

IMAGE-BASED SEXUAL ABUSE: MORE THAN JUST 'REVENGE PORN'

Clare McGlynn and Erika Rackley

'Replacing the language of 'revenge porn' with the more accurate and inclusive 'image-based sexual abuse' would be a small – yet important – step in challenging the cultural context conducive to high levels of sexual coercion and violence.' (Clare McGlynn and Erika Rackley)

Over the last few years we have become increasingly familiar with the term 'revenge porn' to describe the growing phenomenon of vengeful ex-partners distributing private, sexual images without the consent of their former partners. In recognition of the humiliation, distress and real pain this practice causes, countries across the world, including England & Wales and Scotland, have introduced new criminal laws to try to deter and punish such behaviour. However, while the language of 'revenge porn' has caught the

attention of the media and policy-makers, it's time for new terminology. We suggest 'image-based sexual abuse'.

The term 'image-based sexual abuse' better captures the nature and harms of the non-consensual creation and distribution of private, sexual images. Unlike 'revenge porn', it captures both the broad range of practices being challenged and conveys the nature and extent of the harms suffered by victims.

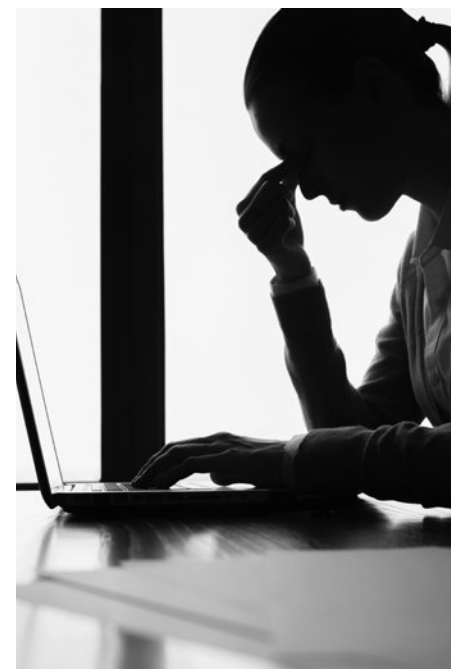
WHAT IS IMAGE-BASED SEXUAL ABUSE?

Our term 'image-based sexual abuse' – which we define as the 'non-consensual creation and/or distribution of private, sexual images' – includes typical revenge porn, as well as consensually taken images that have been hacked or stolen and then shared. But it goes beyond distribution 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.

WHAT'S IN A NAME?

Terminology frames options for law reform, as well as playing a vital expressive role in our public debates. 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.



Secondly, it's not 'porn'. The labelling of revenge porn as 'porn' is salacious, designed to titillate. It distracts governments, leading some down the wrong path by thinking that images must be 'pornographic' or 'obscene' before being unlawful; or that the perpetrator must be motivated by sexual gratification.

EXAMPLES OF IMAGE-BASED SEXUAL ABUSE

Revenge pornography

Vengeful ex-partners don't have to look very far for places to upload and share explicit images without the consent of their former girlfriends and partners. There are over 3,000 websites dedicated to revenge porn.

Threats and blackmail to reveal intimate photos are common within abusive relationships. For some women within minority ethnic communities, coercion and blackmail is particularly threatening, with possible consequences including getting disowned, ostracised, or in the worst case scenario, getting killed.

Upskirting

Upskirting is the surreptitious and non-consensual taking of images or videos up a woman's skirt. Whether it is by smart phone, a 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.

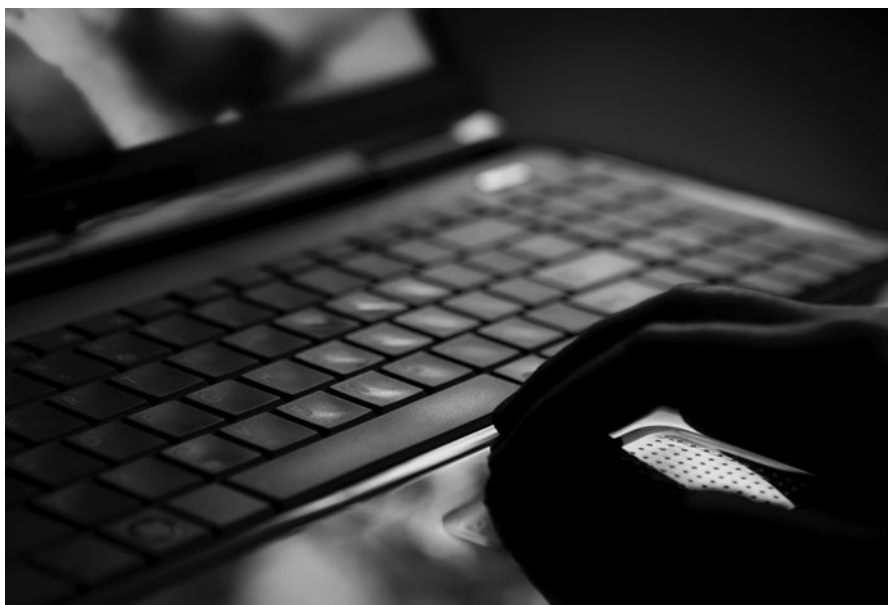
While some perpetrators take images for their own use, they also typically end up on websites dedicated to the sharing of such material and such sites are big business. One was recently exposed by a [national newspaper](#) as receiving 70,000 views a day and was valued at £130 million.

Recording Sexual Assaults and 'Sextortion'

One of the most disturbing examples of non-consensually created sexual images involves the recording of rape and sexual assaults. One notorious example involved two high school footballers from Ohio who were [found guilty](#) of raping an incapacitated young woman after pictures and films of the crime were distributed online and across social media by the attackers. In this case, the images were used to further harass and humiliate the victim, blaming her for the assaults and resulting in death threats against her.

Sextortion

[Sextortion](#) is the practice whereby perpetrators typically coerce victims into creating and sharing images, or performing sexual acts, and then threatening the victim with exposure unless they continue the activities. Other times, the perpetrator hacks into people's social media profiles and, on finding intimate images, threatens to share them.



Pornographic Photoshopping

Recognition is growing that focussing the law and public debate too narrowly around classic 'revenge porn' cases is obscuring from public view, and legal redress, other forms of image-based sexual abuse. One [recent case](#) involved 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. Such acts are not covered by English 'revenge porn' laws which exclude pornographic photoshopped images (unlike Scots law).

HARMS OF IMAGE-BASED SEXUAL ABUSE

The harms of image-based sexual abuse are deeply gendered. Not only are victims mostly women and girls, but the abuse and harassment to which they are subjected is sexualised and misogynistic. The persistence of sexual double standards enables offenders to shame and humiliate victims - with families, friends, employers and strangers commonly blaming victims.

Serious mental and physical impacts

Many victims suffer extreme mental distress, with some attempting and committing suicide. Many fear direct physical attacks after their personal details are posted online, together with the images which are often accompanied by comments encouraging further abuse. Some victims find their livelihoods at risk when employers find the images, with others unable to get work when their online profile is dominated by intimate images, sometimes on porn sites.

Breach of rights to privacy and dignity

Image-based sexual abuse, in its deliberate infringement of victims' self-worth and failure to treat them with respect, violates the dignity of its victims. It is also an egregious violation of the victim's privacy – removing the right to control with whom we share intimate images.

Inhibiting sexual expression

Women are too often blamed for creating sexual images of themselves - nude selfies - or for 'allowing' intimate images to be taken. This 'shame punishment' is fuelled by the sexual double standard and risks inhibiting women's sexual expression. Women must be free to express themselves sexually in whatever way they choose – including taking and sharing private, sexual images and videos – without fearing being blamed for later abuse.

Cultural harm

Image-based sexual abuse is a form of cultural harm. In normalising non-consensual sexual activity, it sustains a culture in which sexual violence is less likely to be recognized, investigated or prosecuted. Image-based sexual abuse, therefore, plays a role in shaping the cultural context conducive to high levels of sexual coercion.

'We must harness the power of law to challenge image-based sexual abuse which not only threatens women's sexual autonomy and fundamental rights, but is also a form of cultural harm affecting all of society'. Clare McGlynn and Erika Rackley

PROSECUTING REVENGE PORN

Recent data reveals that in 9 months in 2015, across England and Wales, the police took no action following most reports of revenge porn.

**THERE
WERE
REPORTED
INCIDENTS**



OF REVENGE PORNOGRAPHY
FROM APRIL 2015 TO DECEMBER
2015 TO 31 POLICE FORCES

**FACEBOOK
WAS USED BY
PERPETRATORS
IN 68%** OF CASES



WHERE
SOCIAL MEDIA WAS MENTIONED IN
REPORTS FOLLOWED
BY INSTAGRAM (12%) SNAPCHAT
(5%) WHATSAPP: 5% TWITTER: 4%

- Three victims were 11 years old with some 30% of offences involving 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. Among the main reasons cited by police include a lack of evidence or the victim withdrawing support

Number of people charged:

Nobody had so far been charged in Lancashire, Devon and Cornwall or Cumbria, for example. In the West Midlands, 25% of reported offences resulted in a charge, while in Staffordshire, the rate dropped to 3%.

WHAT CAN BE DONE?

Change the language

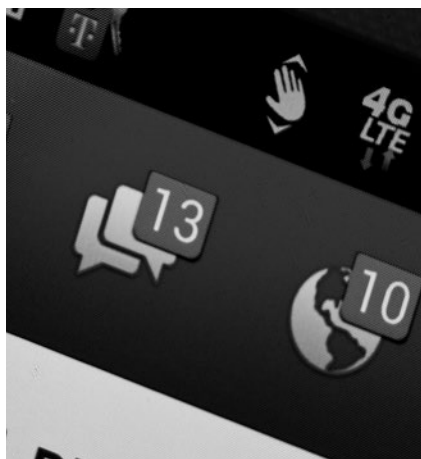
Replacing the language of 'revenge porn' with the more accurate and inclusive image-based sexual abuse would be a small – yet important – step in challenging the cultural context conducive to high levels of sexual coercion and violence.

Change the law

Reform is urgently needed to ensure it covers all forms of image-based sexual abuse, includes civil and criminal remedies, and grants anonymity to all victims.

Change the culture

Social and cultural practices are rapidly evolving, with technology playing an ever greater role in all activities. We have the opportunity now to influence attitudes, ensuring that consent, respect and dignity shape our sexual lives. Appropriate and compulsory sex and relationships education in schools would be a good start, together with national campaigns to challenge current practices and properly funded specialist support organisations for victims.



'Image-based sexual abuse is a form of cultural harm. It normalizes non-consensual sexual activity and its prevalence contributes to a culture which is conducive to sexual violence.'

Clare McGlynn and Erika Rackley

REFORMING THE LAW?

The new law is a welcome start, but is unduly limited and already needs reform.

Parliament should:

- Introduce automatic anonymity for all complainants
- Remove intention to cause distress requirement so the law covers offenders sharing images for financial gain, for a 'laugh' or from hacked or stolen computers/phones
- Or extend the law to cover reckless intention to cause distress
- Extend the law to cover threats to distribute without consent
- Ensure creation and distribution of upskirt images is criminalised
- Introduce a statutory civil law remedy to provide victims with alternative options

RESEARCH SPOTLIGHT

ENGLISH LAW ON 'REVENGE PORN'

Since April 2015, it has been a criminal offence - subject to up to 2 years imprisonment - to:

- Disclose a private, sexual image
 - Private = something not ordinarily seen in public
 - Sexual = exposed genitals or pubic area, or a reasonable person would assume is sexual
- Without the consent of the person in the image;
- With the intention of causing that person distress
- Defence if disclosing for purposes of crime, in public interest journalism, or image has previously been disclosed for financial gain

Criminal Justice and Courts Act 2015,
secs 33-35

ABOUT THE AUTHORS

Clare McGlynn: Clare McGlynn is a Professor of Law at Durham University in the UK and is an expert on laws relating to sexual violence and pornography. She worked closely with legislators and campaign groups to introduce new laws on image-based sexual abuse and rape pornography across the UK. Her research has investigated the use of restorative justice in cases of sexual violence and she is currently working with rape survivors to better understand their ideas of justice. She is the co-editor of *Rethinking Rape Law: international and comparative perspectives* (2010) and *Feminist Judgments: from theory to practice* (2010) and author of *Families and the European Union: law, politics and pluralism* (2006) and *The Woman Lawyer: making the difference* (1998).

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Erika Rackley: Erika Rackley is a Professor of Law at the University of Birmingham in the UK with particular expertise in gender representation, difference and equality. Her research with McGlynn on the 'cultural harm' of certain forms of pornography has informed law reform in England & Wales and Scotland, specifically that relating to the criminalisation of pornographic images of rape and revenge pornography. She is author and editor of a number of books, including *Women, Judging and the Judiciary: From Difference to Diversity* (Routledge 2013) and in 2014 was awarded a Phillip Leverhulme Prize for her achievements in the field of law.

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References

Full references to McGlynn and Rackley's academic work can be found on their websites and also downloaded at academia.edu and researchgate.net.

Clare McGlynn and Erika Rackley 'Image-Based Sexual Abuse: harms, redress and the role of law' (forthcoming).

Clare McGlynn and Erika Rackley, *Criminalising Extreme Pornography: A Lost Opportunity*. (2009) *Criminal Law Review* (4): 245-260.

For shorter comments see:

'Not 'revenge porn' but abuse: let's call it image-based sexual abuse', *Everyday Victim Blaming*, 9 March 2016.

'The new law against revenge porn is welcome, but no guarantee of success' *The Conversation*, 16 February 2015.

'We need a new law to combat upskirting and downblousing' (with Julia Downes), *Inherently Human*, 15 April 2015



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Support for Victims:

Revenge Porn Helpline

<http://www.revengepornhelpline.org.uk/>
 0845 6000 459

National Domestic Violence Helpline

freephone 0808 2000 247