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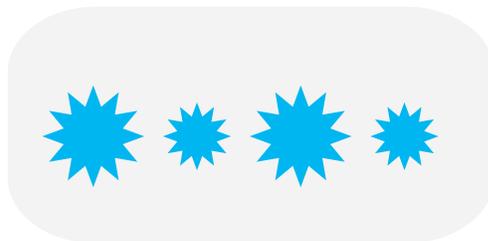
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Do laws criminalizing online harassment and cyberbullying "chill" online speech? My new study suggests, perhaps counter-intuitively, that such legal interventions may actually facilitate and encourage more speech, expression, and sharing by those who are most often the targets of online harassment: women.¹

The study involves a first-of-its-kind online survey administered to 1,212 U.S.-based adult internet users that examines multiple dimensions of chilling effects online. It does so by comparing and analyzing responses to hypothetical scenarios that involve different kinds of regulatory actions—including an online harassment law, public/private sector surveillance, and an online regulatory scheme based on the Digital Millennium Copyright Act (DMCA) and enforced through personally received legal notices. The survey sample was roughly representative of the U.S. internet-using population, with a few biases, mainly being somewhat younger and having slightly lower incomes than the overall U.S. internet population.² Responses to each scenario were compiled, compared, and statistically analyzed.

Findings from the scenario involving the online harassment/cyberbullying law, which criminalized online speech intending to "harass or intimidate another person," and the scenario involving a personally received legal threat, each have implications for our understanding of online harassment and laws criminalizing it. This is important, for while these laws have proliferated across the United States and internationally,³ little is known about the impact and efficacy of these legal interventions.⁴

First, the study found not only that online harassment and cyberbullying statutes may have far less overall chill on different online activities, at least compared with other forms of regulatory actions (like online surveillance),⁵ but that these laws had a statistically significant salutary impact on women's willingness to share personal content online. This gender effect likely evidences that if women are aware of a law that penalizes or criminalizes online harassment and bullying, they feel less likely to be attacked or harassed and are thus more secure and willing to share, speak, and engage online. In other words, these statutes may actually lead to more speech, expression, and sharing online among adult women online, not less.

This is noteworthy because many question the effectiveness of these legislative efforts and their constitutionality—inasmuch as these laws often criminalize online speech, it is argued they prohibit or have a "chilling effect" on First Amendment protected speech.^{6,7} And, indeed, courts have previously stricken down such laws on First Amendment grounds on "numerous occasions."⁸ The analysis may change, however, if these laws actually lead to more speech and sharing online—especially from women, the traditional victims of these malicious activities online—while only minimally impacting other forms of speech and expression.

The study also found statistically significant gender effects in the hypothetical scenario in which respondents receive a personalized legal notice that contains a legal threat. Here, women were more likely to be chilled from engagement in a range of internet activities (online speech, search, and personal sharing) after receiving the personalized legal threat. Results suggested they were also more likely to be chilled in a scenario in which not they but a friend received a similar personal legal threat, and were less likely to take steps to defend themselves from the threatening legal notice that they had received. It is difficult to say, from the results, why women were more negatively affected in these scenarios, but the results no doubt suggest women were more cautious and chilled once they were personally targeted.

Besides being more often the victims of online harassment,⁹ these findings suggest women may also be more affected by these harmful activities. This is consistent with recent findings by Lenhart et al. that women are more likely to be negatively affected—more likely to become angry, worried, and scared—as a result of online harassment and abuse.¹⁰

Of course, these findings do not obviate other important concerns about statutes criminalizing online harassment and cyberbullying, such as a lack of enforcement or disparate effects on other internet speech.¹¹ More research must be done on these counts to achieve a clearer picture. Still, the study's findings on these laws' potential salutary effect is consistent with what advocates like Danielle Citron have argued—that such legal measures can help preserve the "expressive autonomy" of internet users by facilitating more speech, participation, and sharing by frequent targets of such abuse.¹² And in light of the gendered impact of online harassment, these laws may also have the egalitarian impact of improving women's experience online generally.

References

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- 3 - Jieun Baek and Lyndal M. Bullock, "Cyberbullying: A Cross-Cultural Perspective," *Emotional and Behavioural Difficulties* 19, no. 2 (2014): 226-238, <http://www.tandfonline.com/doi/pdf/10.1080/13632752.2013.849028?needAccess=true>.
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- 5 - Penney, "Understanding the Comparative Dimensions of Regulatory Chilling Effects Online." For example, 62% of respondents indicated that the statute would either have no impact or render them more likely to speak/write online.
- 6 - See, e.g., Alice E. Marwick and Ross W. Miller, "Online Harassment, Defamation, and Hateful Speech: A Primer of the Legal Landscape," *Fordham Center on Law and Information Policy Report*, 2014, <http://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1002&context=clip>; Dia Kayyali and Danny O'Brien, "Facing the Challenge of Online Harassment," *EFF Deeplinks Blog*, January 8, 2015, <https://www.eff.org/deeplinks/2015/01/facing-challenge-online-harassment>.