

European Commission Proposal for a Directive on Violence Against Women and Domestic Violence

Article 7: Non-Consensual Sharing of Intimate or Manipulated Material

Recommendations for Change

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Executive Summary

This Policy Briefing focuses on Article 7 of the proposed Directive on Violence Against Women and Domestic Violence which seeks to criminalise some cases of non-consensual sharing of intimate or manipulated material and is based on the authors' recently published [research](#).

Maintain the following elements of Article 7:

- The broad definition of 'intimate image' which includes material originally shared with consent.
- The focus on non-consent, without the need to prove a malicious motive of the perpetrator.

Revisions required to Article 7:

- Strengthen provisions on deepfake porn to cover all material manipulated or altered to make it nude, sexual or including sexual activity. This will ensure nude images and those produced by the growing number of nudification apps are included.
- Remove restriction on sharing to a 'multitude of end-users' to reflect victims' experiences of harm.
- Strengthen requirement to criminalise threats by covering *all* threats to distribute without consent.
- Extend Article 7 to include *taking* intimate images without consent.

Manipulated media and deepfakes: expand scope to cover all harmful material

The proposal recognises the serious harms of distributing altered and manipulated intimate images without consent; a [growing](#) and particularly [egregious](#) form of abuse.

What kind of material does Article 7(b) cover?

- It covers material that is 'produced or manipulated' to make it 'appear as though another person is engaged in sexual activities' without the depicted person's consent.
- It therefore covers pornographic deepfake videos that realistically swap a victim's face, voice, and/or any other identifiable personal characteristics, into a body engaging sexual conduct.

But what kind of material does Article 7(b) *not* cover?

- It does not cover *all* forms of manipulated and altered images that cause serious harms.
- It excludes [nude](#) images and images considered sexual and/or intimate in some [marginalised](#) and minority communities.

Why should nude images fall within the scope of Article 7(b)?

- *Alarmingly common*: Nude images are an extremely common form of altered and manipulated image, particularly with growing number of '[nudification](#)' apps that remove clothing from the images of women and other people and make them look realistically nude.
- *Causes life-shattering harms*: Distributing manipulated nude images can cause life-threatening and life-shattering [harms](#) to the victim.
- The risk of harm is not less where images are of nudity compared with videos of 'sexual activities'
- *Threats to freedom of speech*: [Women's freedom of speech](#) is threatened by the distribution of manipulated images as it adversely impacts on their ability to engage in public and democratic debate. Freedom of expression and women's rights are [mutually reinforcing](#).
- Freedom of expression is not an absolute right, meaning that it can be restricted under specific conditions of [legality, necessity, and proportionality](#).

Proposed amendment:

- Revise Article 7(b) to cover 'producing or manipulating and subsequently making accessible to a multitude of end-users, by means of information and communication technologies, images, videos or other material, making it appear as though another person is **nude or** engaged in sexual activities, without that person's consent'.

Scope of Distribution of Intimate Material: extend scope to cover all harmful sharing

What are the requirements in Article 7(a) and (b) regarding distribution of the images or videos?

- Article 7 (a) and (b) are limited in scope as they only apply where material is made 'accessible to a multitude of end-users by means of information and communication technologies'.
- Recital no. 18 clarifies that the term 'multitude' should be "interpreted and applied having regard to the relevant circumstances, including the technologies used to make that material accessible and the means these technologies offer for amplification."

Why should the reference to the 'multitude of end-users' be removed?

- *Excludes seriously harmful experiences*: This restriction means many people will have no protection from seriously harmful experiences, as victims are harmed where material is distributed to individuals and groups of significance in their life, such as a small number of friends, family or employer. There is no empirical evidence that the harms experienced by victims are worse when material distributed to larger numbers of people.
- *Lacks clarity and legal certainty*: The term 'multitude' will not comply with the fundamental principles of legal certainty and clarity. As such, individuals will also not be able to determine, in advance, whether their actions will constitute a breach of the criminal law.
- *Divergent national transposition*: This lack of clarity will result in divergent national laws.
- *Unnecessary regarding legal basis*: This limitation is not required for the legal basis.
- The *European Economic and Social Committee* has clearly [stated](#) that: "this requirement is ambiguous, vague and highly open to interpretation, and does not deal with the real reputational harm which is sometimes greater if the material is shared only with people from the victim's close social, family or work circles".

Proposed amendment

- We support the amendments proposed in the [draft Report](#) of the European Parliament Committees on Civil Liberties, Justice and Home Affairs Committee on Women's Rights and Gender Equality to remove 'multitude of end-users' with 'other end-users'.

Threats to distribute intimate images: extend to cover all threats

Article 7(c) covers the intentional threat to distribute intimate images or videos, including deepfakes and other manipulated images but only where this is done "in order to coerce another person to do, acquiescence or refrain from a certain act". This means Article 7(c) is likely to address:

- sexual extortion where a victim has already shared intimate images and the perpetrator threatens to distribute them, unless further intimate material is shared.
- blackmail where the perpetrator demands money to prevent distribution, a more common form of extortion where adults are the victims.
- some situations of domestic abuse where a perpetrator threatens to distribute material as part of a broader pattern of control and abuse which might include a direct focus on a 'certain act' as required by the provision.

What does Article 7(c) on threats not include?

However, in limiting the scope to only certain types of threats, Article 7(c) will not protect many situations where individuals, mainly women, are threatened, including:

- threats made with the aim of causing distress or alarm to the victim.
- Threats made as a general pattern of control and power, not related to a specific, provable act.

Why should the scope of Article 7(c) be broadened to cover all threats to distribute?

- Threats to share intimate material is a particularly serious form of abuse, often experienced as life-threatening and paralysing. For others, the threat of disclosure is continuous, cumulative and can become overwhelming, casting a relentless shadow over victims' lives.

How common are threats to share intimate images without consent?

- A recent Irish [report](#) revealed an 85% increase over the last year in cases involving threats to share intimate images.
- Across the UK, Australia and New Zealand, a [study](#) of over 6,000 people found that 1 in 5 participants had experienced threats to distribute intimate images without consent and over half of those identifying as victims of image-based sexual abuse reported being subject to threats.

What are the harms of threatening to share intimate images without consent?

[Life-threatening](#) and paralysing: For Louise, her ex-girlfriend threatened to share her intimate images and the fear was such that she tried to end her life: *'I was embarrassed, and I was ashamed ... Even now I'm still not sure whether or not she will send them ... my mental health deteriorated quite significantly ... I took an overdose.'*

[Power and control](#): For some, threats are part of a means of power and control. Alison: *So I was 18 ... I was drunk and [my ex-boyfriend had] taken photos of me ... the next day ... he showed me them. And I was a bit like "oh no". And then he started saying "oh, I've showed my friends". And each time we'd get into an argument it would be like "oh, I'm going to put them on the website" ... He was quite controlling and manipulative ... But I just tried to keep the peace because I obviously didn't want them to end up anywhere.*

Proposed amendment:

- Recommend deleting requirement to prove coercion: 'threatening to engage in the conduct referred to in points (a) and (b)

Revise Directive to include *taking* as well as sharing intimate material without consent

- The proposed Directive only prohibits *sharing*, not taking, intimate material without consent.
- Limiting the measure in this way fails to reflect the experiences of many who are victim of multiple forms of intimate image abuse, as one connected experience. In one international [study](#), for example, two-thirds of victims experienced more than one form of image-based sexual abuse. Victims, therefore, do not experience the abuse in the discrete categories of ‘taking’ and ‘distributing’, but as a whole.
- Further, the taking of intimate images without consent is experienced as a violation of fundamental rights to privacy and sexual autonomy and should be proscribed by the criminal law.
- Some Member States do criminalise some forms of taking intimate material without consent, such as upskirting, but coverage is patchwork. This mosaic of laws covering image-based sexual abuse is confusing for victims, as well as criminal justice personnel, meaning fewer reports, investigations and prosecutions. Images and videos are taken, stored and distributed using ICTs and cross-border platforms.

References and About the Authors

This Policy Briefing is based on the following article which is free to access and download:

- Carlotta Rigotti and Clare McGlynn (2022). [Towards an EU criminal law on violence against women: The ambitions and limitations of the Commission’s proposal to criminalise image-based sexual abuse](#). *New Journal of European Criminal Law*, 13(4), 452–477.

See also:

- Rigotti, Carlotta. (2022). [A long way to end rape in the European Union: Assessing the commission’s proposal to harmonise rape law, through a feminist lens](#). *New Journal of European Criminal Law*, 13(2), 153–179.
- McGlynn, C., Rackley, E. & Houghton, R. (2017) [Beyond ‘Revenge Porn’: The Continuum of Image-Based Sexual Abuse](#). *Feminist Legal Studies* 25, 25–46 (2017).
- McGlynn, C et al (2019) [Shattering Lives and Myths: a report on image-based sexual abuse](#).

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