

## **HARASSMENT IN THE VIRTUAL WORLD CALLS FOR SANCTIONS IN THE “REAL” WORLD**

The web is, no doubt, the new playground of both kids and adults. The development of Internet has led to the creation of new ways of communicating, socializing, etc.

The European Commission published figures showing that about 42 million people are regular users of social networks, a number which has grown more than 35% in Europe since 2008, and which is expected to reach 107 million by 2012<sup>1</sup>.

A recent study, by OLFEQ<sup>2</sup>, showed that employees are spending about 90min. per day on the Internet, including 66min per day for personal purposes.

However, not every Internet user is playing nice and condemnable behaviours, such as harassment, have been developing on the Internet in the past years.

As an example, in 2006 an employee had been indicted for deliberate acts of mental violence on her colleague. The employee had created an account with the name of her colleague on various dating networks, describing the latter as a tramp, and giving out her personal contact information. The said colleague had then been contacted and harassed by several men, who were definitely not looking for friendship...

According to the US National Center for Victims of Crime (NCVC)<sup>3</sup>, the repeated perpetration of such actions is defined as cyber harassment, i.e. as threatening or stressful behaviours directed at another using the Internet or other forms of online and computer

communications. Cyber harassment can therefore be perpetrated either by sending threatening emails, subscribing to spamming newsletters with the e-mail of another person, leaving improper messages on message boards or guestbooks, tracing another person's computer and Internet activity. One of the main motivations of the harasser is to get control over his victim.

Under French law, cyber harassment is not *per se* condemned.

However, in work relationships, it may fall under the French qualification of moral harassment defined, pursuant to Article L.1152-1 of the French, Labour Code, as repeated acts which trigger a degradation of an employee's work conditions likely to (i) infringe on his rights or dignity, (ii) alter his physical or mental health, or (iii) compromise his promotion.

Such harassment actions are naturally defined as criminal offences. The harasser can therefore be condemned to a one-year prison sentence and a fine up to 15.000 Euros pursuant to Article L.1155-2 of the French Labour Code, and Article 222-33-2 of the French Criminal code. He can also be sentenced to indemnify the harassed employee for the moral damages suffered.

So may be the employer of both the harassed employee and the harasser, provided that he is not himself the harasser.

Legally empowered with wide prerogatives, the employer is compelled to implement all necessary means to prevent moral harassment from being perpetrated within its company (article L.1152-4 of the French Labour Code).

Pursuant to Article L.1321-2 of the French Labour Code, the employer is at least expected to insert in the internal regulations of its company the legal provisions concerning

<sup>1</sup> [http://ec.europa.eu/news/culture/090210\\_1\\_en.htm](http://ec.europa.eu/news/culture/090210_1_en.htm)

<sup>2</sup> [http://www.olfeo.com/pdf/real\\_util\\_web.pdf](http://www.olfeo.com/pdf/real_util_web.pdf)

<sup>3</sup> <http://www.ncvc.org/ncvc/main.aspx?dbName=DocumentViewer&DocumentAction=ViewProperties&DocumentID=32458&UrlToReturn=http%3a%2f%2fwww.ncvc.org%2fncvc%2fMain.aspx#1>

moral harassment. He may also detail in these regulations what kind of actions can be analysed as illegal moral harassment and describe the prevention policy of the company.

Such prevention policy shall be concerted with employees' representatives, as their consultation is mandatory to modify the internal regulations of the company, or to discuss any matter related to the protection of the employees' physical or mental health.

In the event where the employer fails to comply with the above obligations, he shall be held liable to indemnify the harassed employee, even if he was not aware of the harassment acts.

Consequently, it is highly recommended to include in the prevention policies a section related to cyber harassment and to implement technical tools in order to "keep an eye" on such practices.

Moreover, the employer may not disregard accusations of cyber harassment, considering them as virtual therefore lacking reality. Indeed, courts of justice will not regard the employer's liability as virtual.

But cyber harassment is not limited to the professional environment. In fact, the development of cyber harassment between schoolmates (cyber-bullying) has become worrisome.

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However, cyber harassment, outside the professional environment, is not punished by law by itself.

As a result, on February 10<sup>th</sup>, 2009, the European Commission has concluded an agreement with 19 major social networks to define guidelines for a safe use of such networks by children and teenagers<sup>4</sup>.

These guidelines should be completed in a close future by EC regulations for a safer Internet for children, as a public consultation will be launched in May 2009.

These guidelines aim to remind to social networks that it is paramount to ensure users' privacy, and to review illegal or prohibited content or conducts. Moreover, users should be empowered with technological tools to ensure that their profile remains private, or to restrict the access to their profile.

At any age, the protection of one's privacy and the fight against the spread of hurtful information and rumours over the Internet will be one of the challenges of the years to come.

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<sup>4</sup> [http://ec.europa.eu/information\\_society/activities/social\\_networking/eu\\_action/selfreg/index\\_en.htm](http://ec.europa.eu/information_society/activities/social_networking/eu_action/selfreg/index_en.htm)