

Open Research Online

The Open University's repository of research publications and other research outputs

Online Violence Against Women: The Limits & Possibilities of Law

Other

How to cite:

Barker, Kim and Jurasz, Olga (2018). Online Violence Against Women: The Limits & Possibilities of Law. Stirling Law School & Open University Law School.

For guidance on citations see [FAQs](#).

© 2018 Kim Barker; 2018 Olga Jurasz



<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Version: Version of Record

Copyright and Moral Rights for the articles on this site are retained by the individual authors and/or other copyright owners. For more information on Open Research Online's data [policy](#) on reuse of materials please consult the policies page.

oro.open.ac.uk



ONLINE VIOLENCE AGAINST WOMEN: THE LIMITS & POSSIBILITIES OF LAW

Dr Kim Barker and Dr Olga Jurasz

'Online forms of violence against women are frequently perceived as 'not real' due to the fact that abuse happens in the online sphere, including social media. This dichotomy between 'offline' and 'online' is not only incorrect when it comes to combatting online violence against women, but it also fails to take into account the fact that boundaries between 'online' and 'offline' aspects of everyday life are increasingly disappearing in the context of modern societies.'

(Kim Barker & Olga Jurasz)

WHAT IS OVAW?

Online violence against women is a modern phenomenon which affects women and girls worldwide. Online violence against women takes various forms of abuse and includes, but is not limited to, online misogyny, text-based abuse (e.g. on social media platforms such as Twitter or Facebook), upskirting, image-based sexual abuse (also referred to as 'revenge pornography'), rape pornography, doxing, cyberstalking and cyber-harassment.

Online misogyny is widespread, especially on social media and frequently takes the form of text-based abuse, e.g. in the form of abusive and misogynistic tweets.

The risk of young women aged between 18 and 29 years becoming a target of threatening and offensive advances on the internet is twice as high as the risk for women aged between 40 and 49 years, and more than three times as high as the risk for women aged between 50 and 59 years.

EU FRA, *Violence Against Women: An EU-Wide Survey* (2014.)

The 2016 study by DEMOS which investigated the scale of misogyny on social media showed that in the period of three weeks when the study was taking place, 6500 users in the UK were targeted by 10 000 tweets of an explicitly aggressive and misogynistic nature. Internationally, these figures compare with 200 000 aggressive and misogynistic tweets sent to 80 000 persons in the same three weeks.

DEMOS, 'The use of misogynistic terms on Twitter' (May 2016) <http://bit.ly/2DMNJem>

TEXT-BASED ABUSE

Whilst both image-based and text-based abuses have extensive harmful and damaging effects on the victims, only IBSA has benefitted from a legislative appetite for reform. In contrast, there has been an alarming and complete lack of attention paid to text-based abuses within the context of legislative developments.

This is concerning, especially given the harms suffered through these forms of online abuse – factors judicially recognised in the landmark case of *R v Nimmo & Sorley* (2014). Consequently, there is a misperception concerning the level and significance of harm that can be inflicted through text – harms are not only caused by image-based abuse.

“...the effects of the harassment she has received have been life-changing. Her personality has changed long-term. She describes panic and fear and horror. She feared the abusers would find her and carry out the threats. She felt hunted. She remembers feeling terror every time the doorbell rang. She has had to spend substantial time and money ensuring she is as untrackable as possible. She gives a detailed and personal account of the physical effects of the fear on her.”

Per Riddle J in *R v Nimmo & Sorley* (2014).

ONLINE HATE

Online hate is defined as any online expression, encouragement, stirring up or incitement of hatred. Online hate can also take gender-based forms, for example incitement of hatred or acts of violence against women. Misogyny in itself is not a new phenomenon, yet the Internet and technology enables the migration of misogynistic behaviours to the online realm.



Online misogyny should be viewed as a form of online hate and could be prosecuted as a hate crime where the requisite threshold for public prosecution would apply. Whilst responses to combatting online misogyny (and online hate in general) need to go beyond the regulatory and punitive aspects of criminal law, the criminal law has a significant role to play in responding to such conduct.

The term 'hate crime' can be used to describe a range of criminal behaviour where the perpetrator is motivated by hostility or demonstrates hostility towards the victim's disability, race, religion, sexual orientation or transgender identity.

ONLINE MISOGYNY AS A HATE CRIME

Misogynistic text-based abuse is not only a form of online hate speech, but frequently amounts to incitement of hatred towards women as well as to the commission of acts of violence against a particular woman (or women in general). Nonetheless, the law has been slow in responding to this problem and the broader impact it has on women, and the law has appeared reluctant to add gender as a protected characteristic in the context of hate crime despite the existence of similar provisions under equality legislation. Where misogynistic online abuse is concerned, specific legislation to cover offences involving text-based abuse should be created.

“Preventing and combatting online violence against women is an issue in pressing need of global and domestic recognition, as well as action. Addressing online violence against women needs to start from recognizing the existence of online gender-based abuse, online gender-based hate, its scale, numerous forms and the extensive impact it has on women and girls.”

(Kim Barker & Olga Jurasz)

RECOMMENDATIONS

- Prevention of and accountability for online violence against women needs to be prioritised within multiple legal frameworks – preferably within those frameworks dealing with issues concerning online communications and the governance of online space.
- Online violence against women needs to be recognised as a form of gender-based abuse of women and girls as well as a factor standing in the way of their full and equal participation in public and online spaces.
- Gender should be incorporated as a protected characteristic in hate crime legislation in Scotland, England & Wales. This would create legal avenues for addressing misogyny as a hate crime but also allow compliance with existing equality legislation at national and international levels.
- Combatting online gender-based hate requires multilevel and multi-stakeholder input. This includes the pressing need for law reform on offences involving online communications and online hate, but also requires social and educational measures.
- The approach to regulation and tackling of online gender-based hate should be twofold and involve:
 - a) liability of individuals who post hateful content online
 - b) greater liability of platform providers.

References

K Barker & O Jurasz, *Online Misogyny as Hate Crime: A Challenge for (Legal) Regulation?* (Routledge 2018, forthcoming).

K Barker, O Jurasz, 'Submission of Evidence on Online Violence Against Women to UN Special Rapporteur Violence Against Women, Its Causes and Consequences, Dr Dubravka Šimonović' (November 2017) <http://bit.ly/2n9ZG4g>

K Barker, O Jurasz, 'Submission of Evidence to Scottish Government's Independent Review of Hate Crime Legislation' (November 2017) <http://bit.ly/2DFdOgg>

K. Barker, O. Jurasz, 'Gender, Human Rights and Cybercrime: Are Virtual Worlds really that Different?' in: M. Asimow, K. Brown, D. Papke (eds) *Law and Popular Culture: International Perspectives* (Cambridge: Cambridge Scholars Publishing, 2014).

ABOUT THE AUTHORS

Dr Kim Barker is a Lecturer in Intellectual Property & Private Law at Stirling Law School.

✉ kimberley.barker@stir.ac.uk
 🐦 @babylegaleagle

Dr Olga Jurasz is a Senior Lecturer in Law at the Open University Law School.

✉ olga.jurasz@open.ac.uk
 🐦 @olga_jurasz



CITATION

K Barker & O Jurasz (2018) 'Online Violence Against Women: The Limits & Possibilities of Law' (Stirling Law School & Open University Law School).

© K Barker & O Jurasz 2018.

🐦 @StirLaw
 🐦 @OU_Law

UNIVERSITY of
STIRLING

