

Summary

Key Omissions from the Bill

- powers for regulator to ensure swift take-down of harmful material
- sufficient recognition of harms of mainstream pornography and culpability of porn companies in promoting sexually violent content
- Code of Practice regarding online violence and abuse against women and girls
- Recognition of need to strengthen protections for individuals including:
 - new offence criminalising all forms of cyberflashing (sending penis images without consent)
 - Amendments to update and improve laws on intimate image abuse, including taking and sharing of sexual images, and particularly distribution of deepfakes/fakeporn.

Contested issues – regulation enhances free speech

- Recognize that regulation of online harms enhances freedom of speech, particularly for marginalized and targeted groups whose speech is currently constrained by prevalence of online abuse

Comparisons with legislation across the world show weak powers to protect victims in UK Bill

- The UK proposals fail to match the victim-focused powers of the Australian eSafety Commission and New Zealand's Netsafe.
- Current proposals therefore are not world-leading, in fact they provide fewer powers to the regulator than comparator countries, particularly to ensure material is taken-down swiftly.

Content of this Submission

- Summary responses to specific Call for Evidence questions.
- Outline of argument regulation enhances **freedom of expression**
- New research on sexually violent content on mainstream **porn sites** and why additional powers for Ofcom required in Bill.
- The prevalence and nature of **online abuse against women and girls** and why specific Code of Practice re Online VAWG required.
- Why new offence of **cyberflashing** required and must go beyond current Law Commission proposals to ensure all offences are included to protect all victims
- Why laws on **intimate image abuse** need to be updated and improved and specific recommendations on criminalising the distribution of fakeporn/deepfakes.

Expertise

[Professor Clare McGlynn](#) is an expert on laws relating to sexual violence, pornography and image-based sexual abuse, including 'revenge porn', 'upskirting' and cyberflashing. She has played a key role in shaping new criminal laws on intimate image abuse and extreme pornography, giving evidence before select committees of the [Scottish](#) and [UK Parliaments](#). She has advised politicians across all the main political parties on potential law reforms, with her recommendations being debated in Parliament and used by many voluntary organisations in their campaigns. She has addressed policy audiences across Europe, Australia, Korea and the US, as well as working with social media companies including Facebook, Google and TikTok to develop their policies. She is a co-author of the recently published books [Cyberflashing: recognising harms, reforming laws](#) (2021) and [Image-Based Sexual Abuse: a study on the causes and consequences of non-consensual imagery](#) (2021).

Specific Responses to Call for Evidence Questions

- **Will the proposed legislation effectively deliver the policy aim of making the UK the safest place to be online?**

No. The UK proposals fail to match the victim-focused powers of the Australian eSafety Commission and New Zealand's Netsafe.

Current proposals therefore are not world-leading, in fact they provide fewer powers to the regulator than comparator countries, particularly to ensure material is taken-down swiftly.

- **Are children effectively protected from harmful activity and content under the measures proposed in the draft Bill?**

No. The Bill fails to take sufficient account of the prevalence of sexually violent pornography freely and easily available online. See research evidence below. The Bill also fails to put in place sufficient measures to hold online porn companies to account for the material on their websites. The regulator does not have sufficient powers to require porn companies to remove unlawful and harmful material.

- **Does the draft Bill make adequate provisions for people who are more likely to experience harm online or who may be more vulnerable to exploitation?**

No. The Bill must specifically recognise the gendered nature of much online abuse, and the intersectional nature of experiences with black and minoritised women particularly affected. See recommendations to require a Code of Practice regarding online violence against women and girls.

- **How does the draft Bill differ to online safety legislation in other countries (e.g. Australia, Canada, Germany, Ireland, and the EU Digital Services Act) and what lessons can be learnt?**

The draft Bill is not as comprehensive and effective as legislation in Australia and New Zealand where regulators have specific powers to order removal of harmful online content and to initiate civil action against perpetrators or online abuse. These countries have far more effective powers. Far swifter action can be taken in respect of harmful content, rather than watching, waiting and hoping that companies will act as required in codes of practice.

- **Does the proposed legislation represent a threat to freedom of expression, or are the protections for freedom of expression provided in the draft Bill sufficient?**

Not a threat to freedom of expression. Regulation of expression is vital to ensure that there is freedom of speech for all. See comments and references below to regulation being human rights enhancing and ensuring the freedom of speech of women whose speech is currently limited by the extent and nature of online abuse.

Content in Scope

- **Are there any types of content omitted from the scope of the Bill that you consider significant e.g. commercial pornography or the promotion of financial scams? How should they be covered if so?**

Sexually violent and unlawful pornography is freely and easily available on the most popular – free and easily accessible – porn websites in the UK. It is essential this content is clearly covered and that porn companies cannot remove themselves from regulation simply by limiting user interaction.

See evidence submission below with further details.

Some forms of online abuse are not currently unlawful, including cyberflashing – the sending of penis images to someone without their consent. Sharing deepfake and fakeporn without consent is also not criminalised. These behaviours should be criminalised and therefore made clearly unlawful so that they are adequately covered by the Bill.

See evidence submission below with further details.

Regulation enhances freedom of speech

- The freedom of expression of many, particularly women and people from marginalized or vulnerable communities, is currently constrained and limited due to the prevalence and significant harms of online abuse.
- Women commonly self-censor online for fear of abuse and reprisals, as is evident from research by Plan International (2020) and Amnesty (2018).
- The prevalence and harms of abuse are significantly worse for black and minorized women (Glitch and EAW 2020).
- Debates over freedom of expression commonly assume that regulation inhibits speech and should not be adopted. But this approach fails to understand that the current position already limits the speech of women and marginalized groups.
- Better regulation of online harms and abuse, therefore, is necessary to ensure the freedom of expression of many. Regulation therefore is *human rights enhancing*.
- This was recognized by Parliament’s Joint Committee on Human Rights in 2014 when it recommended adopting legislation criminalising possession of rape pornography ‘[as a human rights enhancing measure](#)’.

Sexually Violent Content on Mainstream Pornography Websites: additional powers required for Ofcom to ensure removal of content

Summary

- [New research](#) reveals extent of sexually violent material on the most popular mainstream porn sites in the UK
- Research focussed on landing pages of websites – the material promoted to a first-time user including young teenagers. The porn companies are *actively choosing* to showcase this material to new users.
- This material available is in [direct contravention of their own Terms & Conditions](#), showing that monitoring content of T&C alone will not prevent harm and should not be enough to satisfy any duty of care.
- This research emphasises the need to ensure porn companies are within scope of Online Safety Bill and are pro-actively held to account.
- Greater powers must be given to Ofcom to ensure swift take-down of unlawful and non-consensual material and penalties for delays.
- Introduce new offence criminalising the making of false representations of consent from those included in images/videos when uploading material to commercial web and porn sites,

as recommended by the End Violence Against Women coalition and victim support organisations.

- The titles of videos linked to below are examples of titles used on the most popular porn websites that are free to view and very easy to access for anyone and everyone. Censoring them would be ironic as these sites are viewed by millions everyday, including very young teenagers. It is the reality of today's internet and free, easily accessible pornography.

Evidence base - new 2021 research

- Vera-Gray, F, McGlynn C et al (2021) [Sexual violence as a sexual script in mainstream online pornography](#) *British Journal of Criminology*
- This is the largest study to date of online pornographic content.
- Examines the material on the home pages – that advertised to the first-time user - of the three most popular UK porn sites including Pornhub. This is the material the porn sites themselves choose to showcase to new users.
- The study has been widely reported, including in the [Sunday Times](#), the [New York Times](#), as well as across Europe and Asia. It's been translated into many different languages and used before the Canadian Parliament in its investigation into Pornhub.
- [Short blog here](#) with Dr Fiona Vera-Gray on key implications of this research

Key findings

- **1 in 8 video titles advertised to first-time user – ie young and teenage boys - on UK's most popular porn websites describe acts of sexual violence**
- **For examples of the titles found, please see policy briefing [here](#) or the research article which is free to download [here](#).**
- Study reveals material depicting criminal acts such as rape, incest and upskirting are being actively pushed to the front page by the porn companies
- **sexual activity between family members:** Titles describing sexual acts between family members were the most common.
- **Physical assault and aggression:** This was the second most common category, even though we excluded verbal aggression. Notably, the word 'black' was among the most frequently used terms in this category, suggesting connections between physical aggression, sexual assault and racialised descriptions of black performers.
- **Image-based sexual abuse:** This category includes all forms of non-consensual creation and/or distribution of sexual images including material commonly known as 'revenge porn' and 'upskirting', as well as voyeurism including hidden cameras and 'spy cams.' These videos contribute to a context where the taking and sharing of private sexual videos is seen as a legitimate sexual practice, rather than a form of sexual violence.
- **Coercive and exploitative sexual acts:** We found that words describing young women were particularly common in titles describing coercive and exploitative acts, with the top three words being schoolgirl, girl and teen.

Impacts of sexually violent porn

- The research raises serious questions about the extent of criminal material easily and freely advertised on mainstream pornography websites and the efficacy of current regulatory mechanisms.
- The ready availability of such content sustains a culture in which violence against women and girls is endemic, by minimising the harms of sexual violence and normalising coercion, non-consent, and physical aggression in sex.

- The prevalence of sexually violent content on mainstream sites is a form of [cultural harm](#) which adversely impacts on all members of society.
- This is not about a causal connection; it is about acknowledging that pornography has a social function in setting out the boundaries of what counts as acceptable or desirable sexual practice.

Online Abuse and need for Code of Practice on Violence Against Women and Girls: how and why technology is changing violence against women and girls

Summary

- The Online Safety Bill must specifically recognize the endemic nature of online abuse against women and girls. As recommended by the End Violence Against Women coalition and victim support organizations, a Code of Practice on Online Violence Against Women and Girls is vital and will help ensure meaningful action.
- Technology is changing the nature of online violence against women and girls and the extent of the harms experienced. There is no clear separation between online and offline experiences.
- Law and policy is failing to recognise new harms against women such as fakeporn (deepfakes).

Online abuse impacts on every aspect of women's lives both offline and online:

- It is no longer possible to separate out experiences into 'online' or 'offline' abuse: they are deeply interconnected in women and girls' lives.
- Women can experience *online* abuse but this then impacts directly on their *offline* lives:
 - as they fear for their physical safety because (i) they fear the particular perpetrator as he may know their whereabouts and/or he may know where they live or work and (ii) they experience a more general sense of threat of sexual harassment, violence and abuse from having been abused online which impacts their daily lives and decisions;
 - and the abuse adversely impacts on their physical and mental health, thereby having direct offline effects.

Online activities are integral to our daily lives online and offline:

- Using technology and being online is an integral and necessary part of all our daily lives, including employment, social interactions and civic participation in society. The phone in our hand almost becomes part of us, so that if it becomes a site of trauma as a result of online abuse, this directly and adversely impacts on every aspect of our daily lives. Imagine having to look at your phone/computer to check work emails, to register to vote, to book a cinema ticket or restaurant, to make a GP appointment, but each time you are thinking whether you will see more abuse, more harassment, and therefore experience more trauma.

Online abuse silences victims and locks them out of citizenship

- Because being online is now a fundamental part of participating in society, online abuse has the effect of silencing women. This is an impact on victims, as well as on all other women who modify their behaviour because of the very real threat of online abuse. They fear speaking out, or engaging online. They are silenced.

Technology is changing the *nature of impacts* of online abuse due to constancy and permanency of internet:

- Online abuse is not an incident that happens and is then over. There is a constancy to the abuse due to the continual presence of material on the internet, such as the continual reposting of intimate images, renewing of harassment and the permanency of abuse (difficultly removing material online). The abuse feels relentless.

Technology changing *why* abuse is perpetrated:

- The ease of technology means that abuse is perpetrated with a far wider range of motivations. Particularly, men are using technology to boost their masculinity amongst friends, to gain kudos and status. For example, groups of men sharing and trading intimate images which is not about causing distress to victims (which is what the criminal law requires) but is about their bravado, their status and group bonding.
- Conventional understandings of motivations, therefore, are outdated – such as assumptions that voyeurism is for sexual gratification, or sharing sexual images without consent is to cause distress to the victim. Further, as these motivations are enshrined in law, the law is out of date.

Technology is changing *how* the abuse is perpetrated:

- Technology provides new ways of perpetrating abuse, such as the creation of fakeporn, often referred to as deepfakes, where non-sexual images/videos are made into pornography using technology. These images might then be shared widely, with the same devastating impacts on victims as if the images had been ‘real’. Cyberflashing – sending penis images to someone without their consent – is another new way of perpetrating abuse; the online version of physical flashing.

Online abuse against women and girls is growing and pervasive:

- for example, image-based sexual abuse and cyberflashing are two emergent, pervasive forms of abuse which are disproportionately impacting women and girls in the UK.

Younger women and black and minoritised women particularly affected:

- Research demonstrates that younger women and black and minoritised women are particularly affected by these new and emergent online abuses, and abuse has risen since the covid-19 pandemic.

Significant and life-threatening nature of online harms, often causing ‘social rupture’:

- while abuse might take place online, the harms of such abuse can be significant and long-lasting; and due to the constancy and permanency of the abuse, the impacts can be greater, longer-lasting and therefore more challenging to overcome.

Action required

- **‘future-proof’ responses to VAWG:** currently the law, policy and practice is failing to keep pace with the new and emergent forms of online abuse. A new strategy is urgently required: to address emergent forms of violence against women and girls perpetrated online; and to ‘future-proof’ policy and practice from future emergent abuses, so that we do not have to constantly play ‘catch up’.
- **Civil and criminal law reform urgently needed:** the criminal law, for example around cyberflashing and image-based sexual abuse, urgently requires reform; we must also introduce more civil offences and powers to offer a wider range of options to victims and provide faster more efficient means of redress.
- **Additional training, guidance and resourcing of the criminal justice system:** in addition to reforming the law, police and prosecutors require additional training and guidance, to effectively investigate and prosecute technology-facilitated sexual violence, and respond to victim-survivors appropriately.
- **Significant, sustainable funding of support services:** beyond the law, the government must ensure the sustained and sufficient resourcing to specialist sexual violence and online abuse organisations that provide support to victim-survivors, particularly those working with black and minoritised women who can experience higher levels of online abuse.

- **Holistic, societal and cultural change:** we also require more resources and expertise to deliver education and prevention initiatives, focusing on consent and digital sexual ethics and citizenship.

Strengthening individual protections against online abuse

- The Online Safety Bill provides a valuable opportunity to strengthen individual protections against online violence and abuse.
- This is important not only to provide redress for victims, but also to clarify what content is unlawful and therefore within scope of the various requirements on social media and porn companies.

Include New Criminal Law on Cyberflashing (sending penis images without consent)

Summary

- include new offence to clearly criminalise cyberflashing (sending unsolicited ‘dick pics’)
- offence must be based on non-consent and cover *all* forms of cyberflashing, regardless of the perpetrator’s motives
- current Law Commission proposals *only* criminalise sending penis images if can prove perpetrator’s intention to cause alarm, distress or humiliation (or proof of sexual gratification and reckless as to causing distress) therefore excluding many cases of sending ‘dick pics’ without consent
- experience of laws on intimate image abuse show that a threshold of intention to cause distress seriously limits prosecutions
- legislation should follow examples from US where laws criminalise the sending of penis images to someone without their consent, regardless of motives
- my short blog commenting on Law Commission proposals here in [The Independent A proposed new law criminalising cyberflashing is welcome – but it has one major flaw | The Independent](#)

Evidence base:

This evidence draws on my recently published book [Cyberflashing: recognising harms, reforming laws](#) (2021) with Dr Kelly Johnson which is the most comprehensive study of cyberflashing internationally to date. It details the nature and extent of cyberflashing, as well as providing detailed recommendations for law reform. A summary of the research findings and recommendations is available [here: cyberflashing-policy-briefing-final.pdf \(bristoluniversitypress.co.uk\)](#)

How common is cyberflashing?

- Cyberflashing is an alarmingly commonplace experience, with women, and young women in particular, disproportionately facing the highest rates of victimisation and disclosing the most negative impacts.
- A YouGov survey in 2018 found that 41% of women had been sent an unsolicited penis picture; for younger women, this rose to almost half of women aged 18-24 (47%) (YouGov 2018). These findings are paralleled in a number of US surveys, with women and girls most highly victimised.
- Data from UK police FOI reports show that the majority of those reporting cyberflashing are women under thirty, and that while still the ‘tip of the iceberg’, reports over the last few years are increasing (Gallagher, 2020).
- **Everyday normalisation of cyberflashing for girls:** young and teen girls’ experience cyberflashing as ubiquitous, with one study finding that 76% of girls aged 12-18 had been

sent unsolicited nude images of boys or men (Ringrose et al, 2021). The recent [Ofsted review](#) found that nearly 90% of girls said being sent explicit pictures or videos of things they did not want to see happens a lot or sometimes to them or their peers, including ‘dick pics’.

- **Online abuse particularly affecting black and minoritised women:** It is likely incidence of cyberflashing has recently increased, with surveys showing a rise in online abuse generally, particularly among black and minoritised women, since the pandemic began (Glitch UK and EVAW 2020). The differing experiences of harassment, including street harassment (EVAW and Imkaan 2016) and cyberflashing, as experienced by black and minoritised women, must therefore be clearly acknowledged and taken into account in all law and policy reforms.

Different types of cyberflashing

- **Cyberflashing is a Sexual intrusion:** cyberflashing should be understood as a form of *sexual intrusion* similar to other forms of sexual violence and abuse, and should therefore be treated as a sexual offence. Many victim-survivors characterised their experience of cyberflashing as being similar to in-person indecent exposure, and/or as a form of sexual assault.
- Cyberflashing can take place in a variety of contexts. It can be a one-off event of a sexual exposure, involving one or multiple images or videos, or can form part of a course of abusive, threatening and harassing conduct.
- **Cyberflashing by teenage boys:** sending penis images to girls without their consent is commonplace in schools. Young girls and teen girls receive these images from both their peers, as well as older strangers through social media. Boys are commonly sending penis images followed by pressure on the girls to send back nudes, as the boys collect nudes to be able to raise their status amongst their peers.
- **Cyberflashing in public spaces and on public transport:** Victim-survivor testimonies reveal that women frequently experience cyberflashing in physical public spaces; in supermarkets, libraries, restaurants, museums, university campuses, airports, as well as on various forms of public transport. In many of these circumstances, unknown men send penis images to women’s mobile phones through the use of technology such as Airdrop and Bluetooth. This form of cyberflashing closely parallels physical ‘flashing’.
- **Cyberflashing in online dating and hook-up apps:** Cyberflashing is experienced as routine by many using dating apps, including from strangers, acquaintances and potential daters. It is commonly experienced out of nowhere; other times following rejecting the man’s advances.
- **Cyberflashing on social media and other digital technologies:** Cyberflashing is regularly experienced by women engaging in social media and other online technologies, in personal and professional capacities, by strangers, colleagues, acquaintances, family friends. It is also now taking place in online video conferencing with terms such as ‘zoomflashing’ and ‘zombombing’ now into language reflecting a rise in various forms of online abuse, including online exposure and distribution of sexually explicit texts online.

Multiple, Over-Lapping Motivations for Cyberflashing

- There are multiple, motivations for sending unsolicited penis images which overlap, demonstrating that there will rarely be a single, clear motivation for committing this abuse:
- **‘Transactional’:** men are hoping to either receive nude or sexual images in return, or to initiate sexual activity. For young men, the unsolicited dick pic is usually followed by pressure on the girls to send nudes. The main aim for the boys is to share their nudes and increase their social status amongst their peers. A form of bonding. The nudes are ‘trophies’ to collect.
- **Threatening, harassing and causing distress:** some perpetrators acknowledge they are hoping to shock and threaten women, inducing alarm and fear.
- **Sexual gratification and exhibitionism:** like physical ‘flashing’, some men seek sexual arousal from exposing their penis to women without their consent.

- Our research identifies that underpinning all these range of motivations are problematic constructions of masculinity, a sense of **masculine entitlement**, **'homosocial bonding'** and **desire for exercising power and control**.

Potentially Significant Harms of Cyberflashing

- **Infringing sexual autonomy:** Fundamentally, cyberflashing is wrong no matter what because it is non-consensual sexual conduct which infringes our autonomy and privacy. This is the case regardless of the nature and extent of any further consequential harm, if any, or whether or not the action is actually welcomed by the recipient: it remains a breach of fundamental rights.
- **Gendered harms:** The harms of cyberflashing are deeply gendered: most obviously, women are predominantly targeted, but also that the sexualised form and manner of the abuse, the motivations of perpetrators and the connections with other forms of sexual violence and harassment.
- **Different women experience different harms:** Women's differing experiences must be recognised, particularly those from black and minoritised communities who experience higher levels of online abuse and harassment (Thiara and Roy 2020), as well as differing experiences depending on age, sexuality, class, disability and other social, political and cultural positions.
- **Sexual violation:** Some victim-survivors have described their experiences of cyberflashing in terms of violation, heightened by the sexual dimension of cyberflashing.
- **Humiliation:** Victim-survivors also report experiencing being embarrassed, disturbed, shocked, utterly horrified and ashamed.
- **Threat and fear - what might happen next?:** Women have frequently recounted feeling 'frightened', 'terrified', 'vulnerable' and 'exposed' by acts of cyberflashing. For many, the harm stems from the 'well-founded fear' of escalation - of what might happen next - particularly in contexts where unsolicited penis images are sent in public from strangers.
- **Making girls responsible for boys' behaviours:** young girls and teenagers find they are often shamed for *receiving* dick pics as it's assumed they've sent nudes. Girls have to invest the emotional labour in dealing with their peers as they find being sent the images disgusting and irritating, but they don't report, don't challenge the boys and try to carry on as normal so as to not incur social embarrassment or ostracization.
- **Impacts on everyday life:** The harms of cyberflashing must be understood as cumulative and connected to women's other experiences of harassment and abuse, impacting on women's everyday lives and reducing their participation in public and online life.
- **Social and cultural harms:** the prevalence of cyberflashing, and its detrimental harms and effects, has ramifications across all of society; for example, it may help sustain a culture in which sexual consent is marginalised, thereby minimising other forms of sexual violence.

The law is currently failing victim-survivors of cyberflashing in England and Wales

- There is no criminal offence against sending unsolicited penis images in England and Wales. The laws on physical 'flashing' do not apply; and prosecutions using other offences like harassment have many hurdles, with prosecutions unlikely.
- This is not the case in other jurisdictions; some countries, like Scotland and Ireland, already have sexual offences legislation which is sufficiently broad to capture new forms of sexual violence like cyberflashing. Other places, like Singapore and several US states, have recently introduced new criminal laws specifically targeting cyberflashing.
- Ultimately, the law in England and Wales has failed to keep pace with evolving technology and is letting victims down. Consequently, law reform is urgently needed.

Cyberflashing Key Recommendations

Reforming the criminal law:

- **Adopt a specific cyberflashing offence:** There are many benefits to adopting a bespoke criminal law addressing cyberflashing, including that it would: make it clear cyberflashing is wrong and potentially harmful; let victim-survivors know their experiences are understood and recognised; facilitate successful prosecutions, by removing requirements to shoe-horn cyberflashing into other laws; and provide a positive foundation for education and prevention initiatives.
- **Cyberflashing as a sexual offence:** Any new law must frame cyberflashing as a sexual offence, to recognise the nature and harms, to grant victims anonymity and protections in court, and to permit suitable sentencing options.
- **Focus on the core wrong of non-consent, not perpetrator motives:** The wrong of cyberflashing is non-consensual conduct breaching sexual autonomy, *regardless of the perpetrator's motives*. Motive requirements invariably mean only some abuses are covered, denying some victims redress and make prosecutions less likely.
- **Law Commission proposals only cover some forms of cyberflashing:** the current proposals *only* criminalise sending penis images if can prove perpetrator's intention to cause alarm, distress or humiliation (or proof of sexual gratification and reckless as to causing distress) therefore excluding many cases of sending 'dick pics' without consent
- This proposal will mean that most cases of sending penis images without consent will *not be covered*, including the everyday experiences of young girls.
- The threshold of proving distress etc will also make prosecutions very difficult. We know from experience of laws on intimate image abuse show that a threshold of intention to cause distress seriously limits prosecutions.
- legislation should follow examples from US where laws criminalise the sending of penis images to someone without their consent, regardless of motives
- my short blog commenting on Law Commission proposals here in [The Independent A proposed new law criminalising cyberflashing is welcome – but it has one major flaw | The Independent](#)

Beyond creating a cyberflashing offence:

- **Education, Prevention and Support:** Law reform is only ever the first step and must be accompanied by effective awareness-raising campaigns and education initiatives. Crucially, organisations supporting victim-survivors – including specialist organisations working with black and minoritised women whom we know experience higher levels of abuse – must be granted sustainable and sufficient resources to support victim-survivors.

Improve laws on image-based sexual abuse (taking & sharing intimate images without consent)

Summary

- Laws on intimate image abuse are out-of-date, confusing, piecemeal and fail to provide redress for victims.
- Law urgently needing reform, especially critical to ensure clarity over categories of unlawful material in Online Safety Bill.
- Some reforms straightforward such as criminalising non-consensual sharing of fakeporn/deepfakes and granted automatic anonymity to all complainants.

Deepfakes and fakeporn is a growing and harmful problem

- In an [international survey with colleagues](#), of those whose images were created without their consent, one third (34%) of the images were digitally altered revealing a high number of 'fakeporn'/deepfake abuses.

- The harms experienced by digitally altered images can be equally devastating as with 'real' images. As one stakeholder explained to us: *"it's still a picture of you ... it's still abuse"*. See McGlynn et al [Shattering Lives and Myths: A Report on Image-Based Sexual Abuse](#).

Reforming law to criminalise distribution of fakeporn/deepfakes without consent:

- In 2017, in my research with Erika Rackley, we argued that '[sexualised photoshopping](#)' (as we then termed fakeporn/deepfakes) must be seen as a form of image-based sexual abuse and should be covered by the criminal law.
- Many others have subsequently recommended this change, including [Parliament's Women & Equalities Select Committee report on public sexual harassment](#) in 2018 and a [coalition of MPs](#) in 2019. The Law Commission [2020 consultation](#) on intimate image abuse also recommends this reform.
- The law is falling behind many other jurisdictions which criminalise distribution of altered images including Scotland and many of the Australian and US states.
- **proposed amendment in criminalise distribution of altered images to sections 34-35, Criminal Justice and Courts Act 2015** - offence of 'disclosing private sexual photographs and films with intent to cause distress'
- English law currently includes altered images within its definition of images, but specifically excludes images that are *only* private and sexual by virtue of being altered (section 35(5)).
- Amendment required therefore to *delete* sections 35(5)(b)-(c) and ensure that the images/videos covered include those that are altered to make them sexual or intimate.

Evidence base for submission

This evidence draws on my extensive empirical and legal research conducted with colleagues across the UK, Australia and New Zealand, including:

- **2019 policy and research report:** McGlynn et al [Shattering Lives and Myths: A Report on Image-Based Sexual Abuse](#) detailing nature and harms of all forms of image-based sexual abuse with detailed recommendations for UK law reform and victim support.
- **Detailed study on harms of image-based sexual abuse:** McGlynn et al (2020) ["It's Torture for the Soul": the harms of image-based sexual abuse](#) *Social and Legal Studies* drawing on interviews with 75 victim-survivors and detailing the potentially devastating impacts
- **Foundational legal research on need for comprehensive criminal laws:**
- Clare McGlynn and Erika Rackley, '[Image-Based Sexual Abuse](#)' (2017) 37 *Oxford Journal of Legal Studies* 534-561.
- McGlynn, Rackley, Houghton, '[Beyond 'Revenge Porn': The Continuum of Image-Based Sexual Abuse](#)' (2017) 25 *Feminist legal studies* 25-46.
- **International co-authored book:** Henry, McGlynn et al (2021) [Image-based Sexual Abuse: a study on the causes and consequences of non-consensual nude or sexual imagery](#) examining the nature and extent of image-based sexual abuse drawing on 75 semi-structured interviews in UK, New Zealand and Australia with victim-survivors (n=25 in each jurisdiction), 41 stakeholders and an online survey with approximately 2000 people in each country (total n= 6,109).

What is intimate image abuse?

- **Not 'revenge porn':** The term 'revenge porn' generally refers to a malicious ex-partner sharing sexual images without consent. It does not, therefore, cover all forms of abuse such as upskirting, voyeurism or men sharing images amongst themselves to boost their status or a 'laugh'. The term therefore skews debate and is one of the reasons why the law is so limited. Further, many victim-survivors find the term fails to explain or understand their experiences and it can actively hinder their recovery as it is a victim-blaming term.

- **Image-based sexual abuse:** Due to the problem with the term ‘revenge porn’, together with Erika Rackley, I developed the concept of [‘image-based sexual abuse’](#) in 2016 to better explain the nature and extent of these abuses. This term covers all forms of taking, making and sharing nude or sexual images without consent, including threats to share and altered images. For a detailed discussion, see our research [here](#).
- **Intimate image abuse:** This term is also used to cover the taking, making and sharing of nude or sexual images, as well as including images such as those taken of women without their expected religious or cultural attire. The [Revenge Porn Helpline](#) uses the term intimate image abuse in their work.

How common is image-based sexual abuse?

- My research with colleagues demonstrates that image-based sexual abuse is pervasive, particularly among young adults;
- More than 1 in 3 of all respondents had experienced at least one form of image-based sexual abuse victimisation (37.7%, n=2,306); 39% in the UK.
- Our findings suggest that LGBT+ and those from black and minoritised communities are disproportionately victimised, indicating links between image-based sexual abuse, hate crimes, and other forms of discrimination and oppression
- Note that these data are almost certainly an undercount of victimisation as many victim-survivors are unaware that their images have been taken or shared without their consent.

Multiple motivations for offending

- Our research reveals there is rarely a single motivation for image-based sexual abuse. Rather, there are multiple, overlapping motivations for this abuse, which clearly extend beyond the paradigmatic ‘revenge’ scenario.
- Many perpetrators are motivated by seeking power and control.
- Misogyny, men’s entitlement and ‘laddish’ attitudes also drive image-based sexual abuse, highlighting the gendered nature of many experiences.
- In addition to control and misogyny, interview participants identified a range of further motives for perpetration, including attention seeking, jealousy, obsession, ‘lad’ culture, sexual gratification, a ‘prank’, distress, humiliation, entitlement, and to build up social and economic capital (‘status building’).

Potentially significant harms of image-based sexual abuse

- The harms and impacts of image-based sexual abuse can be devastating and shatter lives.
- **Sexual harms:** many victim-survivors experienced the abuse as sexual abuse, speaking to the similarities between these harms and other forms of sexual violence.
- **Gendered and intersectional harms:** many victim-survivors experience devastating harms because of the social and political context, including the sexual double standard, racism, xenophobia, homophobia, misogyny, and the online abuse of women.
- **‘Social rupture’:** A significant number of victims we interviewed experienced [‘social rupture’](#) where victims report utter devastation of their lives, often dividing their lives into ‘before’ and ‘after’ the abuse. ‘Social rupture’ describes the *totality* of the harms; as a significant devastation that dramatically changed their lives; an extreme, unsettling and intrusive violation.
- **Constancy:** Social harms also include the ‘constancy’ of the abuse, its endless and enduring nature, differentiating it from some other forms of abuse. Images remain ‘out there’, constantly available to be shared online, viewed and re-discovered, with each new viewing or distribution a form of abuse. Victim-survivors did not speak in terms of a discrete ‘event’ or ‘incident’ which ‘happens’ and then ‘comes to pass’; but rather in terms of permanency, ‘ongoingness’ and ‘endlessness’.

- **Profound Isolation:** Victims experience profound '*isolation*' from friends and family; but also from the online world, social media and therefore from society in general. Often this was due to a profound breach of trust. This has profoundly negative impacts on victims' personal and professional lives; as well as reducing civic engagement which adversely affects all of society.
- **Social harms:** Medical-focused accounts do not explain the full nature and extent of harms experienced by victim-survivors; the harms of image-based sexual abuse should therefore be understood holistically, as *pervasive social harms*.

Interconnected experiences of image-based sexual abuse

- **A form of sexual assault:** many victim-survivors experience this abuse as a form of sexual assault, emphasising the interconnection between image-based sexual abuse and other forms of sexual violence experienced by women and girls.
- **Interconnected experiences:** of those survey respondents who experienced image-based sexual abuse, 64% had experienced more than one form of imaged-based sexual abuse, and 37% had experienced *all three* forms (taking, sharing and threats);
- **Image-based sexual abuse, therefore, is not experienced as separate offences** – eg as voyeurism or non-consensual distribution. It is experienced, and often takes place, holistically, with different ways of perpetrating the abuse suffered as one experience.
- **Accompanying information:** survey respondents who had experienced image-based sexual abuse reported that in two-thirds (67%) of cases, their intimate images were non-consensually shared with accompanying information by which they could be identified.
- **Distribution online and onto porn websites:** more than half (55%) of survey respondents who experienced image-based sexual abuse discovered that their images had been uploaded online, and nearly one quarter (23%) were uploaded to pornographic websites (including 'revenge porn' websites). This reports the distribution of which victims were aware and is therefore likely to be an under-reporting of actual distribution.

Failing criminal justice responses to image-based sexual abuse

- Despite reforms, the criminal justice system in England and Wales is still failing victim-survivors of image-based sexual abuse.
- Interviews with criminal justice practitioners and victim-survivors demonstrate that the current failure to capture image-based sexual abuse as a sexual offence limits the criminal justice response. For example, often due to limitations in the current law, police officers are using informal resolutions to respond to image-based sexual abuse.
- Victim-survivors still experience victim-blaming, minimisation and a lack of understanding by some police after reporting their abuse
- Some victim-survivors are reluctant to report the abuse to the police, including for fear of being publicly identified.

Current outdated, confusing, piecemeal law in England and Wales

- The current criminal law is failing victims of image-based sexual abuse
- The failure to categorise all forms of image-based sexual abuse as sexual offences misunderstands the nature of the offending
- Lack of anonymity is a clear disincentive from approaching the police and supporting prosecutions
- Existing civil law can provide an effective route to redress but is expensive and complicated cost arrangements prevent most victim-survivors from accessing it.
- Victim-survivors need help negotiating the difficulties of legal action and supporting a criminal prosecution or civil action.

Supporting victim-survivors and image-based sexual abuse prevention urgently required

- Currently, getting images removed from the internet can be difficult, costly and time-consuming.
- There is a lack of advocacy and legal support available for victim-survivors.
- Victim survivors need effective and straightforward support to get images/videos taken down and removed from the internet.
- Long-term counselling and appropriate emotional support for victim-survivors is vital, including from specialist services such as those supporting black and minoritised women and LGBT+ individuals.
- Better and more effective education – in schools, universities, social venues and workplaces – is vital to prevent image-based sexual abuse.

Image-based Sexual Abuse Key Recommendations

Comprehensive criminal law reform urgently required

- The Law Commission consultation on reforms is welcome.
- It is vital that any new law is comprehensive and focuses on key wrong of non-consent.
- Current Law Commission proposals should be revised to ensure:
 - No hierarchy between victims based on perpetrator motivations
 - Extend definition of intimate images to include images of black and minoritised women without their chosen or expected cultural/religious attire
- My detailed comments on their proposals and recommendations are detailed [here](#) with Erika Rackley: [mcglynnrackley-stakeholder-briefing-5-may-2021-final-1.pdf \(wordpress.com\)](#)

Introduce new statutory civil offence and civil orders

- Any new legislation should include a statutory civil claim together with criminal offences, providing that a person must not take, make or share an intimate image of another person knowing that the person depicted in the image did not consent. See further submission to Law Commission with detailed [here](#) with Erika Rackley
- New civil orders should also be introduced (in both criminal and civil cases), as is commonplace in other jurisdictions. These should include orders:
 - prohibiting the offender from distributing the intimate image.
 - Requiring offender to delete any images.
 - requiring the offender to take down or disable access to an intimate image
 - requiring the provider and/or end user of a social media service, relevant electronic service or designated internet service to remove an intimate image from the service
 - requiring a hosting service provider who hosts an intimate image to cease hosting the image.

Support victim-survivors to reclaim control

- We need a comprehensive government policy on supporting victim-survivors of image-based sexual abuse, including the sustained and effective resourcing of appropriate support services, inclusive of specialist services, such as for black and minoritised women.
- We recommend establishing a regulatory body/office that can provide specialist advice, assistance and support for victim-survivors, as well as focussing on prevention through education.

Effective and resourced training, education and guidance

- Schools, universities and employers must put in place training and policies to effectively and compassionately respond to disclosures of image-based sexual abuse.
- Relationships and sex education in schools must include discussion of the harms and wrongs of image-based sexual abuse.
- Introduce comprehensive police training and guidance on responding to image-based sexual abuse.

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