JOLTT Write-On Summer 2018 Excerpt

(Instructions are on a separate page.)

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1. *18 U.S.C.S. § 2261A – Stalking*

Under 18 U.S.C.S. § 2261A – Stalking, a person who uses electronic communication services or systems of interstate commerce with “intent to kill, injure, harass, or intimidate…” another person is criminally liable if the conduct puts the victim in reasonable fear of serious bodily injury or if the conduct would reasonably be expected to cause the victim substantial emotional distress.[[1]](#footnote-1)

In addition to being convicted under 18 U.S.C. § 875, the defendant in *Petrovic* was also convicted under this federal stalking statute because his threats, and carrying through of the threats, caused substantial emotional distress to his ex-wife.[[2]](#footnote-2) There has been several convictions based on this statute that involve romantic relationships and the internet, or even more closely tied to catfishing: social media.[[3]](#footnote-3) However, each of these cases involves the defendant harassing a victim whom he shared a prior in-person relationship with through posting sexual photos of the victim online. This is unlikely in most catfishing situations because, generally, the purpose of catfishing is trick someone into a romantic or emotional relationship rather than harass a former lover by posting sexual pictures of him. Therefore, similarly to 18 U.S.C. § 875, this statute may be helpful to criminally punish catfish predators in rare cases like Birdman, involving in-person sexual relations and posting of sexual photos online.

1. *The Stored Communications Act*

18 U.S.C. § 2701 of the Stored Communications Act criminalizes intentionally accessing electronic communication services, without authorization, as well as intentionally exceeding authorization to access the electronic communication services.[[4]](#footnote-4) While a plain-language reading of the statute may suggest that impersonating a person on social media would violate the statute, *Doe v. Hofsetter* made clear it would not. [[5]](#footnote-5) The court in Doe found the statute to be an anti-hacking statute. Specifically, the court was “…not persuaded…that violating Twitter’s terms of service…

1. 18 U.S. Code § 2261A – Stalking, Cornell Law School, <https://www.law.cornell.edu/uscode/text/18/2261A> (accessed May 2018) [↑](#footnote-ref-1)
2. United States v. Petrovic, 701 F.3d 849 (8th Cir. 2012). [↑](#footnote-ref-2)
3. *See, e.g.*, United States v. Osinger, 753 F.3d 939 (9th Circ. 2014) (man convicted under 18 USCS § 2261A after creating fake Facebook profile in his ex-girlfriend’s name to post explicit photos of her). [↑](#footnote-ref-3)
4. 18 U.S.C.S. § 1030 (2017). [↑](#footnote-ref-4)
5. Doe v. Hofstetter, 2012 U.S. Dist. LEXIS 82320 (D. Colo. 2012). [↑](#footnote-ref-5)