

## Image-Based Sexual Abuse, Pornography Platforms and the Digital Services Act

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### Executive Summary

#### Nature, prevalence and harms of image-based sexual abuse

- **Terminology:**  
Image-based sexual abuse refers to all taking, creating or sharing of intimate or sexual images without consent, including threats to share and altered, 'deepfake' images.
- **Image-based sexual abuse is alarmingly common:**  
Victimisation rates range from 1 in 12 people surveyed, to 1 in 3. Many examples across the EU of thousands of women's intimate images being shared without their consent. The abuse disproportionately affects women and girls, with black and minority ethnic women and girls particularly targeted.
- **Online abuse and cyber-harassment are common experiences for women:**  
approximately 1 in 10 women report experiencing such online abuse.
- **Online abuse rising since covid-19:**  
Image-based sexual abuse, as with all online abuse, has increased since the covid-19 pandemic.
- **Gendered harms:**  
Image-based sexual abuse is a gendered harm, with perpetrators being mostly men, women particularly victimised, and the harms made worse by sexual inequalities and sexual double standards.
- **Devastating psychological and physical impacts of abuse:**  
The harms of image-based sexual abuse are significant, constant, long-lasting and are more severe for women, as well as those from minority ethnic communities and those identifying as LGBTQI.
- **Abuse adversely impacts women's freedom of expression and participation in civil life:**  
The prevalence of online abuse results in women changing their online behaviours, often withdrawing from social media and civic engagement, adversely impacting their freedom of expression and their rights to everyday life.
- **Adverse economic and social impacts across all of society:**  
Online abuse adversely impacts everyone through its economic cost and reduced democratic engagement.

## **Justifying regulation of pornography platforms via the DSA**

- **Image based abuse prevalent on porn sites:**  
The high incidence of non-consensual sexual material on mainstream pornography sites legitimises and normalises abuse, thereby justifying regulation.
- **Current proposal does not recognise unequal, gendered harms:**  
The Commission proposal for the DSA overlooked the gendered, unequal allocation of hazard and harms of image-based sexual abuse.
- **Harm reduction:**  
Swift removal of non-consensual imagery from the internet may significantly reduce the harms and harassment experienced by victims. There is a limited capacity of criminal justice systems to prevent or reduce harms.
- **Self-regulation by porn companies is failing victims:**  
Victims report significant delays in getting material removed from porn sites, or being ignored entirely.

## **Targeted measures in DSA to regulate image-based sexual abuse and pornography websites:**

- **Targeted provision to DSA:**  
Proposed Article 24b addresses this issue in a targeted manner, focussing on online pornography platforms where the risk is high. The provision does not seek to regulate the content per se; but provides safeguards for those the subject of the content.
- **Provision helps mitigates limitations of VLOP provisions:**  
Provision ensures that smaller platforms cannot exploit an unequal regulatory playing-field.
- **Outlines best practice:**  
New provision outlines best practice to meet risk assessments and due diligence obligations.
- **Reduces likelihood of non-consensual material being disseminated:**  
Verification procedures introduce friction and help prevent non-consensual material being uploaded and potentially facilitate the prosecution of crime.
- **Expert content moderation:**  
Trained human moderators will help ensure swift and accurate removal of non-consensual sexual imagery.
- **Responds to victim demands for material to be swiftly removed:**  
Strengthened notification and moderation requirements will reduce prevalence of intimate image abuse online and respond to victims' legitimate demands to get material taken down swiftly.
- **Human rights compliant:**  
Provision recognises significance of victims' privacy rights, a State's obligation to protect psychological integrity and that online abuse restricts women's freedom of expression, factors that weigh heavily in any balancing exercise.

## 1. Terminology Matters: Image-Based Sexual Abuse

**Definition and scope of terminology:** This Opinion uses the term '[image-based sexual abuse](#)' to refer to all forms of non-consensual taking or sharing of nude, sexual or intimate images or videos, including threats to share such material. It also includes images or videos that have been altered to make them sexual, including the use of photoshopping technology and 'deepfakes'.<sup>1</sup>

**Not terminology of 'revenge porn':** The term 'image-based sexual abuse' is preferred to terms such as 'revenge porn' as it [better captures](#) the extent and nature of these abuses. 'Revenge porn' only refers to one type of abuse – where a malicious ex-partner distributes images without consent – and does not cover sharing images for financial gain or for a 'laugh'; nor does it cover taking or creating sexual images, including upskirting and voyeurism. The term 'revenge porn' distorts debate.

**Terminology matters to law and policy debates:**

**It more accurately captures the harm and diverse motivations of the abuse:** Terms such as 'revenge porn' are misleading as they wrongly suggest there is only one (dominant) motive for such behaviour (ie 'revenge'). Perpetrators of image-based sexual abuse are motivated by a wide variety of factors including financial reward, 'for a laugh', to boost their status amongst friends, power and control. It explicitly labels the behaviour for what it is: sexual abuse.

**It reflects victim-survivor voices and experiences:** Many victim-survivors reject the term 'revenge porn': one victim commented: 'the whole term [revenge porn] is disgusting'.<sup>2</sup> Many victim-survivors describe their experiences as a form of [sexual assault](#) with one stating:

*"It's an abuse of me and my body. It feels like it's sexual abuse. I feel like it's on a par with sexual abuse, just the toll it's taken on me. And I know people might say that sounds like an exaggeration, but that is genuinely how I feel. So I think it's important that [abuse] forms part of the name because it's important to recognise that."<sup>3</sup>*

## 2. High Incidence of Online Abuse including Image-Based Sexual Abuse

**Studies across the world demonstrate a high incidence of image-based sexual abuse:**

- Ireland and Italy: In 2020, over 100,000 images of Irish women and girls were leaked online, with similar websites uncovered in Italy with thousands of users sharing sexual images without consent.<sup>4</sup>
- HateAid survey found that 30% of women across the EU fear that fake intimate images of them may be shared without their consent.<sup>5</sup>
- United States: 1 in 12 (8%) US adults reported having been victims of non-consensual pornography at some point in their lives.<sup>6</sup>
- Australia, New Zealand and United Kingdom: 1 in 3 survey participants had experienced at least one form of image-based sexual abuse. 1 in 5 (19%) experienced threats to share.<sup>7</sup>
- Victimization rates are higher among younger people (aged 18-25), sexual minorities, disabled people and black and minority ethnic individuals.<sup>8</sup>

**Exceptionally high levels of online abuse and harassment across the EU:**

- European Commission: 1 in 10 women experienced sexual harassment/stalking via new tech.<sup>9</sup>
- EU Agency for Fundamental Rights: 1 in 10 women have already experienced a form of cyber violence since the age of 15.<sup>10</sup>

- European Parliament: between 4-7% of women have experienced cyber-harassment during the last 12 months.<sup>11</sup>
- World Wide Web Foundation report in 2020 of 180 countries found 52% of young women and girls had experienced online abuse including intimate image abuse.<sup>12</sup>

### **Increase in online abuse since start of covid-19 pandemic**

- United Nations: recent report identifies a significant increase in violence against women, including online abuse and harassment, since the covid-19 pandemic.<sup>13</sup>
- European Parliament resolution of December 2021 reports increase in gender-based violence since covid pandemic.<sup>14</sup>
- Reports of abuse to the UK's Revenge Porn Helpline doubled in 2020<sup>15</sup> and online abuse has grown across the UK during covid, with prevalence and harms worse for black and minoritized women.<sup>16</sup>
- Reports to Australia's eSafety Commission spiked by 340% in 2020.<sup>17</sup>

## **3. Image-Based Sexual Abuse is a Gendered Harm**

### **Victimisation:**

- Women and girls experience higher levels of online abuse and image-based abuse.<sup>18</sup>
- Vast majority of images and targets of abuse on dedicated 'revenge porn' websites are of women.<sup>19</sup>
- When women report abuse to the UK's Revenge Porn Helpline an average of 42 images are reported, whereas it is less than two for male victims.<sup>20</sup>
- Hidden levels of abuse: many women do not know that their images have been taken or shared without their consent and so the extent of victimisation is unknown and current surveys are a considerable under-estimate.<sup>21</sup>

**Perpetration:** the vast majority of perpetrators of image-based sexual abuse are men.<sup>22</sup>

### **United Nations describes as gendered problem: '**

*'It is therefore important to acknowledge that the Internet is being used in a broader environment of widespread and systemic structural discrimination and gender-based violence against women and girls.'*<sup>23</sup>

## **4. Life-Shattering Harms and the Trauma of Image-Based Sexual Abuse**

Image-based sexual abuse can cause life-shattering and potentially life-threatening harms. Harms are experienced as more significant by women, and by victims from minority ethnic and religious communities, and those identifying as LGBTQI. Many victims describe their experiences as a form of sexual assault, and the trauma and adverse impacts are similar to survivors of sexual violence.

**'Social rupture' and psychological harms:** In a study of 75 Australian, New Zealand and UK victims, a significant number experienced what was called 'social rupture' – a devastating rupture of their lives with impacts that are all-encompassing and pervasive, radically altering their live experiences, relationships and activities, with deep and long-lasting psychological impacts. They divide their lives in terms of 'before' and 'after' the abuse.<sup>24</sup>

Victims describe the 'social rupture' and harms experienced as follows<sup>25</sup>:

- *my whole world just crumbled; a nightmare ... which destroyed everything*

- *impacts your sense of self on every level; it obviously does define my life now ... it has completely changed my life in horrific ways*

Another victim who is taking legal action against Pornhub has stated:

- *When the videos appeared on Pornhub it ruined my life, it killed my personality, it zapped the happiness out of me. It brought me almost two years of shame, depression, anxiety, horrifying thoughts, public embarrassment and scars. I still bear those scars. It'll be an ongoing battle for the foreseeable future for myself and other survivors.*<sup>26</sup>

Further studies show:

- Study of victims from the Nordic countries reported physical symptoms, such as anxiety, unexplained pains, lack of energy and fatigue.<sup>27</sup>
- US study reported 93% of victims reported they suffered serious emotional distress.<sup>28</sup>
- US survey of 3,000 adults in 2019 found that victims of non-consensual pornography have worse mental and physical health than non-victims.<sup>29</sup>
- Canadian qualitative study of 18 women victims found significant adverse psychological impacts, including depression, self-harm and suicide ideation.<sup>30</sup>

**Women experience more significant harms: gendered inequalities and sexual double standards:**

Various studies have found that women experience more significant, adverse impacts than men. This is due to the gendered nature of the harms and abuse, the victim-blaming facing women, the sexual double standards evident across societies and the fact that there is a vast market for pornography.<sup>31</sup>

**Isolation, withdrawal from society and social media:** Victims experience profound *isolation* from friends and family due to breach of trust and victim-blaming attitudes. Personal relationships are adversely impacted.<sup>32</sup> Victims describe this as follows<sup>33</sup>:

- *I cut myself off from all of my friends. I cut myself off from my family ... and just stayed at home in my room ... because I couldn't face the world.*
- *It is so harmful and isolating; My trust ... has been shattered on so many levels.*

**Professional and economic impacts:** The abuse often has profound impacts on victims' professional and economic lives<sup>34</sup>:

- many victims withdraw from online activities and social media to try to protect themselves from further abuse and harassment, with considerable negative impacts on their professional lives;
- availability of images on the internet can lead to victims being sacked from employment and struggling to find new work;
- some victims change their names to avoid further harassment and abuse, with adverse impacts on their professional lives;
- many victims often incur significant financial costs as a result of being forced to leave their jobs or school because of psychological issues or harassment, as well legal costs, the expenses for psychological treatment and similar.<sup>35</sup>

**Adverse impacts on women's freedom of expression and daily lives**

- Online abuse leads many women to self-censor online, restricting their freedom of expression.<sup>36</sup> A recent survey suggested more than half the women surveyed expressed their opinions less often because of digital violence against women.<sup>37</sup>

- The prevalence and daily threat of online abuse leads women to restrict and alter online activities, limiting their contributions to civil society and professional lives.
- All women are adversely impacted, being held responsible for managing the risks of abuse, having to alter their behaviours to try to prevent abuse and/or report it.

### ***Economic impacts across society***

- Recent European Parliament report estimated the overall costs of cyber harassment and cyber stalking to the EU at between €49.0 and €89.3 billion.<sup>38</sup>

## **5. High Incidence of Image-Based Sexual Abuse on Mainstream Pornography Websites**

Despite the large pornography platforms stating they have policies against non-consensual material on their websites, such material is easily and freely available. There are many genres on porn websites specific to image-based sexual abuse including upskirting, spycams, hidden cams, revenge porn, leaked, stolen and many more terms and categories.

### ***Image-based sexual abuse content on mainstream porn websites:***

- In the largest study to date of online porn content, recent [research](#) revealed that 1 in 8 titles on the front page of the most popular pornography websites described sexually violent material, including image-based sexual abuse, with voyeurism images the most common.<sup>39</sup>
- The research reviewed the landing pages – the material promoted to a first-time user including young teenagers. The porn companies are *actively choosing* to showcase this material to new users, demonstrating that their business model (see more below) promotes illegal and harmful content.
- The easy availability of this material available is in [direct contravention of their own Terms & Conditions](#), showing the need for greater regulation.

### ***Campaigns to remove image-based sexual abuse material from porn websites***

Many victims have spoken out about their experiences of having sexual images of them shared on porn websites and their difficulties of getting the material removed.<sup>40</sup> Investigations by the *New York Times* also revealed the easy availability of unlawful material that had been circulating on mainstream porn sites for many years, despite attempts to get it removed.<sup>41</sup>

## **6. Why porn platforms must be required to take action against image-based abuse**

It is vital that the larger, mainstream pornography platforms are mandated to take action:

**Prevention:** Measures to prevent and restrict non-consensual material being uploaded and shared online are central to reducing image-based sexual abuse.

**Harm reduction:** Victims' immediate concern on experiencing abuse is to get material taken down from the internet. Swift removal of non-consensual imagery from the internet can significantly reduce the harms and harassment experienced by victims.

**Limited capacity of criminal justice to prevent or reduce harms:** While the criminal law provides vital options for redress, it provides little support to victims to get material removed from the internet and does not address the harms experienced.



**Image-based sexual abuse material on porn sites legitimises and normalises abuse:** the extent of free and easily accessible abuse material online sends message to users that non-consensual sexual activity is normal and acceptable.

**Self-regulation by porn companies is failing victims:** victims report significant delays in getting material removed from porn sites, or being ignored entirely. While porn companies state they do not allow non-consensual material, it is easily and freely available.

## 7. Digital Services Act (DSA) and need for recognition of gendered harms

**Background and key measures in DSA:** The proposed DSA applies to intermediary services such as online platforms, social media services, marketplaces and ISPs, with different obligations applying to (a) all providers of intermediary services; (b) providers of hosting services; (c) providers of online platforms (a sub-set of hosting services); and (d) very large online platforms (a sub-set of online platforms) (VLOPs).

The DSA deals with the conditions for immunity from liability for all intermediary services, retaining the prohibition on general monitoring found currently in Article 15 e-Commerce Directive as well as dealing with compliance with national court orders (Article 8) and giving information to authorities (Article 9).

Chapter III introduces 'due diligence' obligations, some of which (eg obligations around what to include in their terms of service and transparency reporting) apply across the board. Additional provisions – notably those relating to notice and action mechanisms (Articles 14-15) and internal complaints mechanisms (Article 17) amongst others apply just to online platforms (including VLOPs).

Further obligations are placed on VLOPs, defined by thresholds set in Article 25; the precise methodology for calculating the number of users is to be set by the Commission. They are required under Article 26 to assess significant systemic risks stemming from the function and use of their platforms, including from the dissemination of illegal content; impacts on certain human rights and intentional manipulation of the service. The specified human rights include 'any negative effects for the exercise of the fundamental rights to respect for private and family life': intimate image abuse constitutes not just an infringement of privacy but also the right to psychological integrity.<sup>42</sup> VLOPs should take reasonable, proportionate and effective mitigation measures and these are subject to audit.

**The current structure of the DSA fails to recognise the gendered nature of harm:** The DSA does not define the harms within scope; it cross refers to relevant EU legislation and the various national legal systems. Whether or not these provisions suffice, it leaves the fundamental assumption that hazards and harms of the online experience are felt equally. As noted above, this is not true; it has been well recognised that there is a gendered risk of harm, and that intimate image abuse is a central part of that problem. It is therefore important that this particular issue is expressly addressed to ensure that formal neutrality does not in practice disadvantage already minoritised groups.

## 8. Justifications for new Article 24b on additional obligations for porn platforms

[Article 24b DSA](#) introduces specific obligations on online platforms primarily used for the dissemination of user generated pornographic content. It requires those platforms to take technical and organisational measures to ensure that:

- a) those disseminating such content have identified themselves by email and mobile phone number;

- b) the platform has professional, appropriately trained human moderators; and
- c) an additional notification mechanism whereby victims may notify platforms of the dissemination of content and content is to be removed without 'undue delay'.

**Targeted measure specific to porn platforms:** The provision is targeted to a sub-set of online platforms (themselves a sub-set of hosting services) that are central to the problems identified above. The definition is functional, referring to the dissemination of user-generated pornography and this must be the platform's principal purpose. While pornography as a class of content is not itself the cause for concern, platforms allowing for the sharing of such user generated content present a high risk for the sharing of images that are non-consensual.

**Provisions are not content regulation:** Significantly, like the other due diligence provisions, this article does not constitute content regulation: it does not prohibit categories of content. Rather, it provides safeguards for the well-being of those the subject of pornography and protects against image-based abuse.

**Provisions introduce friction to uploading content and improved reporting/take down processes which can limit dissemination of non-consensual material:** These measures are important given that the business model of many of these sites incentivises them "to keep the process of uploading video content friction-free and to minimise moderation".<sup>43</sup> The business model relies, in addition to subscription, on advertising which depends on increasing the number of people on the platform and keeping them there. Making it easy to upload and to share fulfils this purpose. Moreover, the suggestions of 'related content' - aiming at user retention - may push increasingly extreme content.<sup>44</sup> Conversely, moderation is seen as a competitive disadvantage.<sup>45</sup>

**Risk assessment for Very Large Online Platforms (VLOPs) and reducing regulatory burden:** VLOPs that are also platforms primarily used for the dissemination of user-generated pornographic content will be obliged to carry out the Article 26 risk assessment in addition to complying with Article 24b. The measures proposed in Article 24b could, however, effectively constitute some of the risk mitigation measures that the platform would be expected to take. The specification of particular steps to be taken will help avoid debate over whether a specific VLOP has responded appropriately to the Article 26 risk assessment, reducing regulatory burden.

**Provisions must apply beyond VLOPs:** Given the height of the thresholds for VLOPs, the due diligence obligations on VLOPs are unlikely to catch all online platforms primarily used for the dissemination of user generated pornographic content. Relying on risk assessments under Article 26, therefore, would not be sufficient to include all intimate image abuse. The fact the obligations in the provision apply across the board recognises this point and ensures that smaller platforms do not seek to take competitive advantage from rules imposed on larger players alone.<sup>46</sup> This point is the more significant given outstanding questions as to the methodology by which the threshold for VLOPs will be calculated. If the calculation excludes users who have not created an account with the online platform, the numbers of users attributed to platforms which allow use without an account would be artificially depressed, potentially creating a loophole in the application of the VLOP regime.

**Provisions provide minimum standards:** Article 24b will raise standards for all relevant online platforms by setting minimum standards that are clear from the outset. The provisions, therefore, put in place best practice in terms of risk mitigation in this area.



**Measures targeted at those who disseminate pornography:** The verification obligation is limited to those who upload or share material; it does not apply to all users.

**Verification obligation takes account of rights of those who disseminate pornography and general need to reduce potential abuse:** The obligation will affect those who legitimately disseminate pornography, including sex workers. In this context, the following points should be noted. The requirement is not for a real name policy, nor for the email/mobile number to be made public. Moreover, there remains the possibility within the wording for a user to identify themselves through a secondary or business email and/or mobile number.

**User verification processes assist law enforcement and likely reduce non-consensual content disseminated:** Early research suggested that a large proportion of those uploading user-generated porn did so anonymously; major platforms allow sign-up based on a username and email address.<sup>47</sup> Adding verification processes to user accounts adds friction to the process which may contribute to a reduction in quantity of non-consensual images being uploaded/shared. Requiring those uploading content to verify themselves through the double opt-in strengthens the ability of victims (and where relevant the police) to assert their rights by increasing the likelihood that some contact information would be available. While Article 9 provides for co-operation, this will only be effective if contact details are there in the first place.<sup>48</sup> Difficulty in identifying users is *one* of the reasons given for weak police enforcement of relevant laws. Such a requirement does not mean that relevant due process safeguards found in national law for users would or should be subverted.

**Requiring trained content moderation assists identification of non-consensual imagery:** The default assumption on many platforms is that content depicts role play and/or is consensual. Quantitative and qualitative concerns have been raised about platforms' moderation systems<sup>49</sup>, and Article 24b(b) responds to both of these issues underlining the necessity for investment in human moderation. At this stage of development, automated solutions are unlikely to be able to identify non-consensual images; AI is notoriously weak at assessing context<sup>50</sup> and weaker on images and emojis than text.<sup>51</sup> In many problem domains (eg abuse of minorities and hate speech), civil society groups have highlighted the problems of inadequate training with those acting as moderators failing to recognise content that is illegal or which contravenes platform rules.<sup>52</sup> Further, systems relying on user complaints are unlikely to be effective: users searching for borderline legal material are unlikely to recognise or report illegal material.<sup>53</sup>

**Strengthened notification procedures and take-down:** News reporting and academic research indicates that platforms notice and take down processes are deficient, both in not having processes that specifically recognise intimate image abuse, and the lack of speed and effectiveness of response.<sup>54</sup> While Article 14 seeks to improve notice and take down, it applies to illegal content, with the wording of recital 12 of the Commission proposal specifying that unlawful content would include 'unlawful non-consensual sharing of private images'. This suggests some non-consensual sharing of images may constitute 'lawful' content. There is also great divergence amongst member states as to what forms of image abuse are criminalised and therefore illegal, and differences regarding image rights. Moreover, Articles 14-15 do not require the suspension or removal of content.

The new Article 24b addresses these limitations by ensuring effective and swift notification and take-down relating to all non-consensual imagery. It covers content that contains images of the

complainant, as well as fake images, reflecting the fact that ‘deepfakes’ are a serious and growing problem. The additional requirements in this new Article recognise the intensity of the harm caused by the intimate image abuse and the fact that each time content is viewed constitutes a new intrusion.

## 9. New provisions are human rights compliant

Any measures proposed must respect fundamental rights. Concerns about the freedom of expression and the privacy of a person using pornographic online platforms are clear. The rights of the subject of the intimate images must also be considered. In considering the appropriate balance between fundamental rights the following points are relevant.

**Fundamental rights are equal and interconnected:** Priority cannot automatically be given to a specific right, but the appropriate balance must be determined in the light of relevant facts.

**Article 8 is a very broad right:** Beyond communications privacy and data protection, it includes: *an individual's physical and social identity, including the right to personal autonomy, personal development and to establish and develop relationships with other human beings and the outside world.*<sup>55</sup>

The rights protected impose positive obligations on a State. Specifically, States are under an obligation to ensure respect for individuals' psychological integrity<sup>56</sup> which could include taking action against a range of harms such as bullying.<sup>57</sup> In *Ismayilova* sexual images and videos were posted online, with the Court stating there was:

*no dispute as to the applicability of Article 8: the facts underlying the application, which included covert filming of the applicant in her own home and highly intimate aspects of her life, clearly concern a matter of "private life". The latter concept covers the physical and moral integrity of the person, as well as his or her sexual life.*<sup>58</sup>

In *Buturugă*<sup>59</sup> the Court held that cyber-bullying by a person's intimate partner fell within the scope of Article 8, constituting a form of domestic violence. The Court has also held that a person's image constitutes one of the chief attributes of his or her personality and protection of that image is one of the essential components of personal development.<sup>60</sup> The nature of the image, the use made of it, as well as the context in which the image was obtained all affect the assessment of whether Article 8 ECHR is engaged. The weight of this jurisprudence makes clear that not only is Article 8 engaged, but that intimate image abuse would be regarded by the Court as "a serious, flagrant and extraordinarily intense invasion of her private life"<sup>61</sup>.

**Freedom of expression and privacy are both limited rights:** An interference with either right can be justified if the intrusion is lawful, for a legitimate aim and necessary in a democratic society. This last element is essentially a proportionality analysis. In the context of Art 24b relevant factors are:

- the speech is not of a highly protected nature (not political speech or journalism, but in some instances commercial speech);
- an essential aspect of the victim's private life is in issue and the breach is serious;
- the victim's own rights to freedom of expression are likely curtailed;
- the measure is narrowly focussed in terms of platforms in scope;
- it does not prohibit pornography, or prevent consensual sharing of images;
- the identifiability obligation does not require the user to be named on the platform, and applies only to those who disseminate content – not all users;

- while the moderation and take down obligations are a significant intrusion into speech, given the possibility for multiple further intrusions on each viewing, it is hard to imagine a remedy short of take down that could be appropriate.

In sum, it is likely this proposed provision is human rights compliant.

## Expertise

**Professor Clare McGlynn QC (Hon)** is an expert on laws relating to sexual violence, pornography and image-based sexual abuse, including 'revenge porn', 'upskirting' and cyberflashing. She has played a key role in shaping new criminal laws on intimate image abuse and extreme pornography, recently giving evidence before the New Zealand Parliament's [Justice Select Committee](#), as well as [oral evidence](#) to the UK Parliament's inquiry into the Online Safety Bill. She has addressed policy audiences across Europe, Australia, Korea and the US, as well as working with social media companies including Facebook, Google and TikTok to develop their policies on non-consensual pornography. She is co-author of the [widely reported](#) study [revealing](#) the extent of sexually violent porn on the mainstream porn sites. Together with Erika Rackley, she developed the concept of [image-based sexual abuse](#) and collaborated with colleagues from Australia and New Zealand to interview 75 victims, over 43 stakeholders and undertake a survey of 6000 to examine the extent and nature of image-based sexual abuse, resulting in 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 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).

**Professor Lorna Woods**, OBE is Professor of Internet Law at the University of Essex and a member of the Human Rights Centre there. She started her career in private practice, advising in the technology, media and telecommunications sectors and, since moving to academia, she has taught and researched in these areas. Professor Woods has received an OBE for her services to internet safety policy. Her most recent project, with Carnegie UK Trust, is on [the regulation of social media](#), introducing and arguing for a systemic approach. This work underpinned the UK government's approach to legislation; she has been invited to give evidence to numerous Parliamentary select committees both in the UK and abroad, and regularly presents on law and tech at policy conferences. Recent publications include "[Obliging Platforms to Accept a Duty of Care](#)" in Moore and Timbini (eds) *Regulating Big Tech: Policy Responses to Digital Dominance* (OUP, 2021) and a co-edited collection, [Perspectives on Platform Regulation Concepts and Models of Social Media Governance Across the Globe](#) (Nomos, 2021). Professor Woods also researches digital human rights, including a chapter on freedom of expression in Peers et al (eds) [The Charter of Fundamental Rights: A Commentary \(2nd ed\)](#) (Hart, 2021). She is a senior associate research fellow at the Information Law and Policy Centre, Institute of Advanced Legal Studies, University of London, a member of the Centre for Science and Policy network at the University of Cambridge and a fellow of the Royal Society for Arts.

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<sup>1</sup> The term 'image-based sexual abuse' was developed by Clare McGlynn and Erika Rackley, first used in a blog in [2016](#) and developed in their academic work: 'Image-Based Sexual Abuse' (2017) 37 [Oxford Journal of Legal Studies](#) 534-561.

<sup>2</sup> Quoted in Clare McGlynn et al (2019) [Shattering Lives and Myths – a report on image-based sexual abuse](#).

<sup>3</sup> Quoted in Clare McGlynn et al (2019) [Shattering Lives and Myths – a report on image-based sexual abuse](#).

<sup>4</sup> [Gardaí looking into allegations that large number of images of women were shared online without their consent \(thejournal.ie\)](#) and [Inside the largest Italian network of revenge porn, on Telegram | Wired Italy](#)

<sup>5</sup> [HateAid-Report-2021 EN.pdf](#).

- <sup>6</sup> Involving 3,044 adults: Yanet Ruvalcaba and Asia Eaton, '[Nonconsensual pornography among US adults: a sexual scripts framework on victimisation, perpetration and health correlates for women and men](#)' (2020) 10 *Psychology of Violence* 68-78.
- <sup>7</sup> Survey of 6,109 participants across Australia, New Zealand and the United Kingdom: Henry, McGlynn et al, [Image-Based Sexual Abuse: a study on the causes and consequences of non-consensual sexual imagery](#) (Routledge, 2021), p 11.
- <sup>8</sup> See above and Asia Eaton & Clare McGlynn (2020), '[The psychology of non-consensual porn: understanding and addressing a growing form of sexual violence](#)' 7 *Policy Insights from the Behavioral and Brain Sciences* 190-197.
- <sup>9</sup> European Commission, *Zero Tolerance of Violence Against Women* (2016). See also [Cyber violence against women and girls | European Institute for Gender Equality \(europa.eu\)](#).
- <sup>10</sup> EU Agency for Fundamental Rights (2015). [Violence against women: an EU-wide survey – Main results](#) p 104.
- <sup>11</sup> European Parliament, *Combating gender-based violence: Cyber violence European added value assessment*, March 2021 [EPRS STU\(2021\)662621 EN \(1\).pdf](#)
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- <sup>17</sup> [eSafety office records 340% spike in complaints as coronavirus impacts online behaviour - Hack - triple j \(abc.net.au\)](#)
- <sup>18</sup> See above references and the recently adopted resolution by the Council of Europe's *Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO)*.
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- <sup>21</sup> On the trading of nude images of women without their knowledge, see '[I have moments of shame I can't control: the lives ruined by explicit 'collector culture' | Sexual harassment | The Guardian](#)
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- <sup>27</sup> [online violence against women in the nordic countries.pdf \(lokk.dk\)](#)
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