

## Chapter 5

# Answering the New Realities of Stalking

Avelina Alonso de Escamilla  
CEU San Pablo University, Spain

### ABSTRACT

*This chapter aims mainly to carry out a study of a new type of harassment named stalking. After the study of its contents through the opinions of the most recognized specialist on it, the chapter defines the crime based on the expert's opinion. A study of comparative law is done, and this study focuses on the different ways stalking happens. This chapter offers a critical study of the inclusion of stalking as a felony in the criminal amendment Organic Criminal Law 10/1995 of 23 November, Criminal Law Code. To finish, this chapter proposes some improvements to that regulation and focuses on the new realities that bring about cyber stalking.*

### INTRODUCTION

The term stalking, first introduced by the Anglo-Saxon law tradition, can be explained as an intentional and malicious behavior of obsessive following, spying or harassment towards a certain individual. It therefore forms a pattern of behavior, a sort of abnormal harassment strategy, which is directed during a long interval of time towards a specific person (MELOY/GOTHARD, 1995, pp.259). It must therefore consist in more than a single act of persecution, and these repeated acts must be unwanted by the victim. It can have, among others, the following forms: following, enclosing, prowling, approaching, communicating, repetitive phoning, sending mail, ordering an object or service for the victim, breaking into the victim's house or properties, making false accusations, menacing or assaulting the victim.

As it can be seen from the aforementioned list, these different behaviors vary widely in seriousness: whereas some constitute felonies, others are legally irrelevant, and might even count with social approval. Furthermore we cannot fail to mention the new forms of stalking which the Internet has allowed to appear, such as sending e-mails on a constant basis, sending threatening messages on social networks such as Facebook or Twitter, posting defaming comments on the personal or professional webpages of the victim, hacking the victim's email account, etc. A lot of these actions can be carried out anonymously or even through a fake identity, which makes it much harder to identify the culprit. This harassment can occur even if the victim has never seen the stalker and has no way of figuring out who it could possibly be.

DOI: 10.4018/978-1-4666-6324-4.ch005

The literature has not reached a consensus when it comes to determining what must be taken into account in order to charge this behavior. Some authors consider that the defining factor is the number of attacks suffered by the victim (i.e. 10 times during 4 weeks or twice a week during a 6 month interval), irrespective of the seriousness of the behavior itself (PATHE/MULLEN, 1997, pp.12). On the other hand, other authors believe that a consensus must be reached regarding which out of all these acts are legally relevant for the legal classification of this felony (KAMPHUIS/EMMELKAMP, 2000, pp.207).

The regulation of stalking emerged in the United States of America, where it was defined as a repetitive behavior directed towards a specific individual, who must see such behavior as intrusive and frightening. This kind of definition is similar to the methodology employed in the DSM IV (Diagnostic and Statistical Manual of Disorders, 4<sup>th</sup> Edition), insofar as it requires a series of criteria to be met (WESTRUP, 1998, pp. 279).

To summarize, among the factors of stalking are the following: a series of act that form a pattern of behavior, which are clearly unwanted by the victim, and that cause him or her uneasiness, fear, shame or discomfort, and which hamper the victim from leading a normal life and/or cause her anxiety or some other psychological harm. It is precisely this idea of unceasing persecution that is interesting for criminal law. In some systems of comparative law this behavior has been characterized as a kind of domestic violence, but since harassment occurs in many different forms, some of which are unrelated to the victim's home place, this definition is clearly insufficient.

Stalkers do not necessarily have clinical features in common, so it is difficult to make a psychological profile about their personality. Sometimes they truly believe the victim wants to be with them, sometimes they suffer a romantic obsession which makes them want to be with the victim above anything else. Frequently the stalker follows a person with whom they were previously

romantically involved, refusing to acknowledge that relationship is over. And these are just a few among many of the motivations that stalkers use to justify their behavior. Sometimes the victim will minimize such as a behavior due to feelings of guilt or fear or because they believe it will be short-lived.

## **THE MANIFESTATION OF STALKING BEHAVIOR AND ITS DEMARCATION FROM OTHER CRIMES**

In most of the European legal systems in which *stalking* have been introduced, it has been placed among the felonies against the freedom to act. This is the case in the Netherlands, Austria, Germany or Italy. This freedom to act is understood in a broad way and spans throughout the whole process of volition: the freedom to form a will, the freedom to decide upon a will, and the freedom to carry out a will (or freedom to act strictly speaking (VILLACAMPA, 2010, pp. 41).

Even though stalking attacks this freedom to act, we will see that the current definition of felonies such as duress or threats is not enough to include this predatory form of harassment among its typical manifestations, something that was already proposed in the Project's Statement of Purpose.

To begin with the felony of threats, this crime is usually defined as an attack against the freedom to form a will, and hence some forms of stalking can be subsumed under it. After all such harassment will force the victim to change his or her behavior, and this clearly affects his or her will. However, this crime requires a verbal expression, an announcement of a serious harm that depends on the victim's will, and there are various forms of stalking that do not occur in this way. When a stalker wants to establish a relationship with the victim, or continue a relationship that is over, his or her behavior might appear as intimidating and persecutory, but not necessarily threatening.

8 more pages are available in the full version of this document, which may be purchased using the "Add to Cart" button on the publisher's webpage:

[www.igi-global.com/chapter/answering-the-new-realities-of-stalking/115749](http://www.igi-global.com/chapter/answering-the-new-realities-of-stalking/115749)

## Related Content

---

### How Much is Too Much?: How Marketing Professionals can Avoid Violating Privacy Laws by Understanding the Privacy Principles

Nicholas P. Robinson and Prescott C. Ensign (2012). *Cyber Crime: Concepts, Methodologies, Tools and Applications* (pp. 1147-1160).

[www.irma-international.org/chapter/much-too-much/61000](http://www.irma-international.org/chapter/much-too-much/61000)

### Efficient Anonymous Identity-Based Broadcast Encryption without Random Oracles

Xie Li and Ren Yanli (2014). *International Journal of Digital Crime and Forensics* (pp. 40-51).

[www.irma-international.org/article/efficient-anonymous-identity-based-broadcast-encryption-without-random-oracles/120220](http://www.irma-international.org/article/efficient-anonymous-identity-based-broadcast-encryption-without-random-oracles/120220)

### The Future of Cyber-Crimes and Cyber War in the Metaverse

Sameer Saharan, Shailja Singh, Ajay Kumar Bhandari and Bhuvnesh Yadav (2024). *Forecasting Cyber Crimes in the Age of the Metaverse* (pp. 126-148).

[www.irma-international.org/chapter/the-future-of-cyber-crimes-and-cyber-war-in-the-metaverse/334498](http://www.irma-international.org/chapter/the-future-of-cyber-crimes-and-cyber-war-in-the-metaverse/334498)

### On the Pixel Expansion of Visual Cryptography Scheme

Teng Guo, Jian Jiao, Feng Liu and Wen Wang (2017). *International Journal of Digital Crime and Forensics* (pp. 38-44).

[www.irma-international.org/article/on-the-pixel-expansion-of-visual-cryptography-scheme/179280](http://www.irma-international.org/article/on-the-pixel-expansion-of-visual-cryptography-scheme/179280)

### Surveillance of Employees' Electronic Communications in the Workplace: An Employers' Right to Spy or an Invasion to Privacy?

Ioannis Iglezakis (2009). *Socioeconomic and Legal Implications of Electronic Intrusion* (pp. 246-259).

[www.irma-international.org/chapter/surveillance-employees-electronic-communications-workplace/29368](http://www.irma-international.org/chapter/surveillance-employees-electronic-communications-workplace/29368)