst it is generally not considered illegal to video a fight, in certain circumstances the child can be deemed criminally responsible for the assault and can be charged under the Territory (ACT) Legislation, with the same offences as the antagonist: common assault; assault occasioning bodily harm; assault occasioning grievous harm." This is due to the legislation, as with other states and

territories, extending responsibility for criminal acts to those who "aid", "abet", "counsel", "procure", are "knowingly concerned in" or are "party to" the commission of an offence by another person. In response to similar incidents in South Australia, the SA Attorney General aims to introduce new legislation later this year to make illegal the filming of assaults and the posting online of footage

In terms of distributing the footage, it could be construed as an offence under the Telecommunications Act (under 'misuse of a carriage service') if it is intended to menace or harass one or more of the children/young people involved in the fight. Here we can see cyberbullying as distinct from a conflict situation: bullying is a repeated, intentional act designed to hurt or harm, where there is an imbalance of power between the parties. Deliberately posting online, with the express purpose of causing harm or hurt, places one in a position of power over another, and the repeated aspect is readily understood when it is spread virally throughout the internet, where it can never be totally removed. Spears, Slee, Owens and Johnson (2009) reported that cyberbullying could comprise both overt and covert acts, and the explicit uploading and distribution of footage of a fight is an overt act of cyberbullying.

But what if the fight occurs outside of the school grounds? Where does the jurisdiction lie? Whose responsibility is it then? Butler (2006) reports on the issues surrounding a school's duty of care and the scope of that responsibility, highlighting the complexities involved in determining whether a school's duty of care would extend, for example, to a bus stop where a fight may occur, suggesting that "depending on the circumstances a school authority's common law duty could extend to pupils on the journey on the bus or while they were walking to or from school." Whilst this issue is too complex for this column, one significant aspect in

relation to it concerns cyberbullying and the jurisdiction of principals and schools. In a statement from the Chief Executive of the SA Department of Education and Children's Services, principals, under regulations 40 and 41 of the Education Regulations (1997), have the power to suspend or exclude "a student who acts in a manner that threatens the safety or wellbeing of a student or member of staff, or another person associated with the school ... These regulations do not preclude an event that occurs outside of school hours or off site." As cyberbullying can be perpetrated at any time of the day or week, and it is known that this behaviour can threaten the safety or wellbeing of others, principals in South Australia can act beyond the school gate.

Clearly, education is needed to ensure that our young people are aware that what they upload to social media sites could put them at risk of 'crossing the line' and committing a criminal offence if an assault has occurred. Equally, educators need to be aware that their duty of care may extend beyond the school gate where cyberbullying is concerned. 

*Acknowledgment: Thanks to James Braithwaite, Australian Federal Police for sharing his presentation: When Students Cross the Line: Legal implications and responses for virtual actions.*

*Disclaimer: This article does not constitute legal advice, only general information. Please contact a legal professional for specific advice.*

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