

Net Neutrality: Too Neutral on Online Abuse

While the Federal Communication Commission in the U.S. debates the [elimination of network neutrality](#) (which will widen the “digital divide”), in the U.K., [new Crown Prosecution Service guidelines](#), in effect since October 2016, allow for prosecuting online offenses such as the use of derogatory hashtags, images altered to humiliate people, and “mobbing.” In Germany, the lower house just passed a bill to fine social media that do not remove content that obviously violates national law within 24 hours of its posting, with the German secretary of justice saying that following such laws was a “prerequisite” for freedom of speech online.

In the U.S., abuse cases involving online spaces appear in U.S. news media as regularly as discussions about how law should deal with such abuses.

For instance, in a pioneering lawsuit in California in May 2017 former Playboy model [Dani Mathers was convicted](#) of invasion of privacy for posting on social media the nude photo of a woman with a body-shaming comment. Even more recently California’s revenge porn law is being put to the test with reality star [Robert Kardashian’s social media posts of sexually explicit photos](#) of his former fiancée. These cases at the state level are still rare but promising starts. Yet, at the federal level a backlash against a similar Ohio law to prosecute online harassment is already underway: a [recent lawsuit](#) (filed in the U.S. District Court in Cleveland in May 2017) alleges that free speech is at risk should a prohibition of online harassment be enforced. This prohibition was signed into law in 2016 by Ohio Governor John Kasich ([Sub H.B. 151](#)), “expand[ing] the offenses of menacing by stalking and telecommunications harassment and prohibit[ing] a person from

knowingly causing another person to believe that the offender will cause physical harm or mental distress to a family or household member of the other person.”

Despite the inclusion of specific language to prevent harm to free speech in many new laws, American critics continue to charge that even abusive online speech online must be considered protected free speech. Their “arguments” overlook the gendered and raced dimensions of online abuse, which disproportionately affect women, especially [younger women](#)—dimensions that are more readily understood, it would seem, outside the U.S. In Germany, for example, the German Association of Women Lawyers endorsed the new bill on social media, pointing to women as disproportionately affected by hate speech.

Misogyny toward and abuse of women who speak publicly online remain major problems while major swaths of the American public, social media operators, and law enforcement trivialize and dismiss these attacks and threats as jokes and their regulation as an assault on free speech.

The reluctance to fight such abuse can only be understood in the context of specific gendered histories of [geek culture](#), [troll culture](#), and [rhetoric](#). All three demonstrate how the authority to speak in public has been tied to voices residing in male bodies. This means online spaces re-create and re-enact oppressive, normative social structures. World wide web inventor [Tim Berners-Lee's call](#) to “press for every country to develop a digital bill of rights to advance a free and open web for everyone” remains utopian when gendered, raced hierarchies migrate online and shape intertwined online-offline discourses.

An emerging line of studies demonstrates these dynamics in detail across countries with high internet penetration. For my doctoral dissertation, I interviewed 109 women bloggers in the

U.S., U.K., Germany, and Switzerland in 2013 and 2014 about their experiences with blogging and social media. Their ages ranged from 22 to 69 years; they included women who were differently abled, of transgender identity, and had varying sexual orientations and ethnic backgrounds (though the majority were white and straight). The most salient finding was that these bloggers experienced high levels of online harassment: 73.4% (80 of 109 women) reporting an unpleasant encounter due to their blogging. Percentages varied across the countries, but were a majority in each.

Of these 80 bloggers, 69 said they had experienced insulting, sexually charged, or threatening comments, including being called a "Feminazi" or "bitch" or being told that they "just need to be raped/fucked right."

Twenty-six had endured trolling and/or so-called shit storms (an overwhelming number of insulting or angry online comments to/about a person in a short period of time). Twelve had received rape threats, and eight said they had received death threats. Forty of the bloggers noted that online harassment was accompanied by vandalism at their homes and stalking in their workplaces, plagiarism, doxing (the release of their private information online without consent), and having fraudulent profiles set up on dating websites.

Of the 80 women with abuse experiences nine (one in Switzerland, two each in the U.K. and U.S., and four in Germany) said they went to the police after being seriously threatened online or because a stalker harassed them via phone or in person. Four said police helped to stop three stalkers and took a case of child pornography seriously. Five said police did not help or respond to requests. One 39-year-old white U.S. feminist described a catch-22 when she contacted the FBI's cybercrimes division, which sent her to local police:

[T]he people who are doing [online abuse] aren't local....[S]o the local police are not going to be able to do anything about it. ...I contacted the local police chief about it, and he never responded ...because the laws haven't quite caught up to the internet... but ...it is not really true that the FBI cares about this thing or takes it seriously.

Ignoring or trivializing threats and harm leveled against women has a long history in law. As Danielle Citron describes in her 2014 book *Hate Crimes in Cyberspace*, intimate partner violence and workplace harassment have long been downplayed as part of daily life, “understandable” in specific environments, or ultimately the fault of the victims. Now online hate speech and insults are labeled “part of online culture” and something women need to be able to “handle” if they want to engage in the internet.

Cases in the U.S. and U.K. have occasionally allowed for [jailing online abusers](#), but these are exceptional and have not set new precedent. Even in Germany, where the problem seems to be taken more seriously, [only 2% percent of cyberstalking cases lead to convictions](#). Part of this may be owed to the historically blurred line between legally permissible hate speech and speech that incites violence or otherwise violates law (e.g., libel), but the new bill in Germany may show a new, clearer way to deal with different categories of speech. It distinguishes between speech that clearly violates existing law and speech that is ambiguous and needs to be further examined by a newly established independent commission. The latter cases may be fertile ground to point to the need to amend or create laws.

Meanwhile, in the U.S., targets of abuse are largely—and literally—left to their own devices.

They cannot rely on existing or (slowly) developing laws and law enforcement. Social media sites’ frequently changing

buttons to [ban and report abuse\(rs\)](#) are an interim solution at best; they depend on the goodwill of private companies that benefit from click rates and even the publicity hostilities create.

Today, the internet is a crucial tool; the U.S. Federal Communications Commission even [declared the internet a public utility](#) in 2015 (though this rule is under attack by the Trump administration). The rule, as it stands, lays the groundwork for regulating fraudulent and abusive internet interactions in the U.S., as, in the long run, the country has not tolerated the abuse of other public utilities. Bills like the one just passed in Germany may serve as examples for how to start a more serious national-level discourse about online communication and about when, how, and why damaging speech should be prohibited. The bill may not be perfect, but such legislation represents a first step for an international conversation on how to balance freedom of speech with protection against speech that violates law in borderless online spaces.

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