

DIVORCE AND CYBERSPACE

By K. Dean Kantaras

IN THE OLD DAYS, IF YOUR SPOUSE was cheating on you, and you were sure of it, you would hire a private investigator, who would do what private investigators do, and wait for him to report back to you. Sometimes, you may have gotten "smoking gun" photos or videos, and sometimes you would just be left with your suspicions.

The world has since changed, even though most people haven't. Since we now live in the age of computers, Cyberspace can be, and is often, very helpful to a divorce lawyer.

I've found it strange that people are willing to post their most embarrassing and harmful information on Facebook and other social media. E-mails also have become a fertile source of incriminating information in a divorce action.

While recording someone's conversation with you, or with someone else, without their express permission is not allowed and, in fact, is a crime, the rules for computers are different. There is a question as to what we are allowed to take from a computer belonging to someone else, or even from our own, if the information is under another's password, such as your spouse.

There is an interesting criminal case pending in Michigan. A husband hacked into his wife's password protected email account only to discover she was having a relationship with her second husband. Since the wife had a child with her first husband, the present husband, who was concerned for the child because her second husband had beaten her in the presence of the child, told the first husband what he knew to help protect the child. While it sounds like the right thing to do, the authorities didn't think so and charged the present husband with hacking, a felony that is punishable by up to five years in prison.



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In Florida, although there are no cases that I know of, we do have some guidance. For instance, Florida's Evidence Code allows the use of a computer data printout as long as it is an original. Florida also has an interception of oral or wire communication's statute. The statute makes it illegal to intercept such communication, unless the other party has consented, or a court has specifically allowed it. Likewise, another Florida statute makes it a crime to intercept and disclose oral communications through electronic means. The statute applies to "any person," and "any person" has been ruled to include a spouse.

In North Carolina, a court allowed statements made on a MySpace page to be used to contradict previous statements made by one of the litigants in a case. In Maryland, a criminal trial allowed the use of social networking sites to prove the authenticity of a document.

In this case, a father was accused of raping his daughter. The daughter testified that prior to the attack, she had been a virgin. The father wanted to use the daughter's MySpace page, where she basically admitted to previously having had sex. The appellate court held the MySpace page should have been admissible.

In another case in Maryland, a defendant appealed a second degree murder conviction, where he asserted the trial court should not have allowed the use of the MySpace page of his girlfriend that regarded his presence at the scene of the crime.

Be aware that using aliases or pseudonyms may not be sufficient to protect you from a social networking site being used against you. Pictures that appear there, personal background information, physical descriptions and similar information can lead a court to the true identity of the user.

The essence of this is that I caution you, as you have fun with your computer with chats, emails, and social networking, be very careful what personal information you divulge, because it can return to haunt you.

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