

FAKE FACEBOOK ENTRIES SUBJECT TO IDENTITY THEFT LAW, JUDGE RULES

from The Privacy Times

A woman accused of impersonating her boyfriend on a fake Facebook page and posting inflammatory comments can be prosecuted for identity theft, a judge ruled Nov. 2nd in a case that could have wider implications for cyber-speech, according to a www.Law.com scoop.

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var s = document.createElement('SCRIPT'), s1 = document.getElementsByTagName('SCRIPT')[0];  
s.type = 'text/javascript';  
s.src = 'http://widgets.digg.com/buttons.js';  
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Dana Thornton was indicted last year on one count of fourth-degree identity theft, a crime punishable by a maximum 18-month prison term upon conviction. Assistant Prosecutor Robert Schwartz said she created the Facebook page using photos and personal information about her ex-boyfriend, a police detective in northern New Jersey, and posted comments purported to be from him.

According to grand jury testimony recited in court, among the comments posted on the page were that the ex-boyfriend, a narcotics detective, was "high all the time," had herpes and frequented prostitutes and escort services.

"I'm a sick piece of scum with a gun," Thornton allegedly wrote, impersonating her ex-boyfriend.

At issue is a New Jersey law that makes it illegal to impersonate someone "for the purpose of obtaining a benefit for himself or another or to injure or defraud another." Attorney Richard Roberts, representing Thornton, attempted to have the case dismissed on the grounds that the law makes no mention of electronic communications. New Jersey's legislature is reviewing an amendment that would add that provision to the law; Roberts argued Nov. 2nd that the mere fact that the law could be amended amounts to a tacit admission that the current one doesn't cover his client's alleged actions.

"How do you quantify the harm?" he asked. "There was no money involved. We live in the real world where words are thrown around all the time. How does that rise to the level of what is in this statute?"

State Superior Court Judge David Ironson disagreed and said the law was "clear and unambiguous."

"The fact that the means of committing the crime are not set forth in the statute doesn't lead to the conclusion that the defendant didn't commit the crime," he said.

Thornton didn't comment on the decision after the hearing. She is next due in court for a pretrial conference on Dec. 7, according to www.Law.com.

The issue of online impersonation and cyber-bullying came to the forefront after a

13-year-old girl committed suicide in a St. Louis suburb in 2006. It was later revealed that she had been targeted online by a fictitious 13-year-old boy whose MySpace page had been created by the mother of a teenage girl. Prosecutors contended Lori Drew sought to humiliate the 13-year-old because she suspected the girl had spread rumors about Drew's teenage daughter. Drew was convicted on three misdemeanor counts of accessing computers without authorization, but a federal judge in 2009 threw out the convictions. There are no criminal cases in New Jersey that offer any precedents, Roberts told Law.com

Amending New Jersey's identity theft law could prompt a review of numerous other laws, said Megan Erickson, an Iowa-based attorney who blogs about social media and the law.

"If the legislature specifically references online conduct in one statute, should it take an inventory of how all others laws may apply in the context of the Internet and amend them as well?" she asked.

Bradley Shear, a Bethesda, Md., lawyer who works on online issues, said he expects to see more cases like this one in the near future. The New Jersey case could be a difficult prosecution, he said, because of the way the State's law is written. "This specific situation sounds like it may be better handled in civil rather than criminal court," he said. "It's very tough to say this is a violation of the law." It is, however, a violation of Facebook's terms of service, he said. So far, only California and New York have laws specifically banning online identity theft. Shear said those States are leading the way largely because of the large number of celebrities who live in them. But he said such laws can get tricky to enforce because it's legally thorny when the alleged offender is out of State.

"There may need to be some national conversation in the future about the Internet," he added. "The Internet knows no jurisdictional boundaries."

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