

Block 4 | Types of online harassment that can be taken to court

Before a complaint can be raised at international or regional level, it is necessary to pursue a claim before your **domestic courts and authorities**. Note that systems differ significantly between countries on what the most appropriate law might be to obtain redress for online abuse/harassment.

There will likely be two types of action that you can pursue: civil and criminal complaints.

- If you raise a **criminal complaint**, it will usually be the responsibility of the state to investigate and take the perpetrator to court for the abuse or harassment you have sustained. This means there is less burden on you to see the perpetrator held accountable for their actions. Nonetheless, you will be expected to give evidence in such a case. Furthermore, it is worth noting that this kind of claim will usually not result in personal remedies for you (e.g. compensation). Criminal laws are usually aimed at the most serious regressions in society. Because of this, the amount of evidence you have to bring to court to secure a conviction of an individual for harassing or abusing you online is significantly higher than in civil matters.
- If you raise a **civil complaint**, it will be your responsibility to build the case and bring it to court. This means that such cases will be significantly more of a burden on you. However, it is possible to obtain personal remedies in complaints of this nature - such as an order against further abuse/harassment, and personal compensation. Civil complaints also require a lesser standard of evidence before they can succeed.

The types of action that could be pursued are:

- **Harassment:** In most jurisdictions this can be pursued as a civil or criminal matter. Harassment will usually be found to have taken place where there has been a "course of conduct", this means that an action has been taken more than once, that has had the effect of interfering with a person's privacy or causing them harm (including by feeling alarmed, distressed, or fearful). The person responsible for harassing you will usually have to do it intentionally or show reckless disregard to the impact that their conduct was having on you. There are a few things to note about this type of claim: first, some jurisdictions have recognised that the "course of conduct" can include direct messages or indirect messages to the victim. In other words, it is not necessary for you to show that the perpetrator has been

repeatedly messaging you. If they have been writing about you regularly in such a way that causes you harm or interferes with your privacy, then you could have a case. second, some jurisdictions have recognised that one message can result in lots of people "piling on" and sending similar messages (which can have the same impact as one-person messaging at you or about you regularly). So, it may be possible to pursue a case even where a single action has been taken by an individual that has snowballed into a harassment campaign.

- **Stalking:** In many jurisdictions stalking is treated as simply a more serious form of harassment and is usually a criminal matter. Although, colloquially, when we speak of stalking we usually mean the physical act of following someone in an intrusive way. In law, it usually refers to an aggravated form of harassment. For example, it will usually include the watching or spying of a person or forcing contact with them (including through social media). It can also include publishing statements about a person or pretending to be another person. An individual will be found guilty if they knew or ought to have known that their activity amounts to harassment
- **Threat:** Threats are usually a separate criminal offence to harassment and can involve "one-off" behaviour that is particularly harmful to an individual. In some countries specific types of threat are criminalised, such as a threat to kill, while other countries have laws against threats to commit a crime against another person. For a case to be made against an individual, the person who makes the threat usually has to know or have reason to believe the threat would cause the victim to be fearful that the crime would be carried out.
- **Hate speech/incitement:** It is a requirement under International law that advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence be prohibited by law. Many countries have laws that criminalise the expression of hate or encouragement of violence towards a person or group based on something such as race, religion, sex, or sexual orientation. Such laws do raise free speech concerns in many jurisdictions and can sometimes be relied on by states to target journalists. This should be taken into account before relying on such laws as a legal response or remedy to online harassment or abuse. However, where such abuse or harassment takes the form of inciting hatred or violence, it may be necessary to pursue such a claim.
- **Misuse of private information/data protection/defamation:** With regard to civil complaints, there are a number of causes of action or remedies that could be relied on in response to different forms of online harassment or abuse. These are not necessarily tailored specifically to the phenomenon of online harassment and should only really be

considered if such a cause of action is inadequate. These claims usually arise where there has been publication by another party of a certain kind of harmful information, whether it be private or defamatory. As will be covered in the next video, relying on these kinds of legal responses raises free speech concerns as they are often used by public figures as a basis for suing journalists for their work.

How do I know if I have a viable legal complaint? Identifying whether you have a possible legal complaint depends on the laws of the jurisdiction where you are seeking to take the complaint. This will usually be the jurisdiction where the harm has occurred. The standard of evidence varies depending on whether a criminal or civil complaint is being pursued, and the kind of conduct that would amount to a viable case will also depend on the type of complaint you take. For example, harassment will usually require evidence of more than one incident having occurred that has resulted in an interference with your privacy or that has caused you fear, alarm or distress. It will also be necessary to prove the actual or likely motivations of the individual against whom the case has been taken, particularly in cases of a criminal nature.

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This series is developed in cooperation with the Digital Freedom Fund.

