Denice Buchanan
Dr. Thomas H. Martin
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<div align="center">Cyberbullying</div>

*Background*

       Cyberbullying, as defined by Nancy Willard of the Center for Safe and Responsible Use of the Internet, is being mean or disrespectful to others by communicating harmful and hurtful materials through the use of the Internet or other digital devices (Willard, S64). In a 2006 survey conducted by Harris Interactive, 43% of U.S. teens reported experiencing some form of cyberbullying (Wagner, 14). 60% of victims never told anyone of the threats, stating they were the ones who were afraid of being punished, that they would get their computer taken away, or that no one would believe them (Hitchcock, 14). Cyberbullying happens in many online avenues, including chat rooms, instant message sessions, in emails, on social networking sites, and even though cell phone communication. Although a relatively new phenomenon, the effects of cyberbullying can be just as damaging, if not more so, than that done face-to-face. Victims develop low self-esteem, have poor performance in the classroom, may end up cutting school, become depressed, and even potentially violent. In some cases, cyberbullying has lead to students feeling like there are no answers, leading to suicide (Willard, 55). What makes cyberbullying different from the schoolyard taunts is its ability for the bullyer to be anonymous. Bullies can taunt their victims 24 hours a day, 7 days a week. The message is posted for not only the whole student body to see, but the bully has the tools and the power to spread their taunt worldwide.

       While cyberbullying that occurs on the school campus is punishable according to many districts network use policies, what happens when a student commits the act from their home computer? Although several court decisions have provided a template for how to handle such cases, there is not yet a definitive answer in regards to how to properly address the students' rights under the First Amendment. Unless the speech has entered campus and/or causes a disruption at school, free speech advocates think that school officials have no right to interfere in cases where cyberbullying has occurred off campus, and that this responsibility lays with the parents (Willard, 6).

       Related to cyberbullying is the growing issue of hate speech in cyberspace. The Internet allows for extremists to congregate with those who have similar interests, to be anonymous and yet extremely visible to the public (Leets, 278). The dissemination of information is cheap, easy to accomplish, and can be communicated to unsuspecting users in their home, place of work, and at school (Rajagopal).

       The rise of cyberbullying and hate speech online creates new questions about how much our speech is, and should be, covered by the First Amendment.

*Perspective*

This paper is written from the perspective of a school library media specialist, who plays an integral part in helping students to understand their online responsibilities and their First Amendment rights. The school library media specialist can help to explore how abundant the issue of cyberbullying is a part of the school, has the knowledge to help combat the problem, and can help parents, teachers, and students understand the effects. The education of parents and students is an important step in curbing the problem of cyberbullying, and librarians, along with school administrators, have a common goal of preventing it both inside and outside of school. Libraries, teachers, school psychologists, and parents can work together to inform students about healthy social relationships, combating the issue of cyberbullying before it becomes a school wide and community wide problem. Librarians really are the guardians of the First Amendment and it's relation to Intellectual Freedom and the Library Bill of Rights.

*Issue Questions*

This paper will address the following four issues:
1) When should cyberbullying between minors be treated as free speech, and when should it be treated as violating the law?
2) What should be the legal responsibility of school personnel in monitoring cyberbullying?
3) Should Internet Service Providers and/or social networking sites be required to assist in identifying minor-aged cyberbullies?
4) Should World Internet governance norms limit free speech which advocates hate and racism?

**When should cyberbullying between minors be treated as free speech, and when should it be treated as violating the law?**

A study by the Internet Safety Technical Task Force reported that bullying, both online and in person, was the most frequent threat that minors faced (Szoka, 4). There has been much debate about the way to deal with these frequent threats and if they should be treated as free speech or as a violation of the law.

In October 2006, just prior to turning fourteen years old, Megan Meier hung herself after being bullied online by whom she believe was "Josh Evans," a sixteen year old boy who claimed to be from the neighborhood. That boy was really Lori Drew, a neighbor of the Meier family, who was communicating and eventually tormenting Megan over MySpace. Despite a push for harsher punishment, Drew was convicted of only three misdemeanors of unauthorized computer access (Szoka, 7). Because of the Meier case and a few other similar high profile teen suicides, lawmakers have recently been pushing for legislation to address the issue. The Megan Meier Cyberbullying Prevention Act, which was introduced by Representative Linda Sanchez (D-CA) as H.R. 6123 in the 100th Congress and H.R. 1966 in the current session, pushes for tougher penalization for those who commit cyberbullying. The bill, which has been referred to the Subcommittee

on Crime, Terrorism, and Homeland Security, proposes to amend title 18 of the US Code (H.R. 1966, 111th Congress).

Although the approach made by Representative Sanchez will help to combat the problem of cyberbullying, it seems to create a policy where cyberbullying is held at a different standard than that of face-to-face bullying. Something that could have been said on the playground will now have the bully facing potential jail time (Szoka, 8). While the legislation may be appropriate for those, like Drew, who are adults tormenting children, much of the time children and teens are committing the proposed crime to their peers.

The approach made by Representative Sanchez will help to combat a significant problem, a different proposal also has the potential for just as much positive change. In May 2009, the School and Family Education About the Internet (SAFE Internet) Act was introduced by Senator Robert Menéndez (D-NJ). The act would create an Internet safety education program, which would be administered by the Department of Justice, the Department of Education, and the Department of Health and Human Services (Szoka, 9). Despite schools using filtering software on their campus computers, cyberbullying mostly occurs off campus. Filtering has no effect on the safe internet use of students once they leave the school property, so the bill proposes that education of students, parents, and teachers would be ideal (S. 1047, 111th Congress).

The proposal of the SAFE Internet Act would help to educate children about the risks that are out there in the online world and teach them how to deal with such risks appropriately. Funds would be needed for Internet safety education programs for students, training needed for teachers, administrators, and other school staff, and education for parents so they can understand their important role when it comes to teaching their children about online safety (Szoka, 9). Effective education program can combat the need for the creation of a federal offense. A program like this would also be within the boundaries of the First Amendment (Szoka, 18).

Several other groups have proved to be effective champions in the fight against cyberbullying with education. Formed in February 2008, the Berkman Center for Internet & Society at Harvard University formed the Internet Safety Technical Task Force, which aims to identify the most effective tools that would protect children from online threats, give recommendations for parents and schools to educate themselves about the threats minors face and be engaged in what minors are doing online (Tatlock). The newly formed Online Safety and Technology Working Group, which was established by the Protecting Children in the 21st Century Act, is currently working to make recommendations to protecting and education those online. We should be supportive of efforts such as these instead of lawsuits to combat cyberbullying.

### *What should be the legal responsibility of school personnel in monitoring cyberbullying?*

The use of the Internet is now an integral part of the learning experience and is widely used in the classroom. It provides many new opportunities for students to learn, and is an essential tools for them to master as they progress to levels of higher education and enter the job market. Unfortunately, these necessary skills can also leave parents and school staff concerned about students' safety. Students are taunting, teasing, and threatening their classmates online, which poses a new challenge for school administration. School districts must walk a very fine line between students right to freedom of speech covered by the First Amendment, and the protection of the student body (Willard, S64).

There are two very different situations that a school must consider when looking to punish cyberbullies, that which occurs on campus and that which occurs outside of school property. If schools have the necessary rules in place as part of their network regulations, the punishment of a student of commits an act of cyberbullying on campus is legitimate. When happens off campus contains more grey area.

Two particular court decisions have aided in the schools understanding of when they can take action against students who have committed cyberbullying off campus. In *Tinker v. Des Moines Independent Community School District* (393 U.S. 503, 1969), the courts concluded that even though students do not shed their First Amendment rights after entering school property, that in order to create a safe and effective learning environment, schools can put restrictions on those rights (Vander Broek, 11). In *Hazelwood District v. Kuhlmeier* (484 U.S. 260, 1988), the school district was justified placing restrictions on students' speech (Willard, 3). Students initially challenged their principal's decision to censor information that was published in the school newspaper, but since that newspaper is directly tied to the school system, the courts ruled in favor of the district. Because of *Hazelwood*, schools can impose limitations on school speech that occurs when students are using any device that is intended for educational use (Diamanduros, 702).

In order for school districts to be able to use their authority in punishing students for cyberbullying, they need to create an acceptable use policy that is known by both the parents and the students. Most districts already have policies regarding when students can use district equipment, so cyberbullying policies can be added to this. Formal policies about network use can be treated like policies for locker use. If a teacher, librarian, or other school staff notices suspicious behavior, than a search (looking at the computer history) can be conducted (Willard, 55). If students are committing acts of cyberbullying on school grounds, they will be in violation of district policy and necessary action can be legally taken (Vander Broek, 16). The Children's Internet Protection Act, which was initially deemed unconstitutional because of its' filtering flaws, required schools to have an internet safety policy in place before they could be a part of the e-rate program (Vander Broek, 19). In compliance with the No Child Left Behind Act, most

schools have safe school plans that, in the future, could include the issue of cyberbullying (Willard, 8).

Once the cyberbullying goes off campus, this type of policy will not hold the same weight. If the action is brought onto the school property in any manners, courts should allow for the school to intervene (Servance, 1221). Schools must be able to prove that the communication in question was brought onto school property in some format, either by being pulled up on the media center's computers or shown to a friend on a cell phone. The school must also have the ability to establish that the threat is posing a disruption at the school. A template can be created by the district that lays out all of the necessary steps for collecting evidence before making disciplinary action. Many schools also have state legislation on their side. As of 2007, 45 states had passed legislation that made electronic bullying, no matter where it is done, a violation of the law (Beale, 11).

As stated before, adding an educational component in the school is an important variable when it comes to reducing the issue of cyberbullying both on and off school property. The International Society for Technology in Education, which developed the National Education Technology Standards Digital Censorship states that it is essential that "students understand human, cultural, and society issues related to technology and practice legal and ethical behavior (International Society for Technology in Education, 1). Some state legislatures are even requiring that districts incorporate Internet safety into their curriculum. In Illinois, for a minimum of two hours a year, schools must teach Internet safety to students in kindergarten to twelfth grade. The instruction includes how to be safe and responsible on social networking sites, learning to recognize, avoid and report online solicitations, how to keep personal information private, understanding copyright laws, and how to recognize and report cyberbullying (Vander Broek, 18).

In many districts, teachers are extremely overwhelmed with covering what skills students need to master for state testing purposes, that they don't have the time or knowledge to cover topics of Internet safety. In these cases, the role of the school librarian becomes an essential piece of the puzzle. Also, schools should pull together a team, including the school psychologist, who can evaluate the issue throughout the school and community, can help students with interventions, and an help to create possible solutions (Diamanduros, 694).

### *Should Internet Service Providers and/or social networking sites be required to assist in identifying minor-aged cyberbullies?*

Because of the anonymity and easy accessibility that the Internet provides, cyberbullies have a way to torment their victims which keeping their privacy. This anonymity also makes its extremely difficult for a victim to identify it's bully, in the case where a lawsuit would need to be filed. Users have the ability to post millions of messages daily, which makes is virtually impossible to police each and every message that is displayed. It was only because of a tip from a classmate that Megan Meier's mother was able to discover who the real perpetrator was (Auerbach, 1645). Once a tip like this is discovered, only with the assistance of law enforcement should the

identification of cyberbullies though Internet Service Provides be conducted.  The courts have recognized that the right to speak anonymously online is covered by the First Amendment, but aggress that those who are harmed by the speech are due compensation (Citizen Media Law Project).

Despite some arguing that ISP's should be responsible for abusive content, the Communications Decency Act of 1996 protected ISP's from being treated as the originators of such content (Auerbach, 1655).  Although many providers do have the ability to block and take down content, they should be provided with necessary court papers before they reveal the authors identity.  This type of procedure is also conducted though cases pursued by the Recording Industry Association of America.  Substantive evidence must be collected and a case needs to be created before the ISP is lawfully allowed to give out private user information (McCullagh). The privacy of users is an important quality of the Internet that should not be unnecessarily compromised.

### *Should World Internet governance norms limit free speech which advocates hate and racism?*

Hate speech, that which promotes dislike towards people based on their race, gender, religion or and/or sexual preference, is becoming more and more prevalent in today's society (Akdeniz, 91).  Soon after World War II, several European countries passed laws that prohibited hate speech, leading eventually to international agreements (Van Blarcum, 785).  Although the Internet has made great advances in the ways we communicate, it has also allowed for the spread of hate speech, which in some cases, can be linked to acts of violence (Wolf). The popularity of social-networking sites and other Web 2.0 technologies, such as YouTube, allow hate to spread much faster than in the past (Wolf).  According to those who think international law is the answers, the prohibiting of harmful and offensive speech on sites such as these is not enough to cause hate speech to cease to exist.  As documented by the Simon Wiesenthal Center and the Anti-Defamation League, there were 2,800 hate sites documented on the Internet in 2001 (Leets, 288).  Just as in cyberbullying, the Internet provides a free and easy way for people to forge communities of shared interests.

In recent years, the European Commission Against Racism and Intolerance has fought for international legislature, arguing that it is really the only way to combat the issue of hate speech effectively.  Several countries have all passed national laws that criminalize hate messages, but because of the right to free speech, the U.S. has been opposed to approving such legislature.

Each culture has their own values, deeming different speech harmful or unsuitable according to these values.  It is unrealistic for different governments to come to a conclusion of what is appropriate according to an international law.  Although governments and international organizations agree that speech of this type should not be tolerated, handling such cases would be much better accomplished at the regional or national level (Internet Governance Project, 2).  With open coorporation with Internet

Service Providers, site content can be appropriately regulated.  If this content goes against the ISPs terms of service, sites can be removed (Rajagopal).  Because the Internet has no borders, removing a site that includes harmful content is no way to cease its existence, since it can later reappear in another country.  It is unrealistic for differing governments to come to a conclusive definition of what is appropriate speech.

U.S. Congress had made their attempt to regulate indecent and obscene material for adults through the Communications Decency Act in 1996, but because the internet is a form of communication, Congress agreed that in the Internet should not be regulated like television and the radio.

*Conclusion*

As the prevalence of cyberbullying grows, it is appropriately being recognized as a major problem in both the school and community.  School administrators and parents comprehend the power of cyberbullying as a dangerous part of children and teens lives that can equal that of face-to-face bullying, discrimination and harassment.  Through educational programs, successful collaboration of school administrators, teachers, school librarians and parents, the issue of cyberbullying will decrease its prevalence in today's society.

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