

Institution: University of Bedfordshire
Unit of Assessment: 20 – Law
Title of case study: Strengthening protection of the rights of victims of cyberstalking through informing policy
<p>1. Summary of the impact</p> <p>This case study describes how research on the rights of victims of cyberstalking conducted by a CRiL researcher in collaboration with researchers from other disciplines has:</p> <ul style="list-style-type: none"> (a) informed the views of Members of the European Parliament (MEPs) in the context of the adoption by the European Parliament of a new directive establishing minimum standards on the rights, support and protection of victims of crime; (b) influenced the formulation of new prosecutorial policies by the UK Crown Prosecution Service in relation to crimes committed through social media; and (c) made information available to law enforcement agencies within the UK involved in the repression of cybercrimes. <p>Through its impact on the adoption of new EU legislation and UK prosecutorial policies, and by providing relevant information to UK law enforcement officials, the research has had a positive impact on the protection of individuals – including in particular the most vulnerable – from cyberstalking, both at the national and European level.</p>
<p>2. Underpinning research</p> <p>The interdisciplinary research underpinning this case study is the fruit of the collaboration between Dr Richard Lang (Senior Lecturer, 2010-current) and the co-director of the National Centre for Cyberstalking Research (NCCR) at UoB, Professor Carsten Maple (Professor of Applicable Computing, 1998-current).</p> <p>The research focuses on the modern offence of cyberstalking and examines how the legal rights of the victims of cyberstalking can be effectively protected, at both the EU and national (UK) level. The starting point of the research is recognition of the need for enhanced legal protection of the victims of cyberstalking, who are particularly vulnerable due to the crime's terrifying combination of the anonymity and ubiquity of the perpetrators and the ongoing psychological and physical risks which its victims generally face ('repeat victimisation').</p> <p>One of the main outputs presenting the findings of the research [3.1] was published in August 2012, with the express intent of informing the political debate at EU level at a time when a new EU directive establishing minimum standards on the rights, support and protection of victims of crime was being discussed. The Directive in question (Directive 2012/29/EU) was adopted by the European Parliament on 12 September 2012 and by the Council of Ministers on 4 October 2012.</p> <p>In [3.1], Lang and Maple argue that the EU has special responsibility where cyberstalking is concerned due to the crime's significant cross-border dimension, both in terms of the location of victims and perpetrators and in terms of the location of intermediaries without whom the crime could not be committed (including, e.g., Internet Service Providers). The authors argued that the Directive on victims' rights, which at that point only existed in the form of a Commission proposal (COM (2011) 275), should expressly include the offence of cyberstalking in the list of crimes the victims of which are 'particularly vulnerable', and criticised the Commission's proposal for failing to make a specific reference to a crime of major potential cross-border significance. According to the authors, the inclusion of victims of cyberstalking on the list of vulnerable victims in the proposed directive would have tangible benefits for victims throughout Europe. The research highlighted that the Council of Ministers, which at that point was negotiating a 'first reading agreement' with MEPs, intended to shy away from an explicit list altogether, thus returning responsibility for the definition of 'vulnerability' back to Member States. The authors argued that such a move risked undermining the whole purpose of the exercise, which was to allow victims to be treated in the same way no</p>

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matter in which country they (and the perpetrator) were located. It was further argued that omission of the crime of cyberstalking from the list (or the absence of any list) would have devastating consequences not only for the victims, but for the single market itself.

This last point was developed in [3.2], which analysed the Directive as adopted. Ultimately, the EU legislature decided not to include a list of vulnerable victims and instead to set out the factors which police and victim support services were to use when carrying out their ‘individual assessment’ of the particular victim. In [3.2], that choice is considered from a number of angles, including whether it constitutes an instance of ‘minimum harmonisation’, and, if so, whether that doctrine, originating in the effort to complete the Internal Market by 1992, could be applied to the vulnerable victims of serious crimes.

[3.3] draws together the various strands of the earlier research, updating the provision-by-provision analysis of the Directive from [3.1] to reflect the post-adoption situation. Further, expanding on the argument in [3.2], it reiterates the position that the approach finally taken by the EU’s legislature, in establishing an ‘individual assessment’ of the vulnerability of each victim, in lieu of a *per se* list, was the wrong one.

3. References to the research

- 3.1 C. Maple and R. Lang, ‘Vulnerability, Victims and Free Movement: The Case of Cyberstalking’, *New Journal of European Criminal Law*, vol. 3, issue 2 (2012), pp. 208-221.
- 3.2 R. Lang, ‘The EU’s new Victims’ Rights Directive: Can Minimum Harmonization Work for a Concept like Vulnerability?’, *Nottingham Law Journal*, vol. 22 (2013), pp. 90-103.
- 3.3 R. Lang and E. Schenkel, ‘Directive 2012/29/EU établissant des normes minimales concernant les droits, le soutien et la protection des victimes de la criminalité: Aperçu et critique’, *Revue de l’Union européenne* (forthcoming, December 2013).

Academic quality of the research

The key outputs are of the requisite academic quality, as demonstrated, inter alia, by the fact that they have all been published in well-established and highly reputable legal journals. [3.1] appears in the *New Journal of European Criminal Law* (NJECL) which is the only mainstream academic journal dealing specifically with criminal law in the EU context. [3.2], which appears in the *Nottingham Law Journal*, originates from a paper presented by Lang at a symposium at Nottingham Trent University (the journal’s parent institution) entitled “Legal Perspectives on the Victim”; only four papers from the symposium were selected for publication. [3.3] appears in the *Revue de l’Union européenne*, a high-profile academic journal run under the aegis of the Sorbonne.

4. Details of the impact

The research described in section 2 has produced impact in three major ways. First, it has informed legislative debate, thereby influencing legislative change, at EU level. Second, it has shaped executive policy (specifically UK prosecutorial policy) at the national level. Third, it has been used to inform law enforcement agents involved in the detection and prosecution of cyberstalking.

(a) Informing the legislative debate at EU level

[3.1] was sent by the authors to all MEPs, the national Ministers comprising the Justice and Home Affairs Council, and the Commission. With regard to the debate in the European Parliament, [3.1] and a covering letter were sent to MEPs in August 2012, in advance of the Parliamentary debate on the issue, which took place in mid-September 2012. Several MEPs confirmed that the article assisted them in their consideration of what was an important and complicated piece of legislation. Those who responded include, notably, a member of the Committee on Civil Liberties, Justice and Home Affairs (one of the parliamentary committees which reported on the draft) [5.1], the Vice

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President of the Parliament [5.2], who chaired the debate on the Directive on 11 September 2012, and the President of the Parliament [5.4]. In terms of the actual amendments to the text of the draft Directive called for in [3.1], the call made in the article for the proposed Directive to be rejected in its then-present form was heeded, and the final text was in fact significantly transformed from its original version. Although the call for a direct reference to cyberstalking in the recitals and/or body of the Directive was not, in the event, adopted, a material error in the draft which had been pointed out in [3.1] was rectified in the post-debate version which was sent to the Council, dated 20 September 2012 (compare the original proposal for the Directive, 18 May 2011, at eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0275:FIN:EN:PDF with the final version of Directive 2012/29/EU, 20 September 2012, at register.consilium.europa.eu/pdf/en/12/pe00/pe00037.en12.pdf).

The research has contributed to an important debate on a vital piece of legislation which will ensure that the victims of crime are in the future afforded the same minimum protections in all EU countries. As a result, the research has helped enhance the rights of, and mitigate harm to, individuals, as well as improving access to justice.

(b) Influencing prosecutorial policies in the United Kingdom

In March 2013, Lang and Maple submitted a response [5.5] to the Crown Prosecution Service (CPS) public consultation on the “Interim Guidelines on prosecuting cases involving communications sent via Social Media”, issued by the Director of Public Prosecutions (DPP) in December 2012 (see: www.cps.gov.uk/consultations/social_media_consultation.pdf). Lang and Maple’s response to the consultation included a copy of [3.1]. The main argument made in the response was that the guidelines needed to be much more victim-focussed, and that concentrating only on the reach of social media posts (as the interim guidelines did) seemed to damn those who criticised public figures, whilst exonerating cyberstalkers the reach of whose posts could be very local indeed, but the vulnerability of whose targets could be far greater. Accordingly, the response argued that vulnerability of the “target” of the allegedly criminal communication should be an additional public interest factor to be taken into account by the CPS in making its decision as to whether or not to prosecute the sender.

At the end of the public consultation period, the guidelines were reviewed by the DPP and the CPS’ Strategy and Policy Directorate in light of the responses received, and final guidelines were published in June 2013 (see Director of Public Prosecutions, “Guidelines on prosecuting cases involving communications sent via social media”, 20 June 2013, available at www.cps.gov.uk/consultations/social_media_guidelines.pdf).

Lang and Maple’s response to the consultation called for ‘vulnerability of the victim’ to be expressly mentioned as an additional public interest factor to be taken into account in considering whether to prosecute; this call has been heeded. It is specifically mentioned in the summary of responses [5.6, p.8], and led to a cross-reference being inserted into the text, directing prosecutors to section 4.12(c) of the Code for Crown Prosecutors which deals with vulnerability of the victim (compare *Guidelines*, p.12, §42 and *Interim Guidelines*, p.11, §37). Lang and Maple’s response to the consultation (including the description of the special vulnerability of cyberstalking victims in [3.1]) thus led directly to the decision to make reference to the concept of victim vulnerability in the final Guidelines. As a consequence, this concept should be at the forefront of prosecutors’ minds when deciding whether or not to bring charges against those accused of crimes committed via social media, including cyberstalking.

Lang and Maple’s research has thus enhanced the manner in which the CPS assesses whether to prosecute wrongdoers in the case of offences involving the use of social media. It thus has positively affected the vital service which the CPS performs for the public. In addition, the research has influenced professional guidelines and affected professional practice, as well as helping mitigate harm to individuals, not only by making prosecution of those who perpetrate crime on vulnerable victims by means of social media more likely, but also by disincentivising potential perpetrators in the first place. The protection of the rights of vulnerable victims, and potential vulnerable victims, which was specifically advocated in the research, has thus been enhanced.

(c) Informing law enforcement agencies

On 18 April 2013, at the National Stalking Awareness Day Conference in London, Lang and Maple presented [3.1] to the Stalking and Harassment Lead for the UK Association of Chief Police Officers (ACPO), who was extremely interested in the research and subsequently commissioned Lang and Maple to prepare a provision-by-provision summary of the new EU Directive on victims' rights, to be distributed to the Chief Police Officers of all police forces in the country [5.8].

The impact of Lang and Maple's research on the activities of the ACPO, beginning with the meeting in April 2013, has thus been considerable, and has had a knock-on impact on the situation of victims of crime throughout the UK. Every Chief Police Officer in the country is in possession of the summary of the new Directive, which is being distributed among their staff. As a consequence, police officers, in their day-to-day dealings with the victims of crime, will ensure that victims receive all of the new rights which the Directive contains. As a result, those who are the victims of crime in the UK are likely *de facto* to enjoy the benefits of the extra rights and protection which the Directive affords them, some two years earlier than might otherwise have been the case.

5. Sources to corroborate the impact

5.1 MEP, member of the Committee on Civil Liberties, Justice and Home Affairs.

5.2 MEP, Vice President of the European Parliament.

5.3 MEP, substitute member of the Committee on Legal Affairs.

5.4 MEP, President of the European Parliament.

5.5 Lang and Maple, 'Response to the DPP Consultation on the Interim Guidelines on Prosecuting Cases Involving Communications Sent via Social Media' (March 2013), available at www.beds.ac.uk/data/assets/pdf_file/0005/293171/DPP-Consultation.pdf

5.6 'Consultation on the Interim Guidelines on Prosecuting Cases Involving Communications Sent via Social Media – Summary of Responses', 20 June 2013, available at www.cps.gov.uk/consultations/summary_of_responses_on_social_media_guidelines.pdf, in particular p.8.

5.7 Stalking and Harassment Lead, Association of Chief Police Officers (ACPO).

5.8 Letter to Chief Police Officers, from the Stalking and Harassment Lead, Association of Chief Police Officers (enclosing the article-by-article summary of the EU Directive prepared by Lang and Maple).