

Twitter trolls: the existing legal framework

Recent attacks on Twitter through the legislative framework into sharp relief

The proliferation of social media has seen an increasing number of individuals, businesses and celebrities alike falling foul of social media conventions. Whilst some of these are merely embarrassing, some misuse of Twitter has criminal consequences.

Recent troll attacks

Take the case of Caroline Criado-Perez, the writer and feminist campaigner behind the push to feature Jane Austen's image on banknotes. In July 2013, Criado-Perez received threats via Twitter to rape and kill her.

Two of the offenders, Isabella Sorley and John Nimmo, recently pleaded guilty to sending by means of a public electronic communications network messages which were menacing in character, contrary to Section 127(1)(A) of the Communications Act 2003 (TCA). That "Twitter trolls" need to be prosecuted under legislation that pre-dates Twitter's creation demonstrates the difficulty in controlling the increasing challenge of online abuse.

The Legal Position

Currently, threats made via Twitter can be prosecuted under the Malicious Communication Act 1989 (MCA) and the TCA.

Under the MCA, it is an offence to send an electronic communication in any form that conveys a threat, false or misleading information, or indecent or grossly offensive content. In the latter case, the sender must also intend to cause distress or anxiety to the recipient to be guilty of the offence.

Under the TCA, it is an offence to send via a "public electronic communications network" a message that is grossly offensive, indecent, obscene or of menacing character. It is also an offence to send via such a network for the purpose of causing annoyance, inconvenience or anxiety a message that the sender knows to be false. "Public electronic communications network" covers internet communications generally, including those sent via Twitter.

The MCA and TCA provide a framework by which Twitter trolls can be prosecuted, however, the anonymity that the internet can provide causes significant issues with investigation and prosecution. Tracing individuals consumes limited police resources and requires cooperation from ISPs and social media networks themselves. Sorley and Nimmo were prosecuted after their details were provided to Northumbria Police following a BBC Newsnight investigation.

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The Future

Twitter is facing pressure to pro-actively tackle abuse head on, rather than falling back on legislation. New laws that would require social media sites to reveal the identities of trolls are being considered, although a significant problem facing Twitter is the issue of online abusers simply creating new anonymous accounts when existing accounts are suspended: Nimmo sent his tweets via six separate accounts.

Until such time as new legislation is adopted, prosecutors will have to continue to rely upon the co-operation of Twitter, the increasingly dated MCA and TCA and media benevolence.

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