

The Unstoppable Intrusion: The Unique Effect of Online Harassment and What the United States Can Ascertain from Other Countries’ Attempts to Prevent It

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Introduction

In 2014, the Pew Research Center found that forty percent of adult internet users had been victimized by online harassment.¹ Globally, nations have begun enacting their own respective solutions to prevent or reduce online harassment due to both the relatively recent emergence of online harassment as a topic in the public consciousness,² and the preva-

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1. Moreover, seventy-three percent of adult internet users have seen someone harassed online. Maeve Duggan, *Online Harassment*, PEW RES. CTR.: INTERNET & TECHNOLOGY (Oct. 22, 2014), <http://www.pewinternet.org/2014/10/22/online-harassment/> [<https://perma.cc/63JP-2T76>].

2. The first publicized “cyberbullying” case in the United States occurred in 2008, and final judgment was not made on the case until 2009. *United States v. Drew*, 259 F.R.D. 449 (2009); Guy Adams, *First “Cyber-Bully” Trial Opens*, THE INDEPENDENT (Nov. 21, 2008), <http://www.independent.co.uk/news/world/americas/first-cyber-bully-trial-opens-1028257.html> [<https://perma.cc/X89Z-6A39>]. However, online harassment has become more relevant in the present, which may be exemplified by the Trump Adminis-

lence of the issue described above.³ These solutions have varied.⁴ Some nations, like Australia, have implemented broad protection for online users by criminalizing online harassment as an offense in their criminal codes.⁵ In contrast other countries—like the Democratic Republic of Congo, have failed to enact any laws to provide protection against online harassment.⁶ These diverse, and often radically different, solutions raise questions as to which methods for deterring or preventing online harassment are best—or even feasible, for each nation.⁷

These questions should be of utmost importance to Americans. The United States relies on its own diverse set of non-uniform state laws to combat online harassment.⁸ Moreover, the country suffers from high rates

tration. Melania Trump, the First Lady of the United States, pledged to focus on reducing occurrences of online harassment while in the White House; however, at the same time, President Donald Trump, has made derogatory statements about his political adversaries online. See Hilary Weaver, *Melania Trump Finally Starts Her Work Against Cyberbullying*, VANITY FAIR (Sept. 20, 2017, 3:02 PM), <https://www.vanityfair.com/style/2017/09/melania-trump-speaks-on-cyberbullying-at-united-nations> [https://perma.cc/UBL9-8PL4]; see also Jessica Estepa, *After Donald Trump Tweets, a Reminder: Melania Trump Pledged Anti-Cyberbullying Campaign*, USA TODAY (June 29, 2017, 3:24 PM), <https://www.usatoday.com/story/news/politics/onpolitics/2017/06/29/reminder-melania-trump-pledged-create-anti-cyberbullying-campaign/439247001/> [https://perma.cc/82WJ-CBQD].

3. For a general overview of how several countries have combated or failed to combat online harassment issues, see Kate Lyons, Tom Phillips, Shaun Walker, Jon Henley, Paul Farrell & Megan Carpentier, *Online Abuse: How Different Countries Deal with it*, THE GUARDIAN (Sept. 22, 2017 at 6:08 PM), <https://www.theguardian.com/technology/2016/apr/12/online-abuse-how-harrasment-revenge-pornography-different-countries-deal-with-it> [https://perma.cc/2EJU-2TH6].

4. *Id.*

5. *Crimes We Prosecute: Cybercrime*, COMMONWEALTH DIRECTOR OF PUBLIC PROSECUTIONS (last visited Sept. 22, 2017), <https://www.cdpp.gov.au/crimes-we-prosecute/cyber-crime> [https://perma.cc/JQB9-XYGE].

6. Lyons, *supra* note 3.

7. Questions such as these have been posed by the United Kingdom and Germany since 2006 and 2004 respectively. See *Government Acts on Cyber-bullies*, BBC NEWS (Jul. 25, 2006 12:43 PM), http://news.bbc.co.uk/2/hi/uk_news/education/5210886.stm [https://perma.cc/35EE-793V]; DW Staff, *German Schools Struggle With Bullying*, DEUTSCHE WELLE (Nov. 2 2004), <http://www.dw.com/en/german-schools-struggle-with-bullying/a-1110603> [https://perma.cc/HG5Y-TLQM]. However, as late as 2009, some scholars in Germany have argued that the issue is not as prevalent as suggested. See Julia Riebel, Reinhold S. Jäger & Uwe C. Fisher, *Cyberbullying in Germany - an Exploration of Prevalence, Overlapping with Real Life Bullying and Coping Strategies*, 51 PSYCH. SCI. Q. 298, 310 (2009) (describing the number of cyberbullying incidents in Germany as low and arguing that cyberbullying is a subcategory of ordinary bullying).

8. This lack of unification means that laws throughout the United States can be incredibly varied in their approach to online harassment such as cyberbullying. See generally Tim Woda, *Cyberbullying Laws Around the Globe: Where is Legislation Strongest?*, uKnowKids.com (last accessed Oct. 19, 2017 7:58 PM), <http://resources.uknowkids.com/blog/cyberbullying-laws-around-the-globe-where-is-legislation-strongest> (showing the difference in strength of online harassment laws in some example U.S. states) [https://perma.cc/4TLP-RXGZ]. For example, legislators in Idaho have made online harassment a criminal offense while Montana lawmakers have created no laws regarding online harassment and have therefore left decision-making completely to schools. Cf. *id.* with Kevin P. Brady, Commentary, *Criminal State Anti-Cyberbullying Statutes: Does Legis-*

of online harassment occurrences.⁹ Nonetheless, whatever approach the United States adopts to reduce online harassment must not only be evaluated on its efficiency or on a weighing of its social and economic costs—the existence of the Supremacy Clause compels investigation as to whether the approach is legally compatible with the United States.¹⁰

This Note provides a survey of the ways in which two sovereign states, the United Kingdom and Canada, have handled their respective online harassment issues.¹¹ It then recommends possible approaches that the United States may adopt to likely lessen occurrences of online harassment within its borders, which are derived from lessons the country can learn from what the United Kingdom and Canada have done.

Part I of this Note will provide an explanation as to both what online harassment is and its effects. To do this, it will first define the issue by looking at how online harassment has been explained within the fields of legal scholarship and scientific research, and also in common vernacular.¹² To then better illustrate this definition, this Note will discuss real world examples of such activity.¹³ Finally, this Note will consider the harmful effects of cyber harassment on both its victims¹⁴ and the online harassers themselves.¹⁵

lative Zeal Outweigh Constitutional Considerations?, in 298 WEST'S EDUCATION LAW REPORTER 21, 29-30 (2014).

9. Maeve Duggan, *Online Harassment 2017*, PEW RESEARCH CENTER: INTERNET AND TECHNOLOGY (Jul. 11, 2017), <http://www.pewinternet.org/2017/07/11/online-harassment-2017/> [<https://perma.cc/5Y8G-HYUE>].

10. U.S. Const. art. VI, § 2.

11. This Note uses the term sovereign state because it intends to explore the laws of several countries within the United Kingdom, including Scotland, as well as Great Britain.

12. See generally A. Meena Seralathan, *Making the Time Fit the Crime: Clearly Defining Online Harassment Crimes and Providing Incentives for Investigating Online Threats in the Digital Age*, 42 BROOK. J. INT'L L. 425, 434-435 (2016); *What is Cyberbullying?*, COMMON SENSE MEDIA (last visited Oct. 20, 2017) <https://www.commonsensemedia.org/cyberbullying/what-is-cyberbullying> [<https://perma.cc/2NVW-9YWW>].

13. One of the examples that will be delved into is the process of doxing, wherein hackers “obtain[] and post[] private documents about an individual, usually a rival or enemy.” Nellie Bowles, *How ‘Doxing’ Became a Mainstream Tool in the Culture Wars*, N.Y. TIMES (Aug. 30, 2017) <https://www.nytimes.com/2017/08/30/technology/doxxing-protests.html> [<https://perma.cc/Z7W3-MQT5>]. A recent example of doxing took place when the fans of Rick and Morty, a television show on Adult Swim, began releasing the private information of female writers on the show. See James Hibberd, *Rick and Morty co-creator slams trolls attacking their female writers*, ENTERTAINMENT WEEKLY (Sept. 21, 2017 At 12:20 PM), <http://ew.com/tv/2017/09/21/rick-morty-dan-harmon-female-writers/> [<https://perma.cc/CPY4-54TJ>].

14. Pam Nilan, Haley Burgess, Mitchell Hobbs, Steven Threadgold & Wendy Alexander, *Youth, Social Media, and Cyberbullying Among Australian Youth: “Sick Friends”*, SOC. MEDIA + SOC'Y 1, 2 (2015) (citing Robert S. Tokunaga, *Following you home from school: A critical review and synthesis of research on cyberbullying victimization*, 26 COMPUTERS IN HUM. BEHAV., 277, 277-287 (2010) to discuss that victims of online harassment have their private domains invaded).

15. Kimberly Miller, *Cyberbullying and its Consequences: How Cyberbullying is Contorting the Minds of Victims and Bullies Alike, and the Law's Limited Available Redress*, 26 S. Cal. Interdis. L.J. 379, 386-388.

Part II of this Note will then provide an overview of the United Kingdom's online harassment problems as well as the country's attempts to curtail that problem. It gives an outline of the United Kingdom's online harassment issues through tools like data analysis.¹⁶ It then describes how the United Kingdom has attempted to lower the rate of incidences of online harassment through increased prosecution of harassers using specified legal guidelines that focus on harassing internet behavior.¹⁷ Online harassment still remains a prevalent issue within the United Kingdom, with many citizens feeling that not enough has been done by authorities to stop harassers;¹⁸ however, this increased prosecution has led to a reduction in incidents of online harassment like cyberbullying.¹⁹ Nevertheless, regardless of the laws that the countries in the United Kingdom have passed, the epidemic of online harassment will likely remain due to the lack of proper training for local police officers.²⁰

Part III presents a similar analysis of the online harassment issues and the curtailment efforts of Canada. It will mainly rely on statistics to provide a quantitative analysis that describes the country's online harassment problem.²¹ However, it will also utilize some specific examples of high profile online harassment cases that took place within the country to provide a qualitative description of the problem.²² Then it will discuss one of Canada's newest methods for curtailing online harassment; expanding definitions of tortious offenses to provide specified liability for online harassers, in turn will allow victims of online harassment to have more

16. *Online Abuse: Facts and Statistics*, NAT. SOC. FOR THE PREVENTION OF CRUELTY TO CHILD. (last visited Oct. 20, 2017 10:52 AM), <https://www.nspcc.org.uk/preventing-abuse/child-abuse-and-neglect/online-abuse/facts-statistics/> [<https://perma.cc/D8MD-B5HH>]. However, the full extent of the United Kingdom's online harassment problem is still unclear; see also *Key Facts and Figures*, Paladin Serv. (last visited Oct. 20, 2017 10:55 AM), <http://paladinservice.co.uk/key-facts-and-figures/> (discussing the lack of official statistics regarding cyber stalking) [<https://perma.cc/NN9D-QEGB>].

17. See *Internet Trolls Targeted with New Legal Guidelines*, BBC NEWS (Oct. 10, 2016), <http://www.bbc.com/news/uk-37601431> [<https://perma.cc/L5BJ-HCTX>]; see also *Revenge porn: More than 200 prosecuted under new law*, BBC NEWS (Sept. 6, 2016), <http://www.bbc.com/news/uk-37278264> [<https://perma.cc/AU86-3KSQ>].

18. For instance, some citizens have expressed concern that law enforcement has not adequately provided protection for the victims of online harassment. See May Bulman, *Victim of Online Harassment Feels 'Absolutely Hopeless' over police inaction*, THE INDEPENDENT (Jul. 6, 2017 10:34AM), <http://www.independent.co.uk/news/uk/home-news/online-harassment-victim-sussex-police-inaction-absolutely-hopeless-a7825691.html> [<https://perma.cc/SZC3-H887>].

19. See Sonia Livingstone, Mariya Stoilova & Anthony Kelly, *Cyberbullying: Incidence, Trends and Consequences*, in *Ending the Torment: Tackling Bullying from the Schoolyard to Cyberspace* 115, 116-117 (United Nations Office of the Special Representative of the Secretary-General on Violence against Children ed., 2016) http://eprints.lse.ac.uk/68079/1/Livingstone_Cyberbullying%20incidence%20trends_2016.pdf [<https://perma.cc/9BRJ-H2TY>].

20. See May Bulman, *Victims of Stalking Being 'Let Down' by Police, Report Warns*, THE INDEPENDENT (Jul. 5, 2017 4:35PM), <http://www.independent.co.uk/news/uk/home-news/stalking-victims-let-down-by-police-report-her-majestys-inspectorate-of-constabulary-a7824621.html> [<https://perma.cc/D2EV-8TQC>].

21. See *infra* notes 102-07.

22. See *infra* notes 108-12.

opportunities to be compensated for the harm caused to them.²³

The fourth and final section of this Note takes into consideration the prior analysis of both the online harassment problems of these countries and their proposed solutions. It does so in order to provide recommendations for approaches that the United States may adopt as a means of curbing and preventing online harassment. There are two requirements that each recommended method will have to fulfill in order to be considered applicable, or even plausibly applicable, by the United States government. The requirements are as follows: (1) the recommended method must be constitutionally valid, once again due to the Supremacy Clause;²⁴ and (2) the method must likely be efficient and effective enough to be reasonably employed by the United States.

In regards to the United Kingdom, increased prosecution for online harassers may be untenable in the United States due to Constitutional protections like American First Amendment rights.²⁵ However, the United States could stand to adopt the stronger standards of law enforcement training that the United Kingdom has failed to do thus far. Regarding Canada, adding new definitions of tort liability that focus specifically on harassment crimes that occur on the internet may be a good recommendation for the United States in this regard. It would more provide avenues for the victims of online harassment to receive compensation, which would alleviate, at least in some respects, their suffering as a result of online harassment.²⁶ Moreover, this expansion of tort liability will likely deter at least some potential online harassers.²⁷ Finally, an expansion of civil liability may have fewer limitations as a result of our freedom of speech than other solutions, most notably expanded criminal liability.²⁸

23. See *Legal Consequences of Cyberbullying*, PREVNET (last visited Dec. 2, 2017), <http://www.prevnet.ca/bullying/cyber-bullying/legal-consequences> [<https://perma.cc/RC88-4AEK>]; See also Nick Logan & Erika Tucker, *First-in-Canada Law Allows N.S. Cyberbullying Victims to Sue, Seek Protection*, GLOBAL NEWS (Aug. 7, 2013 5:31PM) <https://globalnews.ca/news/766451/first-in-canada-law-allows-ns-cyberbullying-victims-to-sue/> [<http://perma.cc/7385-KTCN>].

24. U.S. Const. art. VI, § 2.

25. Jyh-An Lee & Ching-Yi Lui, *Real-Name Registration Rules And The Fading Digital Anonymity In China*, 25 WASH. INT'L. L.J. 1, 6-7 (2015) (describing how the First Amendment protects anonymous speech).

26. The National Center for Victims of Crime, *Civil Justice for Victims of Crime*, THE NATIONAL CENTER FOR VICTIMS OF CRIME (last visited Jan. 26, 2018) <http://victimsof-crime.org/help-for-crime-victims/get-help-bulletins-for-crime-victims/civil-justice-for-victims-of-crime> [<https://perma.cc/6AF6-HEHB>].

27. Note that this assumption is based on an economic theory of torts. A. Mitchell Polinsky & Steven Shavell, *Punitive Damages: An Economic Analysis*, 111 HARV. L. REV. 869, 877-78 (1998).

28. To be clear, there has been some usage of first amendment protections as a defense for tort claims. See James M. Beck, *How the First Amendment Affects Tort Law*, LEXOLOGY (Dec. 14, 2012) <https://www.lexology.com/library/detail.aspx?g=1b0cef82-2385-42a0-9631-8a3846724833> [<https://perma.cc/T4RS-C5LC>].

I. Online Harassment—Definition and Effects

A. Defining Online Harassment

Online harassment is a broad term which describes a wide swath of online behavior.²⁹ Consequently, this Note will establish baseline parameters that provide a coherent definition of the term. This is important because the definition can then be used to analyze these behaviors as a whole. Note that this definition may not encompass every aspect of every type of inappropriate online behavior; that being said, at the very least, it will illustrate commonalities amongst these behaviors. This common foundation enables the Note to properly analyze data regarding these behaviors and the effects of these behaviors as a whole.³⁰

Legal interpretations of online harassment is a good place to begin defining the term. In order to discuss legal interpretation of online harassment, this Note will focus on the California Penal Code's statute for stalking, because it has been used for publications like consumer guidelines as a way of successfully describing these forms of behavior.³¹ Moreover, while other states like Michigan have stronger provisions, California was the first state to pass stalking-related legislations, thus its interpretation of the crime could be considered the foundation for all other state laws.³²

The code provides a standard definition of stalking, which includes elements such as willful harassment or following, and the creation of a "credible threat" by the stalker.³³ However, the statute also includes a section which states that a "credible threat" may be performed using an "electronic communication device."³⁴ These devices may include phones, fax machines, video recorders, and computers.³⁵ While the statute does not

29. For instance, some writers have outlined ten different forms of online harassment. Alia Hoyt, *10 Forms of Online Harassment*, HOWSTUFFWORKS.COM (May 18, 2015) <https://computer.howstuffworks.com/10-forms-online-harassment1.htm> [<https://perma.cc/289F-5GNH>].

30. This need to define the term online harassment is so prevalent that respected media publications have also placed importance on it when publishing works about the issue. See Anna North, *What Do We Know About Online Harassment*, N.Y. TIMES (Oct. 23, 2014 6:28 AM) https://op-talk.blogs.nytimes.com/2014/10/23/what-do-we-know-about-online-harassment/?_php=true&_type=blogs&_r=0 [<https://perma.cc/XWH7-LR67>]; Amanda Hess, *On the Internet, Men Are Called Names. Women Are Stalked and Sexually Harassed.*, SLATE (Oct. 22, 2014 10:00AM) http://www.slate.com/blogs/xx_factor/2014/10/22/pew_online_harassment_study_men_are_called_names_women_are_stalked_and_sexually.html [<https://perma.cc/G995-KDYW>].

31. See *Online Harassment & Cyber Stalking*, PRIVACY RIGHTS CLEARINGHOUSE (last updated July 24, 2017) <https://www.privacyrights.org/consumer-guides/online-harassment-cyberstalking> [<https://perma.cc/UCN9-Q4VY>].

32. PAUL BOCIJ, *CYBERSTALKING: HARASSMENT IN THE INTERNET AGE AND HOW TO PROTECT YOUR FAMILY*, 165 (2004).

33. Cal. Penal Code § 646.9 (Deering 2017) ("Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family is guilty of the crime of stalking").

34. *Id.*

35. *Id.*

provide a specific definition of online harassment, it and other similar statutes together make an important point about the issue.³⁶ Essentially, in its most basic form, online harassment is the use of the internet to “harass an individual or group through personal attacks.”³⁷

This understanding of online harassment conforms with its common social conception as well. Writers have defined the term as “repeated online expression amounting to a ‘course of conduct’ targeted at a particular person that causes the targeted individual substantial emotional distress and/or the fear of bodily harm.”³⁸ Scientific research studies have defined online harassment similarly.³⁹

It is important to note that cyberstalking is one of the more severe forms of online harassment, and that this Note will focus on behaviors that are considered severe forms of online harassment.⁴⁰ In order to better define severe online harassment, it is important to look at other examples of this behavior in order to show the full scope the issue.⁴¹

“Doxxing” is one of the most prominent examples of severe online harassment,⁴² and it is also the most recent example to become part of the American public consciousness.⁴³ Doxxing is defined as the “collect[ion of] personal and private information, including home addresses and

36. Jared’s Law in Idaho is another example of describing online harassment, in this specific case cyberbullying, as the harassing behavior of bullying, but in a computerized context. See H.R. 246, 63rd Leg., 1st Reg. Sess. (Id. 2015).

37. Seralathan, *supra* note 12, at 433-434 (quoting *Cyber Harassment Law and Legal Definition*, USLEGAL, <http://definitions.uslegal.com/c/cyber-harassment/> [https://perma.cc/EH3K-Y7MD]).

38. Danielle Citron, *Defining Online Harassment*, FORBES (Oct. 23, 2014) <https://www.forbes.com/sites/daniellecitron/2014/10/23/defining-online-harassment/#1d2d9c1d28de> [https://perma.cc/5S68-GPTC].

39. Amanda Lenhart, Michele Ybarra, Kathryn Zickuhr, & Myeshia Price-Feeney, *Online Harassment, Digital Abuse, and Cyberstalking in America*, DATA & SOC. RES. INST. (Nov. 21 2016), at 1, https://www.datasociety.net/pubs/oh/Online_Harassment_2016.pdf (“[O]nline harassment and abuse—unwanted contact that is used to create an intimidating, annoying, frightening, or even hostile environment for the victim and that uses digital means to reach the target.”) [https://perma.cc/GV68-67WW].

40. The Pew Research Center has labeled “more severe behaviors” as behaviors like physical threats, sustained harassment, cyberstalking or sexual harassment. Duggan, *supra* note 9.

41. This Note will purposely ignore “catfishing,” which some consider to be a severe form of online harassment. This is because it is highly unlikely in the United States that any law would be passed that would make the practice illegal, especially because the United Kingdom, a country which at this point has much stronger laws protecting victims of online harassment (as this Note will explore later), will likely not prosecute those online who engage in the practice. See Marianne Eloise, *We Asked an Expert If You Can Really Make Catfishing Illegal*, VICE (Feb. 25, 2017) https://www.vice.com/en_ca/article/aeaxak/we-asked-an-expert-if-you-can-really-make-catfishing-illegal [https://perma.cc/M8YJ-65N8].

42. See C.S-W, *The Economist Explains: What Doxxing is, and Why it Matters*, ECONOMIST (Mar. 10, 2014) <https://www.economist.com/blogs/economist-explains/2014/03/economist-explains-9> [].

43. Miriam Webster’s dictionary only added dox to its unabridged list of words in 2016. Katy Steinmetz, *Merriam-Webster Adds ‘FOMO,’ ‘Mx.’ and About 2,000 Other Words*, TIME (Apr. 20, 2016) <http://time.com/4299634/merriam-webster-fomo-mx-dox-update/> [https://perma.cc/3FBW-2AK7].

national identity numbers [and then] often releas[ing the information] publicly against a person's wishes."⁴⁴

Interestingly, while people who dox are attempting to intentionally cause harm to someone online, they may not always do so with malicious intent. Many "doxxers" see this behavior as a form of vigilante justice wherein they reveal the information of people in order to punish them for perceived crimes.⁴⁵ Moreover, in some circumstances—most notably when these individuals attempted to publicly disclose the private information of those who engaged in the white supremacist march in Charlottesville in August 2017—it seems reasonable to consider the doxxing of certain individuals as noble, or at the very least justified.⁴⁶

However, regardless of intent or public perception, it is important to remember that these individuals are still performing a severe form of online harassment, and any condoning of these behaviors as acceptable may establish a bad precedent.⁴⁷ Also, many times these individuals have a far more nefarious intent. For example, fans of the popular television show *Rick and Morty* were unhappy that the show had hired female writers.⁴⁸ Due to this unhappiness, they decided to dox the new writers by releasing their home addresses.⁴⁹

To be clear, there are some forms of online harassment that are so egregious, like "swatting,"⁵⁰ that individuals who have performed them

44. C.S-W, *supra* note 42.

45. Perhaps the most well known recent case of doxxing as vigilante justice took place after the white supremacist rally in Charlottesville last August, where in internet users, most notably Twitter user @YesYoureRacist tried to release the identities of those who attended the rally. See Emma Grey Ellis, *Whatever Your Side, Doxing Is A Perilous Form Of Justice*, WIRED (Aug. 17, 2017 8:00 AM), <https://www.wired.com/story/doxing-charlottesville/> [<https://perma.cc/DQW4-HJFG>]. Even famous film actress Jennifer Lawrence urged fans to disclose information about these, admittedly repugnant but I digress, protestors. Martha Ross, *Jennifer Lawrence—Internet Vigilante?—asks Fans to Identify and Shame White Supremacists at Charlottesville Rallies*, THE MERCURY NEWS (Aug. 15, 2017) <http://www.mercurynews.com/2017/08/15/jennifer-lawrence-internet-vigilante-asks-fans-to-identify-and-shame-white-supremacists-at-charlottesville-rallies/> [<https://perma.cc/B9NJ-C5DH>].

46. In fact, in the case of Charlottesville, some have even suggested that doxxing is a form of self-defense. See Ashley Dejean, *The Case for Naming and Shaming White Supremacists*, MOTHER JONES (Aug. 17, 2017 4:09PM), <https://www.motherjones.com/politics/2017/08/the-case-for-naming-and-shaming-white-supremacists/> [<https://perma.cc/W2ZV-EUGB>].

47. See Ellis, *supra* note 44.

48. See Hibberd, *supra* note 13.

49. *Id.*

50. "Swatting" is the act of gaining the private information of someone online, and then "call[ing] in a serious crime—such as a hostage situation or shooter on the loose—in the hopes of unleashing a SWAT team on an unsuspecting person." Steven Tweedie, *'Swatting' is a Dangerous New Trend, as Pranksters Call a SWAT Team on an Unsuspecting Victim while the Internet Watches*, BUS. INSIDER (Mar. 12, 2015 10:50AM), <http://www.businessinsider.com/what-does-swatting-mean-2015-3> [<https://perma.cc/375N-6224>].

have already been prosecuted in the United States federal court system.⁵¹ However, these measures may be insufficient because online harassment still remains a major issue, as shown by a Pew Research study concluding that roughly two out of every ten American have experienced severe online harassment.⁵²

B. Online Harassment Effects

Online harassment has a unique effect on those who have been subjected to it, both in regard to their mental health and in regard to violations of their legal rights. Research suggests that online harassment effects are like the effect of harassment that occurs physically or verbally.⁵³ For example, harassment, regardless of whether performed in person or online, can make victims “develop a variety of psychological, as well as somatic, symptoms.”⁵⁴

However, online harassment differs from other forms of harassment because it is an unstoppable intrusion. Perpetrators of online harassment do not allow their victims to escape their harmful action by entering their home or private domain.⁵⁵ The victim cannot escape the harassment in the haven that is his or her own home.⁵⁶ Moreover, the perpetrator can perform the harassment from anywhere remotely.⁵⁷

The United States has recognized “heighted expectations of privacy within the home”⁵⁸ and the United States Supreme Court has protected the right of individuals to refuse to “welcome unwanted speech into their own homes.”⁵⁹ Furthermore, important legal scholars like William L. Prosser have argued that “intrusion upon [a] plaintiff’s seclusion or solitude, or into his private affairs” and the “public disclosure of embarrassing private facts about the plaintiff” are tortious activity because they invade the pri-

51. See *Individual Pleads Guilty in Swatting Conspiracy Case*, U.S. ATTORNEY’S OFFICE: NORTHERN DISTRICT OF TEXAS (Jan. 29, 2009), <https://archives.fbi.gov/archives/dallas/press-releases/2009/dl012909.htm> [<https://perma.cc/93U5-UJ8Z>].

52. Monica Anderson, *Key Takeaways on How Americans View - and Experience - Online Harassment*, PEW RES. CTR. (July 11, 2017), <http://www.pewresearch.org/fact-tank/2017/07/11/key-takeaways-online-harassment/> [<https://perma.cc/2XUG-GX55>].

53. See Miller, *supra* note 15, at 386 (citing *The Psychological Effects of Bullying*, NOBULLYING.COM (Dec. 22, 2015), <http://nobullying.com/the-psychological-effects-of-bullying/>).

54. *Id.*

55. See Nilan, *supra* note 14.

56. This assumes of course that the victim has access to the internet at home. A large majority of American households have both a computer and internet access, so this is a fair assumption to make. See *Census Bureau’s American Community Survey Provides New State and Local Income, Poverty, Health Insurance Statistics*, U.S. CENSUS BUREAU (Sept. 18, 2014), <https://www.census.gov/newsroom/press-releases/2014/cb14-170.html> (reporting that 83.8% of the nation’s households have a computer, and that 74.4% have some form of internet access at home) [<https://perma.cc/N529-NGRN>].

57. The ubiquity of computers in the home not only prevents the victim from escaping, but also allows an online harasser to continue harassment wherever they are. See *Id.*

58. 24 C.F.R. pt. 100, 63054, 63056.

59. *Frisby v. Schultz*, 487 U.S. 474, 484 (1988).

vacy of the victim.⁶⁰ Online harassment is, at its core, an individual intruding on the privacy of the home of an individual, through the use of unwanted speech online.⁶¹ Therefore, allowing online harassment to continue is a violation of the rights of American citizens.⁶²

A rational critique to this concept of online harassment as an “unstoppable intrusion” is that, unlike verbal harassment in the physical world, the victim can simply turn off the computer and effectively end the harassment.⁶³ However, while “turning it off” may be rational advice to give a victim of online harassment, it is not reasonable advice, nor is this a reasonable critique. First, internet usage is ubiquitous in everyday life.⁶⁴ Not only is it ubiquitous, but some, such as ex-FCC Chairman Tom Wheeler, consider access to the internet to be necessary for economic well-being.⁶⁵ More specifically, business experts and scholars have considered social media to be critical, for engaging with others, and in accessing and participating in the news cycle.⁶⁶ If social media, and the internet broadly, is so vital to our everyday life, it is simply not feasible, or even defensible, to ask online harassment victims to simply turn it off.

While legal ramifications are important, equally important are the negative mental health effects of online harassment as well.⁶⁷ Presently, in

60. William L. Prosser, *Privacy*, 48 CAL. L. REV. 383, 389 (1960).

61. For example, the man who harassed Amanda Todd, used the capabilities of the internet to continually communicate with her in her home despite her many attempts to prevent this from occurring. See *infra* notes 111-17.

62. Consider the case of Jane Becker and Jessica Gao, the female writers of *Rick and Morty* who were harassed, and had their private information spread over the internet. See Hibberd, *supra* note 13. The release of their addresses would clearly constitute a intrusion upon their seclusion or solitude, and had no choice but to deal with unwelcome speech every time they went online.

63. This critique is ubiquitous enough that the Canadian Department of Public Safety and Emergency Preparedness has posted a responsive blog post regarding dismissing the idea as overly simplistic advice that does not actually stem the flow of online harassment. See *Dealing with Cyberbullying by Shutting the Computer? Not a Solution.*, CAN. DEP'T. PUB. SAF. & EMER. PREPAREDNESS (June 5, 2014), <https://www.getcybersafe.gc.ca/cnt/blg/pst-20140605-en.aspx> [<https://perma.cc/J243-UNNQ>].

64. Only eleven percent of Americans do not use the internet, and seventy-seven percent of Americans use the internet daily. Monica Anderson, Andrew Perrin & Jingjing Jiang, *11% of Americans Don't Use the Internet. Who are They?*, PEW RESEARCH CENTER (Mar. 5, 2018), <http://www.pewresearch.org/fact-tank/2018/03/05/some-americans-dont-use-the-internet-who-are-they/> [<https://perma.cc/V7TX-ZCHZ>]; Andrew Perrin & Jingjing Jiang, *About a Quarter of U.S. Adults say They are 'Almost Constantly' Online*, PEW RES. CTR. (Mar. 14, 2018), <http://www.pewresearch.org/fact-tank/2018/03/14/about-a-quarter-of-americans-report-going-online-almost-constantly/> [].

65. Rebecca R. Ruiz, F.C.C. *Chief Seeks Broadband Plan to Aid the Poor*, N.Y. TIMES (May 28, 2015), https://www.nytimes.com/2015/05/28/business/fcc-chief-seeks-broadband-plan-to-aid-the-poor.html?_r=0 [<https://perma.cc/D3CM-YHNY>].

66. See Phil Bradley, *Be Where the Conversations are: The Critical Importance of Social Media*, 27 BUS. INFO. REV. 248, 251 (2011); Rasmus Kleis Nielsen & Kim Christian Schroder, *The Relative Importance of Social Media for Accessing, Finding, and Engaging with News*, 2 DIGITAL JOURNALISM 472, pre-print 11-12 (2014), available at https://rucforsk.ruc.dk/ws/files/54086529/Nielsen_and_Schr_der_Social_media_and_news_Digital_Journalism_2014.pdf [<https://perma.cc/4G36-T7YK>].

67. This is not to say that online harassment affects purely the mental health of those who are victimized by its purveyors. In fact, incidents of online harassment can

the United States, many members of the online community have attempted to delegitimize these negative mental health affects and those affected by them.⁶⁸ They also many times disregard the power of threatening remarks on an online forum, such as when Jim Pagels, a writer for Slate, instructed online users to ignore death threats on Twitter because they are “entirely toothless.”⁶⁹ Many times, these online users attempt this by calling victims of online harassment “snowflakes,” which is a term meant to insult mentally affected individuals who were mentally affected by someone’s opinion by comparing them to an object that is fragile and weak.⁷⁰ Moreover, they say individuals are “triggered” when they have emotional responses to any sort of negative speech addressed toward them.⁷¹ By delegitimizing the negative mental health of online harassment, individuals who engage in this behavior exemplify an attitude in the U.S. of not taking these health effects seriously.⁷²

However, Americans should take these effects seriously. A 2014 study found that forty percent of victims of online abuse suffered damage to their self-esteem.⁷³ Additionally, thirty percent of these victims reported a fear

have real world implications for not only victims, but also for innocent bystanders. For instance, Andrew Thomas Finch, a man who was “swatted” recently by a member of the online video game community, was shot and killed by law enforcement at his home as they were investigating the online harassers claim. Doug Criss, Carma Hassan, & Anne Claire Stapleton, *Police Kill a Man at his Home While Responding to a Fake Call*, CNN (Dec. 30, 2017, 10:13PM), <https://www.cnn.com/2017/12/30/us/kansas-police-shoot-ing-swating/index.html> [https://perma.cc/9FL3-97XL].

68. *Infra* notes 65–67.

69. Jim Pagels, *Death Threats on Twitter Are Meaningless. You Should Ignore Them.*, SLATE (Oct. 30, 2013), http://www.slate.com/blogs/future_tense/2013/10/30/twitter_death_threats_are_meaningless_you_should_ignore_them.html [https://perma.cc/M7XG-MS4G].

70. While the term “snowflake” has been predominantly used in a political context, the basis of the insult is in the idea that an individual is weak and “has no backbone” because they were mentally affected by someone’s political opinion. See Jessica M. Goldstein, *The Surprising History of ‘Snowflake’ as a Political Insult*, THINKPROGRESS.ORG (Jan. 19, 2017 4:16 PM), <https://thinkprogress.org/all-the-special-snowflakes-aaf1a922f37b/> [https://perma.cc/PG64-RL5B].

71. “Triggered,” which is now a popular internet meme that is used to describe those that are upset with something someone said online, derived from terminology used in the treatment of Post-Traumatic Stress Disorder. See Ali Vingiano, *How The “Trigger Warning” Took Over The Internet*, BUZZFEED (May 5, 2014, 2:37 PM) https://www.buzzfeed.com/alisonvingiano/how-the-trigger-warning-took-over-the-internet?utm_term=.WsGRgpGXa#.pgPN8v6Zgn [https://perma.cc/L3T9-X2A8].

72. See Aja Romano, *Study: Americans Think we Overreact to Online Harassment – but also that it’s a “Major Problem”*, VOX (July 11, 2017, 3:50 PM) <https://www.vox.com/culture/2017/7/11/15947536/pew-study-online-harassment-2017> (citing Duggan, *supra* note 1) [https://perma.cc/PD8G-HZCD].

73. Tara Culp-Ressler, *The Real Life Consequences Of Online Harassment*, THINKPROGRESS.ORG (Jun. 11, 2014, 12:57 PM), <https://thinkprogress.org/the-real-life-consequences-of-online-harassment-5c8e9547a93e/> [https://perma.cc/NE6G-ZPHP] (citing Craig Newmark, *The Rise of Online Harassment*, RAD CAMPAIGN & LINCOLN PARK STRATEGIES (2014), <http://onlineharassmentdata.org/index.html> [https://perma.cc/XPA5-GDGL]). It is important to note, however, that the same survey group provided new data in 2016 that showed a small overall decrease in online harassment. Cf. Newmark above, with Craig Newmark, *How Big a Problem is Online Harassment in 2016*, RAD CAM-

for their lives.⁷⁴ This abuse can have such intense ramifications that twenty percent of these victims reported that they were even afraid to leave their home.⁷⁵

Furthermore, victims of online harassment like cyberbullying face a high risk of depression, anxiety, and may increase the risk of the victim harming himself or herself.⁷⁶ Most distressingly, cyberbullying victims were about twice as likely to have attempted suicide than those who have not been harassed in this manner.⁷⁷

However, the victims of online harassment are not the only ones to suffer negative mental health effects from the behavior. The harassers themselves suffer from a variety of negative mental health effects.⁷⁸ Cyberbullying offenders are more likely to have attempted suicide than non-performers.⁷⁹

In conclusion, online harassment is an epidemic.⁸⁰ The forty percent of internet users who have been subjected to online harassment and personal victimization do not face merely trivial inconveniences as some may believe.⁸¹ Rather, they face a substantial infringement of their rights as U.S. citizens. Moreover, they face negative mental health implications that some do not recognize as important or even legitimate. These effects on the victim, and to a lesser extent, the effects on the harasser, are why it is important for the United States to take action to prevent occurrences of online harassment.

PAIGN & LINCOLN PARK STRATEGIES (2016), <http://onlineharassmentdata.org/2016/> [<https://perma.cc/XPA5-GDGL>].

74. Culp-Ressler, *supra* note 66.

75. *Id.*

76. Miller, *supra* note 15, at 387 (citing Stephanie Pappas, *Cyberbullying on Social Media Linked to Teen Depression*, LIVE SCI. (June 22, 2015, 11:33 AM), <http://www.livescience.com/51294-cyberbullying-social-media-teen-depression.html> [<https://perma.cc/6FHS-LTWZ>]); *Cyber-Bullying and Its Effects on Our Youth*, AM. OSTEOPATHIC ASS'N, <http://www.osteopathic.org/osteopathic-health/about-your-health/health-conditions-library/general-health/Pages/cyber-bullying.aspx> [<https://perma.cc/MNV9-J9EJ>]; *Teen Cutting and Self-Injury Behaviors*, CYBERBULLYHOTLINE, <http://www.cyberbullyhotline.com/teen-self-injury-behaviors.html>, [<https://perma.cc/EX5V-ZTUN>].

77. See Sameer Hinduja & Justin W. Patchin, *Bullying, Cyberbullying, and Suicide*, 14 ARCHIVES SUICIDE RES. 206, 216 (2010), https://www.researchgate.net/profile/Justin_Patchin/publication/45289246_Bullying_cyberbullying_and_suicide/links/55098f1f0cf26ff55f85eaa2.pdf [<https://perma.cc/E6GS-PLTV>].

78. Marilyn A. Campbell, Phillip T. Slee, Barbara Spears Des Butler & Sally Klift, *Do Cyberbullies Suffer Too? Cyberbullies' Perceptions of the Harm They Cause to Others and to Their Own Mental Health*, 34 SCH. PSYCHOL. INT'L 613, 619-20 (citing Rittakerttu Kalliala-Heino, Matti Rimpelä, Päivi Rantanen, & Arja Rimpelä, *Bullying at School—an Indicator of Adolescents at Risk for Mental Disorders*, 23 J. ADOLESCENCE 661 (2000)).

79. Hinduja & Patchin, *supra* note 77.

80. Tom Huddleston Jr., *Online harassment is epidemic with young women feeling the brunt*, FORTUNE (Oct. 22, 2014), <http://fortune.com/2014/10/22/forty-percent-harassed-online/> [<https://perma.cc/2E9P-F2CG>].

81. See Duggan, *supra* note 1; see also Romano, *supra* note 72.

II. Online Harassment in the United Kingdom

A. Online Harassment Statistics

In 2016, harassment and stalking were the seventh most common cybercrime reported in the United Kingdom.⁸² Furthermore, according to a report released by the United Kingdom's Office of National Statistics, fourteen percent of all reported harassment and stalking offenses in England and Wales for the year 2017 took place online.⁸³ However, the actual number of online harassment incidents is likely higher than reported. This same report states that victims of cybercrime are unlikely to report these incidences to the proper authorities.⁸⁴ In fact, only about thirteen percent of cybercrimes in general were reported to these authorities.⁸⁵ Underreporting is an issue that extends beyond the United Kingdom.⁸⁶ While it is unclear just how large the online harassment problem is in the United Kingdom, it is clear that there is a high enough rate of occurrences to warrant government intervention.

B. The United Kingdom's Response

There are some roadblocks in regard to specific laws designed to curtail online harassment in the United Kingdom. Currently, the general approach to legal matters in the United Kingdom is that if some action or behavior is illegal offline, then it is illegal online.⁸⁷ This means that in order for an individual to be convicted of online harassment, the court system must find that the individual's online conduct has satisfied the elements of a type of general harassment as outlined in the Protection from Harassment Act 1997.⁸⁸ These forms of harassment include stalking and

82. There were roughly 19,000 incidents reported. Patrick Scott, *How much of a problem is cyber-crime in the UK?*, TELEGRAPH (Nov. 1, 2016, 10:45 AM) <http://www.telegraph.co.uk/news/2016/11/01/how-much-of-a-problem-is-cyber-crime-in-the-uk/> [<https://perma.cc/27VX-XP3>].

83. The report identified 33,418 incidents of online harassment and stalking. John Flatley, *Dataset: Crime in England and Wales: Experimental tables*, OFFICE NAT'L STATISTICS (Oct. 19, 2017), <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwalesexperimentaltables> (data taken from the dataset titled "Year ending June 2017") [<https://perma.cc/XK3B-VTC5>].

84. *Id.* The number may be even higher when one considers that in the United Kingdom "Over half of adolescents and teens have been bullied online, while 73% of adult users have seen someone harassed in some way online and 40% have experienced it." Amelia Murray, *Cyber criminals rob £10.9bn from UK residents in a year - and even more goes unreported*, TELEGRAPH (Oct. 20, 2016, 10:03 AM), <http://www.telegraph.co.uk/money/consumer-affairs/cyber-criminals-rob-109bn-from-uk-residents-in-a-year--and-> [eve/ \[https://perma.cc/B7DJ-PPUE\]](https://perma.cc/B7DJ-PPUE).

85. Flatley, *supra* note 83.

86. See Julie Zeilinger, *This Is What Happens When You Report Online Harassment to the Police*, MIC (Apr. 13, 2015), <https://mic.com/articles/114964/this-is-what-happens-when-you-report-online-harassment-to-the-police#.ikCIgNqCy> [<https://perma.cc/M8WV-3835>].

87. See Pat Strickland & Jack Dent, Briefing Paper, *Online harassment and cyberbullying*, HOUSE COMMONS LIBRARY, No. 07967 at 3 (Sept. 13, 2017).

88. Protection from Harassment Act 1997, c. 40 s. 8, (Eng.).

placing an individual in reasonable fear of violence.⁸⁹ Additionally, government officials in the United Kingdom have generally favored self-regulation of issues of online harassment, which is when groups with a stake in a safe internet, like providers, work with the government to address these issues.⁹⁰

Despite these road blocks, the Crown Prosecution Service (the prosecuting agency of England and Wales) has started to create guidelines prosecuting those who harass others online, specifically through social media sites such as Facebook.⁹¹ These guidelines have had mixed success.⁹² In 2014, Isabella Sorley and John Nimmo were sentenced to twelve- and eight-week prison terms, respectively, for anonymously making threatening and abusive remarks on Twitter towards feminist campaigner Caroline Criado-Perez.⁹³ Sorley and Nimmo sent messages threatening Ms. Criado-Perez with rape, alluded to finding her address and told her to “kill herself.”⁹⁴ These messages had, in Ms. Criado-Perez words, a “life changing” effect on her, and that they introduced “panic and fear and horror” into her everyday life.⁹⁵ The guidelines were a success in this case in that they contributed to the successful prosecution of individuals who committed heinous actions.

However, the guidelines have also faced scrutiny for being too restricting on free speech on the internet.⁹⁶ Jake Newsome, a twenty-one-year-old citizen of the United Kingdom, posted the following on Facebook while discussing the stabbing death of a school teacher: “Personally im glad that teacher got stabbed up, feel sorry for the kid. . . he shoulda pissed on her too.”⁹⁷ He was imprisoned for six weeks for that remark.⁹⁸ Liam Stacey, another British citizen, was arrested for tweeting racially derogatory messages about a soccer player who suffered an on-field collapse due to a cardiac arrest.⁹⁹ He was sentenced to fifty-six days in prison.¹⁰⁰

It was the Stacy incident which led Thomas Hammarberg, then Commissioner for Human Rights for the Council of Europe, to declare that Brit-

89. *Id.*

90. See Strickland, *supra* note 87, at 6.

91. *Guidelines on prosecuting cases involving communications sent via social media*, CROWN PROSECUTION SERVICE, http://www.cps.gov.uk/legal/a_to_c/communications_sent_via_social_media/ [<https://perma.cc/B89Z-FNZ6>].

92. See *infra* notes 93-100.

93. Guardian Staff, *Two jailed for Twitter abuse of feminist campaigner*, GUARDIAN (Jan. 24, 2014 11:04 AM) <https://www.theguardian.com/uk-news/2014/jan/24/two-jailed-twitter-abuse-feminist-campaigner> [<https://perma.cc/DS4K-RALD>].

94. *Id.*

95. *Id.*

96. See *infra* notes 97-101.

97. Susanna Rustin, *Is It Right to Jail Someone for Being Offensive on Facebook or Twitter?*, GUARDIAN (June 13, 2014 11:25 AM) <https://www.theguardian.com/law/2014/jun/13/jail-someone-for-being-offensive-twitter-facebook> [<https://perma.cc/F29J-4E7A>].

98. *Id.*

99. Steven Morris, *Student Jailed for Racist Fabrice Muamba Tweets*, GUARDIAN (Mar. 27, 2012 8:30 AM) <https://www.theguardian.com/uk/2012/mar/27/student-jailed-fabrice-muamba-tweets> [<https://perma.cc/SDH2-XM4U>].

100. *Id.*

ish politicians were not the right entity to combat online harassment, and that this sentencing was overly excessive:

It was too much. He shouldn't have gone to prison. To put him in prison was wrong . . . Politicians are at a bit of loss to know how to . . . protect internet freedom while also having regulations against [such problems as] hate speech and child pornography . . . There are limits to freedom of expression but regulators don't know how to handle this.¹⁰¹

He also believed that questions regarding freedom of expression on the internet should be discussed at the European level, rather than at the local level so that there was no lack of uniformity amongst each country's practices.¹⁰²

While there are some concerns that the rules may be draconian or otherwise too imposing, the United Kingdom has begun to prosecute those who perform online harassment. Furthermore, several United Kingdom countries have begun to codify laws specifically designed to prosecute the most severe forms of online harassment. England and Wales have created a codified law criminalizing revenge pornography,¹⁰³ the distribution of explicit sexual images of someone online without their knowledge or consent.¹⁰⁴ Moreover, Scotland has enacted laws that criminalized "threatening or abusive . . . behavior that would cause fear or alarm" through forums, including the internet.¹⁰⁵ While it is unknown whether these laws have had a significant effect on reducing rates of online harassment,¹⁰⁶ these laws helped prosecute over 200 severe online harassers in 2016 alone.¹⁰⁷

The United Kingdom as a whole has been reluctant to create these similar codified laws specified for other, arguably less intense, forms of

101. Own Bowcott, *Student who abused Fabrice Muamba on Twitter 'should not have been jailed'*, *GUARDIAN* (Apr. 1, 2012 11:51) <https://www.theguardian.com/uk/2012/apr/01/twitter-jailing-wrong-thomas-hammarberg> [<https://perma.cc/E4RG-LGPW>].

102. *Id.*

103. Criminal Justice and Courts Act 2015, c. 40 pt. 1, § 33 (Eng.). The CPS has also created guidelines for prosecuting this specific crime as well. *Revenge Pornography - Guidelines on prosecuting the offence of disclosing private sexual photographs and films*, CROWN PROSECUTION SERVICE, http://www.cps.gov.uk/legal/p_to_r/revenge_pornography/index.html [<https://perma.cc/8B6M-AW4K>].

104. Emily Reynolds, *Why there's no 'silver bullet' for ridding the web of revenge porn*, *WIRED UK* (Mar. 16, 2017) <http://www.wired.co.uk/article/revenge-porn-facebook-social-media> [<https://perma.cc/DZ7K-A3M3>].

105. DLA Piper, *Online Harassment: A Comparative Policy Analysis For Hollaback!*, *HOLLABACK!*, (Nov. 2016) at 24.

106. See Press Release, Amnesty International UK, *More than a quarter of UK women experiencing online abuse and harassment receive threats of physical or sexual assault - new research* (Nov. 20, 2017), <https://www.amnesty.org.uk/press-releases/more-quarter-uk-women-experiencing-online-abuse-and-harassment-receive-threats>, (Research suggests that about a quarter of United Kingdom women still deal with online harassment) [hereinafter Amnesty International] [<https://perma.cc/Z3HF-VXEX>].

107. Denis Staunton, *Over 200 prosecuted for 'revenge porn' in England and Wales*, *IRISH TIMES* (Sept. 6, 2016 5:41 pm) <https://www.irishtimes.com/news/world/uk/over-200-prosecuted-for-revenge-porn-in-england-and-wales-1.2781401> [<https://perma.cc/3B4R-JX7Z>].

online harassment such as cyberbullying,¹⁰⁸ which may be a reason the online harassment problem in the United Kingdom continues.¹⁰⁹

Another reason may explain why this high harassment rate continues in the United Kingdom as a whole. Specifically, it has failed to develop adequate training programs or protocols measures to assist its police in dealing with online harassment. As late as 2016, Parliament had not passed any legislation to provide funding for United Kingdom police officers to be trained regarding cybercrime, and any available training regarding these crimes is not mandatory.¹¹⁰ Parliament failed to pass this legislation even though audits and inspections performed by Her Majesty's Inspectorate of police procedure around the United Kingdom found that there was "a need for better understanding and appropriate training" in regards to online harassment.¹¹¹ Moreover, there have been reports of police mismanagement of online harassment crimes, wherein police officers were found to not recognize such crimes, record them incorrectly, or fail to investigate them.¹¹²

III. Online Harassment in Canada

A. Incidents of Online Harassment in Canada

Approximately thirty-one percent of social media users in Canada have been harassed as of October 2016.¹¹³ Over a quarter of the people polled reported that "their online harassment had real world effects, with some as severe as forcing them to change schools or find a new job."¹¹⁴

This problem is more prevalent among Canadian youth. Forty-four percent of younger Canadian social media users had been harassed online.¹¹⁵ Moreover, approximately seventeen percent of Canadian people aged fifteen to twenty-nine had been the victim of cyberbullying or cyberstalking at some point in their life.¹¹⁶

108. See Strickland, *supra* note 87, at 10–11.

109. See Amnesty International, *supra* note 106.

110. DLA Piper, *supra* note 105, at 28.

111. *Id.* at 29 (citing HM Inspectorate, 'Real lives, real crimes: A study of digital crime and policing,' (Sept. 8, 2016) <https://www.justiceinspectors.gov.uk/hmicfrs/wp-content/uploads/real-lives-real-crimes-a-study-of-digital-crime-and-policing.pdf> at ch. 5, para. 5.6) [<https://perma.cc/DYW6-FYA5>].

112. Owen Bowcott, *Stalking and harassment crimes routinely badly handled, UK report says*, *GUARDIAN* (July 4, 2017 7:01 PM) <https://www.theguardian.com/uk-news/2017/jul/05/stalking-and-harassment-crimes-routinely-badly-handled-uk-report-says> [<https://perma.cc/XPB3-DXYJ>].

113. *Trolls and tribulations: One-in-four Canadians say they're being harassed on social media*, *ANGUS REID INST.: PUB. INT. RES.* (Oct. 21, 2016) <http://angusreid.org/wp-content/uploads/2016/10/2016.10.04-Social-Media.pdf> [<https://perma.cc/PMY3-7NTY>].

114. Jill Slattery, *Almost half of young Canadians have been harassed on social media, reports poll*, *GLOBAL NEWS* (Oct. 21, 2016 10:36 PM) <https://globalnews.ca/news/3019354/almost-half-of-young-canadians-have-been-harassed-on-social-media-reports-poll/> [<https://perma.cc/D42J-QY9D>].

115. *Trolls*, *supra* note 113.

116. Darcy Hango, *Cyberbullying and cyberstalking among Internet users aged 15 to 29 in Canada*, *STATISTICS CANADA* (Dec. 19, 2016) <http://www.statcan.gc.ca/pub/75-006-x/2016001/article/14693-eng.pdf> [<https://perma.cc/AZ25-PGZZ>].

All in all, 1.1 million young Canadians have been victimized by online harassment.¹¹⁷ Moreover, this number may be higher because these statistics are taken from a study performed in 2014.¹¹⁸ These alarming statistics illustrate a real and growing online harassment problem within Canada.¹¹⁹

Perhaps the most well-known incident of online harassment in Canada is the case of Amanda Todd.¹²⁰ Amanda Todd was a Canadian citizen who was convinced to expose herself by a stranger online when she was twelve years old.¹²¹ The stranger took a photo of her and then proceeded to harass her for years, including sending the photograph to her classmates on Facebook.¹²² Eventually, this harassment caused her severe emotional problems, such as anxiety and major depressive disorder, which contributed to her suicide at the age of fifteen.¹²³ Her story became international news when a video she posted on YouTube discussing the online harassment she was forced to endure and its effects went viral after her death.¹²⁴

B. Canada's Response to Online Harassment

Amanda Todd's passing is a tragedy; its aftermath exemplifies how Canada's approaches to online harassment have been molded and evolved

117. The Canadian Press, *More than 1 million young Canadians victims of cyberbullying, cyberstalking*: StatsCan, CBC NEWS (Dec. 19, 2016 2:53 PM), <http://www.cbc.ca/news/technology/million-canadians-cyberbullying-cyberstalking-statcan-1.3903435> [<https://perma.cc/ECG3-AQ45>].

118. See Monique Scotti, *1 in 5 young Canadians cyberbullied or cyberstalked: Statistics Canada*, GLOBAL NEWS (Dec. 19, 2016 2:24 PM), <https://globalnews.ca/news/3135337/1-in-5-young-canadians-cyberbullied-or-cyberstalked-statistics-canada/> [<https://perma.cc/36TF-RQKR>].

119. According to NOBullying.com, as late as 2015, Canada had "the ninth highest rate of bullying compared to 35 other countries." Therefore, it logically follows that cyber-bullying and online harassment would be on the rise as children who are more used to technology grow up. See *Cyber Bullying Statistics in Canada*, NOBULLYING.COM (Dec. 22, 2015), <https://noblebullying.com/cyber-bullying-statistics-in-canada/>.

120. Note that while the Amanda Todd case is perhaps the most well-known online harassment case in Canadian history, the Canadian government began attempting to prosecute online harassers as early as 2012. For example, Gregory Alan Elliot was arrested for criminal harassment in 2012 due to crass tweets he had sent to two Toronto activists. However, he was not found guilty because the prosecution was not able to prove a real threat of violence beyond a reasonable doubt. See Ashley Csanady, *One man's vulgarity is another man's lyric: Toronto man found not guilty in Twitter harassment trial*, NAT'L POST (Jan. 22, 2016 7:09 PM), <http://nationalpost.com/news/canada/toronto-man-found-not-guilty-in-twitter-harassment-trial-widely-viewed-as-a-canadian-first> [<https://perma.cc/2RKF-5J6M>].

121. *Amanda Todd cyber-bully case: Dutchman to be extradited to Canada*, BBC NEWS (June 28, 2016), <http://www.bbc.com/news/world-europe-36654683> [<https://perma.cc/PA3M-5HR9>] hereinafter *Amanda Todd cyber-bully case*.

122. Michelle Dean, *The Story of Amanda Todd*, NEW YORKER (Oct. 18, 2012), <https://www.newyorker.com/culture/culture-desk/the-story-of-amanda-todd> [<https://perma.cc/VYA3-JS9J>].

123. *Amanda Todd cyber-bully case*, *supra* note 121.

124. Katinka Dufour, *Amanda Todd case highlights issue of online bullying*, TELEGRAPH (Oct. 16, 2012 3:49 PM), <http://www.telegraph.co.uk/news/worldnews/northamerica/usa/9612030/Amanda-Todd-case-highlights-issue-of-online-bullying.html> [<https://perma.cc/T5NM-NSJY>].

over the years. Todd's story sparked the first official debate in the Canadian House of Commons regarding cyberbullying prevention and legislation.¹²⁵ Ultimately, Todd's harasser was arrested and sentenced to eleven years of jail time for his behavior online, and a Dutch Court approved his extradition to Canada to face further charges.¹²⁶

On the other side of the spectrum, not all of the Canadian government's attempts at legislation have been successful. Moreover, not all members of the government, specifically some judges, have taken online harassment to be a serious issue.¹²⁷ A recent case of online harassment in Canada illustrates these assertions. In 2015, a group of students in Bridgewater, Nova Scotia created Drop Box accounts where they spread sexually explicit images of their classmates.¹²⁸ They pled guilty to distribution of intimate images without consent and were sentenced in a case that received national attention.¹²⁹ A Crown attorney who worked on the case said that he "hope[d that] the case [would] raise[] awareness about the criminal consequences of this kind of behavior."¹³⁰

According to some, including a Nova Scotia Chief Justice, some members of the government in Nova Scotia may have been overzealous in their pursuit of protection for online harassment victims.¹³¹ He argued that this overzealousness has actually hurt online harassment victims because it causes the members to create laws that are struck down, which then cannot deter harassers and which leaves these victims without protection.¹³²

In 2011, Nova Scotia passed the Cyber-Safety Act "under intense public pressure" after Rehtaeh Parsons, a victim of online harassment, committed suicide.¹³³ However, the bill was incredibly far reaching according to some critics, who deemed the laws "draconian" and "too broad."¹³⁴ In 2015, in the case of *Crouch v. Snell*, the Nova Scotia Supreme Court, in an opinion written by the Honourable Justice Glen G. McDougall, nullified the

125. See *In wake of Amanda Todd suicide, MPs to debate anti-bullying motion*, CTVNews (Oct. 14, 2012 10:22 PM), <http://www.ctvnews.ca/canada/in-wake-of-amanda-todd-suicide-mps-to-debate-anti-bullying-motion-1.995254> [<https://perma.cc/FYF8-2L7N>].

126. See *Amanda Todd cyber-bully case*, *supra* note 121; see also *Amanda Todd case: Accused Dutch man jailed for cyberbullying*, BBC News (Mar. 17, 2017), <http://www.bbc.com/news/world-us-canada-39295474> [<https://perma.cc/A4AA-YLV2>].

127. See Brett Ruskin, *Court strikes down anti-cyberbullying law created after Rehtaeh Parsons's death*, CBC NEWS (Dec. 11, 2015 3:07 PM), <http://www.cbc.ca/news/canada/nova-scotia/cyberbullying-law-struck-down-1.3360612> [<https://perma.cc/8SFQ-PY7W>].

128. Patrick Odell, *Police investigate intimate images shared by Bridgewater, N.S. students*, GLOBAL NEWS (May 20, 2015 6:24 PM), <https://globalnews.ca/news/2007196/police-investigate-intimate-images-shared-by-bridgewater-n-s-students/> [<https://perma.cc/892W-NHQV>].

129. Adina Bresege, *Bridgewater, N.S. intimate photos case unlikely to deter teens: experts*, CAN. PRESS (July 30, 2017 2:52 PM), <https://globalnews.ca/news/3635117/bridgewater-n-s-intimate-photos-case-unlikely-to-deter-teens-experts/> [<https://perma.cc/DPN6-JMZN>].

130. *Id.*

131. See Ruskin, *supra* note 127.

132. *Id.*

133. *Id.*

134. *Id.*

law by stating that the definitions within the law were broad enough to constitute an excessive impairment of a Canadian citizen's rights to freedom of expression.¹³⁵ After nullification, Nova Scotia lawmakers promised new online harassment laws.¹³⁶ A new law was then introduced that more narrowly defined cyberbullying.¹³⁷

In addition to attempting to update criminal codes, the Canadian government has expanded federal civil liability for behavior that constitutes online harassment. Perhaps the term expansion is a bit misleading without context, as the Canadian government has not generally created new federal laws meant to address suing for the specific act of online harassment.¹³⁸ That being said, in the province of Ontario, "public disclosure of embarrassing private facts," has been recognized by the Superior Court.¹³⁹ The context in which the court recognized and defined this tort as a civil violation was, in fact, a case of severe online harassment.¹⁴⁰ Specifically, the court adopted this tort in a revenge pornography case.¹⁴¹ That being said, most claims brought in civil court in Canada for online harassment are under the civil violation of defamation.¹⁴² Some cases have also been brought by claiming that a perpetrator "created an unsafe environment" for the victim.¹⁴³

IV. Recommendation for United States

A. In Regard to the United Kingdom

First, the laws of the United Kingdom regarding online harassment have a level of uniformity that jurisdictions within the United States should adopt. Unfortunately, unlike the countries in the United Kingdom, the United States is unable to provide uniform online harassment laws due to the Tenth Amendment securing the power of the states to make their own decisions on powers not specifically delegated to the federal govern-

135. *Crouch v. Snell*, 2015 NSSC 340, para. 111-16.

136. Michael Gorman, *New anti-cyberbullying law promised for this fall*, CBC NEWS (Jun. 22, 2017 3:47 PM) <http://www.cbc.ca/news/canada/nova-scotia/legislation-justice-law-cyberbullying-safety-kids-mark-furey-1.4173195> [https://perma.cc/HF7L-W79F].

137. Jean Laroache, *N.S. introduces new cyberbullying law it hopes passes constitutional muster*, CBC NEWS (Oct. 5, 2017 4:49 PM), <http://www.cbc.ca/news/canada/nova-scotia/cyber-bullying-law-bill-ns-legislature-rehtaeh-parsons-1.4340758> [https://perma.cc/U5DR-EXTF].

138. *Cyberbullying and the Law: How the Law Addresses Cyberbullying*, MEDIA SMARTS, <http://mediasmarts.ca/digital-media-literacy/digital-issues/cyberbullying/cyberbullying-law> [hereinafter *Cyberbullying and the Law*] [https://perma.cc/4Q3Q-NQKJ].

139. *Id.*

140. *Doe 464533 v N.D.*, 2016 ONSC 541 para. 41 ("Public disclosure of embarrassing private facts about the plaintiff." That category is described by the [Restatement (Second) of Torts (2010) at 652D as follows: "One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that (a) would be highly offensive to a reasonable person, and (b) is not of legitimate concern to the public.").

141. *Id.*

142. Katherine Ng, *Digital Dilemmas: Responding to Cyberbullying in Nova Scotia* 22 EDUC. LJ 63, 82.

143. *Cyberbullying and the Law*, *supra* note 138.

ment.¹⁴⁴ That being said, the United States could certainly benefit from more uniformity in its harassment laws. Under the current scheme, there are inconsistencies among the state governments regarding the punishment of online harassers, with states imposing maximum penalties that range from three months in prison to five years.¹⁴⁵ If the penalties for online harassment were standardized, or at the very least all states adjusted their classification of online harassment to address the needs of their citizens, there is an argument to be made that potential harassers may be deterred, even if said deterrent may reach a point of diminishing returns.¹⁴⁶

Second, the United States should not adopt an approach to police training and policing online harassment like that of the United Kingdom.¹⁴⁷ As of now, the United States has a similar issue with adequately training police officers to handle online harassment cases.¹⁴⁸ Unfortunately, proposed federal legislation to provide funding for such training did not pass.¹⁴⁹ This Note argues that if such funding were to pass, or even if local police leaders made an increased effort to adequately deal with these crimes, there would be a reduction in online harassment rates, simply because the police will have the tools necessary to identify and deal with online abuse.¹⁵⁰ For example, a female journalist named Amanda Hess was threatened online with rape and murder by another Twitter user, but police had issues with helping her because the officer assigned to her case was unfamiliar with the social media site.¹⁵¹ Moreover, if increased funding was more publicized, people would likely feel more comfortable reporting incidents of online harassment because they would know that law enforcement would be taking such incidents seriously and would be

144. U.S. CONST. amend. X. While there are federal codes that provide criminal harassment penalties, these may only be used in instances of interstate or foreign interaction. See 47 U.S.C. § 223 (2013).

145. DLA Piper, *supra* note 105, at 39.

146. See S.K., *Longer jail sentences do deter crime, but only up to a point*, ECONOMIST (Mar. 29, 2016) <https://www.economist.com/blogs/freeexchange/2016/03/criminal-justice> [<https://perma.cc/4Q3Q-NQKJ>].

147. There are many examples of federal grant programs to states, like Medicaid, that have been around for years, so clearly there is no constitutional issue with this funding. See *Federal Grants to State and Local Governments*, CONGRESSIONAL BUDGET OFFICE (Mar. 5, 2013), <https://www.cbo.gov/publication/43967#section0> [<https://perma.cc/AL9C-7SPS>]. Moreover, states can budget for law enforcement improvements under the Tenth Amendment. U.S. CONST. amend. X.

148. See Emma Marshak, *Online Harassment: A Legislative Solution*, 54 HARV. J. LEGIS. 501, 515-17 (2017), (citing Rebecca Watson, *Why I Don't Just Go To The Cops*, SKEPCHICK (Oct. 10, 2013), <http://skepchick.org/2013/10/why-i-dont-just-go-to-the-cops/> [<https://perma.cc/2JR6-6SL6>]).

149. See Cybercrime Enforcement Training Assistance Act of 2016, H.R. 4740, 114th Cong. (2016).

150. There are many stories of women who could not be adequately helped by law enforcement due to an officer's lack of knowledge regarding online harassment. See Amanda Hess, *Why Women Aren't Welcome on the Internet*, PACIFIC STANDARD (Jan. 6, 2014), <https://psmag.com/social-justice/women-arent-welcome-internet-72170> [<https://perma.cc/9EL2-FVGL>].

151. *Id.*

better trained to assist them.¹⁵²

In conclusion, the United Kingdom's uniform laws regarding online harassment and increased prosecution for online harassers would likely be beneficial in a vacuum to curb online harassment. However, the uniformity of these laws would likely be impossible in the United States due to protections for states under the Tenth Amendment. Moreover, it has become abundantly clear that by not providing proper training for the officers who enforce these laws, the United Kingdom has failed to adequately address the issue. Thus, the best lesson that the United States could learn from an analysis of the United Kingdom's attempts would be increased funding for educating officers further in the field of cybercrime.

B. In Regard to Canada

In terms of criminal law, any legislative body in the United States would have difficulty creating a constitutionally viable criminal law that could derail online harassment completely. Recall the Cyber-Safety Act. One of the reasons it was nullified was because it defied Section 2(b) of the *Canadian Charter of Rights and Freedoms*, which is equivalent to the freedom of speech protection found in the United States Bill of Rights.¹⁵³ Due to these protections, it is likely that any law dealing with online harassment could be characterized as an infringement on free speech.¹⁵⁴ Moreover, in recent years, sitting members of the Supreme Court have made it more difficult to prosecute threats made online in general, so expanded prosecution for online harassers seems unlikely in the near future.¹⁵⁵

However, a reconstruction of civil rights liability may be a solution that the United States can adopt in some form. It is true that there are first amendment protections in civil cases;¹⁵⁶ however, online harassment cases typically fall under defamation, and in some cases copyright infringement.¹⁵⁷ So, there is some precedent in the United States' legal system for civil liability based on online harassment.¹⁵⁸ Therefore, there is a possibility that the United States could recognize civil violations, either in state or federal court, akin to those recognized by the Ontario Supreme Court in

152. Currently, only about forty-three percent of Americans believe that law enforcement will help them with online harassment incidences. Duggan, *supra* note 1.

153. Crouch, *supra* note 135; compare Canadian Charter of Rights and Freedoms, Part I of Constitution Act, 1982, being Schedule B to the Canada Act, 1982, c 2(b) (U.K.) with U.S. Const. amend. I.

154. This is a common argument already for cyber-bullying laws currently in place. See John O. Hayward, *Anti-Cyberbullying Laws Are a Threat to Free Speech*, OPPOSING VIEWPOINTS (2013), http://ic.galegroup.com/ic/ovic/ViewpointsDetailsPage/DocumentToolsPortletWindow?displayGroupName=viewpoints&jsid=86b8d9990680ac70437ab043a7b61192&action=2&catId=&documentId=GALE%7CEJ3010868216&u=nysl_we_bcsd&zid=E5792b8229fbb3d88a51bec521a1e8cf.

155. See Adam Liptak, *Supreme Court Overturns Conviction in Online Threats Case, Citing Intent*, N.Y. TIMES (June 1, 2015), <https://www.nytimes.com/2015/06/02/us/supreme-court-rules-in-anthony-clonis-online-threats-case.html>.

156. Beck *supra* note 28.

157. DLA Piper, *supra* note 105, at 38.

158. *Id.*

2016.¹⁵⁹ While there is some debate on whether torts deter those who perform tortious actions,¹⁶⁰ an expansion should at the very least provide victims of online harassment with a more structured avenue to pursue their case.

In conclusion, the Canadian territories have made attempts to curtail online harassment through the criminal code and through civil litigation. However, First Amendment issues will prevent the United States from adopting criminal laws that are specific to defeating online harassment. That being said, perhaps there is leeway for an expansion of civil liability to deter those who perform online harassment.

Conclusion

The United States must provide some solution to deal with online harassment. Looking at its fellow nations may be a good way to provide a foundation for changes that need to be made.¹⁶¹

159. *Cyberbullying and the Law*, *supra* note 138.

160. For instance, those who want to perform actions may conceive the ramifications of their actions. See Howard A. Latin *Problem Solving Behavior and Theories of Tort Liability* 73 CAL. L. REV. 677, 678 (1985).

161. At the conclusion of this project, I would like to briefly acknowledge and thank the people who made completion of this note possible. First, I would like to acknowledge the outgoing editors of the Cornell International Law Journal not only for giving me an opportunity to enter the sphere of academic writing, but also for seeing something in this project and in my work long before I did or ever would. Also, I would like to acknowledge the journal's current note editors whose feedback has made this note as good as it possibly can be, and perhaps more importantly, for putting up with my terrible spelling. Finally, I would like to acknowledge my loved ones. First, my friends, both in the Cornell community and beyond it, provide me daily with a level of support that strengthens my resolve in tough times and allows me to believe in myself. Without that support, you would not be reading this today. Second, my family, who love me unconditionally, but never allows me to stop pushing myself. I love you all and this Note is truly for you. In conclusion, thank you everyone who made this Note possible. I will be grateful for everything you all have done for the rest of my life.