

## **Anonymity for Complainants of Image-Based Sexual Abuse: focus on harms to victims, not motives of perpetrators**

### **1. Summary:**

- 1.1. It is in the interests of justice that victims of crime, including image-based sexual abuse, come forward to report incidents to the police and support prosecutions.
- 1.2. The Government has accepted that complainants of sexual offences, female genital mutilation and forced marriage are more likely to report and support prosecutions if granted automatic anonymity. The same logic applies to complainants of image-based sexual abuse.
- 1.3. Image-based sexual abuse is a form of sexual offence because of the *mode* of perpetration, not the motive. The harm comes from the fact that it is *sexual* images that are shared without consent; the images go viral because they are *sexual*. The abuse accompanying distribution of images is *sexualised*.
- 1.4. Victims experience 'revenge porn' as a form of sexual assault.
- 1.5. Contrary to Government statements, it is not a requirement of a sexual offence that there is physical contact or that it is motivated by sexual gratification. Many sexual offences do not involve contact. Rape and sexual assault is motivated by power and control.
- 1.6. The term 'revenge porn' is problematic as it focuses on just one form of motivation for this form of abuse. [Image-based sexual abuse](#) better explains and nature and impact of this growing phenomenon.

### **2. Current law on complainant anonymity: not just for sexual offences**

#### **2.1. Image-based sexual abuse complainants**

Currently in England and Wales, complainants of image-based sexual abuse are not guaranteed automatic anonymity when they report incidents to the police. If a case goes to court, the courts have the power to grant anonymity, but only in limited circumstances.

#### **2.2. Sexual offence complainants**

Complainants of sexual offences are guaranteed lifelong anonymity from the time of reporting.

#### **2.3. Youth defendants**

There are reporting restrictions for young defendants; but not complainants who are under 18.

#### **2.4. Female Genital Mutilation**

The [Serious Crime Act 2015](#), which came into force on 3 May 2015, introduced a new automatic reporting restriction for the victims of female genital mutilation (FGM).<sup>1</sup> This provision was explicitly modelled on the provisions for sexual offence complaints. The [Government justified](#) this new provision on the following basis: 'Reluctance to be identified as a victim of FGM is believed to be one of the reasons for the low incidence of reporting of this offence. It is anticipated that providing for the anonymity of victims of alleged offences of FGM will encourage more victims to come forward.'

#### **2.5. Forced Marriage**

The current Policing and Crime Bill provides for the introduction of automatic anonymity for complainants of forced marriage. Government Minister [Karen Bradley MP justified](#) this provision for

the following reasons: 'Lifelong anonymity will give more victims the confidence to come forward and seek justice.'<sup>2</sup>

### 3. Why is anonymity needed for image-based sexual abuse?

The reasons for granting anonymity to complainants of forced marriage, FGM and sexual offences apply equally to victims of image-based sexual abuse.

#### To increase police reports and successful prosecutions:

- 3.1. It is in the interests of justice that victims of crime, including image-based sexual abuse, come forward to report incidents to the police. If victims are not doing so, because of fears over publicity, then the interests of justice are not being served. The police report that one of the reasons for low prosecutions and convictions is that complainants are withdrawing reports due to fears over publicity.
- 3.2. We know that complainants of sexual offences are reluctant to bring complaints because of the fear, shame and humiliation. Anonymity encourages complainants to report incidents and the importance of this has been recognised since 1976.
- 3.3. Victims and services supporting victims report similar concerns regarding image-based sexual abuse.

#### To protect complainants from further harm:

- 3.4. The harms of image-based sexual abuse are mostly caused by the widespread distribution of private, sexual images online. When images/videos go viral in this way, internet searches reveal again and again the images, with friends, family, the public and employers able to view the images (and the accompanying abuse). This online presence is ever-lasting, with it being almost impossible to have images removed. This blights victims' online presence and can adversely impact not just on their health and well-being but future employment prospects. Victims can also fear for their physical safety, as often identifying info is published alongside the image/video ('doxing').
- 3.5. Granting automatic anonymity would go some way to reducing the likelihood of images/videos going viral and therefore reducing the harm and impact on victims.

### 4. Why 'Image-Based Sexual Abuse' is a form of sexual offending

The harms of 'revenge porn' are a form of sexual offending because of the sexual nature of the images, the sexualised nature of the harassment and abuse, and because their non-consensual creation and/or distribution infringes rights to sexual autonomy.

#### 4.1 Victims experience image-based sexual abuse as a form of sexual assault:

Women who have their private sexual images distributed without their consent have spoken about how they experience this abuse as a form of sexual offence. For example:

- Jennifer Lawrence (start of *Hunger Games*) referred to the extensive distribution of her naked images following a hack of the iCloud as [a "sex crime"](#);
- Chrissy Chambers (a YouTube star) who had images of a sexual assault distributed without her consent, has described those who distribute the images to be held ["accountable for sexual assault"](#).

#### 4.2 Sexual nature of images

- Image-based sexual abuse – ‘revenge porn’ – is a growing phenomenon because it is about the non-consensual distribution of private *sexual* images. The harm comes from the fact that it is *sexual* images that are shared without consent; the images go viral because they are *sexual*. Non-sexual images would simply not have the same potency to cause harm and abuse; nor would thousands of others distribute the images unless they were sexualised.
- The images often end up on pornography websites, some specifically focussing on ‘revenge porn’.

#### 4.3 Sexualised nature of abuse

- The harassment and abuse which women suffer when their private, sexual images are shared without consent comes from the sexualised nature of the abuse and the sexual double standard when women are castigated for any sexual agency. Women suffer harassment and abuse because they have ‘allowed’ images to be taken, or they have taken images themselves. The online abuse which accompanies distribution of private sexual images includes sexual threats (rape threats), as well as abusive comments about the victim’s appearance, body, sexuality and sexual agency.

#### 4.4 Harms sexual freedom and autonomy

- Sharing private sexual images without consent is a form of exploitation of an individuals’ sexual identity and infringes their sexual autonomy. All of us should be free to create or share private sexual images without fear of them being distributed without our consent.
- The distress caused by the distribution of their private sexual images and the way women are told to self-censor to avoid becoming victims of ‘revenge porn’, restricts the individual’s willingness or ability to exercise their rights to sexual autonomy and expression.

### 5 Offenders: it’s not about a sexual motive

The Government has stated that image-based sexual abuse is not a sexual offence because it does ‘not require any element of sexual contact or sexual gratification’. The implication is that a sexual offence requires sexual contact and/or sexual gratification. This misunderstands sexual offending.

Sexual offences are sexual offences because of the *mode* of perpetration (sexual acts), rather than  *motive*.

#### 5.1 Sexual offences are not motivated by sexual gratification

- The Government appears to misunderstand the motives of perpetrators of sexual offences such as rape and sexual assault. Research has found reasons for sexual offending include:
- One study found that ‘the most common type of rapist is one who is motivated by power and control’.<sup>3</sup>
- Another identified motives as: revenge and punishment, sexual access of unwilling/unavailable women, recreation and adventure.<sup>4</sup>
- Rapists attributed their offending most frequently to grievance, impulsivity or sexual need, with one third not being able to give any explanation of the motivation.<sup>5</sup>
- UN study found that ‘sexual entitlement’ was an important motivation, namely the belief that men have the right to sex, regardless of consent. It was also found that prominent motivations included entertainment, as well as anger and punishment.<sup>6</sup>

5.2 Therefore, while sexual gratification can be part of a motive for a sexual offence, it is only a small part. Even where the motivation is sexual, it is closely associated with negative views of women which disregard consent, believe in entitlement to sex and conduct acts of sexual assault as a means of collective punishment of women.

### 5.3 Sexual offences do not always require sexual contact

There are many sexual offences which do not require sexual contact, including preparatory offences such as grooming, causing individuals to perform sexual acts (without contact with the perpetrator), or coercing individuals to watch sexual acts.

### 5.4 Online abuse can be as harmful as contact offending: 'sextortion'

Most importantly, the strict dichotomy between physical acts of sexual offending and online abuse is no longer tenable. For example, offences of 'sextortion' where individuals are coerced into performing sexual acts online (and then blackmailed) do not involve sexual contact but are (or should be) treated as sexual offences. The harms to the individuals can be as intense and life-threatening as other forms of sexual abuse.<sup>7</sup>

## 6 International Perspectives: 'Revenge Porn' as a Sexual Offence

6.1 Across the world there is growing acknowledgement that image-based sexual abuse is a form of sexual offending:

- in the US state of Illinois, new laws have been debated on the basis that 'revenge porn' is a "a form of sexual assault"<sup>8</sup>;
- the Australian Legal and Constitutional Affairs References Committee discussed this phenomenon as a "sex crime"<sup>9</sup>;
- in Israel, 'revenge porn' is prosecuted as a sexual offence, with perpetrators treated as sex offenders.<sup>10</sup>

## 7 What's in a Name? Not 'Revenge Porn' but Image-Based Sexual Abuse

7.1 The term 'revenge porn' only covers one particular form of online harassment and abuse involving the non-consensual distribution of private, sexual images. The term is salacious and distracts media and policy-makers to focus only on 'revenge' which limits law and policy responses.

7.2 The term [image-based sexual abuse](#) better explains the nature and extent of this form of abuse. *It's not always about revenge*: there are many motives for non-consensual distribution of private sexual images including for a 'laugh', for financial gain, for group bonding. The harm to the victims is the same and should be prosecuted on the same basis. This term goes beyond *distribution* of images and videos, and also covers the non-consensual *creation* of sexual imagery: for example photos and videos created by means of upskirting<sup>11</sup>, forms of voyeurism and sextortion, or recordings of sexual assaults. It also covers perpetrators threatening to share images, commonly part of a pattern of coercive behaviour in abusive relationships.<sup>12</sup> Secondly, *it's not 'porn'*: the labelling of revenge porn as 'porn' is salacious, designed to titillate, and implies consent.

## 8 How common is image-based sexual abuse ('revenge porn')?

8.1 There is little UK-specific data on the prevalence of forms of image-based sexual abuse. [FOI statistics](#) on 'revenge porn' have revealed<sup>13</sup>:

- There were 1160 reported incidents reported to 31 police forces from April to December 2015
- 3 victims were 11 years old
- 30% of offences involved young people under 19
- The average age of a revenge porn victim was 25
- Around 11% of reported offences resulted in the alleged perpetrator being charged, 7% in a caution and 5% in a community resolution
- 61% of reported offences resulted in no action being taken against the alleged perpetrator.
- nobody had so far been charged in Lancashire, Devon and Cornwall or Cumbria
- In the West Midlands, 25% of reported offences resulted in a charge, while in Staffordshire, the rate dropped to 3%.

8.2 In Australia, [one study of 3000 young adults](#) found that<sup>14</sup>:

- 1 in 10 men and women were victims of 'revenge porn';
- 1 in 5 women reported that someone had sexually *harassed* them online, via mobile phone or other electronic devices;
- Women and men (29%) also reported similar rates of 'receiving unwanted sexually explicit images, comments, emails or text messages'.
- 9.6% reported that someone has *threatened* to post nude or semi-nude images of them online or send them onto others.
- interviews with law enforcement, legal services, as well as sexual and domestic violence services, revealed the ways that perpetrators of domestic violence in particular are using the threat and/ or distribution of a sexual image as a means to abuse, exploit and control victims.<sup>15</sup>

### Women as victims of image-based sexual abuse

8.3 The harms of image-based sexual abuse are deeply gendered. Not only are the majority of complainants women, but also the online shaming of women demonstrates the sexualized form of abuse.

8.4 Figures from the UK's Revenge Porn Helpline showing that 75% of 1,800 calls over six months were from women,<sup>16</sup> and snapshot data of a revenge pornography website over a 28 day period found that just 18 (5%) of the 356 new posts featured men.<sup>17</sup>

## 9 Further References

[Research Briefing re Online Abuse and Law Reform](#), Centre for Gender Equal Media, 5 July 2016

<https://claremcglynn.com/2016/07/05/gem-briefing-on-online-abuse-parliamentary-debate-law-reform-and-funding-specialist-support-services/>

[Image-Based Sexual Abuse: more than just 'revenge porn'](#)

Clare McGlynn and Erika Rackley, Research Briefing

<https://claremcglynn.com/revenge-pornography/revenge-pornography-quick-reads/>

['Not "revenge pornography". but abuse: let's call it image-based sexual abuse'](#)

Clare McGlynn and Erika Rackley, *Everyday Victim Blaming* 9 March 2016

<http://everydayvictimblaming.com/news/not-revenge-porn-but-abuse-lets-call-it-image-based-sexual-abuse-by-%E2%80%8Fmcglynnclare-erikarackley/>

- <sup>1</sup> Section 71 of the Serious Crime Act 2015, which came into force on 3 May 2015, introduced a new automatic reporting restriction for the victims of female genital mutilation (FGM).
- <sup>2</sup> <https://www.theguardian.com/society/2016/jun/07/victims-of-forced-marriage-to-receive-lifelong-anonymity>
- <sup>3</sup> Robertiello and Terry 2007, p 511: <https://www.infona.pl/resource/bwmeta1.element.elsevier-648dd3ad-39cf-3f2d-85df-c24864ae6001>
- <sup>4</sup> Scully, D. & Marolla, J. (1985) "Riding the bull at the Gilley's": Convicted rapists describe the rewards of rape' in Kennedy Bergen, Edleson, & Renzetti (eds) (2005) *Violence Against Women: Classic Papers*.
- <sup>5</sup> Mann, R. E., & Hollin, C. R. (2007) Sexual offenders' explanations for their offending *Journal of Sexual Aggression* 13(1), 3-9.
- <sup>6</sup> <http://www.partners4prevention.org/resource/why-do-some-men-use-violence-against-women-and-how-can-we-prevent-it-quantitative-findings>
- <sup>7</sup> <http://www.bbc.co.uk/programmes/profiles/40DhRnbN7b69gMkPqsJ1m0Q/sextortion> See also US report: <http://www.brookings.edu/research/reports2/2016/05/sextortion-wittes-poplin-jurecic-spera>
- <sup>8</sup> State Representative Scott Drury, stated that it is a form of sexual assault. See, Kim Bellware, 'Illinois Passes New "Revenge Porn" Law That Includes Harsh Penalties' *The Huffington Post* 30 December 2014 [http://www.huffingtonpost.com/2014/12/30/illinois-revenge-porn\\_n\\_6396436.html](http://www.huffingtonpost.com/2014/12/30/illinois-revenge-porn_n_6396436.html)
- <sup>9</sup> The Senate of the Commonwealth of Australia, Legal and Constitutional Affairs References Committee, 'Phenomenon colloquially referred to as "revenge porn"' February 2016 page 54, para 5.37
- <sup>10</sup> Yifa Yaakov, 'Israeli law makes revenge porn a sex crime' *Times of Israel* 6 January 2014 <http://www.timesofisrael.com/israeli-law-labels-revenge-porn-a-sex-crime/>
- <sup>11</sup> Clare McGlynn and Julia Downes, 'We Need a New Law to Combat "Upskirting" and "Downblousing"', *Inherently Human* 15 April 2015 <https://inherentlyhuman.wordpress.com/2015/04/15/we-need-a-new-law-to-combat-upskirting-and-downblousing/>
- <sup>12</sup> For more information see, Clare McGlynn and Erika Rackley, 'Research Briefing: mage-Based Sexual Abuse: more than just 'revenge porn' <https://claremcglynn.com/revenge-pornography/revenge-pornography-quick-reads/>
- <sup>13</sup> Peter Sherlock, 'Revenge pornography victims as young as 11, investigation finds' *BBC News* 27 April 2016 <http://www.bbc.co.uk/news/uk-england-36054273>
- <sup>14</sup> Anastasia Powell and Nicola Henry, 'Digital Harassment and Abuse of Adult Australians' (RMIT University, 2015): <https://www.rmit.edu.au/news/all-news/2015/november/online-abuse-affects-3-in-5-australians-study/>
- <sup>15</sup> Sexual Offences (Amendment) Act 1992
- <sup>16</sup> Government Equalities Office, Caroline Dinenage MP and The Rt Hon Nicky Morgan MP, 'Hundreds of victims of revenge porn seek support from helpline' 23 August 2015 <https://www.gov.uk/government/news/hundreds-of-victims-of-revenge-porn-seek-support-from-helpline>
- <sup>17</sup> Abby Whitmarsh, 'Analysis of 28 Days of Data Scraped From a Revenge Pornography Website' *everlastingstudent.wordpress.com* 13 April 2015