

**Criminalising the Creation and Solicitation of Sexually Explicit Deepfakes:
Briefing for Baroness Owen's Private Member's Bill**
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Executive Summary

- **First step towards comprehensive Image-Based Abuse Law:** This Private Member's Bill should be seen as the first step towards a [comprehensive image-based abuse law](#) that includes a comprehensive criminal law, civil law sanctions, strengthened regulatory oversight, as well as greater education and survivor support. A coalition of survivors and civil society organisations are calling for this change led by End Violence Against Women and Girls, Glamour, #NotYourPorn and [survivor-activist Jodie](#).
- **Change terminology from 'deepfake porn':** Caution against use of the term 'deepfake porn', recommending instead *sexual digital forgeries* or *sexually explicit deepfakes* and describing this phenomenon as *deepfake sexual abuse*.
- **Exponential rise in the prevalence of sexually explicit deepfakes:** The use of nudify apps has increased significantly, with millions accessing this technology. The largest website dedicated to 'deepfake porn' receives approximately 14 million visits each month.
- **Deepfake sexual abuse is gendered:** Women are the predominant targets, and the harms are serious due to the sexual double standards of society and inequalities facing women online and offline. People identifying as LGBTQI and from black and minority ethnic communities are also significant targets.
- **Deepfake sexual abuse is facilitated by the largest social media and search companies:** Nudify apps are advertised on the largest social media platforms; for years, the largest search engines returned deepfake abuse websites at the top of search. Bing still does so. Deepfake sexual abuse is being sustained and facilitated by the largest internet platforms and payment providers. This is not a niche phenomenon.
- **Creating sexually explicit deepfakes is harmful to individual women and girls:** Creating a sexually explicit deepfake is a violation of sexual autonomy and integrity. It is a false representation, stealing someone's identity and likeness: a *sexual digital forgery*. The creation feels like an assault for many victims; it is invasive and an implicit threat. The imagery feels real; it does not matter than it is created with AI. The prevalence and ease of creation means all women and girls face the ever-present threat of being deepfaked.
- **Being sexually deepfaked is a real danger to psychological well-being:** Anxiety, trauma, tension are common due to the constant vigilance, the perpetual threat of more abuse and harassment, and more videos being made and possibly distributed. There is a risk of reputational, professional, and economic harm. There is a deep loss of trust.
- **Lack of criminal sanctions sends message this is normal and acceptable:** The lack of sanction risks normalising non-consensual sexual activity and creating a climate conducive to sexual violence.

- **Criminal sanctions justified due to the expressive power of the law:** The criminal law has a powerful expressive role, sending a clear message this conduct is wrong and harmful. It can help to shift attitudes and aid prevention. It provides a foundation for education and culture change.
- **Criminal law can strengthen platform regulation:** Criminalising creation can also instigate platform changes and innovations such as better deepfake detection. It would also clearly classify sexually explicit deepfakes as 'illegal material' enabling greater regulatory controls.
- **Criminal law provides redress for individual victims:** It provides a justice option for individuals and recognises the harm they experience.
- **Solicitation of sexually explicit deepfakes must be criminalised:** this would address the way many sexually explicit deepfakes are created and recognise the significant harms of solicitation.
- **'Sexual fantasy' not a valid defence:** Creating a sexually explicit deepfake generates a digital file that can so easily be shared deliberately, by accident, through hacking. This makes it very different from a sexual fantasy in one's head. It's not clear why some men's rights to a sexual fantasy should trump women's rights to sexual autonomy, privacy and dignity.
- **Women's freedom of speech is infringed by sexually explicit deepfakes:** While limiting creation is challenged as restricting freedom of expression, in fact, creation breaches women's rights freedom of expression by chilling their speech. The threat and prevalence of deepfake abuse inhibits women's online presence and engagement. Creation generates false representations of people, using their data, and should not be lawful or justified on free speech grounds.
- **Some jurisdictions have criminalised creating sexually explicit deepfakes:** This includes Victoria (Australia), Texas, South Korea and the Netherlands. Proposals have been made to criminalise creation in England & Wales and Denmark.
- **A creation offence should be part of comprehensive law covering all forms of image-based sexual abuse:** It should be a criminal offence to non-consensually create, solicit, take, share, or threaten to share intimate imagery.
- **Civil law options for redress should also be introduced:** This could include making a claim for compensation through civil courts, as well as getting orders against perpetrators and internet platforms to get material swiftly deleted or removed.

Read more:

- Clare McGlynn, '[The new deepfake laws are already making the internet safer for women, but there's still more to do](#)', *Glamour*, 24 April 2024.
- Clare McGlynn, '[Deepfake porn: why we need to make it an offence to create it, not just share it](#)' *The Conversation*, 9 April 2024.

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1. Changing the Terminology: Concerns with the Term 'Deepfake Porn'

Problem with the term 'deepfake': the term 'deepfake' was [coined](#) by the first man to develop the technology to create digitally altered pornographic videos. Even though the term 'deepfake' is by now well-established in referring to digitally altered videos of all types, it is important not to forget its problematic origin of the motive to create non-consensual 'pornography'.

Problem with language of 'fake': the term 'deepfake' is also problematic as it implies a dichotomy between 'real' and 'fake' which does not reflect women's experiences of abuse where the images feel very real, and the harms are real.

Problem with the term 'porn': pornography generally refers to legitimate, consensual adult material. These materials are non-consensual and a record of abuse. Its use here minimises the harm.

Victims' perspectives: victims struggle to name and understand their experiences when the language used (e.g. 'deepfake porn') conveys sexual gratification and consent.

Alternative terminology: other terms better capture this phenomenon including: - [Sexual digital forgery](#) - [Deepfake image-based sexual abuse](#) - [Sexually explicit deepfakes](#) - [Deepfake abuse](#) - [Deepfake sexual abuse](#) - [Non-consensual synthetic intimate imagery](#)

Sexual digital forgeries: This term emphasises the false nature of the material: it's stealing someone's likeness and sexual identity, creating a false representation of someone. The term 'forgery' clearly labels this as fraudulent and unlawful behaviour. It [originates](#) in the United States and is used in [draft legislation](#) before the US Congress. It is the preferred term. Nonetheless, for ease of understanding, we use sexually explicit deepfakes and deepfake sexual abuse.

2. How Common Are Sexually Explicit Deepfakes, 'Deepfake Porn' Websites and Nudify Apps?

2.1 Over **90%** of deepfakes are sexually explicit and target women: it's a gendered phenomenon.

- Compared to women, men are more [likely to know](#) about deepfakes, create, and view them.
- While this phenomenon started with sexually explicit deepfakes of [celebrity women](#), all women are now affected, including women in the public eye, e.g. [politicians](#), [journalists](#), [activists](#), as well as [ordinary women](#).

2.2 Creating sexually explicit deepfakes and nudes is fast, easy, cheap, and no longer niche.

There are different ways of creating sexually explicit deepfakes, which vary in their realism.

- Superimposing the victim's likeness into an already existing pornographic video/image.
- Using generative AI to create a '[new](#)' sexually explicit video, as with the [Taylor Swift deepfakes](#), where an original video is not needed.
- Photoshopping editing apps, which edit the original image to look sexually explicit (sometimes referred to as 'shallowfakes/cheapfakes' as it typically does not use deep learning or AI).
- '[Nudification](#)' where a single clothed image is changed into a nude using nudify tech which is widely available in [app stores](#).
- The number of nudify apps '[soared](#)' in use during 2023.

- Nudify apps are commonly being used in schools, including cases receiving worldwide attention from [Spain](#) and across the [US](#) and [Australia](#).
- There are many individuals who [make money](#) creating sexually explicit deepfakes for others.

2.3. Deepfake sexual abuse is getting more prevalent.

- A 2023 [report](#) found an increase in the number of deepfake porn videos available online has increased 550% since 2019, with 99% of the videos identified featuring female subjects.
- A report in [Wired](#) in March 2024 revealed thousands of copyright requests, a considerable increase, to get deepfake porn videos removed.
- In one month in 2023, [a study found that](#) across 34 deepfake porn websites, [there were over 24 million unique visitors](#).
- A set of [52 Telegram groups](#) used to access non-consensual intimate image services contain at least 1 million users as of September 2023.
- The nudify app ClothOff had over [half a million subscribers](#) in May 2024.
- Between July 2020 and July 2023 monthly traffic to the top 20 'deepfake porn' websites [increased by 285%](#).
- Referral spam (ie a response to a social media post on this theme that then links to the deepfake/nudification websites and apps) totalled 1,280 in 2022 compared to over 32,100 by December 2023, representing a [2,408% increase in volume year-on-year](#).
- There is an extensive network of online communities, message boards, [subscriber-only websites](#) surrounding the creation, solicitation, and sharing of sexual digital forgeries. In July 2024, an [investigation](#) founds tens of thousands members of telegram groups dedicated to nudify imagery.

2.4. Mainstream social media companies, search engines and payment providers are facilitating and sustaining a vast financial market and internet ecosystem in deepfake sexual abuse.

- Deepfake sexual abuse has become [a scaled and monetised online business](#).
- The largest sexually explicit deepfake website 'MrDeepFakes' receives an average of [14 million visitors a month](#) and has many advertisers.
- Pornhub is still [monetising 'deepfakes'](#), even though the website publicly banned them in February 2018.
- For years, the largest search engines, Google and Bing, return 'deepfake porn' websites at the [top of search results](#) fueling the trade and demand. Finally, in July 2024 Google [announced](#) it will downrank these sites, though Bing still high ranks them.
- Googling 'fake nudes' [returns links](#) to nudify apps.
- Searches for reports on celebrity views on being victimised by sexually explicit deepfakes, Google [returns](#) the actual sexually explicit deepfake video.
- Mainstream social media companies, like [X \(formerly Twitter\)](#), and [Instagram](#) are profiting from hosting adverts for nudify apps.

2.5 Some sexually explicit deepfakes are re-victimising sex trafficking survivors using the original abuse video

- A dataset used to generate sexually explicit deepfakes [uses images](#) scraped from porn production companies and producers that have been convicted of sex trafficking offences, reproducing and further spreading the original abuse.

- Further, the largest 'deepfake porn' website has [hosted](#) sexually explicit deepfakes deliberately made and named from the trafficking cases GirlsDoPorn.

3. What are the harms of creating sexually explicit deepfakes?

3.1. Creating sexual digital forgeries is wrong and harmful and justifies criminal sanctions.

- Creating sexually explicit deepfakes is a violation of the person's sexual autonomy, dignity, integrity, and privacy. It breaches women's fundamental rights.
- Deepfake sexual abuse is a form of '[virtual coercion](#)' where (mostly) men exercise control over women and their identities, privacy and autonomy, portraying them in ways not of their own choosing. The creator decides how the person appears, talks, and acts in the video.
- Deepfakes taint the memory associated with the original photos. One victim described looking at the original once treasured photos as '[it feels like the picture of an assault](#)'.

3.2. Sexually explicit deepfakes are in effect real images: this is the 'new voyeurism'

- It is commonly assumed that taking or sharing of "real-life" sexual images is worse than creating sexual digital forgeries. However, sexually explicit deepfakes are essentially a new way of "taking images", even more nefarious, as it is easier to create them, without the need to be in the presence of the victim.
- Sexually explicit deepfakes [feel 'real'](#) to victims, even though the images are fabricated and altered. The images are online, on phones, become reality.
- Any distinction between 'real' and 'fake' images is becoming blurred. Google's [latest research](#) in July 2024 stated that AI generated content could potentially 'distort collective understanding of socio-political reality'. AI content is real, its just different from capturing an image using non-AI photographic and video techniques.
- Creating sexually explicit deepfakes should be understood as a the 'new voyeurism'. Voyeurism is covertly viewing and/or recording another engaged in intimate or sexual activities. This was once perpetrated by the unaided physical gaze, then with smart phones, hidden cameras. Most jurisdictions criminalise voyeurism, regardless of whether or not the victim of the abuse or whether the imagery is shared.
- Creating sexually explicit deepfakes should be treated in the same way as voyeurism; the new version of voyeurism using AI.

3.3. Deepfake sexual abuse creates a collective sense of threat experienced by women and girls.

- The mere creation of sexually explicit deepfakes is experienced as an implicit threat to share: The image is the threat.
- *Fear and threat* are experienced when an image is created in digital form. It can so instantly and easily be shared whether maliciously, deliberately or through hacking. This is the '[invisible threat](#)' now pervading the lives of women and girls: the ever-present fear that deepfake can be made and shared without consent.
- Many [women have spoken out](#) about their fear of having sexually explicit deepfakes made of them without their consent, including students talking about how their professional futures and reputations are at such easy risk of sabotage due to the 'unpredictable behaviour' and one 'rash decision' by someone to create and then share 'deepfake porn'.

- One [survey](#) of women in 2024 found that 91% of respondents thought that deepfaking poses a threat to the safety of women, compared to 40% fearing other forms of image-based sexual abuse.

3.4. Creating Sexually Explicit Deepfakes Harms Society in General.

- **Silencing of women's speech:** the ever-present threat of deepfake sexual abuse, and the distribution of sexually explicit deepfakes is [silencing](#) women's speech and has a '[chilling effect](#)'. Sexually explicit deepfakes and the accompanying abuse causes women to [withdraw from public and online life](#), or severely restrict their online interactions. The widespread creation of sexually explicit deepfakes of [women politicians](#) is a [threat](#) to democracy.
- **Normalising non-consensual sexual activity:** The easy creation and proliferation of non-consensual deepfake pornography risks normalising non-consensual sexual activity. Thus, while it causes significant individual harms, the repercussions adversely impact on all members of society, though its effects are felt by women and girls in particular.
- **Conducive culture to sexual violence:** Its prevalence, combined with the minimisation of its harms, engenders a culture which is conducive to further forms of sexual violence – sustains a set of attitudes that are not universal, but which extend beyond those immediately involved as perpetrators or victims. This means that acts of sexual violence which are also predicated on an absence of consent are perhaps less likely to be recognised as such.

3.5 Soliciting (procuring) sexually explicit deepfakes

- There are many [examples](#) of individuals asking others to create sexually explicit deepfakes on their behalf. This can happen on a 1-1 basis, or in communities of men trading and sharing sexual digital forgeries.
- Solicitation of deepfakes is a serious concern and is not clearly covered by the criminal law. While some forms of solicitation may be covered by laws on assisting others to commit crime (or conspiracy), this is now always clear, especially with cross-border internet crimes.
- The case of [Jodie](#) in the recent BBC radio [documentary](#) on File on 4 involved solicitation and demonstrates the harms of this conduct. The offender shared Jodie's images and details to a deepfake forum where the video was then created and shared.
- Jodie has [described](#) how: 'It felt like the whole world collapsed around me. To take my photo out of context and have it used like that – I think it's everyone's worst nightmare. It is the ultimate violation'

4. Justifying a Criminal Offence of Creating Sexually Explicit Deepfakes

4.1 Expressive and Symbolic Role of Criminal Law

- A new criminal law can send a clear message to victims, perpetrators and society as a whole that conduct is wrong, harmful and should not be tolerated.
- Adopting new criminal laws can help shift attitudes and behaviours, reducing harm and prevalence.
- Not acting, and allowing the creation of sexually explicit deepfakes, sends a message that this conduct is acceptable and normalises it.
- Allowing the creation affects more than just the individual woman's sexual autonomy and self-

determination, it reveals a collective societal tolerance and even acceptance of sexual violence against women.

- Criminalising creation recognises the harms experienced by victims.

4.2 Inspiring Tech Solutions

- A creation offence would signal society's intolerance of the behaviour. This can inspire technology providers to develop better and more effective tools to combat the phenomenon.
- Deepfake detection tools have been [shown to have bias](#) and diversity problems, performing better on deepfakes with men than on deep fakes with women's images. Better detection is needed to enable swift removal of non-consensual material.

4.3. Interplay with the Platform Regulation Across Jurisdictions

- A comprehensive criminal law, including criminalising creating sexually explicit deepfakes, makes clear that deepfake sexual abuse websites and apps have no lawful purpose. This will inspire and force platforms to act by
 - challenging the [payment providers](#) that continue to prop up the deepfake financial ecosystem;
 - saying to Bing they can no longer highly rank 'deepfake porn' sites and apps;
 - making YouTube remove the [tutorial videos telling people how to create](#) sexually explicit deepfakes;
 - removing adverts for nudify apps on mainstream social media such as [X \(formerly Twitter\)](#) and Instagram.
- A creation offence can lead to 'deepfake porn' platforms and nudify apps restricting access. After the proposals for a creation offence in the UK, the largest website and nudify app [blocked](#) access in the UK. This is a significant moment and a testament to the power of criminal law to instigate further response to combat this phenomenon.
- The UK's Online Safety Act relies on the concept of "illegal content" to identify the platform responsibility in reducing harms. Criminalising creation of sexual digital forgeries will leave no doubt about their nature as 'illegal content', requiring platforms to act.
- Under the UK's [Online Safety Act](#) services must assess the risk arising from harms from illegal content or activity on their service and take proportionate steps to mitigate the risks.

4.4 Individual Redress Options for Victims

- A creation offence would provide victims with the option to pursue a criminal justice response to the harms of deepfake sexual abuse.

4.5 Preventing Behaviour

- Criminalising the creation of sexually explicit deepfakes sends a message that this behaviour is evaluated as a serious wrong. Ideally this changes peoples' behaviour.
- Once these videos are disseminated, it becomes nearly impossible to remove them online. In most cases, even if the video is removed, the victim has already been harmed irreparably.
- Given the immediate nature and severity of the harm, the primary focus of legal intervention against sexual digital forgeries should be on preventing the media from ever being created.
- This requires a comprehensive approach where societal condemnation of the behaviour, platform responsibility, and criminal law all play a role.
- We should harness the preventative function of criminal law. A [survey done by the Cyber Civil](#)

[Rights Initiative](#) asked the respondents who admitted to having engaged in image-based sexual abuse what might have stopped them. The majority indicated criminal penalties would have been the most effective deterrent.

4.6 Prohibitions are ‘human rights enhancing’ similar to extreme porn laws

- The justifications for introducing the offence of possessing extreme pornography apply equally to the creation of deepfake pornography without consent. The extreme pornography law criminalises the *possession* of pornographic images of rape, bestiality, necrophilia, life-threatening injury and serious injury to the anus, breasts or genitals.
- **Cultural harm and ‘human rights enhancing’:** Parliament’s Joint Committee on Human Rights [justified](#) the criminalisation the possession of rape pornography on the basis of its ‘cultural harm’ to society as a whole and that criminalisation is ‘[human rights enhancing](#)’, protecting the rights of women and girls to live free from violence and abuse. In particular, the Committee noted that:
 - *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).*
- These justifications apply equally to the creation of deepfake pornography. The easy creation and proliferation of non-consensual deepfake pornography normalises a culture of non-consent. Creating deepfake pornography without consent breaches women’s rights to sexual autonomy, integrity and dignity.

5. Rebuttals to Arguments Against a Creation Offence

5.1 ‘It infringes on Freedom of Expression’

- There is no absolute right to freedom of expression. The UN Special Rapporteur on Freedom of Expression and others has [affirmed](#) that online gender-based violence is “proliferating with the aim of intimidating and silencing women”, that has particular significance for women’s freedom of expression and that action is required to reduce this abuse. In balancing freedom of expression and protection against abuse, there are many arguments tipping the balance in favour of protecting the rights of women and girls:
- *Not a form of expression but a form of abuse:* Sexually explicit deep fakes are not a legitimate, or high-level, form of expression or creation worthy of protection, but a form of abuse. The core issue lies with the non-consensual representation of the victim’s image belonging to the most private sphere of life.
- *Privacy and data protection:* Freedom of expression does not protect against unauthorised use of private data, including our images. The non-consensual creation of deep fakes uses our personal data (images and videos) without our agreement, contrary to data protection laws.
- *Breach of women’s privacy rights:* the material is created without consent and breaches the privacy and autonomy of women and girls to determine their own sexual identities.
- *Breach of women’s freedom of expression:* Women’s speech is being silenced by the exponential rise in deepfake sexual abuse, justifying legislative action.

5.2 'It's Just a Sexual Fantasy'

- This is different from a sexual fantasy in one's head, or even a drawing. It is the creation of a digital file that is easily shared without consent whether deliberately, through hacking, or accidentally. The production of deepfake sexual abuse material creates a clear risk of harm.
- Creation of sexually explicit deep fakes should not be seen as an isolated individual's fantasy, but rather as part of a larger phenomenon inseparable from the systematic degrading of women as a group.
- Creation may be about sexual fantasy for some, but it is also about power and control, and the humiliation of women. Men's sense of [sexual entitlement](#) over women's bodies pervades the internet chat rooms where sexualised deepfakes and tips for their creation are shared. As with all forms of [image-based sexual abuse](#), deepfake abuse is about telling women to [get back in their box](#) and to get off the internet.
- In any event, it is not clear why we should privilege men's rights to sexual fantasy over the rights of women and girls to sexual integrity, autonomy and choice. This is non-consensual conduct of a sexual nature. Neither the porn performer nor the woman whose image is imposed into the porn has consented to their images, identities and sexualities being used in this way.

5.3 'There is no Harm in Just Creating a Sexually Explicit Deepfake'

- There are distinct harms in creating, soliciting, threatening to share, and sharing sexually explicit deep fakes. The harms occur both on individual and societal levels
- The lawfulness of sexually explicit deepfakes sends a message that this is acceptable conduct. It creates a culture of non-consent. It suggests women's concerns that their likeness and sexual identities are being used without their agreement are not taken as seriously as men's rights to create sexual content at their will.
- It creates a digital file that can be distributed at any moment whether through a deliberate act, or through hacking or some other misuse of the file. Women and girls are now experiencing the ever-present threat of having deepfake porn made of them without consent, and the risk that is then shared. Criminal offences are enacted where there is a risk of harm.

5.4 'Social Harms are Already Over-criminalised'

- The 'last resort' character of criminal law cautions against over-criminalisation for social harms.
- However, women's harms have historically been under-criminalised and not taken seriously.
- Police will only ever get involved if the creation of the material becomes known, perhaps through the perpetrator making the victim aware, or through some form of hacking or other identification of the imagery.

5.5 'It's Impractical to Enforce'

- Many criminal offences are challenging to enforce but that does not prevent their introduction and prosecution, where possible.
- There are challenges in enforcing a creation offence, especially because it is hard to identify and locate the perpetrator, who can be located outside the criminal jurisdiction. But these challenges do not negate the fact that there is a need for a creation offence which also has a symbolic role.

5.6 'We don't want to criminalise young people'

- The aim of a creation offence is not to overly-criminalise young people.
- However, the criminal law also provides the basis for strong and effective education and culture change initiatives, grounded on the idea that creating sexual digital forgeries is wrong.
- The police and Crown Prosecution Service has clear guidance limiting the use of the criminal law against young people and emphasising education, warnings and community engagement.
- The Government and Law Commission rejected this argument about young people when justifying a consent-based non-consensual distribution of intimate images offence. The Law Commission stated:

We have carefully considered the arguments and conclude that it is appropriate for the intimate image offences to continue to apply to perpetrators and victims of all ages. The criminal justice system, in particular the youth justice system, is designed to respond to the risks associated with children being criminalised.

Cases involving children are only prosecuted where there is a public interest in doing so (suitably robust prosecutorial guidance would help ensure this).

5.7 'CPS guidance is not enough to protect against over-criminalisation'

- Some argue that a comprehensive, consent-based offence may result in unnecessary prosecutions. The Law Commission rejected this argument when justifying the consent-based non-consensual sharing of intimate images offence:
- *'As with all offences, the prosecuting authorities will also have discretion over what cases to charge and prosecute. The public interest test will assess whether it is appropriate to prosecute cases that involve, for example, very borderline criminal culpability. In addition, criminal investigation, charges, and prosecutions will only happen in cases that come to the attention of the police and prosecutors. We do not expect that all cases of intimate image abuse will be prosecuted, or even reported. In low level cases, not reporting the abuse may be appropriate where the issue is satisfactorily resolved between parties without needing to notify the police. However, it is important that the base offence is available for the wide range of cases that merit a criminal justice response.'* ([para 6.42](#))

5.8 'Guidance from College of Policing and CPS will ensure motives investigated and prosecuted.'

- In relation to the April 2024 proposed criminalisation offence, which required proof of motives, it was sometimes suggested that a comprehensive, consent-based law is not needed as CPS and police guidance will ensure the right cases are taken forward and assistance is given as to how to prove sexual gratification or causing distress.
- But relying on such guidance is trying to solve a problem we do not need to create. Guidance is not needed if there is a straightforward, consent-based law.
- We know from experience of the sharing sexual images offence that the mere requirement to prove motives puts the police off investigating cases. It is an additional evidential burden, meaning reports are less likely to be taken forward. Even if the CPS state that proving sexual gratification is straightforward (which is disputed), the cases are simply unlikely to get to that level of consideration where the law is known to require this additional level of evidence.

5.9 'Consent-based law likely to result in a "victim's previous sexual or private behaviour being interrogated in open court"'

- During debates on the cyberflashing offence (which requires proof of motives), the Government Minister at the time, Lord Parkinson, made the very concerning statement that the Government's

motive-based approach was preferable as a consent-based law risks raising women's sexual history or other private behaviour in criminal proceedings.

- First, this justification – if valid – applies equally to the non-consensual sharing of intimate images offence which was included in the Online Safety Act 2023.
- Secondly, it is true that there is an undue focus on the behaviour of complainants in sexual offence cases, despite laws to the contrary. But this is why the governments have invested significantly in Operation Soteria to improve rape investigations so this does not happen.
- We should adopt laws on the basis of the appropriate principles – here the core wrong being non-consent – rather than drafting laws in light of fact that existing approach to investigating and prosecuting sexual offences are failing women. That really would be throwing in the towel.

6. What Are the Laws on Creating Sexually Explicit Deepfakes in other countries?

- **Criminal laws on non-consensual *distribution* of intimate imagery:** A growing number of jurisdictions around the world criminalise the *distribution* of sexually explicit deepfakes including England and Wales, some states in the [US](#), Canada and Australia, and the [European Union](#)

6.1 Creation Offence in the State of Victoria, Australia and Aggravating Factor at Federal level

- In 2022, as an amendment to Sexual Offences, the State of Victoria added the [Image-based Sexual Offences Subdivision](#) of “producing, distributing, or threatening to distribute intimate images”.
- ‘Production of the image’ explicitly includes digitally creating (whether generated or altered) or manipulating the still or moving image. The [statutory example](#) is where someone ‘digitally superimposes another person’s face onto a photograph of a naked person taken from an online magazine’. This clearly emphasises that the creation of sexually explicit deepfakes is included in these provisions.
- The offence does not address solicitation (procuring) of sexually explicit deep fakes
- In summer 2024, Australia enacted the [Criminal Code Amendment \(Deepfake Sexual Material\) Act 2024](#) which makes it a federal offence to distribute sexually explicit deepfakes with creation an aggravating factor at sentencing.

6.2 Creation Offence in the State of Texas, USA

- In September 2023, State of Texas [passed the bill TXSB1361](#) criminalising the “production or distribution of deepfake video that appears to depict the person with the person’s intimate parts exposed or engaged in sexual conduct”.
- The offence defines “deep fake video” with the intent to deceive. This might be interpreted to exclude not-so-sophisticated sexual digital forgeries. It might also provide a defence for someone claiming they did not have this intention but, instead, were intending the deepfake as humorous or artistic.
- The Act only mentions “deep fake videos” which leads to still images not being explicitly covered under the offence. The offence does not address solicitation of sexually explicit deep fakes

6.3 Federal Proposals in the United States for a civil offence

- In July 2024, the [DEFIANCE Act](#) passed the Senate and would create a federal civil right of action relating to the non-consensual creation of 'digital forgeries' (and the solicitation of such material). This Act directly addresses deepfakes under the name digital forgeries.
- The DEFIANCE Act states that any identifiable individual may bring a civil action against any person that knowingly produced or possessed the non-consensual sexual digital forgery with the intent to disclose it, or knowingly disclosed or solicited the forgery.

6.4 Creation Offence in the Netherlands

- Article 139h/1 of the Dutch Criminal Code covers image-based sexual abuse in general, as follows: intentional and unlawful making of an image of a person of a sexual nature; having the image as referred to under paragraph a at one's disposal, punishable with imprisonment up to a year. Article 139h/2 makes publication punishable by imprisonment up to 2 years.
- In November 2023 this article was interpreted by a [court](#) for the first time in application to the creation of sexually explicit deepfakes. The creator and distributor of a so-called "deep fake porn" video was sentenced to 180 hours of community service.

6.5 South Korea: criminalising creation, possession and distribution

- In 2024, in response to the growing crisis of deepfake sexual abuse, Korea strengthened its criminal laws by introducing [new legislation](#) that criminalises the creation, as well as possession and distribution of sexually explicit deepfakes.

6.6 Denmark: proposed new offence criminalising creation

- In October 2024, Denmark [announced](#) plans to criminalise the creation of sexually explicit deepfakes. The Government stated that there was a need to 'strengthen the protection against subsequent possible accidental sharing and to send a clear signal about the unacceptable nature of the production itself, regardless of purpose'.

Further reading

- Clare McGlynn, '[Deepfake porn: why we need to make it an offence to create it, not just share it](#)' *The Conversation*, 9 April 2024.
- This Briefing draws on the forthcoming academic article: Clare McGlynn and Rüya Tuna Toparlak, '[The New Voyeurism: criminalising the creation of 'deepfake porn'](#)' forthcoming

Author biography

Professor Clare McGlynn is a Professor of Law at Durham University and an expert on violence against women and girls, including deepfake abuse, [image-based sexual abuse](#) and [cyberflashing](#). Her pioneering research has influenced new criminal laws in many countries around the world. She worked with a coalition of women's rights organisations to [strengthen](#) the UK's Online Safety Act 2023. She is the co-author of the key policy report [Shattering Lives and Myths: a report on image-based sexual abuse](#) and co-authored book [Image-Based Sexual Abuse: a study on the causes and consequences of non-consensual nude and sexual imagery](#) (2021). She is also co-author of [Cyberflashing: recognising harms, reforming laws](#) (2021), co-editor of [Rethinking Rape Law: international and comparative perspectives](#) (2010) and author of [Families and the European Union: law, politics and pluralism](#) (2006).

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