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Cyberbullying

TARTALOMJEGYZÉK

CYBERBULLYING

Péterfalvi Attila:[1]
MOCK Conference conclusions

I would like to sum up the conference with two quotes. The one is cited from the 2006 study titled "Internet use and net life construction" of Dr. László Ropolyi[2]: *"the internet is neither good nor bad – it is merely a feature. A mirror. It appears that what thereby evolves is not radically new. Network life inherits the numerous annoyances and weaknesses."* the other citation comes from the 2011 study titled "The cyber kid and the bicycle" from Katalin Parti (National Institute of Criminology) and György Virág[3]: *"children surfing online often and too long usually lack the capability of empathy and face reading, they cannot perceive fine signals which are expressed other than verbally or in writing which can result in various conflicts during offline communication."*

The two quotations above refer to the keynote speech of the conference. According to Edina Kastory (National Media and Infocommunications Authority, Commissioner for Media and Infocommunication) this is an interdisciplinary problem and, therefore, the solution should be the same. She highlighted the need for joint collaboration of adults. Krisztina Karsai (vice-dean for education affairs, University of Szeged) affirmed that we would need a complex approach as the online harassment needs to be addressed by novel and complex legal solutions. I could not agree more.

I think the conclusions should be dedicated not only to the participants of the conference but mainly to those who are not present. This is confirmed by the presentation of András Koltai (National Media and Infocommunications Authority, Media Council) as well who noted that the state *is listening*. I am wondering whether the state is truly listening. Is it listening at the appropriate place and the appropriate time, indeed? I am convinced there are still areas where more attention should be paid to, in addition, more preventive actions would be needed. I think these are the key points. Prevention could be fostered primarily by education and the training of teachers.

I think – without hyping it – that perhaps the ARCADES ("*Introducing dAta pRoteCtion AnD privacy issuEs at schoolS in the European Union*") EU project, involving also the NAIH as a consortium member – can contribute to extending the data protection knowledge. In the context of the project a methodological manual on data protection has

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[1] Closing speech of Dr. Attila Péterfalvi, President of NAIH

[2] László Ropolyi: *Internet usage and the constract of the social networks*. Budapest, 2006. http://www.infonia.hu/digitalis_folyoirat/2006_4/2006_4_roplyi_laszlo.pdf (Downloaded 16th February 2016)

[3] Katalin Party & György Virág: The cyberkid and the bicycle, Study about The specifics of the internet use of children in Eastern Europe. In: Virág Gy. (editor): *Criminological Studies 48. OKRI*, Budapest, 2011, 48. p. http://www.okri.hu/images/stories/KT/KT_48_2011/004_2_parti-virag_29-48.pdf (Downloaded 16th February 2016)

been compiled for teachers which can promote prevention by supplying practical and conscious internet usage for children. András Koltai thinks that parents should be excited rather than children. Moreover, children should be taught on how to use the internet properly. I believe it should also be explained what is wrong. We are in a better position in that a basic principle of data protection is the requirement of fair data processing. Finally this refers to some kind of moral content. As of fall 2006 all of my presentation slides illustrate what Europe makes Europe – beyond moral rules: the Greek philosophers, the Roman legal academics, the Old Testament and the Christianity. Right after it can be struck through and be replaced with the term of empathy. This was raised in the lecture of Árpád Mihalik (SZTE Psychological Institute) as well who said that sharings should be postponed. That is to say, one should reconsider the disclosure of personal data. The video clip created at our request by Tamás Vastag performer promoting our "Key to the net!" publication echoed the same key message. Its major note is the following: „Think before disclosing your personal data! Are you using privacy settings?" But referring also to the moral standard of the society: he assumed to create this clip, afterwards a society campaign was produced for free which contains information, e.g., how much information is being shared and what data are being downloaded daily. Right after I have got a request for data of public interest enquiring after my position over why I think this information may imply anything important. My short reply as followed: my thoughts did not constitute data of public interest.

Regarding the conference I would also mention some shortage without formulating critical remarks. I am rather wondering from a scientific point of view – given that I am a civil lawyer and have been teaching civil law and data protection law since 1986 – how the criminal law relates to the various aspects of online intimidation, how different offences are categorised we heard or how the abuse with personal data would be assessed. The *portrait* is exhaustively listed in the Act CXII of 2011 on Informational Self-determination and Freedom of Information as *photographing*. If the portrait constitutes personal data and taking a photo is to be regarded as data processing then why does its unlawful disclosure and sharing not constitute abuse with personal data? If somebody is heterosexual or transsexual an abuse with their data why does not establish misuse with special personal data, why is not it an aggravated case of the criminal offence in question? Why do we allow – "allow" certainly as a rhetorical question – that only the politics takes advantage of the unlawful processing of personal data judging it as a criminal offence relating to general elections?

Why does not constitute a criminal offence displaying a minor as a victim of a sexual abuse without covering his/her face? How could the investigating authority declare that there is no prejudice to personal interests?

Finally I would like to mention that I decided to launch the Children's rights project of the NAIH in 2007 because I attended the International Data Protection Conference in Montréal in 2007 with the motto 'terra incognita'" where the major topic was the complex approach to minor's rights and internet. For objective reasons, however, I could revise this plan only in 2013 and, since then, the protection of children has become an area of our Authority. We are striving to make every effort; we have quite good contact

with Facebook as well. Formerly it was stated that not all privacy settings and information of Facebook are available in Hungarian. True, indeed. We try our best with Facebook – its data protection officer is of Hungarian origin – to make them create more and more privacy settings in Hungarian as well. (On a side note, the data processing practice of Facebook could be interesting to privacy experts following the Safe Harbour decision.)

Thus, in any case, I think this conference has been very useful; I would like to thank you for organizing it and wish you a successful continuance.

I believe the education work and awareness-raising programmes for children of state institutions and civil organizations will be needed in the future as well but, of course, it would be good if we saw a higher level state involvement.

Budapest, February 2016

Parti Katalin:[1]
What works in anti-bullying programs? Evaluative assessment best practices and recommendations

I. Objective

The study gives an overview of the five most popular school violence programs containing an anti-bullying component running in the U.S. today. The description of the major content elements and evaluation of the programs have a critical approach: we use the experience gained during the impact study of the programs to set up a standard for evaluation criteria as far as bullying assessment and implementation evaluative assessment are concerned. This document is a methodological analysis of the programs, and explains on the one hand (1) based on what principles and methods the *phenomenon* of bullying was examined, and (2) what evaluative methods were used to assess the *effectiveness,* applicability and adaptability to the given population *of the programs* on the other.

We formulate our proposals with the *ideal* methods for assessing the effect of the phenomenon and the programs in mind. In actual reality, conditions are only in the rarest cases truly ideal for the introduction of programs – e.g. the decisions of authorities or the school management, the involvement of educators and parents, the motivation of the children, or financial resources may be lacking. Despite that, we considered it important to paint an ideal picture, as we have to know the goals that we should strive for to be able to get closer to achieving them.

II. The selected programs and their commonalities

It is important to overview "what works" strategies, i.e. programs that have been proven to work in practice, because after the theoretical foundations are laid, it is practice that may show us whether we can achieve the desired effect with the individual program elements. At the same time, choosing an evaluation method for assessing impacts that is not suitable may bring misleading results. For this reason, not only strategies, but also evaluation techniques set up to assess results need to be elaborated with the greatest care and thoroughness.

The study builds up the ideal evaluation criteria based on the review of the characteristics and results of the following five programs:

- Olweus Bullying Prevention Program (OBPP);
- Positive Action (PA);

- Second Step (SS) and Second Step: Student Success Through Prevention middle school program (SS-SSTP) (Committee for Children);
- Steps To Respect (STR) (Committee for Children);
- KiVa, an anti-bullying program developed in Finland.

These five programs were selected for the analysis because all of them are programs in use in the U.S. (among other countries), that:

- Look back on many years or even a decade of *experience*.
- Several *impact studies* linked to the programs provide evidence of the operation of the programs in practice, their applicability, and also the less successful program elements.
- They are school-based intervention programs with a *reliable* (experimental or quasi-experimental[2]) *group design*. Each program reports data in a statistical format necessary to calculate effect size (e.g. means, standard deviation, group sizes, percentages).
- They are also *implemented internationally*, and they have been successfully adapted in several countries and on different continents (e.g. Europe, America, Australia).
- They contain *components developed for bullying situations*: a curriculum, training and other sensitization tools for educators and students. The research reports of the chosen programs indicate that intervention for bullying behavior is either the primary focus or a main component of the program.
- They contain *components developed for cyberbullying situations* – as part of the curriculum (case solution, lessons focused on cyberbullying) or in the form of a "cyberbullying toolkit".
- They are complex program packages aimed at the whole community – teachers, other school staff, students, parents – based on the *whole-school approach*. This is essential, because only those programs managed to achieve a positive impact, that were aimed at the whole school and the community outside the school beyond the classroom curricula and social skills training.[3]
- They are complex module systems, which approach the targeted groups of population with *different methods*, and contain e.g. teacher training, parental meetings, student curricula, and sensitizing conferences addressed to the community coming into regular contact with the children.
- They use a *terminology* widely accepted in international literature on the topic. The definition of bullying used by the reviewed programs can be described as

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[2] An experimental study is a type of evaluation that seeks to determine whether a program or intervention had the intended causal effect on program participants. A quasi-experimental study is a type of evaluation, which aims to determine whether a program or intervention has the intended effect on a study's participants. Quasi-experimental studies take on many forms, but may best be defined as lacking key components of a true experiment. While a true experiment includes (1) pre-post test design, (2) a treatment group and a control group, and (3) random assignment of study participants, quasi-experimental studies lack one or more of these design elements.

[3] J. David Smith – Barry H. Schneider – Peter K. Smith – Katerina Ananiadou: The effectiveness of whole-school antibullying programs: A synthesis of evaluation research. *School Psychology Review,* 2004/4., 547-560. pp.

follows. *"The definition of school bullying includes several key elements: (1) physical, verbal, or psychological attack or intimidation that is intended to cause fear, distress, or harm to the victim; (2) an imbalance of power (psychological or physical) with a more powerful child (or children) oppressing less powerful ones; (3) and repeated incidents between the same children over a prolonged period of time."*[4] Consequently, it is not considered bullying when two persons of equal power (physical, psychological, or verbal) or in equal positions of power come into a one-off conflict. A further attribute of school bullying is that it occurs on the premises of the school, or outside that on the way to school, or from school home[5] or between the students of a school, whose effect is felt at school – in the form of ruining school climate, disrupting the peaceful learning atmosphere, or even weakening the cohesion of a smaller community (school learning groups, classes, etc.).

Characteristically these programs include prevention and intervention elements or a combination of the two: they exert their influence through general sensitization and individual skills-building. Within that, they put more emphasis on proactive, preventive techniques, than on reactive, subsequent response. Consequently, they contain education of not only the bully and the victim, but also the bystanders, children standing up for each other and in some cases peer mentor training are integral parts of the programs as well.

The programs consist of several components on several levels. A typical element is the classroom curriculum, which may range from a few sessions to a systematic offer of classes for a whole semester. The written curriculum of classes is sometimes supported by video spots, and in some cases (KiVa) an online video game helps understand the incidents. In addition to the informative-sensitizing classes held for students, direct training for educators also appears as a compulsory program element, which may be complemented by indirect training for a trainer diploma (train the trainer). Educators with such a diploma are entitled to hold trainings for other educators at their own or other schools. The programs also include parent trainings/meetings on specific issues, and school conferences. The programs also support the teaching staff with complete protocols for the resolution of cases, and responses. All written materials of the programs (curriculum, black lines, procedural protocols, reporting forms, information materials for parents, etc.) are available and can usually be downloaded for a fee from the program websites. Programs also include improved playground supervision and a whole-school anti-bullying policy, disciplinary (but non-punitive) methods, classroom rules, and cooperative group-work.

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[4] Referred by David P. Farrington: Understanding and preventing bullying. In: Michael Tonry (Ed.): *Crime and Justice, 17.* University of Chicago Press, Chicago, 1993, 381-458. pp.; Dan Olweus: *Bullying at School. What We Know and We Can Do.* Blackwell, Oxford, 1993; Maria Ttofi – David P. Farrington: Effectiveness of school-based programs to reduce bullying: A systematic and meta-analytic review. *Journal of Experimental Criminology,* 2011/7., 27-56. pp.
[5] Ttofi – Farrington: Id.

Of the meta-analyzes overviewing anti-bullying programs[6] the most rigorous so far is the Ttofi & Farrington study[7], aggregating 44 different program evaluations based on the procedure of the Campbell Collaboration Systematic Review[8], which compared the findings of randomized clinical trials. It established that the analyzed programs based on the procedure of appropriately documented, randomized controlled trials reduced the incidence of bullying by an average 20 to 23%, and victimization by 17 to 20%.

It has also become clear that the sole use of an anti-bullying curriculum shows no significant correlation with either perpetration or victimization.[9] The different program elements can change school climate and improve bullying indices in an interdependent and synergistic way.

Programs focusing on older children (above the age of 11) achieved better results than programs aimed at younger children.[10] Admittedly, according to Smith and his colleagues this is possible, because Ttofi and Farrington applied between-program comparisons instead of within-program comparisons in their meta-analysis. Any one program, however, is aimed at several age groups, and contains age-specific components. For this reason, the effects of age-specific program components need to be assessed for each age group within the same program. Smith and colleagues have proven that if the comparison is made between the age groups, it is exactly the age group six to 11 years where the most positive effect can be achieved.[11]

Anti-bullying programs introduced in the U.S. rely on the elements and methods of the Olweus Bullying Prevention Program (OBPP) for the assessment, prevention and management of the phenomenon. In contrast to the original OBPP implemented in Norway on a nationwide sample, these research projects produced statistically not significant, in certain cases negative, but at best mixed results. Evans and his colleagues, who compared the findings of research published between 2011 and 2014 following the meta-analysis of Ttofi and Farrington[12] establish, that the programs implemented in

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[6] See Smith – Schneider – Smith – Ananiadou: Id.; Friedrich Lösel – Andreas Beelmann: Effects of child skills training in preventing antisocial behavior: A systematic review of randomized evaluations. *Annals of the American Academy of Political and Social Science, 587,* (2003), 84-109. pp.; Kenneth W. Merrell – Duane Isava – Barbara A. Gueldner – Scott W. Ross: How effective are school bullying intervention programs? A meta-analysis of intervention research. *School Psychology Quarterly,* 2008/1., 26-42. pp.; Ttofi – Farrington: Id.; Caroline B.R. Evans – Mark W. Frazer – Kattie L. Cotter: The effectiveness of school-based bullying prevention programs: A systematic review. *Aggression and Violent Behaviour, 19* (2014) 532-544. pp.; David Scott Yeager – Carlton J. Fong – Hae Yeon Lee – Dorothy L. Espelage: Declines in efficacy of anti-bullying programs among older adolescents: A developmental theory and a three-level meta-analysis. *Journal of Applied Developmental Psychology, 37* (2015) 36-51. pp.

[7] Ttofi - Farrington: Id.

[8] *Campbell collaboration systematic reviews: Policies and guidelines (V 1.0).* www.campbellcollaboration.org; (last accessed: 30.04.2015)

[9] Ttofi – Farrington: Id.

[10] Id.

[11] Peter K. Smith – Christina Salmivalli – Helen Cowie: Effectiveness of school-based programs to reduce bullying: A commentary. *Journal of Experimental Criminology,* 2012/8., 433-441. pp.

[12] Caroline B.R. Evans – Mark W. Frazer – Kattie L. Cotter: The effectiveness of school-based bullying prevention programs: A systematic review. *Aggression and Violent Behaviour, 19* (2014) 532-544. pp.

Europe may have produced better results, because the assessed population and the sample taken were more homogenous.

III. Evaluative assessment best practices

Evaluation may focus on reviewing the content requirements of the program. This is content assessment (i.e. bullying assessment), which measures the degree of implementation of program components and the program's intensity. If the result of evaluation is negative, the program was not implemented correctly, and the phenomenon was not measured using the criteria defined in the program description. In such a case, there may be problems with the degree of intensity, the frequency of monitoring, and the degree of implementation. In contrast to that, program assessment (i.e. implementation assessment) examines whether the desired results were achieved with the program, i.e. whether the program is suitable for triggering the changes that it is expected to achieve. If so, the program can be continued, but it is recommended to adjust the components, measuring tools and methods to arising new needs identified by way of continuous needs assessment. If as a result of the program the desired results did not materialize (e.g. bullying and victimization indices did not fall, the school staff and the children did not become more sensitive towards the issue, and they did not learn any new tools to help them break out of their bystander role, etc.), the program's faults need to be resolved after an investigation of causes (method, intensity, personal or financial conditions, etc.), and the program can be continued accordingly, in a developed form.

1. Recommendations for bullying assessment. What to measure?

Targeted techniques by subgroups
It has become clear from evaluative assessments that it is easier to teach victims protection mechanisms, than convincing perpetrators to leave the path that they have chosen. In this context, program developers have the responsibility in the future to examine how reliably the strategy they have developed is suitable for the re-education of the perpetrators. On the other hand, desistance-enhancing techniques need to be elaborated specifically for perpetrators and they need to be incorporated into programs. The curriculum needs to include strategies for popular bullies, who may be able to replace their violent behavior with peaceful, socially accepted methods, and still keep their high status in the community. Research is needed into how the coaching of children (by teachers) who bully differs from coaching of those who are victims or bully-victims. Is coaching differentially effective among these groups? Are such interventions effective if they do not occur in the context of a comprehensive program?[13] The strategies need to be tested, and methods that truly work need to be identified.

Yeager and colleagues recommend that the programs should introduce different language use suited to the different age groups while conveying the same set of rules. In younger

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[13] Miriam K. Hirschstein – Leihua Van Schoiack Edstrom – Karin S. Frey –Jennie L. Snell – Elizabeth P. MacKenzie: Walking the Talk in Bullying Prevention: Teacher Implementation Variables Related to Initial Impact of the Steps to Respect® *Program. School Psychology Review*, 2007/1, 3–21. pp.

age groups it is controlling language that is more effective, while later it is autonomy-supportive language.[14] The effectiveness of programs can be increased with this simple technique when working with adolescents in their late teens.

It is also Yeager and colleagues who recommend that it should be examined in each age group separately what components have an effect and why. So for example among three- to 11-year-olds popularity is a strong and significant predictor of bullying, but among older adolescents aged 12 to 18, popularity is a weaker, non-significant predictor of becoming a bully.[15] They also establish, however, that among moderate-to-high popular students the programs may be effective, but they show no effect on the most popular students (of the programs reviewed, only KiVa examined this phenomenon, and came to a similar conclusion.[16] The suitability of social-emotional skill instructions for children who demonstrate a high level of social intelligence and are capable of manipulating others is questionable. Skills need to be developed therefore for emotion regulation and assertiveness, which are specifically targeted at popular children.[17]

A striking gap in the literature on anti-bullying programs is that while students with disabilities have been identified as one subgroup that is potentially at a higher risk of experiencing and engaging in bullying, bullying prevention programs have not been developed for use with this specific population. None of the programs assessed have been researched with students with disabilities and none of the program guidelines include information on how to adapt or modify the program to make it more accessible for these populations.

Intensive bullying activity is only characteristic of a small group.[18] Most of those involved in bullying are bystanders, or are on rare occasions victims or perpetrators. More research is needed into how the "hard core" – those who regularly involved in bullying – can be approached, what skills they need to be taught to achieve desistance. According to research, African American, Hispanic and other ethnic minorities show different characteristics in school violence.[19] It needs further investigation what characteristics school bullying has along ethnic and socio-economic variables and

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[14] Yeager – Fong – Lee – Espelage: Id.

[15] Clayton R. Cook – Kirk R. Williams – Nancy G. Guerra – Tia E. Kim – Shelly Sadek: Predictors of bullying and victimization in childhood and adolescence: A meta-analytic investigation. *School Psychology Quarterly,* 2010/25, 65–83. pp.

[16] Claire F. Garandeau – Ihno A. Lee – Christina Salmivalli: Differential effects of the KiVa anti-bullying program on popular and unpopular bullies. *Journal of Applied Develpomental Psychology, 35,* (2014), 44-50. pp.
http://www.sciencedirect.com/science/article/pii/S0193397313000828; (last accessed: 08.05.2015)

[17] Karin S. Frey – Susan Bobbitt Nolen – Leihua Van Schoiack Edstrom – Miriam K. Hirschstein: Effect of a school-based social-emotional competence program: Linking children's goals, attributions, and behavior. *Applied Developmental Psychology, 26* (2005a), 171-200. pp.

[18] See for example Karin S. Frey – Miriam K. Hirschstein – Jennie L. Snell – Leihua Van Schoiack Edstrom – Elizabeth P. MacKenzie – Carole J. Broderick: Reducing playground bullying and supporting beliefs: An experimental trial to the Steps To Respect program. *Develpomental Psychology, 41* (2005b), 479-491. pp.

[19] Sandra Graham – Jaana Juvonen: Ethnicity, peer harassment, and adjustment in middle school: An exploratory study. *Journal of Early Adolescence, 22,* (2002), 173–199. pp.

matching program elements need to be developed. Although researchers in recent years have begun investigating racially motivated bullying and harassment[20], little is known about intra-racial/ethnic bullying.

Sexual maturation may further influence the reaction of age groups to the program. It may be a catalyst especially in relation to bullying manifesting as relational aggression.[21] The evaluative assessments of several programs were not performed for single age groups. For example the relatively recent KiVa is currently being tested in the lowest age group, and PA has never been assessed in the age group 15 to 18.[22] In order to target high school populations, we need to identify first what factors make programs more successful in older age groups.[23] The curriculum is required to be adjusted to the needs of the older age groups. KiVa, for example achieves this by offering separate online games for younger children (KiVa Game with anima-style characters) and adolescents (KiVa Street, featuring an edgy teen with skateboarder clothes and stocking cap).[24]

Even though programs act against bullying on many different levels – classroom, individual, community level –, there is currently very little research into the correlation of classroom or individual level implementation of bullying prevention programs *and* program effects. E.g. STR examined measures against bullying at classroom level ("talk the talk": frontal presentations) and at individual level ("walk the talk": coaching, one-on-one interactions), but the assessment was not suitable for separating the effects of the two levels.[25] These questions also need attention in the future.

Finding a definition
According to research, if the questionnaire determines the definition, we can expect a lower prevalence as a result of the survey, which suggests that it could be a way to ensure validity and avoid term overuse.[26] If we want to measure with a single question (one-item measure), without a definition, the object of the survey will be compromised, and it is therefore recommended to ask questions about specified behaviors. In such a case, most

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[20] Stephen L. Wessler – Leila L. De Andrade: Slurs, Stereotypes, and Student Interventions: Examining the Dynamics, Impact, and Prevention of Harassment in Middle and High School. *Journal of Social Issues,* 2006/3, 511–532. pp.
[21] Tracy Vaillancourt – Jessie L. Miller – Aanchal Sharma: "Tripping the prom queen": Female intrasexual competition and indirect aggression. In: Karin Österman (Ed.): *Indirect and direct aggression.* Peter Lang Publishing, Frankfurt, Germany, 2010.
[22] Kin-Kit Li – Isaac Washburn – David L. DuBois – Samuel Vuchinich – Peter Ji – Vanessa Brechling – Brian Flay: Effects of the Positive Action programme on problem behaviors in elementary school students: A matched-pair, randomized control trial in Chicago. *Psychology & Health,* 2011/2., 187-204. pp.
[23] Yeager – Fong – Lee – Espelage: Id.
[24] Antti Kärnä – Rinus Voeten – Todd D. Little – Elisa Poskiparta – Erkki Alanen – Christina Salmivalli: Going to scale: A nonrandomized nationwide trial of the KiVa antibullying program for grades 1-9. *Journal of Consulting and Clinical Psychology,* 2011/6 (2011a), 796-805. pp.; Antti Kärnä – Rinus Voeten – Todd D. Little – Elisa Poskiparta – Anne Kaljonen – Erkki Alanen – Christina Salmivalli: A large-scale evaluation of the KiVa antibullying program. *Child Development, 82* (2011b), 311-330. pp.
[25] Hirschstein – Van Schoiack Edstrom – Frey – Snell – MacKenzie: Id.
[26] Susan M. Swearer – Dorothy L. Espelage – Tracy Vaillancourt – Shelley Hymel: What can be done about school bullying? Linking research to educational practice. *Educational Researcher, 39,* (2010), 38–47. pp.
http://digitalcommons.unl.edu/edpsychpapers/141; (Last accessed: 15.05.2015)

questionnaires do not provide a definition,[27] but it would still be desirable for more precision. All of the programs assessed use some modified version of the Olweus Bullying/Victimization Questionnaire,[28] but there are several anti-bullying programs running in the U.S., which attempt to measure bullying by listing the elements of violence, which however does not fully correspond to the phenomenon they intend to measure. Also, anti-bullying research should include as an essential element the measurement of the dynamics of bullying, i.e. the role of the group. Despite that, Second Step used the University of Illinois Bullying/victimization Scale,[29] Steps to Respect the School Experiences Survey,[30] which contain items for measuring violence, even though both programs refer to action against bullying. As an example not discussed here in detail, the School Experiences Survey concentrates so much on violence, that it lacks any items on power imbalance, repetition and intent. There are also other standards beside Olweus' basic definition, which may serve as a reference point for research, such as e.g. the manual developed by Centers for Disease Control and Prevention.[31]

According to social-ecological and evolutionary psychology research, bullying is a behavior rooted in evolution, it is more intentional than accidental, and bears the characteristics of proactive aggression to maintain a position in a community rather than reactive aggression.[32] We should consider integrating these newly developed elements (goal-directedness, proactive aggression) into the definition of bullying. Prevention and intervention programs need to be amended with these elements in mind, i.e. program elements adjusted to the aim of bullying need to be added.[33]

The use of the terms 'bully' and 'bullying' in questionnaires and other measurement tools is also another disputed issue. Some research uses the term bullying, while others list all the behaviors that bullying includes. Research proves that use of the term bullying may elicit socially desirable responses.[34] Others suggest that sensitization works as a backlash of prevention programs: overusing the term 'bullying' may compromise validity of

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[27] Evans – Frazer – Cotter: Id.

[28] *Olweus Bullying Questionnaire Script,* Hazelden Foundation, 2009, http://www.sisd.net/cms/lib/TX01001452/Centricity/Domain/56/Teacher%20Script%20for%20Olweus%20 Questionaire.pdf; (last accessed: 30.05.2015); Mona E. Solberg – Dan Olweus: Prevalence estimation of school bullying with the Olweus bully/victim questionnaire. *Aggressive Behavior, 29,* (2003), 239–268. pp.

[29] Dorothy Espelage – Melissa K. Holt: Bullying and victimization during early adolescence: Peer influences and psychosocial correlates. *Journal of Emotional Abuse,* 2001/2, 123-142. pp.

[30] Eric C. Brown – Sabina Low – Brian H. Smith – Kevin P. Haggerty: Outcomes from a school-randomized controlled trial of Steps to respect: A bullying prevention program. *School Psychology Review, 40,* (2011), 423-443. pp.

[31] Matthew R. Gladden – Alana M. Vivolo-Kantor – Merle E. Hamburger –Corey D. Lumpkin: *Bullying surveillance among youths: Uniform definitions for public health and recommended data elements, Version 1.0,* National Center for Injury Prevention and Control, Centers for Disease Control and Prevention and U.S. Department of Education, 2014.

[32] Anthony A. Volk – Andrew V. Dane – Zopito A. Marini: What is bullying? A theoretical redefinition. *Developmental Review,* 2014/4., 327-343. pp.

[33] Ttofi - Farrington: Id.

[34] Dorothy L. Espelage – Susan M. Swearer: Research on school bullying and victimization: What have we learned and where do we go from here? *School Psychology Review, 32,* (2003), 365–383. pp.

data.[35] Further research is needed to examine the strength and limitations of each approach.

Culture and adaptability

It needs to be examined whether the positive program effects can be implemented in other countries. It is possible that different countries will show significant differences in culture, school types, school homogeneity, and the school system. For this reason, the possibilities of adaptation, and the barriers to implementation between countries need to be investigated before adapting any program in a foreign country. Forecasts need to be compiled about the different needs (needs assessment), and about how attitudes related to bullying influence the effect of the new program. Before adaptation, the changes potentially needed in the program are to be mapped. To accommodate that, programs need to be designed in a way that makes it possible for them to be flexibly adjusted in other cultures and school systems. The rules need to be concrete, but suitably flexible. For example in Eastern Europe, where today's top-down controlled, authoritarian school system bears the marks of the historical Prussian educational system, and norm crisis has become wide-spread after the fall of communism, it is necessary to examine how these effects can influence the effects of the program to be adapted.[36]

Care must be given to the assessment of such culture-dependent environmental factors as poverty incidence, the everyday survival issues of disadvantaged families, problems from the social welfare system (e.g. the work-load of parents prevents them from properly supervising the leisure activities of their children), traditions of discipline in the family and at school, the structure of the school system, basic education of educators, equipment and infrastructures of schools, ethnic setup of students. It is also necessary to measure what problems students are facing at school and in their living environment.

The Olweus Bullying/Victimization Questionnaire needs to be amended and enable it to measure everyday stress factors in low-income neighborhoods and also peer aggression/bullying. The stress factors of educators also need to be measured. In the knowledge of these, school- of school district-specific bullying prevention programs can be amended with the suitable strategic elements.

The community outreach component of programs needs to be strengthened, which is particularly needed in regions grappling with poverty. Opportunities need to be created for community leaders to get involved in school-based anti-bullying programs using their own resources.

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[35] Elizabeth K. Englander: *Bullying and Cyberbullying: What every educator needs to know.* Harvard Education Press, Cambridge, MA, 2013.

[36] Péter Fóti: *Poroszos-e a mai magyar iskolarendszer? [Is the current Hungarian school system Prussian?]* 2009.
http://www.foti-peter.hu/porosz.html; (last accessed: 16.05.2015)
William S.F. Pickering – Geoffrey Walford: *Durkheim's Suicide: A century of research and debate. British Centre for Durkheimian Studies.* Routledge, London and New York, 2000, 25. p.

Causal research and the research of latent and complex bullying phenomena
None of the reviewed programs managed to achieve a drop in the non-physical bullying component. It is possible that the programs are only able to manage the simple, visible forms of bullying, and are not suitable for the prevention and reduction of more complex and latent phenomena. Evaluations lag behind in terms of causal research, what is more, they do not examine the development of cyberbullying, as a form of non-physical bullying. In the future, more energy needs to be invested in the examination of the phenomenon of cyberbullying. Positive changes in indirect – verbal, cyber- or relational – bullying demand a longer time. Changes are necessary in the sensitivity and attitude of not only students, but also educators.[37] Care must be given to the development of program elements, which are capable of changing attitudes, and the testing of these.

Research has not assessed the correlation of lack of empathy and bullying. Descriptive work suggests a possible link between lack of empathy for victims and perpetrating or watching bullying.[38] The link between lack of empathy and bullying needs to be researched in the future.

Malicious gossip may be a starting point of bullying, or one of its components. Only a few studies have investigated this phenomenon, its spread and role in changing group status[39] this needs to be corrected in the future.

Practical solutions for educators
Beyond the universal approach (targeting whole schools and classrooms) – which every anti-bullying program contains – we also need to offer options for solving current incidents. Indicated actions (which was elaborated the most thoroughly by KiVa of all the reviewed programs) are needed to intervene in ongoing bullying (for example systematic discussion techniques for addressing bullying cases; simulation exercises during teacher training). Educators usually say they miss techniques the most in the programs that they can use in every day practice.[40] Children are looking for role models, while teachers need to be taught field intervention techniques, which they can use to actually intervene in incidents (e.g. coaching, reinforcement in the moment, which STR uses successfully) and may show children an example for learning supportive attitudes. We need to assess which practice can be used in which situation the most effectively.

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[37] Dorothy L. Espelage – Sabina Low – Joshua R. Polanin – Eric Brown: The impact of middle school program to reduce aggression, victimization, and sexual violence. *Journal of Adolescent Health, 53*, (2013), 180-186. pp.

[38] Inger M. Endresen – Dan Olweus: Self-reported empathy in Norwegian adolescents: Sex differences, age trends, and relationship to bullying. *In Arthur C. Bohart – Deborah J. Stipek (Eds.): Constructive & destructive behavior: Implications for family, school, and society. American Psychological Association,* Washington, D.C., 2001, 147–165. pp.; Anthony D. Pellegrini – Jeffrey D. Long: A longitudinal study of bullying, dominance, and victimization during the transition from primary school through secondary school. *British Journal of Developmental Psychology, 20,* (2002), 259–280. pp.

[39] Frey – Hirschstein – Snell – Van Schoiack Edstrom – MacKenzie – Broderick 2005a; Zsolt Boda – Bálint Néray: Inter-ethnic friendship and negative ties in secondary school. *Social Networks, 43,* (2015), 57-72. pp.

[40] Elizabeth K. Englander – Katalin Parti – Meghan McCoy: Evaluation of A University-Based Bullying and Cyberbullying Prevention Program. *Journal of Modern Education Review,* 2015/10., 937-950. pp.

The rationale for research on cyberbullying
There are several studies available on the rationale for the research of the cyberbullying phenomenon.[41] Even though studies invariably state that cyberbullying is a low frequency phenomenon compared to school bullying, they also agree that (1) the term needs to be used restrictively – Peter K. Smith uses the definition of Olweus for traditional bullying and extends it to electronic perpetration; (2) the term needs unification, otherwise the findings of research will not be comparable and the research will not be reproducible; (3) it needs to be labeled as a form of bullying, and not as a completely different phenomenon. They however also acknowledge that there are phenomena – e.g. online bystander roles and dynamics, and the process of online bullying on social networking sites –, which are more complex and require separate assessment.[42] Olweus argues that traditional bullying and cyberbullying overlap – since the majority of cyberbullied children are also exposed to traditional bullying –, and consequently, if we treat traditional bullying properly, we can also combat its forms in cyberspace.[43] Others[44] would like to see separate program packages for the treatment of cyberbullying. In fact, there are no reliable surveys into these questions. Research has failed to identify overlaps between school and online bullying, and also typically co-occurring forms of appearance. According to Gradinger and colleagues, the perpetration and victimization forms of both traditional and cyberbullying have to be identified, for us to be able to establish the characteristics of risk groups, which were not receptive to programs mainly treating traditional bullying.[45] Olweus also agrees however that there are cardinal questions in relation to cyberbullying that demand an answer. These are:[46]

- To what extent can the traditional criteria of bullying, intentionality, repetition, and power imbalance, be applied to cyberbullying?
- Do cyber-victimization / bullying items differ in important ways from traditional victimization / bullying items measuring physical, verbal and indirect / relational forms of bullying?
- Do cyber-victimization / bullying items and other victimization / bullying items go together in one factor and, in case, have roughly similar loadings?
- Do cyber-victimization / bullying variables relate in the same way as traditional victimization / bullying variables to psychosocial adjustment dimensions they can be expected to be associated with?

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[41] Dan Olweus: Cyberbullying: An overrated phenomenon? *European Journal of Developmental Psychology,* 2012/5, (2012a), 520–538. pp.; Dan Olweus: Comments on cyberbullying article: A rejoinder. *European Journal of Developmental Psychology,* 2012/5, (2012b), 559-568. pp.; Sameer Hinduja – Justin W. Patchin: Cyberbullying: Neither an epidemic nor a rarity. *European Journal of Developmental Psychology,* 2012/5., 539–543. pp.; Peter K. Smith: Cyberbullying: Challenges and opportunities for a research program. A response to Olweus (2012). *European Journal of Developmental Psychology,* 2012/5., 553–558. pp.; Ersilia Menesini: Cyberbullying: The right value of the phenomenon. Comment on the paper: Cyberbullying: An overrated phenomenon? *European Journal of Developmental Psychology,* 2012/5., 544-552. pp.
[42] Smith: Id.
[43] Olweus: Id.
[44] Hinduja - Patchin: Id.; Smith: Id.
[45] Petra Gradinger – Dagmar Strohmeier – Christiane Spiel: Traditional bullying and cyberbullying. *Zeitschrift for Psychologie/Journal of Psychology, 217,* (2009), 205–213. pp., 212. p.
[46] Olweus: Id.

Cyberbullying is still less frequent than school (offline) bullying. Cyberbullying is a low-frequency and high-intensity incident, which may be more damaging than school bullying.[47] Compared to the low prevalence, it has the potential to have such a profound effect on the wellbeing and social status of individuals, that this in itself justifies the existence of research into the forms of appearance and effect of cyberbullying.[48]

2. Proposals for program evaluative assessment. How to be more effective?

Improve the qualitative indices of the degree of implementation

In order to improve the qualitative indices of the degree of implementation, it is recommended to organize meetings and conferences with stakeholders (educators, guidance counselors), and to continuously monitor participating schools. The close connection is necessary *before* and *during* the implementation of the program as well, as it makes it possible to control the suitability of the degree of implementation. KiVa can be regarded as a model in this respect, as the program provides detailed guides to schools, and prepares them at conferences and interactive meetings.

Fidelity monitoring

Several studies mention the effect of systematic monitoring on implementation fidelity.[49] The STR program, which expressly emphasizes the importance of fidelity monitoring in the interest of maintaining the program effect, also mentions among the financial conditions that program fidelity monitoring is free of charge. This program guarantees continuous supervising making sure that the schools implement the program according to requirements. Other anti-bullying programs do not concentrate so much on program fidelity, what is more, some programs actually allow schools to choose those program elements freely that best suit local needs and teachers to only hold the classes of the curriculum that they like. In order to ensure validity, it would be more fortunate to find a middle ground and offer the option of program monitoring to these programs, even if for a minimal fee.

The importance of consistency and continuity

Programs started in preschool need to be continued into the late teens (if conditions are given and the program contains components for older age groups). It is however necessary to check the components for age-appropriateness, i.e. whether they meet the needs of the older adolescent age groups, and whether rules can be made to fit the adolescents' drive for independence, and their psychological and psychosexual development processes.

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[47] Volk – Dane – Marini: Id.

[48] Sonia Livingstone – Lucyna Kirwil – Cristina Ponte – Elisabeth Staksrud: *In their own words: What bothers children online?* 2013 http://www.lse.ac.uk/media@lse/research/EUKidsOnline/EU%20Kids%20III/Reports/Intheirownwords020 213.pdf; (last accessed: 03.05.2015)

[49] Smith – Schneider – Smith – Ananiadou: Id.

Combined use of quantitative and qualitative methods may promote the expression of attitudes towards the program

Mostly quantitative methods are used to measure program effectiveness – e.g. pre- and post self-report test with students, and self-report perception tests with teachers and parents (school administrator reports, parent reports). The PA program also recorded qualitative reports: parents and children had the opportunity to express their opinion about the program and to what an extent its effects met with their expectations in comments and essays.[50] This method complements multiple choice tests very well, and with its help we may learn about impressions on issues, which cannot be measured with multiple choice tests. The research EU Kids Online for example recorded one-on-one interviews with parents, who explained to what an extent they think their children are threatened online, or to what degree their child is involved in school bullying.[51] The researchers of EU Kids Online also asked open questions to measure such sensitive issues as to what an extent the children felt disturbed by the incidents that happened with them online, and how much time they needed to process their psychological injuries.[52] When performing the evaluative data collection of the anti-bullying program of the Massachusetts Aggression Reduction Center, I also opted for the technique of interviews surveying the educators of the participating schools. During the one-on-one interviews, I gained information on program implementation, which would not have been possible with the limited number of responses in multiple choice tests.[53]

We need to repeat the surveys every three years to check program results

The program evaluations prove that some program effects may change – strengthen or weaken – over the years. For example the positive effect of the reviewed programs seen in the first year was reduced or disappeared in the second year of intervention, and also with older children, who have been participating in the program for longer.[54] Ryan and Smith[55] recommend a three-year follow-up period to properly investigate the effects of the intervention program. The developers of KiVa emphasize that this is necessary because the participating teachers should have enough time to solve the problems arising during implementation, and for program effects to manifest to the fullest extent possible.

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[50] Positive Action Evaluation Report, Proposed Mental Health Services Act – Positive Action Evaluation Report Data from August 2013 - June 2014.
http://www.co.shasta.ca.us/docs/HHSA/mental-wellness/positive-action-evaluation-report-final-oct-14.pdf; (last accessed: 03.05.2015)
[51] EU Kids Online: findings, methods, recommendations 2014. EU Kids Online, LSE, London, UK. http://eprints.lse.ac.uk/60512/; (last accessed: 03.05.2015)
[52] Livingstone – Kirwil – Ponte – Staksrud: Id.
[53] Englander – Parti – McCoy: Id.
[54] Dan Olweus – Françoise Delange Alsaker: Assessing change in cohort-longitudinal study with hierarchical data. In: David Magnusson – Lars Bergman – Georg Rudinger – Bertil Törestad (Eds.): *Problems and Methods in Longitudinal Research: Stability and Change,* Cambridge University Press: New York, NY, 1991, 107-132. pp.
[55] Wendy Ryan – J. David Smith: Antibullying programs in schools: How effective are evaluation practices? *Prevention Science,* 2009/10., 248-259. pp.

Program effect can be assessed between-program and within-programs
Meta-analyzes are good example for the former, which are needed to filter out well working and effective program components. Nonetheless, if we want to examine the effect of the single components of a program on an age group, we need to do a within-program analysis. This may be necessary to establish in which age group the strategies offered in the program work the best, and in which grade they achieve the greatest possible effect. When we make statements about program effectiveness, we should not forget about the possibility of some program elements being effective only at a certain age.[56]

Modern info-communication tools' effect to be measured
We have to examine the effect of modern info-communication tools – e.g. the use of virtual reality computer games. Despite the fact that these components have been introduced by several programs so far, there is no data on how and to what an extent they can help convey the prevention messages.[57]

Subsequent surveys to be conducted
Subsequent surveys need to be conducted to check the validity of implementation evaluation results. A focus group discussion may be suitable for that, or with teachers the informal interview technique, which should be ideally conducted by an independent researcher.

IV. Recommendations for data collection and evaluative assessment studies

The basic rules of measuring bullying can be summarized as follows:

a) Bullying assessments need to be systematic and well-planned as a result of the cooperation of the professional team outside and inside schools. Programs need to be elaborated by an independent professional team after the assessment of local characteristics, needs and problems, but the implementation of the program also requires work from the teams at the institutions (administrators, counselors, teachers, guidance counselors and psychologists). The program should be piloted before implementation, if possible.

b) Before implementation, racial, cultural, ethnic and socio-economic have to be mapped within the given school community, so that stratification can be ensured. This is the only way any program can be suitable for assessing the problems of the heterogeneous populations of schools, and for giving an adequate response.

c) Before deciding on the use of any particular measure method, it needs to be examined whether the given method is suitable for measuring the desired phenomenon in the given environment (technical adequacy).

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[56] Smith – Salmivalli – Cowie: Id.
[57] Ttofi – Farrington: Id.

d) In the interest of reliability and validity, data need to be collected routinely and systematically over a long period, within a set timeframe.[58]

e) Data have to be collected using more than one method. Qualitative techniques, like observation, interviews or teacher rating scale may complement or control the quantitative techniques, such as surveys, self-report and peer-report questionnaires.

f) Parents are to be involved if possible both in the assessment and the implementation phase. Even though reaching out to parents is the most difficult aspect, their involvement in the program is necessary both to protect children's right to privacy and in the interest of program fidelity.

g) The highest possible number of school staff must be involved in data collection. Recurrent trainings and quality checks should be used to ensure the competence of the personnel and the consistency of research.

h) The school staff has to be informed about the findings of assessment and implementation, obviously without any prejudice to the privacy or personal data of the children. Schools can only be expected to understand problems and cooperate during implementation in this way.

The golden rules formulated in methodology literature and confirmed by anti-bullying programs need to be incorporated into the impact study of the programs:

a) Care must be taken to conduct the programs using a unified and controllable, strictly documented methodology, so that the results can be compared between school districts or even states.

b) Control schools need to be selected that match the program schools in the sample: intervention and control schools need to be matched based on grades, gender, settlement type, and other factors important for measuring; it is crucial that intervention and control schools should not show great differences along these variables.

c) Schools must be randomly selected, by equal possibility selection into the intervention or the control group.

d) More than one method has to be enlisted for the assessment of results (multi-method outcome assessment).

e) The perseverance and continued participation of schools that started using the program is a must for longitudinal research, as is maintaining the initial enthusiasm and activity levels. This ensures the homogeneity of the sample on the one hand, and on the other lasting results can only be expected from consistent implementation ongoing for several years. Anti-bullying research has proven that a drop in self-reported and peer-reported bullying shows a statistically significant correlation with the degree of implementation.

f) To achieve and maintain a high level of implementation, both the program provider and the school management need to assure educators of their support. This requires the preparation of suitably detailed manuals appropriate for practical use, the regular monitoring of teachers' activities (systemic monitoring analysis)

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[58] Anthony D. Pellegrini – Maria Bartini: An empirical comparison of methods of sampling aggression and victimization in school settings. *Journal of Educational Psychology, 92,* (2000), 360–366. pp.

from the part of the program provider, and creating the conditions for a whole-school approach from the school management. If we expect feedback from educators, it may increase motivation just as much as material support (incentives).

g) Last but not least, programs do not only need to be assessed, but the findings also need to be incorporated into the programs in a strictly documented manner. Program development and communication with the target group (school policy makers, school leadership, school staff) need to be continuous.

These methodological assumptions all have to be observed for a program's suitability for the reduction of bullying and victimization to be measured, and also for assessing whether the changes that occurred were actually triggered by the program.

Tordai Zsófia:[1]
Online intimidation and its potential solutions from a data protection expert's point of view

The online world has become an integral part of our daily life. We exist in a virtual reality in a substantial part of our life where we can keep in touch with our loved ones effectively, order goods and services easily, follow and comment on world events. The online world has been increasingly penetrating into our life while purchasing these services – sometimes unknowingly –, threatening our private life and thus suffering our personal data.

The fast development of technology had a particularly important role in the emergence of the new 'Z generation'[2], which members are exist and communicate in the online world. Its members, during the late 90s and after the millennium were born in the digital era, where it would be unimaginable to exist without Web 2.0 smartphones and other digital communication tools. Another term used for the 'Z generation', invented by Marc Prensky is 'digital aboriginals'[3].

Members of the 'Z generation' grew up in a new world where the learning habits changed gradually, inducing problems in the education system, mainly in the field of teaching methods. It becomes harder and harder for teachers to transfer knowledge to the students who are used to fast flow and reception of information. They are capable of dealing with various tasks (*multitasking*).

They are tending to read less while playing more with PC games as well as visiting the social media increasingly. By the development and increased speediness of communication devices they are affected by different online circumstances: they receive more information, process and think of them differently than the members of the 'X and Y generations'.

The number of digital devices has been increased in the households and adolescents are already living online. The attraction of the virtual domain has already reached the youngest generation, by now teenagers are surfing online extensively. The changes generated by technological development are visible at adolescents whom, truly are difficult to approach however, in some cases they are mature enough to receive and process information, and in other cases they are a little more childish. This is called

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[1] Data protection expert, NAIH.

[2] Annamária Tari: *Teenagers in online mode: sought on the Z generation*.
http://www.dehir.hu/eletmod/kamaszok-online-uzemmodban-teriteken-a-z-generacio/2012/09/27/
(Downloaded 16th February 2016)

[3] Marc Prensky: Digital Natives, Digital Imigrants. 2001, In: *On the Horizon*
(MCB University Press, Vol. 9 No. 5, October 2001), 1. p.
http://www.marcprensky.com/writing/Prensky%20-%20Digital%20Natives,%20Digital%20Immigrants%20-%20Part1.pdf (Downloaded 16th February 2016)

'mosaic-like maturity' which signals the effects of consumer society and information age that cannot be modified and avoided either.

The emotional operation and mental capabilities of the "Z generation" are often distant from each other. Despite the rapid technological development, the emotional capacity of a child progresses in its own psychological pace, they are unable to align to the accelerating world. Consequently, they understand a lot but are incapable of processing everything. They spend a lot of time in the narcissistic online world, receiving emotional experiences that affect their social relations in real life, even changing their relation with family and parents. Real ties conflict with virtual relations and the addictive effects of their online status.

The Internet is a special sphere of personal data processing, with regard to the huge extension of information, data processing and the enormous number of data subjects as well as the power of unlimited publicity. Protection of children's personal data is a priority for data protection experts as they, concerning their age and lack of experience, are more vulnerable and the potential infringements have serious detrimental impacts on their personal development. As a consequence, data protection authorities (hereinafter referred to as DPAs) have to take special care of online data processing involving children. Prevention and information play a vital role as do the reconciliation of past violations and the awareness-raising of data subjects involved and the publicity.[4]

The rapid development of IT technologies and the online presence are responsible for more and more psychological problems and adverse patterns of behaviour. The phenomenon affects the entire population, but particularly, incautious children.[5]

Certainly, several changes are to be considered forward-looking, as a result, various former complicated work processes (collection of information, research, data collection, organization) have been accelerated thus saving time for the user. Although the pathological changes in behaviour, the improper use of the Internet can induce detrimental effects and cause serious psychological problems.

Children start using the Internet at ever younger ages and the extensive use of tablets and smartphones marginalise the outdated PCs, simultaneously overshadow the development of physical activities, speech and communication skills, leading to real health risks.

Several factors should be taken into account from a psychological point of view:

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[4] National Authority for Data Protection and Freedom of Information: *Key to the world of the net!*. Budapest, 2013, 47-48. pp.
http://naih.hu/files/projektfuzet-angol-web.pdf (Downloaded 16th February 2016)
[5] Árpád Mihalik – Éva Szabó – Péter Kovács: The parental control of the children's computer- and internet use. In: *Applied psychology*. 14(1):47-58., 2014, 48. p.
http://ap.elte.hu/wp-content/uploads/2014/05/APA_2014_1_Mihalik_Szabo_Kovacs.pdf (Downloaded: 16th February 2016)

1. time spent online and with social media (surfing, browsing, looking up 1-1 single content continuously, reading, posting) – can go to the expense of real experience;
2. online games (pathological playing addiction, gambling) – may lead to addiction;
3. psychological effects induced by widespread social media usage – social platforms, improper use of dating websites by minors and negative impacts thereof.

All three factors do have impacts on the relationship between the individual and his/her environment and in the framework of established interactive processes the individual's relation to him/herself and to the outer world fundamentally changes. Inasmuch this phenomena becomes pathologic, social damage as well as psychological disorders may arise.

Researchers agree that problems can occur in persons who are either still immature (children) or have personality disorders. It follows that kids are vulnerable at all ages and situations since their personality development might take a wrong direction if they become familiar with the Internet in an inappropriate way. The learning process consists of numerous steps: parents and/or siblings, the behaviour of peers (following patterns) and the active learning (from parents, teachers).

Best practices to protect against personality distortion factors:

- the Internet using habits of parents and external environment should be observed,
- time limits shall be set for the various platforms,
- rules and opportunities shall be explained to children according to their age and mental capabilities,
- minors should be warned for possible threats,
- children should be diverted from computers via positive inputs, alternative programs (the Internet shall not be a babysitter!)
- in more serious cases a family or individual psychotherapeutically care is advised.

The majority of impacts lead to the emerge of fear and distress which form the basis for several mental problems. The more deficient (emotion, safety, trust) the life of the minor is, the higher is the negative effect on the child. The pathological and detrimental factors impact interactively, particularly on the personality development of minors, the patterns and the learning process are of great importance in this regard. Moreover, great care must be taken of the continuous forming of the trust based, two-way, parent-child relationships, since it is the only way to be expected that their children will share bad experience with their parents.

I. Mapping of problems – online deviancies

New deviancies emerging in the information society may range from the "somewhat uncomfortable" feelings leaving behind bad impressions to actions constituting crimes.

Another endangering risk factor beyond the apparent anonymity is the seemingly mild community sanction since the abnormal behaviour in the virtual world may lead only to the exclusion of the perpetrator from the community whereas, in the real world, such conduct can involve more serious consequences. Past the mild sanctions of the cyber communities the mild assessment of the society also enhances these deviations. The anonymous online life leads to dual morality which implies the weak interpretation of social norms, i.e. a huge majority remains traditionally compliant but during his Internet communication follows altered rules.[6]

In the online world people lose their inhibitions and can contact strangers more easier, individuals present their opinions or expose information more bravely, either taking on himself or anonymously. And the majority of the youngsters open up to the outer world blindly. Girls, at best, upload photos of themselves in bikinis, reveal their actual location and the place where they head to have a party or that they will be at home alone in the weekend. In accordance with the findings of Police Major Dr. Tibor Peszleg the sense of danger in children during online surfing is lower than necessary: "Inhibitions of children, evolved instinctively or by virtue of family education, are being demolished. Subsequent to the Internet chatting comes the personal meeting during which the juvenile could become a victim of a crime. These risky dating possibilities include the Internet chat rooms, mailing forums, IRC channels……In my work I already encountered a minor who met an adult in a chat room, at the personal meeting had a sexual intercourse with that person and consumed drugs together as well. The child was away from home for days and even after did not even perceive the peril of what has happened. In the course of the interrogation came out the fact that this had not been the first 'chat' relationship".[7]

a. Cyber bullying

Due to modern technical devices and the widespread expansion of Internet we can find cases of cyber bullying in relation to children aged 10-16 more and more frequently (mostly) due to the lack of education on this subject. Cyber bullying always begins for personal reasons and the offender deliberately "tortures" his victim for a longer period.

The new Hungarian Penal Code establishes the following statutory provisions for harassment (Section 222): (1) Any person who engages in conduct intended to intimidate another person, to disturb the privacy of or to upset, or cause emotional distress to another person arbitrarily, or who is engaged in the pestering of another person on a regular basis, is guilty of a misdemeanour punishable by imprisonment not exceeding one year, insofar as the act did not result in a more serious criminal offense. (2) Any person

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[6] Zoltán Szathmáry: *Doctoral dissertation: Crime in the Information Society, criminal constitutional dilemmas in the information society*. Budapest, 2012, 64-65. pp.
http://ajk.pte.hu/files/file/doktori-iskola/szathmary-zoltan/szathmary-zoltan-vedes-tezisek.pdf (Downloaded 16th February 2016)
[7] National Authority for Data Protection and Freedom of Information: Id. 47-48. pp.

who, for the purpose of intimidation: a) conveys the threat of force or public endangerment intended to inflict harm upon another person, or upon a relative of this person, or b) giving the impression that any threat to the life, physical integrity or health of another person is imminent, is guilty of a misdemeanour punishable by imprisonment not exceeding two years.

The key element is harassment, though the actions can differ: for instance someone sends threatening or degrading emails day and night, sends messages on a social site, posts intimidating comments or insults his fellows in his blog. An unpleasant situation happened anywhere that was recorded by a cell phone equipped with a camera, can be learned the same day by mass of people on a popular social networking site. The insulting offense committed by a fellow youngster via an ICT gadget is directed repeatedly against a targeted victim from whom he is unable to defend him/herself. In the course of rough joke and bantering young people, typically between the ages of 13-17, discredit each other on diverse platforms.

Perpetrators are mostly other minors and juveniles. The anonymity of the offender could be more scaring for the kids since it can enhance the impression of being unprotected thus causing more serious injuries. As psychological or physical harassment at school ceases after getting home, in the event of an online bullying the victim remains victim at home as well. Internet annoyance takes place publicly with the approval of apparently multiple witnesses compared to offline insulting. The prevalence of smart phones limits the supervisory and regulatory powers of parents thus the peril affecting children increases.

An example for the above is highlighted through a suicide case committed by an American girl, M.M., in 2006. The tragedy happened because, according to the prosecution, a mother and her daughter were collaborating to deceive the victim, 13, on MySpace where they made her believe that she was dating with a boy, 16, in the course of a continuous e-mail correspondence. The girlfriends later got into conflict with each other, the deceit came to light and M.M. hung herself in utter bitterness. The public has been shocked by the prosecution initially failing to bring charges against the suspected mother since they could not find a count of indictment capable of complying with the action of online bullying. Finally the mother was brought to court on account of conspiracy and illegal use of PC networks. Since the issue took place on MySpace, the liability of the social site was also raised. After the case Mr. Matt Blunt, Governor of Missouri, signed the Act on the Punishment of Online Bullying that was officially promulgated the 28th of August 2008 and stipulates that online insulters or vexatious persons may be fined up to 500 $ or sentenced to custody up to 90 days. Unfortunately the number of fatal victims of cyber bullying increase every day and, hearing media coverages, typically girls aged between 13-15 are driven to suicide due to the malicious and generally anonymous remarks.[8]

b. Internet memes

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[8] National Authority for Data Protection and Freedom of Information: Id. 48-50. pp.

Dispatching digital files or references originally for marketing purposes nowadays consists of circulating faked news embarrassing videos or images. These could express artistic contents or courtesy but often end up in rough smear campaign. The difference between memes and cyber bullying is that the aggrieved party is usually a stranger whom the Internet community generally "picks out" based on some negative features or attitudes. Generally these subjects are well known personalities, (e.g. Pope Benedict XVI became a real "meme celeb "following his resignation, often depicted in a rather indecorous manner) but sometimes ordinary people – rarely children – also come up.[9]

A fresh graduate Hungarian man expressed his special thanks to his senior colleagues (including also the Prime Minister) for granting him an office job on his Facebook site in May 2013 – soon he became featured in numerous insulting memes as a result of unveiling his name and photo. Due to his personal message originally directed to his friends a fresh graduate has become a victim of a public degrading campaign. We can see from the above story how irresponsible seniors can be, we could imagine the impact of such harms on adolescents.

c. Provoking comments (troll)

The troll, according to the Internet slang, is a person who distributes his irrelevant messages provocatively to an online community (e.g. on an Internet forum, in a chat room, blog or a mailing list) or pushes forward his position violently aiming at provoking harsh reactions from other users or else disturbing and hindering the communication. The English sentence "Do not feed the trolls" (abbreviated as DNFTT) suggests that users should ignore these persons.

Among trolls nowadays it has become "fashionable" to outrage famous athletes this way. Recently a young British boxer has been spotted by a user, under the nickname Jimmibob88, on Twitter who hurled various insults at the athlete and taunting his results. The very temperamental sportsman offered blood money of 1.000 GBP on Twitter to anyone who reveals the name and address of the troll. Soon he found the offender; what's more, he even posted a photo of his house on the Internet indicating that he can catch him any time he wants. The troll retreated and pleaded for forgiveness. On Twitter the ratings #keyboardwarrior and #jimmybrownpants became the most popular hashtags due to this issue.

Trolls evidently unleash passions: both the abuses and the backlashes are made in a brutal style; even death threats are very frequent. Following a poor match athletes can expect even such messages: "I hope you, your wife, kids and family die, you deserve it." Trolls expressing their extremist opinions anonymously certainly do not promote civilized Internet usage and can generally influence all users in an unwanted and wrong way.[10]

d. Sending erotic photos (sexting)

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[9] Id. 50. p.
[10] Id. 51. p.

Sexting means circulating erotic images or videos via infocommunication tools, which grew to be trendy among youth in recent years.

In most 'detected' sexting cases erotic images had been recorded by the models themselves or, upon mutual consent, by the partners but later the recordings started to spread uncontrollably. The obvious circumstance that may result in abuses is that multiplied images can be forwarded without any further permission or limits. Another significant inspiration, beyond irresponsibility, could be the vengeance usually in cases when once an affair comes to an end, the one party – mostly the male – discloses the pictures taken of his girlfriend.

Some views argue the reason for this behaviour could be that today teenagers are sexually promiscuous and send erotic messages just for fun. Others are on the opinion that youth make experiments during which they take wrong decisions. Researchers, however, agree that distributing erotic images because of anger or revenge may refer to juvenile relationship behavioural patterns characterized by emotional abuses and violence. It would be wrong to assume that this attitude is only typical of youngsters, however due to their possession of digital opportunities their emotional life and impulsive actions became the main reasons why they avoid to consider the long-term consequences of these actions.

The ethical assessment of the new forms of sexting is not the subject to this chapter, however, it should be noted what unlawful acts could emerge in this regard. Obviously the abuse with illegal pornographic picture arises, as well as – in case of age differences - the delict of abuse with personal data. Unfortunately, even int he US there is no uconsistent approach regarding the detection and handling of the root causes of this phenomenon. The only problem comes from judging the circumstance that in many cases data subjects take and forward these pictures of their own free will thus, i.e. sexting destructs certain principles of impeachment related to legal matters to be protected. Another feature which, however, is meaningful in this chapter is the revaluation of users' relation to privacy. Cyber bullying and sexting equally verify that attitudes to privacy turned to the wrong direction as while cyber bullying means the total ignorance towards the privacy of another person sexting implies the entire revealing of the user's privacy and the voluntary renunciation to protect thereof.

These new trends clearly show not only the changes in moral but also the attitudes of people concerned – including children – to certain protected societal values.[11]

The above mentioned events are clearly illustrated in the following example: a 14 year-old girl and a 16 year-old boy took erotic photos of each other. The boy shared the pictures – out of pride – in a closed group of a social media site including almost the whole school class. The girl's father learnt the case and reported it to the police. The police interrogated the boys in the class and found that all the boys processed the photos unlawfully (since the girl never consented explicitly to the processing of the pictures that would have been a legal basis for processing). Point of law: did the class members who

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[11] Id. 52-53. pp.

got access to the photos commit the crime of misuse with personal data. From a data protection point of view we should emphasize that the sole access to the data does not constitute processing of personal data but any further action does (for instance forwarding, in the present case).

Experts of the Authority (who heard the case) were astonished that– pursuant to the police reporting – the suspected youngsters had been totally indifferent in the course of the procedure.

Therefore we can conclude that today's children do not deal with online privacy the same way as offline privacy. One may wonder, whether these children would have posted their photos printed out from the social site, on the school billboard with an adhesive tape. The answer is clearly no, I presume.

This demonstrates that the perception of risk amongst youngsters in the online world has still not evolved while, in the offline world they may easily realise the effects of their actions.

e. Internet paedophilia

A paedophile is an adult person who, due to his personal distortion, feels sexual desire towards minors. The social opinion of paedophilia is extremely negative and several forms thereof are penalized by the penal law as well:

- sexual abuse: any person who engages in sexual activities with a person under the age of fourteen years, or persuades such person to engage in sexual activities with another person; or

- child pornography: any person who a) obtains or have in his possession pornographic images of a person or persons under the age of eighteen years, b) produces, offers, supplies or makes available pornographic images of a person or persons under the age of eighteen years, c) distributes, deals with or makes pornographic images of a person or persons under the age of eighteen years available to the general public, or d) persuades a person/persons under the age of eighteen years to participate in a pornographic production.

Therefore offenders certainly strive to hide their activity. The Internet is an excellent forum to satisfy these paedophile desires anonymously. It involves not only individual but also organized crime activities since acquiring and forwarding pornographic pictures of children is much faster and simpler on the net. A not unusual example: a male in his forties registers on a social networking or dating site pretending to be 18 years old, uploads an attractive photo of himself, begins to date with teenager girls, they become friends quickly, the girls take 'the boy' into their confidence and, on his request, they possibly send additional pictures of herselves, in clothes at best, at worst nude or semi-nude images.

In the course of Internet paedophilia offenders really use the Internet as a channel to commit a sexual abuse by dating, establishing contacts or obtain the pornographic pictures by severely violating the real intentions or interests of the aggrieved party.

From a data protection perspective it could be problematic that in many cases the injured party himself, willy-nilly, facilitates the acquirement of pornographic images by uploading pictures voluntarily. Moreover an expert shall be appointed to testify that on a certain pornographic image the child in question is observable or not. (In many cases the pictures are modified, for instance – through image editing software – the head of a stranger is added to a nude body.).[12]

f. Online meshing (grooming)

For the time being there is no proper Hungarian term for it, the phenomenon could be described by the words meshing or catching. The expansion of social sites simplified nowadays' dating practices and as a result, children accept the friendship of people they have not ever met before, only because the individual is an acquaintance of a friend or they share some common field of interest. We shall also bear in mind that a person concealing behind a photo and pretending to be a 14 year old boy may be actually a 30 or 40 years-old man, or even elders who search for potential victims to satisfy their sexual desires on the web. Most perpetrators hunt for their young victims (boys and girls equally) on social sites with a well-founded strategy for months. They get into the victims' confidence, obtain their personal information, involve the younger people into online sexual games and and in extremist they persuade their victims to meet them in person.

Children initially – in virtue of the well-founded confidence – do not recognize what is going on; they will not get disappointed that the person who in the beginning pretended to be a fellow youngster really deceives them. The excitement or curiosity is much higher. If, after all, a personal meeting takes place between them the minor will not speak about it. Due to the shame involved s/he generally will ask for help too late or never ever.[13]

g. Flaming

'Flaming' is a form of cyber bullying exercised in widespread Internet forums where insulting and hostile comments, not directly linked to the main topic are being sent deliberately via public channels such as public community sites, personal blogs, chat rooms, e-mail messaging systems or famous video sharing sites like YouTube.

The term 'flaming' refers in Hungarian to some sort of discrediting someone in the online world, in practice, a written manifestation of oral, emotional and, frequently sexual harassments. Perpetrators – the 'flamers' – generally publish defamatory contents as responses to their fury, sadness, degradation or lack of self-confidence.

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[12] Id. 53-54. pp.
[13] Id. 54-55. pp.

Actually it can be considered as an online 'war', assault, quarrel: angry, offensive and obscene comments on public forums (often political, religious, ideological disputes).[14]

Whereas some individuals share purposefully degrading contents or target the racial, sexual, religious identity or pecuniary situation of people, others insult net users solely for fun, without reasonable grounds.

Several offenders clearly address seemingly vulnerable Internet users; if the former managed to acquire personal information of them – giving rise to more serious concerns – they would make use of it against the latter.

Anybody, spending some time in the online world, can fall victim of the flaming. The negative reactions given to 'flaming' raise the interest of perpetrators by which they learn that they have achieved their goals and succeeded in infuriating the targeted people.

Their purpose is to intentionally provoke innocent users and by sharing offensive and degrading contents, to invoke negative emotions in the individuals involved: fury, indignation, worry, fear or degradation.

Neither the detailed character of 'ordinary' offenders nor the 'flamers' can be illustrated precisely as anyone can become perpetrator regardless of age, sex, origin or family status: some for fun, others from envy and others as an act of revenge responding to previous insults.

In case of disclosing insulting contents the worst response of the victim is to react to it, particularly, if the victim's behaviour reveals anger, fury or disenchantment since the major purpose of 'flamers' is to provoke. For this reason – though it is quite difficult to act so – the best practice is to ignore these contents because perpetrators, following 2-3 unsuccessful attempts, cease insulting the targeted person and switch for another individual.

When problems strike, it is essential for victims to know they are not let alone. Unfortunately cyberbullying became an 'everyday practice' today. If someone falls victim to 'flamers', it can be reported to the service provider of the site who deletes the insulting content in question or bans the offender user from the site.[15]

II. How to avoid becoming a victim to cyberbullying – different roles?

„If you are not posting, it has not happened!" this slogan directs the Y-generation. The youth take for granted that they are living in the online world, refers to unknown virtual

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[14]   http://www.kek-vonal.hu/index.php/hu/szolgaltatasok/internetbiztonsag/395-internetes-zaklatas (Downloaded the 27th January 2016)
[15] http://nobullying.com/what-is-flaming/ (Downloaded the 27th January 2016)
http://www.wisegeek.com/what-is-flaming.htm (Downloaded the 27th January 2016)

people as 'friends' and as a consequence they reveal all of their secrets to strangers; they do not perceive the risks until the above mentioned online threats reach them.

The Innocenti Research Centre of UNICEF[16] produced a report of the online safety of youth in 2011. According to the survey the debates conducted on information and published online are varied. Some think disclosing personal information is a normal behaviour nowadays. Basically, if a teenager does not publish any personal information then his fellow schoolmates tend to consider him strange or crank. Disclosing personal data has become commonplace and part of their culture for them today and the kids do not consider it dangerous. Worldwide researches show that young people are more convinced of their online safety than their parents.

The reason for this is that the online world creates a different and new lifestyle on infocommunication devices which previously was not available and, therefore, the younger generations cannot enquire about it from their parents and grandparents. Challenges of the Internet should be discovered by children and parents together.

Surveys also revealed that in case of online harassment young people do not rely on their parents at first since, according to their views, they do not know and understand the online world. Besides, they fear of being deprived of their smartphones or parents limiting the use of Internet, or they are anxious about the insulter threating them or concerned about shame or indignity. There is growing evidence that the most powerful protective aspect would be the parents using the Internet, discussing the online experience with the children openly which, according to the studies, the young people would not object to. Smartphones with online access are on a raise however, new problems in this regard since parents are much less capable of supervising, blocking or monitoring the use of different apps. That's why it is of utmost importance to involve the young people and to make them aware the risks and perils so as to they can help other children as well as, in case of troubles, they approach their fellows at first. Teenagers need information and protocols to identify the problems, methods and processes which they can apply. Last but not least, with a view to enhance the online safety of children, parents should also be supported in improving their digital skills.[17]

In Hungary several organisations are playing an active role in developing digital literacy through numerous programmes and events.

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[16] ITHAKA Research & Consulting: EU Kids Online II: *International research at the children's Internet usage, the risks and hazards, The results of the research in Hungary*. 2011. http://ithaka.hu/wp-content/uploads/2012/07/ITHAKA_NMHH_EU_KIDS_PPT_v1.0.pdf (Downloaded 16th February 2016) PowerPoint Slides

[17] Report of the Commissioner on Fundamental Rights on the state of play of teaching media recognition, Budapest, 2016, 15. p.http://www.ajbh.hu/documents/10180/2500969/Jelent%C3%A9s+a+m%C3%A9dia%C3%A9rt%C3%A9s-oktat%C3%A1s+helyzet%C3%A9r%C5%91l+497_2016/41838d72-616e-45bf-8b51-e744c4fa1b59?version=1.0; (Downloaded: 9th February 2016)

The Digital Knowledge Academy (http://digipedia.hu/) is a civil society that intends to give examples and information to both parents and children on the conscious usage of digital devices.

The National Authority for Data Protection and Freedom of Information (NAIH), within the scope of its official duties pays particular attention to the conscious Internet use of minors and to enhance privacy knowledge. In this field the NAIH launched its long-term awareness-raising campaign in 2013. It's first outcome was the "The key to the World of the Internet" teaching material published in September 2013 (http://naih.hu/key-to-the-world-of-the-net-.html).

The book illustrates the risks of the online world and smart devices as well as social community sites, highlights events occurred but also contains tips for children to protect themselves against threats.

In summary we can conclude that it is a common concern to monitor the activity of our children in the online world and joint action is needed for prevention and to address problems.

Pongó Tamás:
Is There a Reasonably Foreseeable Substantial Change in US Cyberbullying Jurisprudence or the Ambiguity Remains?

I. Introduction

On 16 October 2015, the first Hungarian National Cyberbullying Conference (abbreviated: MOCK) was organized in Szeged, Hungary by the Constitutional Law and the Criminal Law and Criminal Procedure Law Departments of the University of Szeged Faculty of Law and Political Sciences.[1] I had the honor to participate in this conference as a speaker. In my speech, I focused on US jurisprudence regarding cyberbullying. In my presentation, I highlighted the most crucial issues in judicial practice, like the lack of a Supreme Court (SCOTUS) decision, or the so-called "circuit split" problem. I introduced the landmark decisions of SCOTUS in students' freedom of speech and emphasized that the jurisprudence to this date is based upon these old decisions, even though these standards were worked out way before the Internet even appeared. Moreover, in this theoretical framework, I focused on cyberbullying cases, which represent the crucial elements and problems of this omnipresent phenomenon. In *Wisniewski*, I analyzed *Tinker's* reasonably foreseeable substantial disruption test, and compared it to *Kowalski*, in which the Fourth Circuit transformed an off-campus speech into on-campus. Afterwards, I conducted an in-depth analysis of *J.C.*, where the Central District Court of California summarized every problem, which makes the whole system suffer, and - most importantly – provided a solution, or at least a guideline to a possible future solution. The two steps test, or the substantial disruption inquiry might be a breakthrough in cyberbullying jurisprudence, which could very well make *J.C.* a landmark decision.

Later on, I explored *Marquan*, where we could face the hurdle how hard it is to adopt a proper cyberbullying law, which passes the constitutional muster. In each of the above-mentioned cases, the violations of First Amendment rights of the students were all examined on the merits, like in *Marquan*, but with one significant difference. In *Marquan* the student filed a suit that the cyberbullying law is too vague and overbroad, therefore unconstitutional. The New York Court of Appeals had to apply strict scrutiny to the constitutionality of the law, instead of focusing on the facts of the actual case at hand.

Nevertheless, as the conference was first of its kind, I felt the responsibility to briefly address the *status quo* in Hungary in connection with cyberbullying. I would say, it is not joyful, but there is hope and room to improve. We have no case law, no Act and not even any anti-bullying policy applied nationwide, but on 28 January 2016 we joined to KiVa, one of the most successful anti-bullying programs in the world. Therefore, I truly believe that Hungary realized the dangers of this omnipresent phenomenon before any tragedy could have occurred, and joining KiVa certainly represents this attitude.

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[1] Mikes Lili: Magyar Országos Cyberbullying Konferencia – MOCK 2015. In: *Közjogi Szemle,* 2016/1.

II. What we know about students' freedom of speech in light of SCOTUS landmark decisions?

In the following I will shortly introduce some landmark cases related to students' free speech and its curtailment. The greatest problem with these cases is that they were born before the blasting spread of the internet, thus nowadays the courts try to apply the *ratio decidendi* and the tests created in these old decisions.

Firstly, the most important case in students' free speech jurisprudence in US is *Tinker*.[23] John Tinker, a 15-year-old student decided during the holidays to wear a black armband to express his support for a truce in the Vietnam War. When the school board heard about his plan, they adopted a policy, in which they prohibited wearing these kinds of armbands and suspended the students until they wore them. In light of this policy, when Tinker and his friends appeared in the school with these armbands, the principals sent them home until they reconsidered wearing the accessory. On appeal to the District Court's decision, the Court of Appeals for the Eighth Circuit decided on the issue and the case made its way to SCOTUS, where they found that *"[o]ur problem lies in the area where students in the exercise of First Amendment rights collide with the rules of the school authorities".[4]*

After SCOTUS defined the problem, they analyzed the situation and delivered a landmark decision about this passive, non-aggressive *"pure speech"[5]*, which established the basic test to handle students' free speech and its collision with the rules imposed by school authorities. Moreover, *Tinker* created the often cited "schoolhouse gate" formula, meaning that "*either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate".[67]* This phrase will have significant importance in any electronic speech cases, because at any time, when students' speech takes place outside the school(house gate) the problem of location appears (e.g. off-campus speech could become on-campus) and in almost every case then, courts should recall the "schoolhouse gate" doctrine.

Nevertheless, *Tinker* created an extremely important standard:
"The school officials banned and sought to punish petitioners for a silent, passive expression of opinion, unaccompanied by any disorder or disturbance on the part of petitioners. There is here no evidence whatever of petitioners' interference, actual or nascent, with the schools' work or of collision with the rights of other students to be

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[2] *Tinker v. Des Moines School District*, 393 U.S. 503 (1969)
[3] See Martha McCarthy: Cyberbullying laws and first amendment rulings: can they be reconciled? *83 Miss. L. J. 805*, 2014, p. 813; David R. Hostetler: Off-campus cyberbullying: First Amendment problems, parameters, and proposal. *2014 BYU Educ. & L. J. 1*, 2014, 6. p.
[4] Tinker 507. p.
[5] Id. 508. p.
[6] Id. 506. p.
[7] See Merle Horowitz - Dorothy M. Bollinger: *Cyberbullying in Social Media within Educational Institutions - Featuring student, employee, and parent information*. Rowman & Littlefield, United Kingdom, 2014, 35. p.

secure and to be let alone. Accordingly, this case does not concern speech or action that intrudes upon the work of the schools or the rights of other students."[8]

The *Tinker* standard created two prongs: it *"reasonably forecast(s) a substantial disruption because of the expression, or it collides with the rights of others."*[9] As we can see, these two elements are not conjunctive, thus the standard gives two options for courts in their future decisions. However, we should keep in mind, that in 1969 the internet did not even exist as it does today, so the reasonably forecast substantial disruption element of *Tinker* was much easier to define than it is now, with the spreading of social media sites, smart phones and free Wi-Fi systems.

The relevance and the importance of *Tinker* will be more understandable later on, when I will introduce some cyberbullying cases, where *Tinker* was used to delineate students' free speech and the boundaries of schools' authorities.

Furthermore, following the development of cases dealing with the above-mentioned First Amendment issues, I now present the core of the *Fraser* doctrine. This standard was created in *Fraser*,[1011] where a high school student (Matthew N. Fraser) referred to his opponent with sexual metaphors during his speech in front of 600 other students in an educational program. On the next day the principal suspended him and removed his name from the candidates' list for graduation speaker at the school's commencement exercises, by reason of an alleged violation of the school's "disruptive conduct rules". Later the respondent filed suit in a Federal District Court for violating his free speech rights,[12] and the District Court and later the Court of Appeals for the Ninth Circuit held that the school's rule was *"unconstitutionally vague and overbroad"*[13]. These elements will have significant meaning later on in *Marquan*. The Ninth Circuit also stated that the speech analyzed in *Tinker* is indistinguishable from the one in *Fraser*.[14] The SCOTUS opinion clarified some key elements of students' freedom of speech in connection with *Tinker* as well. First of all, they stated that there is a difference between the constitutional protection of an adult's and a minor's, student's speech. In their words: *"simply because the use of an offensive form of expression may not be prohibited to adults making what the speaker considers a political point, the same latitude must be permitted to children in a public school. ... we reaffirmed that the constitutional rights of students in public school are not automatically coextensive with the rights of adults in other settings."*[1516] Second of all, the *Fraser* standard was set up, the core elements of which are the following: *"[t]he First Amendment does not prevent the school officials from*

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[8] Tinker: 508. p.
[9] McCarthy 2014: 813. p. *emphasis added*
[10] *Bethel School District v. Fraser*, 478 U.S. 675 (1986)
[11] See also McCarthy 2014; Hostetler 2014.
[12] Fraser: Id. 679. p.
[13] Id. 679. p.
[14] Id.
[15] Id. 682. p.
[16] Horowitz - Bollinger 2014: Id. 35. p.

determining that to permit a vulgar and lewd speech such as respondent's would undermine the school's basic educational mission"[17].

Last but not least, a significant distinction can be seen from *Fraser* between two types of speech, a pure political speech and a sexually explicit speech, which glorifies male sexuality and insults teenage girls.[18]

In light of these statements we can safely say that the vulgar, lewd or offensive speech is not protected by the First Amendment in a controlled, school environment; however, the same content could deserve the protection of the Federal Constitution in case such speech is delivered by adults.[19] Nevertheless, we have to recall, that in those days, the Internet was not at the general disposal of the population to exchange views, opinions and to exercise free speech. However, the basics of the legal collision between students' and school authorities' rights and duties relating to free speech were as much established in *Fraser* as in *Tinker*.

Furthermore, the last case, although not directly relevant to the issue of cyberbullying, is the *Morse*.[20][21] In this case a sort of "Morse-code" was created by SCOTUS, based on the following fact pattern. At a *"school-sanctioned and school-supervised event, a high school principal saw some of her students unfurl a large banner conveying a message she reasonably regarded as promoting illegal drug use",* and the principal (Morse) directed the students to take down the banner, but one of them refused, thus the principal suspended him.

In the opinion of the Ninth Circuit, the principal violated the student's freedom of speech, but SCOTUS reversed the decision. In his reasoning, SCOTUS concluded that the principal's measures exemplified how seriously the school took the dangers of illegal drug use. Moreover, as they argued, *„[t]he First Amendment does not require schools to tolerate at school events student expression that contributes to those dangers."*[22] As far as Martha McCarthy stated in one of her articles: *„promoting illegal drug use could be curtailed without the link to a disruption"*[23] and *„the Court in Morse created a new standard excluding expression from constitutional protection based on „student welfare."*[24]

These three SCOTUS landmark decisions – *Tinker*, *Fraser* and *Morse,* actually even four with *Hazelwood*,[25][26] remain unaddressed in this paper, but still constitute the basics that enable us to understand the problems around cyberbullying and students' free speech.

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[17] Fraser: Id. 685. p.
[18] Id. 680. p.; 683. p.
[19] See McCarthy 2014: Id. 814. p.; Horowitz – Bollinger 2014: Id. 51. p.
[20] *Morse v. Frederick*, 551 U.S. 393 (2007)
[21] See also McCarthy 2014; Hostetler 2014.
[22] Morse: Id. 15. p.
[23] McCarthy 2014: Id. 814. p.
[24] Id. 814. p. note 33.
[25] *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988) was also a very important case in the evolution of students' freedom of speech. See McCarthy 2014: Id.

The main reason why I analyzed and introduced these cases is that many cyberbullying cases making their way through the court system are decided upon these standards, thus it seemed appropriate to highlight the crucial elements of these opinions in a logical framework underlying the analysis of the US approaches to the topic.

III. Was it reasonably foreseeable? The decision in *Wisniewski v. Board of Education of the Weedsport Central School District*[27]

Aaron Wisniewski, an eight grader challenged his suspension in violation of his First Amendment rights. Aaron was using an Instant Messaging program (IM) at home, on his parents' computer, i.e. in an off-campus environment. The IM he used allowed its users to create an icon to identify him during online conversations.[28] Aaron's icon *"was a small drawing of a pistol firing a bullet at a person's head, above which were dots representing splattered blood."*[29] Moreover, beneath this drawing he wrote "Kill Mr. VanderMolen", his English teacher. While he was using this drawing as identification icon, he displayed it to 15 members of his so called "buddy list" in IM for three weeks.[30] Meanwhile, another student showed the drawing to Mr. VanderMolen, who was distressed by this information and forwarded the picture to the school principals. After Aaron admitted his act, he was suspended for five days. VanderMolen, on his own request, was allowed to stop teaching Aaron's class; furthermore, Aaron was subjected to an interview by a police investigator and an evaluation by a psychologist. Each of these declared that Aaron's action was a joke and he had no violent intent and posed no real threat to the school employees and the school environment.[31] However, later on, a hearing by the superintendent was held, with her decision being that the icon was threatening and disrupted the school environment. Therefore, Aaron was charged under the New York Education Law for violation of school rules.[32] Pursuant to the superintendent's decision Aaron was suspended for a semester. A year later, his parents filed a suit on his behalf against the Board and the superintendent on five counts. The first count claimed that the icon was not a true threat, thus it was protected by freedom of speech. The second and third counts alleged that the Board and the superintendent had failed to train the school staff on threat assessment, the lack of which training led to the violation of First Amendment rights of their child. The fourth and fifth counts stated that the defendants violated the New York Education Law.[33] Under the foregoing facts, the District Court determined that *"the icon was reasonably to be understood as a 'true threat'."*[34] On appeal, the Second Circuit Court of Appeals did not intend to resolve the

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[26] See in detail also McCarthy: Id.; Hostetler 2014: Id.
[27] *Wisniewski v. Board of Education of Weedsport Central School District*, United States Court of Appeals for the Second Circuit (2007)
[28] Wisniewski: Id. 3. p.
[29] Id. 4. p.
[30] Id.
[31] Id. 5. p.
[32] Id.
[33] Id. 7. p.
[34] Id.

dispute between the parties, but focused on the merits of the First Amendment claim.[35] The Second Circuit examined the SCOTUS decision in *Watts v. United States*[36], where the notion of 'true threat' was analyzed. According to that judgment, the Court argued that the school officials have *"significantly broader authority to sanction student speech than the Watts standard allows."*[37][38] In conclusion, the Court declared that Aaron's speech established a reasonably foreseeable risk to cause a substantial disruption in the school environment; therefore, it was not protected by the freedom of speech.[39] As we introduced above in *Tinker*, a reasonably foreseeable substantial disruption authorizes the school officials to curb the students' First Amendments rights.[40]

This element of *Tinker* already served as a basis of other sister Circuit Courts opinions: (i) *Snyder I*[41] in Third Circuit, where the Court ruled in favor of the school under reasonably foreseeable disruption test. However, this decision was actually reconsidered a year later in *Snyder II*[42] by the same court, and declared that under the circumstances of the case, a reasonably foreseeable substantial disruption did not stand;[43] and (ii) in *Kowalski*[44] in the Fourth Circuit, which Court actually turned an off-campus action into on-campus, and applied *Tinker's* reasonable foreseeability test.[45] There are two significant distinctions we shall emphasize between *Kowalski* and *Wisniewski*. First of all, *Kowalski* was a student-on-student scenario as opposed to *Wisniewski*. Second of all, the Fourth Circuit transformed an off-campus speech into on-campus and applied *Tinker*'s foreseeablity test. However, the application of *Tinker* in this case created a controversy, because under SCOTUS jurisprudence a "bedrock principle" was laid down (as I will elaborate below, in *J.C.*), namely *Tinker* is the general test for students' freedom of speech cases, however, if a speech is evaluated as on-campus, special tests should be applied, like *Fraser* for vulgar and lewd speech, or *Hazelwood* for school-sponsored events. In *Kowalski,* however, the Fourth Circuit applied the general test to an on-campus case, which is actually in clear contradiction with the ancient legal principle of *lex specialis derogat legi generali.* Under this principle a special test deteriorates the general one. The Second Circuit did not commit this mistake in *Wisniewski*, because they did not transform Aaron's speech into on-campus, but applied *Tinker* to off-campus expression. Furthermore, they declared and emphasized that *"off-campus conduct can create a foreseeable risk of substantial disruption within a school."*[46] The Second Circuit

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[35] Id. 8. p.

[36] *Watts v. United States*, 394 U.S. 705, 708 (1969)

[37] Wisniewski: Id. 9. p.

[38] Horowitz - Bollinger 2014: Id. 48. p.

[39] Id.

[40] Jocelyn Ho: Bullied To Death: Cyberbullying And Student Online Speech Cases. *64 Fla. L. Rev. 789*, 2012, 802. p.

[41] *JS Ex Rel. Snyder v. Blue Mountain Sch. Dist.*, 650 F. 3d 915 - Court of Appeals, 3rd Circuit (2011)

[42] Id. The first *Snyder* judgment was reconsidered in this decision a year later in 2011. The second opinion was filed in 13 June 2011.

[43] Ho 2012: Id. 805-806. pp.

[44] *Kowalski v. Berkeley County Schools*, 652 F. 3d 565 - Court of Appeals, 4th Circuit (2011)

[45] Tamás Pongó: Anglo-Saxon Approaches To Students' Freedom Of Speech And Cyberbullying: Constitutional Foundations For A Comparative Analysis. In: S.C. Universul Juridic S.R.L. (ed.): *European Legal Studies And Research.* Timisoara, 534-546. pp., Timisoara, 2015, 543. p.

[46] Wisniewski: Id. 11-12. pp.

underlined that in *Morse* SCOTUS held that *"it had no occasion to consider the circumstances under which school authorities may discipline students for off campus activities."*[47] The argument of the Court sounds logical, but might be too harsh regarding the foregoing interpretation of the case. In *Morse,* the promotion of illegal drug use by a banner during school time, under school supervision, established the authority to the school principal to curb the student's First Amendment rights. However, under those special circumstances we cannot conclude that there is no necessity to explore the circumstances in each case, before we give the power to schools to discipline their students for their speech. Besides this concern, the Second Circuit's opinion fits better in the theoretical framework of students' freedom of speech and cyberbullying jurisprudence, than the *Kowalski* opinion of the Fourth Circuit.

Furthermore, we should highlight Judge Walker's opinion in *Wisniewski*, who fully concurred with the majority, but we would like to also emphasize that an off-campus student speech could be disciplined by the school *"only if it was foreseeable to a reasonable adult, cognizant of the perspective of a student, that the expression might reach campus."*[48]

In summary, the Second Circuit concluded that it was reasonably foreseeable that the icon would reach campus, i.e. the school premises, and would cause substantial disruption in the school environment.[49]

However, we should also emphasize that the Court did not decide whether a one semester suspension exceeded any constitutional limitation that might exist; they just held that the First Amendment claims were properly dismissed by the District Court.[50]

The foregoing facts and decisions underline the necessity of a SCOTUS landmark decision in cyberbullying cases, to clear the anomalies in the current jurisprudence and to guide school officials, students and courts, how to handle off-campus cyberbullying cases, which have significant effects on the school premises and environment. In the absence of this landmark decision, all that remains will be "circuit splits", which will lead us to a vague and overbroad, ambiguous judicial practice in the field of cyberbullying and off-campus originated student freedom of speech cases.[51] A possible solution or at least a guideline to a solution to the problem could be provided from the case that I am going to analyze below.

IV. The Solution? - J.C. v. Beverly Hills Unified School District[52]

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[47] Id. 12. p.
[48] Id. 13. p.
[49] Id. 13-14. pp.
[50] Id. 15. p.
[51] For arguments, why SCOTUS refuses to grant certiorari in cyberbullying cases see Susan S. Bendlin: Cyberbullying: When is it „School Speech" And When is it Beyond the School's Reach? *5 N.E. U. L.J. 47*, 2013, 66. p.
[52] *J.C. v. Beverly Hills Unified School District*, United States District Court Central District of California, CV 08-03824 SVW, (2009)

In the present case the following material facts were undisputed. J.C. was a high school student, who recorded a video after school, in a restaurant with her friends. On the video, one of J.C.'s friend talked about the targeted student C.C., using profane and vulgar language. During the recording, J.C. encouraged her friend to keep talking about C.C. On the same day, J.C. uploaded this video to YouTube from her home computer and contacted 5 to 10 students, including C.C. to watch it. J.C. asked C.C. whether she should delete the video, but C.C., on her mother's advice, did not ask her to do so, so that she could show the recording to the school officials on the next day. She did so indeed, and did not want to attend classes, because she felt herself humiliated and hurt. However, the school counselor convinced her to go to class, so she skipped only a single one.

J.C. was suspended for two days due to her action. The video was watched approximately by fifteen students and by school officials during the investigation, but it is an important fact that YouTube was blocked on school computers, so the students could not watch the video on campus. According to the records of the investigation, the video was opened on campus only during the viewing of the footage by school officials.[53]
J.C. filed a suit for violation of her First Amendments rights and the case was decided by the United States District Court for the Central District of California.

Upon this factual background, we should focus on the merits of the First Amendment free speech claim underlying *J.C.*. The issue was whether the school had the authority to discipline J.C. for her off-campus speech, or rather her freedom of speech rights were violated by the school's action. *"To resolve this issue, the Court must first determine the scope of a school's authority to regulate speech by its students that occurs off campus but has an effect on campus."* – argued the Court.[54] According to this logic, the Court briefly introduced *Tinker, Fraser, Hazelwood* and *Morse* and the legal standards and tests worked out in and by these landmark rulings.

Afterwards, the Court cited Circuit Court decisions in connection with off-campus cases, which "reached the campus", i.e. became applicable to on-campus conduct through interpretation. In *Lavine v. Blaine School District*[55], the Ninth Circuit analyzed the case under *Tinker* regardless the off-campus origin of the speech. In *Lavine,* the Ninth Circuit set up the following framework for applying SCOTUS student speech tests: (i) vulgar, lewd, obscene, plainly offensive speech governed by *Fraser*, (ii) school-sponsored speech governed by *Hazelwood,* and (iii) other speech, which is not covered by the foregoing tests is governed by *Tinker.*[56](Actually, according to the Ninth Circuit opinion, this framework was set up by the Ninth Circuit in *Chandler v. McMinnville School District* – earlier on.)[57] Nevertheless, we should highlight that this system was supplemented by SCOTUS in *Morse*, which decision governs student on-campus cases regarding illegal drug abuse.

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[53] *J.C.* 2-6. pp.
[54] Id. 8. p.
[55] *Lavine v. Blaine School District*, 257 F. 3d 981 - Court of Appeals, 9th Circuit (2001)
[56] *J.C.* 13. p.
[57] Id. 13. p. footnote 3.

Besides this framework, in *Lavine* the Ninth Circuit analyzed *Tinker's* substantial disruption test and concluded that the school could reasonably foresee a future substantial disruption in the school environment.[58]

Furthermore, the Central District Court of California in our case at hand cited several cyberbullying cases, which were decided under the substantial disruption test regardless the off-campus origin of the speech.[59] Consequently, the Court stated, where the foreseeable risk of substantial disruption is established, the schools' actions to curb the students' First Amendments rights were permissible.[60]

However, the Court noted that some Circuit Courts (especially the Second Circuit) considered the location of the speech highly important, and these courts should resolve the origin issue before applying any SCOTUS tests.[61] However, *"[d]etermining where internet speech occurs is almost as thorny an issue as determining when life begins."[62]*
Besides, to strengthen his aspect, the Court cited *Wisniewski* (cf. above) and emphasized that the Second Circuit first discussed the nexus between the speech and the school. Ultimately, the Second Circuit found the nexus well-established in *Wisniewski* and applied *Tinker's* foreseeable substantial disruption test, but without transforming the speech into on-campus, as the Fourth Circuit did in *Kowalski*. This approach fits in the theoretical framework created by the Ninth Circuit, because none of the SCOTUS tests are applicable to off-campus speech but *Tinker*. Therefore, as they concluded, in *J.C.,* the Central District Court of California should apply *Tinker*.

However, we shall highlight the danger of this system regarding cyberbullying jurisprudence, namely that most of the cases are dealing with off-campus originated student speech, which then has significant effect on-campus, just like in *J.C.,* but without in itself becoming on-campus speech. Therefore, none of the SCOTUS student freedom of speech tests, except *Tinker,* will be applicable to these cyberbullying cases, because those tests govern only on-campus scenarios, but those cases will not be treated as on-campus speech. In sum, only *Tinker* will be applicable to off-campus originated student speech with on-campus effect.

In his judgment, the Central District Court of California called on *Doninger v. Niehoff*, decided by the Second Circuit as well, and on *J.S. v. Betlehem Area School District* by the Supreme Court of Pennsylvania, where the nexus between the speech and the school were the first inquiry.[63][64] In these foregoing three cases (*Wisniewski, Doninger, J.S.*) the nexus was examined at first and under the factual circumstances, the speech was treated as off-campus with significant effect on-campus; and was decided under *Tinker*. In my opinion, this two-step analysis provides an excellent way to handle cyberbullying cases, but courts should be aware to declare under which circumstances an off-campus speech is

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[58] Id. 13-14. pp.
[59] See J.C. 14-15. p.
[60] Id. 15. p.
[61] Id.
[62] Bendlin 2013: Id. 48. p.
[63] J.C. 16-18. p.
[64] See Horowitz – Bollinger 2014: Id. 43. p.

assessed or becomes on-campus. Furthermore, if the speech is treated as on-campus, then courts should first apply the special SCOTUS on-campus tests (*Fraser, Hazelwood, Morse)*, before applying *Tinker.*[65]

If this two-steps approach would be used and applied nationwide, then the cyberbullying jurisprudence in US would become less ambiguous and vague. This standard could establish a much more predictable framework to courts, scholars, school officials and students as well.

This foregoing analysis and conclusion, which is based on the *J.C.* opinion of the Central District Court of California, could serve as guideline to courts. However, the analysis of case law was not the only important statement of this judgment. The Court also summarized several general conclusions regarding off-campus student speech cases.

First, off-campus speech, which is brought to school or to the attention of school authorities, regardless of the geographical origin, and causes or foreseeably might cause substantial disruption in the school is governed by *Tinker*, and could be regulated by the school, according to the majority of courts.[66]

Second, some courts will apply SCOTUS tests only where there is a sufficient nexus between the speech and the school. However, it is still unclear when this nexus exists. According to the Second Circuit it does, when it is *"'reasonably foreseeable' that the speech would reach campus".*[67][68] This approach is mostly used by the Second Circuit, but we saw this viewpoint reflected in *J.S.* as well.

Third, in those cases, where students took specific efforts to keep their speech off-campus, the SCOTUS standards are not applicable.[69]

These foregoing principles were analyzed in *J.C.* by the Central District Court of California, and the Court held that under the framework created by the Ninth Circuit, the geographical origin did not matter, because *Tinker* was applicable to on-campus and off-campus speech as well. If the Court would apply the Second Circuit's approach and considered the origin of the speech, the sufficient nexus would be well-established under the foregoing factual circumstances (C.C. came to school with her mother on the next morning, the video was viewed by schoolmates, and at least two times during the investigation), thus it would be reasonably foreseeable that the speech would made its way to campus.[70] Moreover, J.C. did not make specific efforts to keep the speech off-campus,[71] thus, in consequence, the Court ruled that *Tinker* governed the case, but it

[65] Bendlin 2013: Id. 65. p.
[66] J.C. 22. p.
[67] Id.
[68] For more examples when sufficient nexus exists see Atticus N. Wegman: Cyberbullying and California's Response. *47 U.S.F. L. Rev. 737*, 2012-2013, 755-756. pp.
[69] J.C. 22. p.
[70] Id. 22-23. pp.
[71] Id. 25. p.

should be decided whether it caused or is reasonably likely to cause a substantial disruption.[72]

J.C.'s substantial disruption inquiry

Under the above-mentioned test, the Court concluded that *Tinker* should be applied to this case; however, it was still undecided whether actual or reasonably foreseeable substantial disruption occurred. In order to resolve this issue, the Court created an inquiry, which was highly fact-intensive and the existing case law did not provide clear guidelines.[73] However, certain factors bear relevance to this analysis.

First of all, general rumblings or buzz is not sufficient to reach the level of substantial disruption.[74]

Second of all, when the student speech is violent or threating to members of the school, several court have found the reasonably foreseeable substantial disruption established. As we could see in *Wisniewski*, solely the violent content of the speech could constitute this foreseeable disruption.[75]

Third of all, courts should explore whether school officials are pulled away from their ordinary tasks to handle the case.[76]

Last but not least, courts must consider whether the school's action was based on evidence or fact regarding the indication of foreseeable substantial disruption.[77]

The Court explored the case under the foregoing facts and ruled that J.C.'s speech did not cause actual or reasonably foreseeable substantial disruption.[78][79]

Under the first point of inquiry, the Court concluded that an upset parent and student, who missed a single class, did not rise to the level of substantial disruption.[80]

Pursuant to the second part of the test, J.C.'s video was not violent and did not contain any threat to any member of the school. There was no confrontation either between J.C. and C.C., or between any other students and C.C.

Thirdly, handling conflicts between students, who hurt each other's feelings, by the principal and the counselor's help to process the effects of a conflict in connection with

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[72] Id. 27. p.
[73] Id. 28. p.
[74] Id. 46. p.
[75] Id. 33-34. pp.
[76] Id. 34. p.
[77] Id. 36. p.
[78] Id. 40. p.
[79] Horowitz - Bollinger 2014: Id. 39. p.; Wegman 2012-2013: Id. 751. p.
[80] Horowitz - Bollinger 2014: Id. 39. p.; Wegman 2012-2013: Id. 752. p.

this "clash", is the actual duty of school officials. Therefore, they were not pulled away from their tasks, more likely they fulfilled their official duties very well.

Lastly, the Court concluded that the school did not present any evidence to support his action to discipline J.C. for her video.[81]

Besides these elements, the Court explored whether any evidence could support the argumentation of the school that a disruption was reasonably foreseeable. However, the Court found that there was no evidence regarding prior, relevant, relationship between J.C. and C.C. moreover, no physical or verbal confrontation did occur. Furthermore, there was no history in the school similar to this situation, which caused any substantial disruption.

In sum, the Court did not find actual or reasonably foreseeable substantial disruption well-established.

Nevertheless, *J.C.* is a landmark decision in my reading, because it highlighted crucial issues regarding cyberbullying cases and provided a solution or at least a guideline to a possible future solution. The Court summarized the existing case law and marked the distinctions among Circuit Courts, so called 'circuit splits', and analyzed the case under both (Ninth Circuit and Second Circuit) approaches. According to the Second Circuit method, courts might be able to decide when they should transform an off-campus speech into on-campus and how to handle such scenarios. If the sufficient nexus is well established, then they could decide whether it turned into on-campus, or remained off-campus. Therefore, off-campus cases should be decided solely under *Tinker*. Pursuant to this analysis, courts have to justify their rulings and cannot avoid important questions in their judgments. Moreover, the Court created a substantial disruption inquiry, which could serve as guidelines to other courts, even to higher-level courts.

Finally, the most important value of this decision is that the Central District Court of California followed the logic they created. The Court explored every element of the tests, gave reasons, and called on evidence. In consequence, I would say that this is a landmark decision. Should we have more of such well-constructed judgments, cyberbullying could be easier to deal with.

V. A different approach of the First Amendment and cyberbullying - The People of the State of New York v Marquan M.[82]

The Dignity for All Students Act in Albany County, New York criminalized cyberbullying as a misdemeanor offense. The 16-year-old high school student defendant was prosecuted for "cyberbullying" misdemeanor, because he anonymously posted sexual information about fellow classmates in a Facebook group called 'Cohoes Flame', named after the defendant's high school (Cohoes High School). These posts contained

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[81] J.C. 40-44. pp.
[82] *People v. Marquan M.,* 2014 NY Slip Op 04881, New York Court of Appeals (2014)

photographs and detailed descriptions about the classmates' alleged sexual behaviors, sexual partners and further personal information about them.[83] Marquan admitted his authorship, but moved to dismiss the charges, stating that the local law violated his First Amendment rights. The City Court denied his motion and on appeal the County Court found the local law constitutional.[84] On appeal, the New York State Court of Appeals faced the question whether the local cyberbullying statute conforms to freedom of speech under the First Amendment.[85]

Based on this factual background, we should focus on the legal arguments of the case. The defendant contended that the law was overbroad (included protected speech) and vague (did not give a fair notice to the public).[86]

The Court of Appeals explored and examined the defendant's arguments, and defined 'overbroad' and 'vague'. *"A regulation of speech is overbroad if constitutionally-protected expression may be 'chilled' by the provision because it facially 'prohibits a real and substantial amount of' expression guarded by the First Amendment."*[87] Furthermore, a statute could be declared vague, if *"it fails to give a citizen adequate notice of the nature of proscribed conduct, and permits arbitrary and discriminatory enforcement."*[88]

The main point of the Court's ruling was that the cyberbullying law at hand tried to protect children from cyberbullying, however as it was written, it covered communications aimed at adults and fictitious or corporate entities as well. Moreover, the Court highlighted that every form of communication was included, such as telephone conversations or telegram. In a broad interpretation, anyone, who via telephone conversation meant to annoy an adult, could be prosecuted under this cyberbullying law.[89] The County as a legislator admitted that the law is too broad and asked the Court to declare that some remaining part of the law is narrow enough to be constitutional.[90] However, the Court of Appeals emphasized that such a judicial rewrite would not be constitutional, because it would hurt the separation of powers and would enter the "realm of vagueness".[91] Under the foregoing facts the Court of Appeals admitted that the conduct of the defendant was harmful, vulgar and offensive, however, the cyberbullying law, under which he was charged, covered constitutionally protected speech, therefore, it was overbroad and invalid under the First Amendment.[92]

Judge Smith dissented and argued that a remaining part of the law could be constitutionally valid. Under Smith's reasoning in the dissent, the *"law does not prohibit*

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[83] *People v Marquan M.* 1. p.; 4. p.
[84] Id. 4. p.
[85] Id. 1. p.
[86] Id. 4. p.
[87] Id. 5. p.
[88] Id. 6. p.
[89] Id. 7. p.
[90] Id.
[91] Id. 8. p.
[92] Id. 9. p.

conduct intended to harass, annoy, threaten or the like unless the actor specifically intended 'significant emotional harm'. I don't find such a prohibition to be unconstitutionally vague or overbroad.'[93] Judge Smith focused on the intent of the law, which tried to prohibit those kinds of communications, which had no legitimate purpose, just intended to inflict significant emotional harm and injury to children. This governing aim of the legislator should be appreciated and supported.

This case bears a huge relevance in my opinion, because usually students' cyberbullying cases in connection with First Amendment freedom of speech rights are not decided upon a strict scrutiny analysis of a law, as we could see above. In general, courts call on the SCOTUS landmark students' freedom of speech cases, like *Tinker*, *Fraser*, *Hazelwood* or *Morse* and evaluate the circumstances, cite other cyberbullying decisions.[94]

However, in this case the Court of Appeals of New York explored the vagueness and overbroad nature of the county cyberbullying law and decided the case in light of the constitutionality of the text of the law, leaving out of consideration the facts of the case.

Of course, we should bear in mind that the above-mentioned cases are not criminal procedures, but it still raises the question: is this a good way to tackle cyberbullying? In my opinion, this approach is not typical and is not the one that should be followed. This case should have been decided upon *Tinker* and the 'substantial disruption test'. Unfortunately, *Fraser* would not be applicable to the current scenario, albeit, if we declare the speech on-campus, like in *Kowalski*, *Fraser* could be applicable. Nevertheless, *Tinker's* reasonably foreseeable or actual substantial disruption tests could have resulted in a ruling against Marquan in this case. We shall notice here, that no victims filed suit against Marquan, so there were factual differences between the current and the above-mentioned cases. If they would have filed, then the Court might have used *Tinker's* reasonably foreseeable substantial disruption test and could have taken into consideration the Second Circuit Court approach to cyberbullying. Under this approach, the Court should first define whether the sufficient nexus between the speech and the school exists. If yes, did that speech turn into on-campus? If it did, then they should apply SCOTUS on-campus tests before *Tinker*. If the nexus exists, but it should be considered as off-campus speech, then *Tinker* should be applied.

Besides this hypothetical case, strict scrutiny is a high-level standard, which constitutes a great obstacle for legislators to surmount, when adopting cyberbullying laws. Therefore, it seems better to decide cyberbullying cases under facts rather than under the strict scrutiny of a law.

VI. Where are we now? - The Hungarian *status quo*

Compared to what we have seen in terms of the evolution and possible future directions for US jurisprudence, I think it is important to say a few words about the *status quo* in Hungary.

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[93] Id. 11. p.
[94] Snyder, Kowalski, Wisniewski, J.C.

First of all, we shall emphasize that Hungary is a civil law country with a centralized Constitutional Court. Therefore, our "ordinary" judges sitting in lower courts have no power to interpret the constitution, thus in our judgments we cannot find any fundamental rights argumentation, like in the above-mentioned US decisions. The Hungarian Constitutional Court is outside the ordinary court system and solely bears the power to authentically interpret the Fundamental Law of Hungary. Therefore, we have to look at the following statements through these glasses.

Now, I would like to highlight the *status quo* in Hungary regarding cyberbullying, which will not be so positive.

In comparison with US, where every state has an anti-bullying law and almost half of them cover cyberbullying as well, we don't have any such case law or legislation;[95] however, an anti-bullying law also covering cyberbullying could be an effective way to protect the victims as well.[96]

Among the achievements, we could mention the international project (Threat Assessment of Bullying Behaviour in Internet, called "TABBY"), which dealt with *"the assessment of the volume and the management of the complexities of cyberbullying among children."*[97]

In our country, there is no nationwide anti-bullying program; however a huge step was made on 28 January 2016, when the Hungarian Institute for Educational Research and Development crossed the finish line and bought the license for the Finnish KiVa program, which is one of the most successful anti-bullying programs worldwide.[98]

Moreover, the level of public awareness and the number of prevention programs are low, most of Hungarian youth don't even know what cyberbullying means, or even if they do, they are unaware how to tackle it, or how to handle similar situations. In my opinion, the introduction of KiVa will significantly raise public awareness and increase the success of prevention among our nation's youth. Prevention and educating students, parents and teachers mean the first and very important step in the fight against cyberbullying, thus its development is essential.[99]

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[95] Sameer Hinduja - Justin W. Patchin: *State cyberbullying laws.* A Brief Review of State Cyberbullying Laws and Policies, 2015.
http://www.cyberbullying.us/Bullying-and-Cyberbullying-Laws.pdf (last accessed: 31.03.2016)
[96] Ho 2012: Id. 809. p.
[97] Katalin Parti - Andrea Schmidt - Bálint Néray - György Virág: *TABBY in Internet* - The assessment of the volume of cyberbullying among students, and school mentor training in Hungary (2011-2014). In: *Anthology of College of Criminal Law Science, Beijing Normal University,* Beijing, China, 2015, 2. p.
[98] Viola Bozsi: Finland's Anti-Bullying KiVa Program to be Introduced in Hungarian Schools. 2016. http://ofi.hu/node/179809 (last accessed:31.03.2016)
[99] See Ho 2012: Id. 815. p.; Wegman 2012-2013: Id. 756. p.; Parti-Schmidt-Néray-Virág 2015: Id. 2-3. pp.

Furthermore, our legal academia writing on this topic is highly negligible, which fact decreases the scientific background of a proper future legislation in connection with cyberbullying.

In addition to the problems of future legislation, the lack of academic background has already led to another crucial issue, namely to find the most appropriate Hungarian term of bullying and cyberbullying. Important and significant information "get lost in translation" as the proverb says. For instance, in Hungary the term cyberbullying is translated as online harassment, although, this terminology misleads the whole society, because cyberbullying is an 'umbrella term', which covers online harassment, but does not function as a synonym thereof.

Thanks to a foundation, called Felelős Társadalomért Közhasznú Alapítvány (The Public Foundation for a Responsible Society), a better term used to designate (cyber)bullying become more widespread and well-known. The Foundation also achieved some important results in the field of prevention, e.g. it maintains a webpage, which helps everyone, how to tackle this phenomenon.[100]

In conclusion, Hungary is far behind the US to tackle cyberbullying, but we recognized the problem and try to address it with adequate answers, like introducing KiVa or organizing the first ever Hungarian National Cyberbullying Conference (MOCK), which was not trying to mock the legislator and the courts but to signify as a hallmark that we picked up the fight against bullying and cyberbullying.

VII.   Conclusions

In this article, I tried to explore the US jurisprudence regarding cyberbullying, and to find guidelines for courts in lack of a SCOTUS judgment. I reckon that *J.C.* might provide a solution with its two-step analysis, created by the Second Circuit, and also with the substantial disruption inquiry.

The merit of this two-step test is that (i) it firstly examines the nexus under the factual circumstances; (ii) the speech is either treated as off-campus with significant effect on-campus and was decided under *Tinker*, or is considered as on-campus speech and then special on-campus SCOTUS tests become applicable.

In my opinion, this two-step analysis provides an excellent way to handle cyberbullying cases, but courts should be aware to declare under which circumstances an off-campus speech becomes or should be assessed as on-campus. Furthermore, if the speech is treated as on-campus, then courts should first apply the special SCOTUS on-campus tests (*Fraser, Hazelwood, Morse)*, before applying *Tinker.*

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[100]Felelős Társadalomért Közhasznú Alapítvány Megfélemlítés Elleni Programja (Anti-bullying Program of The Public Foundation for a Responsible Society); www.megfelemlites.hu (last accessed: 18.04.2016)

Moreover, the Central District Court of California summarized several general conclusions regarding off-campus student speech cases, which helps to define, when such a nexus exists.

First, off-campus speech, which reaches the campus, regardless of the geographical origin, and causes or foreseeably might cause substantial disruption in the school is governed by *Tinker*, and could be regulated by the school, according to the majority of courts.[101]

Second, some courts try to establish a sufficient nexus between the speech and the school. However, it is still unclear when this nexus exist. According to the Second Circuit this nexus exists, when it is *"'reasonably foreseeable' that the speech would reach campus".[102]* This approach is mostly used by the Second Circuit, but we saw this viewpoint reflected in *J.S.*, a case decided by the Supreme Court of Pennsylvania.

Thirdly, in those cases, where students made specific efforts to keep their speech off-campus, the SCOTUS standards are not applicable.[103]

Furthermore, the District Court in *J.C.* created an inquiry to define when a reasonably foreseeable disruption is well-established. This inquiry could help courts follow the approach of the Second Circuit, which was introduced above.

Under this inquiry we could declare that general rumblings or buzz is not sufficient to reach the level of substantial disruption,[104] a violent or threating speech could establish reasonably foreseeable substantial disruption (as we saw above in *Wisniewski*, where solely the violent content of the speech could constitute this foreseeable disruption[105]). Furthermore, courts should explore whether school officials are pulled away from their ordinary tasks to handle the case;[106] and whether the school's action was based on evidence or fact.[107]

Pursuant to this conclusion, courts could work out clearer guidelines in cyberbullying jurisprudence, which could lead to a nearly uniform judicial practice.

In the next part, I examined *Marquan*, decided upon a First Amendment issue as well. However, in this case we realized how difficult it is to adopt a proper, constitutional cyberbullying law, and how easy is to declare provisions in an unconstitutionally vague and overbroad fashion, without exploring the actual facts of the case at hand. In my reading, Marquan filed a great complaint, because he focused on the text of the law, under which he was charged, instead of relying on the facts of the case. He could file a constitutional complaint for a violation of First Amendment in this way as well, but he

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[101] J.C. 22. p.
[102] Id.
[103] Id.
[104] Id. 46. p.
[105] Id. 33-34. pp.
[106] Id. 34. p.
[107] Id. 36. p.

chose what better fit his claim. However, this method is the one, which should not be followed in the judicial handling of cyberbullying.

Last but not least, I shortly introduced the current situation in Hungary regarding cyberbullying, which could be in better shape, however, we achieved small goals, like introducing KiVa, as a pilot anti-bullying program in Hungarian schools, or agreed on a proper translation of the word '(cyber)bullying'.

Furthermore, the Hungarian National Cyberbullying Conference could be evaluated as a big success for our country and for everyone, who fights against this omnipresent phenomenon.

Prevention is a crucial element of this battle, and hopefully KiVa will increase the level of public awareness and thus the efficiency of prevention in Hungary. In my opinion, prevention and raising the public awareness could be a more effective way to tackle cyberbullying, than court procedures. However, we should establish the legal basis of court proceedings as soon as possible, and thus Hungary could provide sufficient protection of the fundamental rights of the victims.

Granyák Lívia:
Children's rights online - legal aspect of cyberbullying:
is a specific cyberbullying legislation needed?[1]

I. Introduction

Bullying is a well-known, widespread matter all over the world. This is hardly a new phenomenon, it has been part of the society's life for a long time, especially the children's life. However, it has moved from the schoolyard to social networking sites as much Facebook, emails and mobile text messages presenting us with a major challenge. That is why this paper aims at familiarizing cyberbullying with all the most important components. After getting an inside view of cyberbullying the research moves on the state's role to discuss whether cyberbullying legislation is needed and if it does, then which branch of law should regulate this issue. Some countries have already attempted to regulate cyberbullying. Due to this fact, the study focuses on the most significant cyberbullying legislations such as the existing regulations of the United States of America (USA), the United Kingdom (UK) and Australia.

II. What is cyberbullying?

To understand what cyberbullying is, first bullying has to be defined. Bullying means repeated negative behaviours intended to frighten or cause harm based on imbalance of power between the participants. Cyberbullying implies the same conduct using technologies such as e-mail, cell phone and text messages, instant messaging, defamatory personal websites and defamatory personal polling sites. As evidenced by this definition, cyberbullying can take many different forms, including:

- sending mean, vulgar or threatening messages or images;
- posing sensitive or private information about another person; or
- intentionally excluding someone from an online group.

This phenomenon could be more dangerous than its offline version because of some special features that will be discussed below. That is why a reasonable question emerges: who has to undertake the responsibility to tackle this deviance? Victims, parents, schools, NGOs or governments, etc.?

This task cannot be imposed on one individual. In the interest of an efficient solution it is obvious that all of them must take part in the prevention and fight against cyberbullying. So the next question is: what obligations does each person have? Due to the limit of this paper the government's role will be discussed.

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[1] I would like to express my sincere gratitude and appreciation to Irina Beaton, one of Scottish Child Law Centre's solicitors for giving advices regarding this study.

To find out in which cases the state's responsibility is required, the "simply" hurtful behaviour and an infringing act have to be distinguished from each other. It is really significant, because in the first instance, a state intervention is not well-founded, but in the second case it is more conceivable. As mentioned above there are many cyberbullying behaviours, therefore in order to make a distinction between an unlawful act and "simply" harmful conduct, below are listed the most relevant features of cyberbullying:

- taking place between children,
- based on a real or apparent dominant position,
- using electronic devices which include, but are not limited to, telephones, cell phones or other wireless telecommunication devices, personal digital assistants (PDAs), computers, email, instant messaging, text messaging, and websites,
- intentionally,
- repetitive,
- offensive
- cause severe humiliation, harassment or intimidation.
-

Due to the various types of cyberbullying, the above mentioned list is not exhaustive. This paper would not try to determine a definition covering all cyberbullying behaviours because that needs another study to be done from another perspective. So now this "definition" is simply confined to this review to summarize the most common and serious elements of cyberbullying.

III. The reasons for taking action by the states

Because of the online area and the electronic devices cyberbullying has unique features threatening children in a more dangerous way. Four arguments for cyberbullying regulation:

1. The extent of this phenomenon taking account of its prevalence and seriousness

Claim of controlling cyberbullying appears first where cyberbullying behaviours happen frequently and induce serious consequences. Therefore, it is not surprising that the first legislation steps against cyberbullying were made by the USA where unfortunately more cyberbullying has already led to suicide. Due to the high level of the teenager's self-harm in Australia, the Australian legislation has done a pioneer work in ruling cyberbullying as well.[2] Thank to this, Australia can now take pride in having an independent Children's e-Safety Commissioner established by the Enhancing Online Safety for Children Act 2015. This Act implies a huge achievement in combat against cyberbullying that is why this system is going to be discussed in more detail later.

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[2] The substantive part of the Children's Rights Report 2014 by the National Children's Commissioner focuses on intentional self-harm with or without suicidal intent and death by intentional self-harm. https://www.humanrights.gov.au/sites/default/files/document/publication/Children%27s%20Rights%20Report%202014_2.pdf (Downloaded: 30.05.2016)

2. Children victims

Nowadays children's rights are protected all over the world. The United Nations Convention on the Rights of the Child adopted on the 20th of November in 1989 is a vital convention in relation to children's rights. Its 54 articles describe the economic, social and cultural rights of the children. Due to the widespread approval by the countries, this is one of the most successful conventions of the United Nations (UN).[3]All state members of the UN ratified it but one, the United States of America.[4] In addition the Charter of the Fundamental Rights of the European Union (EU) obliges the EU and its Member States to protect and promote children's rights when implementing EU law. In December 2009, with the entry into force of the Lisbon Treaty, the Charter was given binding legal effect equal to the Treaties.[5] The Charter contains the first detailed references to children's rights at the EU constitutional level.[6] These legal sources indicate that children need further, specialised legal protection.

3. Unbalanced relation between the participants

The imbalance of power between the cyberbullying participants is caused by joining of several components such as anonymity, the distance from the victim and the lack of accountability. These factors contribute to the escalation of the act of cyberbullying which induces more destruction in the children's world. Due to the level of children's maturity and the speciality of the online arena, children are not able to realise the feasible consequences of their actions. Furthermore, online materials are very difficult to control and delete that aggravates the children's defencelessness. The materials – either picture or text- can be spread extremely fast without the consent of the person. This lack of control produces a very vulnerable position for the victims, which makes it very difficult to rescue them from this situation if that is possible at all.

4. In public

The most cyberbullying conduct happens in public that justifies the state's intervention by either cyberbullying legislation or by other instruments. This could involve providing opportunity for a direct enforcement of one's rights as well which could lead us to the horizontal effect of fundamental rights also known as third-party effect. This means the application of public law rules to directly effect legal relations between private individuals in their relation with other private law person.[7] In cyberbullying cases this would mean that private individuals could enforce fundamental rights against another private individual instead of the state. Law systems allow third- party effect remarkably

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[3] 196 states are party of the convention this means these countries ratified it and 1 state, the USA signed it
[4] http://indicators.ohchr.org/ (Downloaded: 10.04.2016)
[5] Charter of Fundamental Rights.
http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:l33501 (Downloaded: 27.05.2016)
[6] See more about children's rights within the European law: Handbook on the European law relating the rights of the child.
http://www.echr.coe.int/Documents/Handbook_rights_child_ENG.PDF (Downloaded: 30.05.2016)
[7] http://www.hanselawreview.org/pdf8/Vol5No2Art02.pdf (Downloaded: 10.04.2016)

seldom because basically fundamental rights protect individuals from the state and not from another private individuals. There is a chance of horizontal effect of fundamental rights if the breach of fundamental rights happens in public or based on imbalance of power, for example, it happens between an employee and an employer where individuals are not equal. In these kinds of situations one person is more vulnerable than the other, therefore more protection is needed by the state. Moreover, the states have wider scope for manoeuvre in making legislation regarding matters happening in public. Here, emphasis has to be laid on the singularity of the third-party effect. Its possibility in relation to this issue doesn't mean that third- party effect automatically applies to cyberbullying cases.

An additional argument for the state's cyberbullying legislation is one thoughts of István Bibó[8]: „ … human freedom and dignity one and indivisible, every harm against someone on the grounds of social status or descent or sex or age jeopardises everyone else's freedom and dignity."[9]

Following this principle we cannot close our eyes to harm of the individuals caused by cyberbullying, as cyberbullying threatens exactly that - human's freedom and dignity.

Based on all these things the state's legislation could be reasonable in the most serious cyberbullying case. However, there are more ways for its manifestation, for example, it can be either criminal sanctions or civil law provisions. The way of fundamental right's enforcement between private law persons could be also open. Additionally this can happen with the help of administrative law,including education law provisions or creating a new status of a special commissioner, as the Australian example mentioned above. For which country which solution will be the adequate answer for tackling this problem is influenced by the speciality of the legal system and the extent and seriousness of cyberbullying. This means there is no general solution. Every country has to find their owntailor-made „remedy". Some countries have already found their answer to this deviance and now we shall move on the most important existing cyberbullying legislations within the branches of legal system.

IV. Criminal sanctions

Due to the special criminal sanctions of cyberbullying within the USA criminal law the United States does a pioneer work on determining cyberbullying. Cyberbullying legislation is divided for state and federal level just like the whole law system in the

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[8] István Bibó lived from 1911 until 1979. He was a Hungarian lawyer, civil servant, politician and political theorist. During the Hungarian Revolution in 1956 he acted as the Minister of State for National Government. When the Soviets invaded to crush the rebellious government, he was the last Minister left at his post in the Hungarian Parliament in Budapest. He wrote his famous proclamation named For Freedom and Truth in this time.

[9] Find the quote in Hungarian here: http://tollelege.elte.hu/sites/default/files/articles/szabadsagszereto_ember.pdf (Downloaded: 31.05.2016)

USA. The federal legislation is still in drafting.[10] However, there have already been many state regulations regarding cyberbullying. To be specific there are 24 States ruling cyberbullying from which 7 States have criminal sanctions for it.[11] These States have different definitions of cyberbullying that is why the sanctions are also varied. Despite this fact the common of these legislations is cyberbullying ruled maximum as a misdemeanour and the penalty could be fine or imprisonment or both. Moreover many cyberbullying behaviours have already fallen under existing criminal law, for instance harassment, stalking, certain acts of harm or libel, defamation, intentional infliction of emotional distress, though these laws are infrequently applied.[12]

In contrast to the United States there is no legal definition of cyberbullying within the legislation made by the UK's government. However there is a number of existing laws that can be applied to cyberbullying cases. For example the Protection from Harassment Act (1997) under that if someone harasses another person, the perpetrator can be prosecuted in the criminal courts because of the offence against section 1 prohibited behaviour amounting to harassment of another.[13] Section 4 involves a more serious offence of someone causing another person to fear, on at least two occasions, that violence will be used against them. If a person is found guilty of harassment, he or she is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine.[14] The Criminal Justice and Public Order Act (1994) defines a criminal offence of intentional harassment, which covers all forms of harassment, including sexual.[15] A person is guilty of an offence if with the intent of harassment, alarm or distress

- he or she uses threatening, abusive or insulting words or behaviour or disorderly behaviour;
- or displays any writing sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.[16]

Other source of the legal assistance is the Malicious Communications Act introduced in 1988.[17] Section 1 of this Act involves sending to another of any letters, electronic communications, photographs and recordings which are indecent, grossly offensive or which convey a threat intended to cause distress or anxiety to the person receiving them.[18] The offence refers to the sending, delivering or transmitting, there is no

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[10] Federal Law – In April 2009 a bill was passed to amend Title 18 of the United States Code, with respect to cyberbullying. The bill is cited as the "Megan Meier Cyberbullying Prevention Act", after the Missouri teenager who tragically committed suicide following a cyberbullying campaign carried out by an adult neighbour.

[11] http://cyberbullying.org/Bullying-and-Cyberbullying-Laws.pdf (Downloaded: 31.05.2016)

[12] http://www.cyberbullying.us/cyberbullying-legal-issues.pdf (Downloaded: 24.01.2015)

[13] Protection from Harassment Act is an UK General Act, find here: http://www.legislation.gov.uk/ukpga/1997/40/contents (Downloaded: 31.05.2016)

[14] http://www.legislation.gov.uk/ukpga/1997/40/section/2 (Downloaded: 24.04.2016)

[15] Criminal Justice and Public Order Act is an UK General Act

[16] See Section 154: http://www.legislation.gov.uk/ukpga/1994/33/section/154 (Downloaded: 30.05.2016)

[17] Malicious Communications Act is a UK General Act

[18] http://www.legislation.gov.uk/ukpga/1988/27/section/1(Downloaded: 30.05.2016)

requirement for the communication to reach the person who has the intention to read it. If a person is found guilty of this offence they can receive a maximum prison sentence of 2 years or a fine or both.[19]An anti-social behaviour order (ASBO) under the Crime and Disorder Act 1998 could be used for cyberbullying as well.[20] An ASBO is an order which prohibits an individual from engaging in specific anti-social acts for example vandalism or drunken, threatening behaviour.[21] An ASBO can be made against any person, aged 10 years or over, where there is evidence that their behaviour caused, or is likely to cause, harassment, alarm or distress to others and where an order is needed to protect a person from further anti-social acts.[22]

It has to be mentioned there are different rules in Scotland. For example ASBOs can be issued to anyone over the age of 12.[23] In addition there is Breach of the Peace being an offence at common law in Scotland. A prosecution for breach of the peace may be brought where someone is accused of disorderly conduct being liable to cause fear, alarm or disturbance to others.[24]

Furthermore the Director of Public Prosecutions published guidelines in 2013 for prosecutors. These guidelines should be taken into account when making decisions in relation to cases where it is alleged that criminal offences have been committed by sending communication via social media.[25] This is important to distinguish the cases that imply criminal responsibility from the cases which don't. Moreover this ensures that procedure becomes more child-friendly. According to the guidelines prosecutors may only start a prosecution if a case satisfies the test which has two stages: the first is require of evidential sufficiency and the second involves consideration of the public interest.[26] For this reason the prosecutor must be satisfied that there is a sufficient evidence to provide a realistic prospect of conviction.[27] The case which does not pass the evidential stage must be not proceed. In every case where there is a sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest or not. Without the public interest the prosecutor decides that the case should not proceed further.[28]Because children may not appreciate the potential harm and seriousness of their act a prosecution against a child is not likely to be in the public interest that is why this principle is so relevant.

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[19] http://www.legislation.gov.uk/ukpga/1988/27/section/1 (Downloaded: 20.04.2016)
[20] Crime and Disorder Act is an UK General Act, find here: http://www.legislation.gov.uk/ukpga/1998/37/contents (Downloaded: 30.05.2016)
[21] https://www.gov.uk/asbo (Downloaded: 24.04.2016)
[22] https://www.gov.uk/asbo (Downloaded: 24.04.2016)
[23] https://www.mygov.scot/asbos/ (Downloaded: 24.04.2016)
[24] http://www.mcsporrans.com/breach-of-the-peace.html (Downloaded: 18.04.2016)
[25] Guidelines on prosecuting cases involving communications sent via social media, find here: http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/ (Downloaded: 30.05.2016)
[26] Guidelines on prosecuting cases involving communications sent via social media, see it within General Principles: http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/ (Downloaded: 30.05.2016)
[27] Id.
[28] Id.

V. Civil law provisions

Taking into account that cyberbullying happens between private individuals, civil remedy would seem the perfect way to protect cyberbullying victims. Despite this there is no specific cyberbullying definition in civil law. However, some already existing civil provisions could be used in cyberbullying cases, for instance defamation law.

In the United States, federal defamation law is closely tied to the First Amendment. As a result, federal slander and libel laws are more defendant-friendly in the US than those in common law countries, like the UK.[29] An opinion is not considered defamation in the US, just the false statements of fact that harm the reputation of an individual, aren't protected under Constitutional Free Speech provisions.[30]
Concerning the United Kingdom there is the Protection from Harassment Act, mentioned before, under which harassment is both a criminal offence and a civil action. This means, if someone harasses you they can be prosecuted in the criminal courts and it also means that action can be taken against the perpetrator in the civil courts.[31] Section 3 provides civil remedy for the victim.[32] The civil court may grant an injunction to restrain a person from conduct which amounts to harassment and restraining orders are also available to protect the victim.[33] Defamation law also exists within the law made by the UK government as well.[34] It applies to any published material – this includes materials published on the internet as well - that seriously damages the reputation of an individual. Where defamatory material is posted on a website the person concerned can inform the host of its contents and ask the host to remove it.[35] Once the host knows that the material is there and that it may be defamatory, it can no longer rely on the defence of innocent dissemination in the Defamation Act 1996.[36] The person affected could obtain a court order to require removal of the material, and could sue either the host or the person who posted the material for defamation.[37]

VI. Education law rules and human rights-based approach

The most common solution for fighting against cyberbullying is giving a big role to the schools which is reasonable taking account of cyberbullying could be connected with school environment in some way. Besides the law or instead of making legislation

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[29] http://kellywarnerlaw.com/us-defamation-laws/ (Downloaded: 30.05.2016)
[30] Id. (Downloaded: 30.05.2016)
[31]   https://www.citizensadvice.org.uk/discrimination/taking-action-about-discrimination/taking-action-about-harassment/ (Downloaded: 18.04.2016)
[32] Section 3 is about injunction: http://www.legislation.gov.uk/ukpga/1997/40/section/3,
Section 5 is about restraining order on conviction, Section 5A is about restraining order on acquittal: http://www.legislation.gov.uk/ukpga/1997/40/contents   (Downloaded: 30.05.2016)
[33] The main difference between an injunction and a restraining order is that a restraining order is issued at the end of a criminal case, but you can ask the court for an injunction even if someone has not been charged with a criminal offence.
[34] See Defamation Act 2013, Defamation Act 1996, Defamation Act 1952 which are UK General Acts
[35] http://old.digizen.org/cyberbullying/fullguidance/understanding/ (Downloaded:31.05.2016)
[36] http://www.legislation.gov.uk/ukpga/1996/31/contents (Downloaded: 31.05.2016)
[37] http://old.digizen.org/cyberbullying/fullguidance/understanding/ (Downloaded: 24.04.2016)

concerning cyberbullying school policy is required to handle this issue. This means that the schools are required to develop policies on the prevention and reporting, investigation of bullying. Restorative measures are often encouraged. The state laws usually allow schools to discipline students for their off-campus harassment that substantially interferes with or limits the victim's ability to participate in or benefit from services, activities or opportunities offered by the school. Nevertheless, this doesn't mean that schools have universal authority in all cases. For instance in Emmett v. Kent School District No. 415 (2000), the US District Court reviewed a case where a student was initially expelled for creating a webpage entitled the "Unofficial Kentlake High Home Page" that included mock obituaries of students and an online mechanism for visitors to vote on who should die next.[38] The major issue in this case was that the school failed to demonstrate that the website was "intended to threaten anyone, did actually threaten anyone, or manifested any violent tendencies."[39] In sum it can be said the US courts are oriented toward supporting First Amendment guaranteeing freedom of expression for the students. However the intervention is allowed if the behaviour:

- substantially or materially disrupts learning,
- interferes with the educational process or school discipline,
- utilizes school-owned technology to harass,
- threatens other students or infringes on their civil rights.[40]

The schools have to be very cautious before taking step in this area, because they cannot violate the student's rights to freedom of expression. In some cases, there can be just a very slight difference between a cyberbullying conduct and free speech. At this point a note has to be made of that in this paper's view in the case of cyberbullying's definition given above, the protection of free speech cannot be conceivable.

The UK government also pays attention to this serious matter and encourages the schools initiative role. The Department for Education created a non-statutory advice for headteachers and all school staff on how to tackle cyberbullying.[41] The Education Act 2002 places duty on the school governing bodies in England and Wales to have a behaviour policy in place which includes measures to prevent all forms of bullying among pupils.[42] The Education and Libraries Order 2003 requires all state schools in Northern Ireland to have an anti-bullying policy.[43] The Scottish Education Act 2004

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[38] Emmett v. Kent SchoolDist. No. 415, 92 F. Supp. 2d 1088 (W.D.Wash. 2000), find here: http://law.justia.com/cases/federal/district-courts/FSupp2/92/1088/2529495/ (Downloaded: 31.05.2016)
[39] Sameer Hinduja, Ph.D. and Justin W. Patchin, Ph.D.: *Cyberbullying Legislation and Case Law - Implications for School Policy and Practice*, 2. p.
http://cyberbullying.org/cyberbullying-legal-issues.pdf (Downloaded: 01.05.2016)
[40] Id. 3. p.
[41]https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/374850/Cyberbullying_Advice_for_Headteachers_and_School_Staff_121114.pdf (Downloaded: 24.04.2016)
[42] A UK Public General Act, find here:
http://www.legislation.gov.uk/ukpga/2002/32/contents (Downloaded: 31.05.2016)
[43] A Northern Ireland Order in Council, find here:
http://www.legislation.gov.uk/nisi/2003/424/contents (Downloaded: 31.05.2016)

requires local authorities and schools to provide extra help to all children with additional support needs, including bullying.[44]

Besides the education law rules there is another very good solution to fight against cyberbullying. This is provided by the well-developed Australian ombudsman system which includes a unique Children's e-Safety Commissioner established by the Australian Enhancing Online Safety for Children Act.[45] The Commissioner is to be appointed by the Minister for Communications who may give directions to the Commissioner. A key function of the Commissioner is to administer a complaints system for cyberbullying material targeted at an Australian child.

In the eye of this Act cyberbullying material involves the following conditions:

1. it is provided on a social media service or relevant electronic service,
2. an ordinary reasonable person would conclude that:
   - it is likely that the material was intended to have <u>an effect on a particular child</u> and
   - the material would be likely to have the effect on the child of seriously <u>threatening</u>, <u>intimidating</u>, <u>harassing</u> or <u>humiliating</u>
3. Australian child is the target of this material.[46]

These factors help to distinguish the "simple" hurtful, unpleasant content from the cyberbullying materials which is really significant to not understate this phenomenon. When every bad thing that happens to children gets called cyberbullying, we end up with misleading narratives.

In compliance with the Act the complaint against cyberbullying material could be made by a child who has reason to believe that he or she was the target of the cyberbullying material or a parent, guardian of the child or someone who the child has authorised to make a complaint about the matter.[47] The Commissioner may investigate the complaint.[48] A very important component of the new complaint system is the two-tier scheme aimed at providing children and young people a pathway for the removal of potentially harmful cyberbullying material. Any social media services may volunteer to participate in tier 1 including small social media services.[49] If a service corresponds to the conditions of tier 1 social media service after its application the Commissioner must declare that the social media service is a *tier 1 social media service*.[50] The Commissioner can make a recommendation that large social media services to be declared Tier 2.[51] The declaration

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[44] An Act of the Scottish Parliament, find here: http://www.legislation.gov.uk/asp/2004/12/contents (Downloaded: 31.05.2016)
[45] This federal Act came into force in March 2016, find here: https://www.legislation.gov.au/Details/C2015A00024/Controls/ (Downloaded: 31.05.2016)
[46] Enhancing Online Safety for Children Act 2015, Section 5.
[47] Id. Section 18.
[48] Id. Section 19.
[49] Tier 1 social media service for example Ask.fm, Twitter, Yahoo!7 Answers
[50] Enhancing Online Safety for Children Act 2015, Section 23.
[51] Tier 2 social media service for example Facebook, Google+, Instagram, YouTube

of *tier 2 social media service* is made by the Minister for Communications based on the Commissioner's recommendation.[52] The most significant difference between the tier 1 and tier 2 social media services is that the last one is subject to legally binding notices and penalties.[53] It is very important to highlight this because a legally binding decision is one of the most efficient ways to enforce one's rights.

An additional innovation is the end-user notice that may be given the cyberbullying's perpetrator to do any or all of the following:

- take all reasonable steps to ensure the removal of the material,
- refrain from posting any cyberbullying material for which the child is the target,
- apologise for posting the material.[54]

In sum the complaints system involves the following remedies:

- a 2-tiered scheme for the <u>rapid removal</u> from social media services of cyberbullying material,
- a tier 1 social media service <u>may be requested to remove</u> from the service cyberbullying material,
- a tier 2 social media service <u>may be given a notice</u> (a social media service notice) requiring the removal from the service of cyber-bullying material,
- a person who posts cyber-bullying material targeted at a child <u>may be given</u> a notice (an end-user notice).[55]

VII. Conclusion

To conclude, the intervention by the state could be well-founded in relation to the most serious cyberbullying cases. However, as mentioned before, there are more potential ways for its manifestation. In the eye of this study the criminal sanctions and the civil law provisions don't have the proper capacity to tackle this matter, due to the *erga omnes* nature of criminal law and considering that civil law regulates relationships between equal individuals. Taking into account the singularity of direct enforcement of the fundamental rights between private law persons, this could imply the slippery slope fallacy, therefore this doesn't seem a satisfying solution either.[56] After all these and based on the existing examples discussed above, the administrative law, including education law provisions or creating a new, specific commissioner looks the exceptional answer to

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[52] Enhancing Online Safety for Children Act 2015, Section 30.
[53] https://www.esafety.gov.au/social-media-regulation/social-media-service-tier-scheme (Downloaded: 31.05.2016)
[54] Enhancing Online Safety for Children Act 2015, Section 42.
[55] Id. Section 3.
[56] Slippery slope fallacy is when a relatively insignificant first event is suggested to lead to a more significant event, which in turn leads to a more significant event, and so on, until some ultimate, significant event is reached, where the connection of each event is not only unwarranted, but with each step it becomes more and more improbable.

handle cyberbullying. In the eye of this study the human-based approach seems the best way to fight against cyberbullying, because this view is capable to keep in mind and handle the seriousness and speciality of cyberbullying.

However we have to bear mind that for which country which solution is the adequate resolution for tackling cyberbullying is influenced by the speciality of the legal system, the extent and seriousness of cyberbullying. This means every country has to find their own tailor-made „remedy".