Digital and online violence: international perspectives

Kim Barker & Olga Jurasz

Published online: 01 Feb 2024.

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EDITORIAL

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Digital and online violence: international perspectives

This issue of the International Review of Law, Computers & Technology presents a number of papers from the inaugural international conference 'Digital and online violence: regional perspectives' hosted in September 2022, and organised by Professors Kim Barker & Olga Jurasz, co-founders and co-directors of the Observatory on Online Violence Against Women (ObserVAW).

As part of the wider 'Digital and Online Violence: UK and South Korea' (2022-2023) project, generously funded by the ESRC, the conference offered a unique opportunity to bring together researchers exploring online and digital forms of violence and to share international, interdisciplinary perspectives, with a special emphasis on perspectives from South Korea and the UK in particular. Despite the challenges posed by the pandemic, including a forced change of venue, the hybrid conference resulted in a rich set of discussions and some interesting themes emerging with respect to developments across the UK, Africa, Asia, and Europe relating to our approaches to, and learnings of, online and digital forms of violence. Some of the best papers from that conference are captured in this special issue, which is dedicated to the same topic.

Actions such as image-based sexual abuse, online hate, stalking, harassment, cyber-flashing, trolling, sexting, and online bullying have all been widely recognised as harmful behaviours in the online space, but relatively little discussion has been given to the wider phenomenon of online and digital violence, of which these – and more – all form a part. The uniqueness of the inaugural Digital Violence conference was that it created a dedicated, cross-disciplinary, and unique space for these conversations to explore the wider parameters and environments in which these nefarious and malicious behaviours evolve. In creating this space, it allowed for such explorations to also consider the myriad responses of disparate legal regimes operating to address similar behaviours while managing differing cultural and social attitudes, and legal approaches. Two things became clear from the conference conversations – and are similarly evident from the papers in this special issue – the need for these discussions to continue is paramount, but so too is learning from other jurisdictions and approaches as to 'what works' and, what does not.

That the inaugural Digital Violence conference unfolded against the backdrop of the (then) Online Safety Bill (now the much-criticised Online Safety Act), was an accident of fortune. The (now) Act provides as much fertile ground as the preceding Bill did, and many conversations around how this may shape the landscape with respect to Digital Violence will unfold in the future. Necessarily, the passing of the Online Safety Act is a landmark moment, but this is by no means the final word on addressing issues relating to online and digital forms of violence. In many respects, it is the very beginning of what will emerge as an evolving branch of law, especially given that the ongoing consultations by the nominated regulator, Ofcom, run to hundreds of pages concerning the proposed enforcement and reporting mechanisms that must be given effect under the provisions of the new statutory regime. Straightforward, and easy to navigate, it is not. That the Act has passed is a significant step, but it cannot be said that the Act will be a one-stop shop for addressing online harms and digital violence.

One staggering example of pernicious and harmful behaviour which remains absent from the regulatory and enforcement regime – and which was discussed in depth at the inaugural Digital Violence Conference in 2022 – is the phenomenon of online violence against women (OVAW).

There are some forms of behaviour – discussed in the articles of this special issue – that remain outside of the scope of the Online Safety Act and its – soon to be implemented – enforcement regimes. Much still depends on Ofcom as the regulator and the actions of the platforms & services which form the subject of the regime itself. Nevertheless, while debates and critique of the Act (and its complexity) will continue, the papers in this special issue reflect the breadth of online harms, harmful behaviours, and the ecosystem of harms which proliferates through interactive online platforms. The chosen papers illustrate neatly that no matter the region or the precise behaviour, the wider ecosystem of online harms remains a significant legal and societal challenge, and that it is not region-unique.

This special issue brings together papers from different jurisdictions, and different regions – Europe, and Asia. The seven papers included here touch on two themes from across these regions: three papers that touch on aspects of online and digital forms of hate in Asian states, and four papers explore different elements of the criminal law relating to harms, and actions in digital contexts that all have a sexual element attached.

We begin with discussions of hate speech in Asia. Chen Siyuan critiques the Protection from Online Falsehoods and Manipulation Act (2019) (POFMA), introduced in Singapore and explores its potential applicability to online hate speech all while considering the tensions and challenges posed to freedom of expression. In assessing POFMA, Siyuan posits that POFMA is an almost inevitable forerunner to speech regulation, while noting that despite its flaws, the system in Singapore is not as illiberal as it may first appear, with the legal system allowing potentially problematic posts to remain 'live' online for as long as there is a right for the authorities to rebut the post – a more unique approach than the more common 'notice and takedown' which prevails elsewhere.

The theme of hate speech in Asia continues with Josh Uyheng & Kathleen M. Carley's paper exploring online hate in the Philippines. Their paper, which takes a more contextualised view of online hate speech, seeks to examine how the situation in which the hate is manifested makes it more nefarious and manipulative. In their exploration of online hate speech in the Philippines, an assessment is made of both the narratives and the networks that compound and exacerbate the impact on the intended targets. Uyheng and Carley introduce a characterization of online hate narratives affecting gendered, political, and racial identities and illustrate how this wider understanding can influence responses in the form of counter-narratives to online hate. Ultimately, Uyheng and Carley conclude that that while there is a shared global understanding of online hate, to tackle it meaningfully, there is a need for a more nuanced, and local understanding.

Finally, on the theme of online hate, Minjeong Kim charts the rise of a specific form of online hate speech in South Korea – online gender-based hate speech. In charting its evolution, Kim highlights that – similar to Uyheng and Carley – contextual awareness is vital in understanding the situation in different countries, even within wider regions. In South Korea for instance, as Kim discusses, the rise of online gender-based hate does not have misogyny as its foundation, but rather misandry, making regulatory approaches more challenging given the cultural norms within the country. The norms, leading to a patchwork of regulatory efforts, make addressing these forms of violence incredibly difficult in South Korea, with only two potential legal avenues available, neither of which, as Kim explains, offer much in the way of meaningful assistance to targets of online gender-based hate. Kim concludes on a slightly more positive

note, with a call for improvements in the legal responses, rather than perfection – a theme which is evident across all of the papers discussing online hate across Asia.

It is also a theme present in abundance in the four papers that discuss harms and actions in digital contexts that involve a sexual element. Goran Livazović and Igor Vuletić begin by discussing the state of Croatian law in respect of sexting, offering an interdisciplinary analysis of the 2021 addition to the Croatian Criminal Code making it a criminal offence to misuse recordings of sexually explicit content. In their critique of legal developments in Croatia, Livazović and Vuletić make it clear that while sexting is a problem and is included within the purview of online violence, reaching a precise definition of 'sexting' is in itself a challenge – another broad theme which emerges across all of the papers here. Given the difficulties in precisely identifying the behaviour which the criminal law seeks to capture, it is of little surprise that their paper concludes that the Croatian approach is a polarized one, offering very different punishments dependent on the age of the actor, with the most severe punishments retained for those under 18. Their conclusions also suggest that – as with most issues in the area of online and digital violence – there is significant scope for improvement in the legal provisions.

Elisabetta Stringhi continues explorations of legal inadequacy with her assessment of Europe's Digital Services Act (DSA), and the due diligence obligation, assessing it in light of cyberviolence within the European Union. Stringhi discusses at length the various proposals and ambitions of EU legislative provisions, all of which have broad ambitions to improve the safety of online spaces, but all of which, by necessity are left to Member States to implement. Stringhi explores this alongside the definitional weaknesses in the DSA due diligence provisions. While, in theory, the DSA has the potential to improve responses to cyberviolence, Stringhi is not convinced that there is a significant step-forward, suggesting, instead, that the absence of a regional understanding of illegal content renders the DSA almost unfit for purpose in the face of digital and online violence before it has had a chance to try.

The failings of the regulators to tackle online harms are picked up by Andy Phippen and Emma Bond in their paper asking why legislators keep failing when it comes to online harms. Taking a victim-centred approach, Phippen and Bond outline that there is a widespread failure to understand that online harms are harms affecting society as well, and as such, the policy approach has been poor from the outset. In their assessment of the continuum of failures in respect of non-consensual sharing of intimate images (NCII), they indicate that the approach favoured by governments of 'prohibitive legislation' is as flawed as the underlying policy approach which seeks to eradicate harm, setting up regulatory mechanisms to fail from the outset. In exploring *why* legislators keep failing, Phippen & Bond conclude that there is a pattern of failure – and that pattern keeps repeating itself which is why there is little to no progress in meeting the needs of victims.

And finally, in the last paper included in this special issue, Wendy O'Brien and Marie-Helen Maras continue with explorations of the needs of victims, and the resulting failures of systems to provide access to justice for victims of gender-based violence perpetrated by technology. In their paper exploring technology-facilitated gender-based violence (TFGBV), O'Brien & Maras highlight the repeated failures of legal systems and frameworks in addressing technologically facilitated coercive control (TFCC). Their paper identifies the limited routes for redress for digital violence in light of the evidentiary obstacles that arise in such circumstances. In light of this, they argue, the courts are less inclined to regard TFCC as a serious matter. O'Brien and Maras conclude by offering suggestions for reform, calling for action by systems, legal infrastructures, and the IT sector – similar calls to those seen in the other papers collated in this special issue. In many ways their paper – like all of the others included here – contains striking parallels to other discussions of online and digital violence – and the wider lack of understanding surrounding online and digital violence more broadly.

The papers in this special issue, edited by Professors Kim Barker & Olga Jurasz all focus on harmful online behaviours, and regulatory approaches. All of these papers – and those presented at the conference – reflect the broad theme and categorisation of behaviours as forms of online and digital violence, but all call for improved approaches to digital and online violence by respective legal systems. As our understandings of, and legal responses to, online and digital forms of violence evolve, so too do online services, platforms, and technologies – many at a pace faster than law reforms. With this evolution comes a parallel set of developments – those of harm. In the UK, like Europe through the Digital Services Act, we have laid down a marker with the Online Safety Act, but much, much more remains to be done. This special issue illustrates exactly that.

Kim Barker
Lincoln Law School, College of Arts, Humanities & Social Sciences, University of Lincoln, Lincoln, UK
http://orcid.org/0000-0003-4446-3480

Olga Jurasz
Open University Law School, Faculty of Business and Law, Open University, Milton Keynes, UK
kbarker@lincoln.ac.uk http://orcid.org/0000-0002-0064-8494