



Centre for  
Gender Equal  
Media



# The Centre for Gender Equal Media at Durham University

## Online Abuse Parliamentary Debate: Law Reform and Funding Specialist Support Services

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### Centre for Gender Equal Media

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The Centre for Gender Equal Media (GEM) at Durham University is a newly established think-tank generating evidence and policy ideas to work towards a gender equal media. Founded by a partnership between leading researchers and policy experts in the field, GEM's aim is for a democratic media, open and accessible to all. We make the connections across forms of media including print media, online spaces and social media, film, gaming and music videos, and seek to inform consistent evidence based policy-making across these areas.

## **Executive Summary**

### **1. Online harassment and abuse is gendered**

- 1.1 Online harassment and abuse is a gendered phenomenon with girls and women disproportionately affected.
- 1.2 The pervasiveness of gendered online harassment, of image-based sexual abuse ('revenge porn') and sexualised sexism ('sexualisation') creates the conditions within which harassment, violence and abuse thrive in society.

### **2. Changes linked into Government Violence Against Women Strategy**

- 2.1 Policy and interventions should therefore be framed within the Home Office-led Violence Against Women and Girls strategy at national level, and within similar strategies at local level.
- 2.2 Online abuse must be taken as seriously as off-line abuse.

### **3. Justifying legal regulation of online harassment and abuse:**

- 3.1. strengthening legal regulation (including the criminal law) can be justified to counter online harassment and abuse on the basis that:
- 3.2. regulation ensures freedom of speech for all
- 3.3. regulation is human rights enhancing
- 3.4. regulation is necessary to challenge the cultural harm of misogynistic online harassment and abuse.

### **4. Change the terminology: 'image-based sexual abuse'**

- 4.1. The term 'revenge porn' limits legal and policy debate: it's not just revenge - it's sexual abuse.
- 4.2. We recommend the term 'image-based sexual abuse' which includes both the creation and distribution of private sexual images without consent, and for all the reasons beyond just 'revenge'.

### **5. Strengthen the law on 'revenge porn' as follows:**

- 5.1. grant automatic anonymity for complainants:
- 5.2. expand scope of the law beyond 'revenge' (reckless intent)
- 5.3. extend the law to cover pornographic photoshopping
- 5.4. criminalise taking and sharing upskirt images:
- 5.5. introduce statutory civil law remedy

### **6. Strengthen CPS guidelines on prosecuting social media offences, including review of the 'high threshold' and definitions of grossly offensive and indecent.**

### **7. Adopt age-verification process for online pornography websites**

### **8. Provide sustainable funding for specialist support services including the Revenge Porn Helpline, the National Rape Helpline, the Domestic Violence Helpline and local domestic violence services and rape crisis centres.**

## 9. Endorsement of Parliamentary Motion on Online Abuse and Need for Law Reform and Education

9.1. We welcome the debate being held in Parliament on Thursday 7<sup>th</sup> July 2016 and fully endorse the proposed motion: *"That this House notes the increasing number of cases where the internet, social media and mobile phone technology are used to bully, harass, intimidate and humiliate individuals including children and vulnerable adults; calls on the Government to ensure clear legislation is in place that recognises the true impact and nature of online abuse (as distinct to offline abuse); and puts in place appropriate legal sanctions (including criminal), police training, CPS guidance and appropriate education for young people."*

## 10. Justifying Strengthening Regulation and Legal Sanctions

Online harassment and abuse is a gendered phenomenon with girls and women disproportionately affected. The pervasiveness of gendered online harassment, of image-based sexual abuse ('revenge porn') and sexualised sexism ('sexualisation') creates the conditions within which harassment, violence and abuse thrive in society. Policy and interventions should therefore be framed within the Home Office-led Violence Against Women and Girls strategy at national level, and within similar strategies at local level.

### 7.1 Regulation protects freedom of speech

Demands to strengthen laws to protect against online harassment and abuse are often challenged on the basis that they might hamper freedom of speech. On the contrary, appropriate legal sanctions are necessary to *ensure* the freedom of speech of all in society, including those who are victims of online abuse and harassment. Further, as the End Violence Against Women Coalition has [commented](#), there is often a lazy conflation of censorship with regulation, as can be seen by the debate around using filters to limit access to pornography online. Regulation is a well-established principle in relation to broadcast and print media, and the same principles can apply to online activities.

In this context, it is vital to remember that freedom of expression is a qualified right, as set out in Article 10 of the European Convention on Human Rights. Further, there is clear pedigree of regulating freedom of speech including the like of [John Stuart Mill](#) who argued that the law should not simply be reactive. It was precautionary too, designed to anticipate and preclude even the risk of harm: ['It is the business of the law to prevent wrongdoing, and not simply to patch up the consequences of it when it has been committed.'](#)

### 7.2 Regulation is human rights enhancing

Legal regulation should also be seen as enhancing human rights protections. This point was well made by the [Joint Parliamentary Committee on Human Rights](#) in the context of criminalising the possession of online pornography:

*"We welcome, as a **human rights enhancing measure**, the provision in the Bill to extend the current offence of possession of extreme pornography to include possession of pornographic images depicting rape and other non-consensual sexual penetration. We consider that the cultural harm of extreme pornography, as set out in the evidence provided to us by the Government and others, provides a strong justification for legislative action, and for the proportionate restriction of individual rights to private life (Article 8 ECHR) and freely to receive and impart information (Article 10 ECHR)".*

Therefore, regulation of online abuse and harassment can enhance the protection of human rights by enabling an online culture in which all can participate freely and without fear of harassment and abuse.

### 7.3 Cultural Harm of Misogynistic Online Harassment and Abuse

Regulation can be justified on the basis of the cultural harm of misogynistic online harassment and abuse, including 'revenge porn'. By '[cultural harm](#)' we mean the role of online harassment and abuse in creating a climate in which violence against women is (or at least appears to be) condoned, and in which equality and dignity are not protected.

We are at risk of entrenching a culture that accepts online harassment and abuse as a 'harmless prank'; where the vast majority of perpetrators are rarely reprimanded while victims continue labelled hypersensitive or humourless. In this context, online abuse such as 'revenge pornography' normalizes non-consensual sexual activity. While this results in serious harms to many individuals, it also adversely impacts on all members of society (though its effects are felt by women and girls in particular).

This means that online harassment and abuse, including 'revenge porn', helps to sustain a culture – a set of attitudes that are not universal but which extend beyond those immediately involved – in which sexual consent is regularly ignored. And by extension, this means that acts of sexual violence which are also predicated on an absence of consent are less likely to be recognized as such.

## 11. Strengthening the law: Not 'Revenge Porn' but Image-Based Sexual Abuse

The term 'revenge porn' only covers one particular form of online harassment and abuse involving private, sexual images. While using this term has certainly worked to secure the attention of the media and policy-makers, it's time to widen the focus of law and policy to address all forms of what we call [image-based sexual abuse](#).

### 8.1 What's in a name?

A major purpose of the criminal law is to express societal condemnation of specific activities with the hope of changing people's behaviour. The law can only achieve these purposes if the label applied to a crime is the right one. And 'revenge porn' is the wrong one. Why?

First, ***it's not always about revenge***. Revenge porn covers just one form of image-based sexual abuse – the malicious ex-partner sharing photos or videos without the agreement of their former partner. But there are many others kinds of image-based sexual abuse that the law should cover – for example the distribution of hacked images, where the motive is financial, taking and sharing upskirting images. Secondly, ***it's not 'porn'***. The labelling of revenge porn as 'porn' is salacious, designed to titillate, and implies consent.

## 8.2 What is image-based sexual abuse?

We recommend the term 'image-based sexual abuse' as suggested by [Clare McGlynn & Erika Rackley](#). 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, 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.

## 8.3 [FOI statistics](#) on 'revenge porn' and low level of prosecutions:

- 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%.

## 8.4 Women more likely victims of 'revenge porn'

Moreover, it is clear that [women are far more likely to be victims of revenge pornography than men](#). Snapshot data of a revenge pornography website over a 28 day period found that [just 18 \(5 per cent\) of the 356 new posts featured men](#). In fact, according to the same data, women are not only more likely to appear on the website but there was [greater community engagement \(views, comments and so on\) with the posts featuring women](#).

## 8.5 Strengthening the law on image-based sexual abuse

Since April 2015, it has been an offence to distribute private, sexual images without consent and with the intention of causing distress. This new law is a welcome start, but is unduly limited and already needs reform. It excludes many activities which are harmful and abusive. We [recommend the law is reformed](#) as follows:

### **8.6 Automatic anonymity for complainants:**

to grant automatic anonymity should be introduced for all complainants, in the same way as for other sexual offences. There is currently no automatic anonymity for complaints, including young people. This means that victims are reluctant to report offences to the police, or to support prosecutions, for fear of further distribution of their images and more abuse.

### **8.7 Expand scope of the law beyond 'revenge porn' (reckless intent):**

Reckless intention to remove the requirement to prove the perpetrator acted with the intention to cause distress. Perpetrators share images for many reasons including for financial gain, for a 'laugh', as part of group bonding or distribute images/videos from hacked or stolen computers/phones. Or, the law should cover the perpetrator who is reckless as to whether or not they cause distress to the victim, as the law in Scotland allows

### **8.8 Pornographic photoshopping:**

The law should be strengthened so that it covers 'pornographic photoshopping', where a pornographic image is superimposed onto an image, making it sexual. The English 'revenge porn' law does not cover photoshopped images, unlike Scots law. This is a problem, with one [recent case](#) involving a man who took a Facebook photo of a 15 year old girl, superimposed on her body an explicit image and then uploaded it to a porn website inviting comments.

### **8.9 Criminalise taking and sharing upskirt images:**

There is no specific offence covering taking images up a woman's clothes, without her consent, though some cases are prosecuted on the common law offence of outraging public decency. But this is little known to victims or the police. Whether it is by smart phone, hidden recording device (eg under a stairway) or a specially adapted camera in a shoe, this is now an easy offence to perpetrate. And it is a huge phenomenon.

While some perpetrators take images for their own use, they also typically end up on websites dedicated to the sharing of such material and such sites are big business. One was recently exposed by a [national newspaper](#) as receiving 70,000 views a day and was valued at £130 million.

The [current law](#) also does not cover the distribution of upskirt images and a new law covering all forms of image-based sexual abuse is required.

### **8.10 Introduce statutory civil law remedy:**

As with the Protection of Harassment Act 1997, a statutory civil remedy would victims with alternative justice options, with the possibility of recovering damages for the harm suffered.

## 9 Strengthen Crown Prosecution Service guidelines on prosecuting online abuse

In March 2016, the CPS issued revised interim guidance on prosecuting social media offences. We [welcomed this revised guidance](#) for its recognition that technology-related violence against women is on the rise and law enforcement must ensure we take online crime as seriously as offline offending. This is vital as it remains the experience of front-line women's support services that these crimes are often minimised by criminal justice professionals. Nonetheless, we recommended to the CPS that the interim guidance is revised further to strengthen its application to online abuse, particularly harassment and abuse of women.

### 9.1 Problem with 'high threshold' for prosecution

We are concerned that the 'high' threshold for many social media offences does not take into account the variety and severity of harms suffered by victims, mostly women, of online abuses. Further, we agree with the End Violence Against Women coalition which [advised in 2013](#) that concerns with free speech need to be balanced with Article 8 of the European Convention on Human Rights (right to respect for private and family life) in conjunction with Article 14 (Prohibition of Discrimination). Further, while concern is expressed regarding the potentially large number of communications that might fall under section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003, this underlines for us the seriousness of the issue. A potentially high number of criminal offences being committed daily suggests the vital need for clear action challenging these growing practices. Just because there is a high volume of crime, does not mean we should effectively disregard the law.

### 9.2 Unnecessarily Limited Scope of 'Grossly Offensive':

The examples of what comes within 'grossly offensive' in the Guidance are extremely limited. The Interim Guidance states that the following *may* be considered 'grossly offensive': 'very serious injuries', women being raped, or sadistic violence accompanied by supportive text.

This is a worryingly limited category of images or videos. We urged the CPS to revise this guidance so that it is reflective of the harms suffered by victims, by including all forms of sexual assault, all serious injuries (not just 'very' serious) and including sadistic violence with or without accompanying text.

### 9.3 Provide Guidance on Indecency in context of VAWG

Further, the Interim Guidance provides no reference to interpretations of 'indecent' in the communications offences. This is a broader category than 'grossly offensive' and should encompass a wider range of forms of communications abuses suffered by women, including all forms of image-based sexual abuse.

### 9.4 Improve Guidance on 'Context and approach' to prosecutions

We recommend that the VAWG section is strengthened to provide further guidance on the 'context and approach' when considering VAWG category 4 offences. This part of the



guidance cautions prosecutors against taking action in view of the 'instantaneous' often 'jokey' nature of social media. This must be balanced with guidance on the specific adverse impact of online abuse for women and girls. Online abuse is a gendered phenomenon, affecting predominantly women and girls. Communications which may be presented as 'banter' amongst or by men, may have devastating consequences for women in view of social attitudes of society, friends, families and employers. Online harassment and abuse can have the effect of limiting women's online activities, curtailing their rights to freedom of expression and limiting their engagement with social media.

We urge the Guidance, therefore, to state that prosecutors must ensure great emphasis on the harms to victims, rather than just on the motives or justifications of perpetrators.

## **10 Introduce Age-Verification of Online Pornography Websites**

- 10.1 We [recommend the adoption of age-verification processes](#) for online pornography websites, as including in the Digital Economy Bill.
- 10.2 We note that in [recently published research](#), young people also endorsed these proposals.
- 10.3 Such action to regulate pornography access for young people must also be viewed in the context of gender inequality, including inequality for young people, and violence against women and girls.
- 10.4 Pornography is implicated in ongoing gender inequality because of the ways in which it represents women and men, restricting women's sexual expression and shaping young people's developing sexuality in ways that reinforce unequal gender norms.
- 10.5 This action should be part of a holistic approach to tackling the harms of pornography including age-appropriate information about issues of equality, respect and consent through Sex and Relationships Education, as well as public information campaigns.

## **12. Sustainable Funding for Specialist Support Services**

- 12.1. It is vital that specialist support services are given sustainable funding from Government to continue to support victims. These services are providing a vital service for victims, yet have little dedicated or sustainable support.
- 12.2. We know that reports of all forms of violence against women are low, as women fear not being taken seriously by police and prosecuting authorities. This is why it is vital, in the interests of justice and to support victims, that specialist and dedicated services are available.
- 12.3. We recommend funding for specialist support services including the Revenge Porn Helpline, the National Rape Helpline, the Domestic Violence helpline and local domestic violence services and rape crisis centres.



### 13. Further references:

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

Clare McGlynn & 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/>

**[The Cultural Harm of Rape Pornography,](#)**

Erika Rackley and Clare McGlynn, Free Speech Debate, 22 May 2015

<http://freespeechdebate.com/en/discuss/the-cultural-harm-of-rape-pornography/>

**[New Technology: Same Old Problems – report of a roundtable on social media and violence against women](#)**

End Violence Against Women Coalition, 2013