

Mean girls, bad boys and other crimes by bullies: a legal review

Fiona Robertson - Senior Counsel, Head of Media - Digital & Data
- Dubai International Financial Centre

Minal Sapra
m.sapra@tamimi.com - DIFC, Dubai, UAE

The internet continues to advance at the speed of lightning. It has made day to day lives easier and makes communication and information available to a global audience with the touch of a button. However, it has also opened up a broad range of new illegal activities relating to cybercrime. During 2020, as the world continues to grapple with a serious pandemic, people have become more reliant on digital communication which has resulted in people being increasingly exposed to anti-social and illegal online behaviour. Unfortunately, the increased reliance on technology to deliver education has meant that teenagers and children are increasing their use of technology and so they are online more than ever before. Both parents and teachers need to be aware of how these changes can impact their children and students and their future.

When considering cybercrime, people tend to think of fraudsters, impersonators and blackmailers however, cyberbullying is also considered to be a cybercrime in the UAE. It is usually associated with children and teenagers, but can also target adults. For example, in 2019 a man threatened and bullied a woman into sending him inappropriate photos of her on Snapchat. He was later arrested when the woman filed a complaint against him. Both the Criminal Court of First Instance and the Appeal Court sentenced the man after finding him guilty of violating Federal Decree No. 5 of 2012 on Cyber Crimes ('Cyber Crimes Law') because he was blackmailing her online and had requested inappropriate images.

What is Cyberbullying?

Cyberbullying is the use of technology to convey any bullying message to the victim and to those around the victim they can be known to the victim, or can be anonymous. Because students are online so frequently (whether on their laptop or smart phone), it is increasingly easy to spread negative messages and to spread them much further than was previously possible.

Potential bullies have access to a variety of social media platforms, such as WhatsApp, Twitter, Instagram, and Snapchat readily available for their use in creating the messages. Additionally, secondary perpetrators can forward and share the negative material, resulting in rapid and widespread dissemination. A secondary perpetrator is anyone who shares any content/material that may be considered illegal or prohibited and which falls under the Cyber Crimes Law; they can also be convicted of a crime. Cyberbullying is defined as to include not only the creation of the bullying messages, but also dissemination of them. Once shared, the bullying message may be viewed multiple times by a diverse audience globally (colloquially known as 'going viral').

Age restrictions and their value

Globally, social media websites set rules for controlling access to their sites for users they consider to be underage but, they are not enough to prevent a child or teenager from accessing adult content. A child can readily tick a box agreeing that they are above a certain age or use a false year of birth on registration, as no proof is required; no passport or ID is required.

This means that a child can readily access the same content that an adult can access, and can create content in the same unrestricted manner.

The UAE authorities have issued certain guidelines, regulations and channels that apply to media content generally. For example, telecommunications carriers have the right to block content they consider 'prohibited' under Annex 1 of the Telecommunications Regulatory Authority ('TRA') Internet Access Management Policy ('IAM Regulations'), for instance; internet content containing pornography and nudity, defamation, fraud and 'offences against the UAE and public order'. The TRA published statistics for the first quarter of 2020, showing that 614 websites have been blocked, each falling under Annex 1's 'Prohibited Content Categories' which will include pornography, gambling, promoting weapons: it is not specific to children rather the general public accessing such content online.

In relation to charging juveniles with crimes, the Juvenile Law (Federal Law No. 9 of 1976) specifically dictates that children under the age of 18 may be sentenced to no more than half of the prescribed detention period for some offences. Court hearings for children under 18 are not to be made public and may only be attended by certain persons (e.g. lawyers, custodians, Ministry of Social Affairs). A court may excuse a child's attendance during witness testimony if that is considered to be in the child's interests, even if they are the accused. The Cyber Crimes Law also allows a judge to order the deportation of any perpetrator (of any age) if they are not a UAE national.

How are you protected under the law?

Defamation is usually at the core of cyberbullying; calling the victim names, telling stories about them (whether true or not) and generally trying to ensure that the victim is less liked in a social circle than they were before.

Many people are unaware that defamation is treated as a criminal offence in the UAE. Not only does the UAE have extensive provisions within its Penal Code (Federal Law No. 3 of 1987), but it also has the benefit of the Cyber Crimes Law. Article 138 of the Penal Code stipulates that a punishment of jail and a fine (determined at the discretion of the judge) "shall be inflicted on any person who publishes through any means of publicity news, pictures or comments pertaining to the secrets of people's private or familial lives even if the same is true". The UAE has traditionally considered defamation to be a serious criminal offence.

Article 20 of the Cyber Crimes Law deals with slander in the broadest of terms: "*... any person who insults a third party or has attributed to him an incident that may make him subject to punishment or contempt by a third party ... shall be punished by imprisonment and a fine ...*". An example of this Article in practice can be seen in a case where two men were fined AED 500,000 (approximately US\$136,000) after sending a demeaning and insulting message to a friend on social media via video and voice recording. The man recorded the video and voice recording as part of evidence to help in prosecuting these young men.

Of course, the standards that are applied to defamation can be high; as is generally the case globally. The statement must, first and foremost, do harm to someone's reputation, and must do so in a manner that makes people consider that person in a negative light.

As is often the case, it is the Cyber Crimes Law that provides the most practical recourse for victims of

crimes involving technology and prescribes harsh penalties for any use of material that is considered to be pornographic.

Article 17 states *"Any person who ... transmitted, sent, published or re-published ... pornographic materials ... and anything that may prejudice public morals shall be punished by imprisonment and a fine ... Any person, who produced, prepared, sent or saved pornographic materials ... and anything that may prejudice public morals for the purpose of exploitation, distribution or displaying for a third party ... shall be punished by the same punishment."*

In addition, Article 18 imposes further penalties if the pornographic material concerns individuals younger than 18 years old; which naturally embraces all school age students. If the subject of the pornographic content is under 18 years of age the perpetrator faces imprisonment and heavy fines. So, inappropriate images of a classmate would fall into this category. The wording of Article 18 is important: *"Any person who intentionally acquires Juvenile Pornographic Materials ... shall be punished by imprisonment for a period not less than six months and a fine not less than (AED 150,000) and not exceeding (AED 1,000,000)."* It is important to note that this does not mean that the material must be actively sought. Merely receiving an inappropriate image from a third person; someone who is not the subject of the image will be enough to trigger the operation of the article, even if the recipient did not request the image.

Article 16 of the Cyber Crimes Law may also apply to cyberbullying. It states that a perpetrator of an action that could be considered to be extortion "shall be punished by imprisonment for a period of two years at most and a fine not less than Dh250,000 and not in excess of Dh500,000, or either of these two penalties". This means that if, for example, a teenager threatened to bully or ridicule a fellow student unless they provide an inappropriate image of themselves, the teen will be liable for prosecution. In this case, not only will the perpetrator be guilty of inciting contempt (Article 20) receiving and distributing child pornography (Article 18), but they will also potentially be guilty of extortion under this Article 16. It is important to note however that Article 16 can also exist in isolation. The threatened act does not have to eventuate; it need merely be intimated.

Enough already, no more bullying

In a nutshell, cyberbullying is an issue in society and it affects not only the victim but others around them. If action is not taken against the person bullying, it can aggravate the situation both online and offline. Exacerbating this situation is the fact that digital content remains accessible forever. Even if it is taken down, there are always ways to readily save the information: screen grabs, Bluetooth sharing, photos of screens. Everyone involved will have their part in the process permanently recorded, somewhere.

Cyberbullying may be very recent but bullying has been a part of society for decades. Open and honest conversations are one way to help a child's awareness of the issues facing them as perpetrators, victims and accomplices. These issues are not just social and emotional but legal as well.

If you or someone you know is being bullied and/or targeted online, please report these cybercrimes using the channels provided by the UAE government on: <https://u.ae/en/information-and-services/justice-safety-and-the-law/cyber-safety-and-digital-security/report-cybercrimes-online>. or download the 'My Safe Society' app.

For further information, please contact [Fiona Robertson \(f.robertson@tamimi.com\)](mailto:f.robertson@tamimi.com).