

Creating Sexually Explicit Deepfakes: Options for Criminal Law Reform

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Executive Summary

- **Change terminology from ‘deepfake porn’:** We 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 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; search engines Google and Bing return deepfake abuse websites at the top of search. 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. 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.
- **'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 and the Netherlands. Proposals have been made in England & Wales.
- **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.

Contents of the Opinion

1. [Changing the Terminology: Concerns with the Term 'Deepfake Porn'](#)
2. [How Common Are Sexually Explicit Deepfakes, 'Deepfake Porn' Websites and Nudify Apps?](#)
3. [What Are the Harms of Creating Sexually Explicit Deepfakes?](#)
4. [Justifying a Criminal Offence of Creating Sexually Explicit Deepfakes](#)
5. [Rebuttals to Arguments Against a Creation Offence](#)
6. [What Are the Laws on Creating Sexually Explicit Deepfakes in Various Jurisdictions?](#)
7. [Options for Law Reform](#)

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.
- The largest search engines, Google and Bing, return 'deepfake porn' websites at the [top of search results](#), following by numerous other websites dedicated to this material and tools and tutorials on how to make this material. In July 2024, Google finally [announced](#) some changes to ranking.
- 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, it's just different from capturing an image using non-AI photographic and video techniques.
- Creating sexually explicit deepfakes should be understood as 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.

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 [Google](#) and 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 EU’s Digital Services Act and UK’s Online Safety Act both rely 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.
- The DSA reinforces the principle “[What is illegal offline is now illegal online](#)” with [obligations](#) on platforms to put in place measures to counter the spread of illegal content.
- 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.

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, 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. Most jurisdictions have guidance limiting the use of the criminal law against young people and emphasising education, warnings and community engagement.
- 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.

6. What Are the Laws on Creating Sexually Explicit Deepfakes in Various Jurisdictions?

- **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 a number of member states of the EU. The EU's [Directive on Violence Against Women and Domestic Violence](#) includes provisions on sharing sexually explicit deepfakes without consent, though with some [limitations](#).
- **Criminal laws on *creating* sexually explicit deepfakes:** This Opinion focuses on creation criminal offences which have already been introduced in [Texas](#), the [Netherlands](#) and the Australian state of [Victoria](#). There are proposals to criminalise creation in the [UK](#).
- **Istanbul Convention on Violence Against Women and Girls includes production (creation) and procuring (soliciting) non-consensual intimate images:** The Convention prohibits 'sexual harassment' (Article 40) and [GREVIO Recommendation No 1](#) on the Digital Dimension of Violence Against Women states that this encompasses online sexual harassment defined as including the 'non-consensual taking, producing or procuring of intimate images or videos'.

6.1 Creation Offence in the State of Victoria, Australia

- 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".
 - Intimate image is defined as a) a person engaged in sexual activity; b) a person in a manner or context that is sexual; c) the genital or anal region of a person (whether bare or covered by underwear); d) if a person is female or a transgender or intersex person identifying as female, the breasts of the person.
- '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
- The need for a creation offence on a federal level was is being [considered](#).

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 March 2024, the [DEFIANCE Act](#) was introduced, which aims to create a federal civil right of action for the creation of "digital forgeries". 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 the publishing of said image is 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 Proposal for creation offence in England and Wales

- In April 2024, the UK Government proposed [a new offence](#) to criminalise creating some forms of sexually explicit deepfakes.
- The proposed offence would only apply where the prosecution could prove the material was created with the intent of causing alarm, distress or humiliation, or with the purpose of obtaining sexual gratification.
- This [limits the scope](#) of the offence and would allow, for example, defences of artistic expression and humour.

- 'Purported sexual image' is limited to depicting the person (i) participating or engaging in a sexual act, (ii) the person doing a sexual thing, (iii) part of the person's exposed genitals or anus, (iv) all or parts of a person's exposed breasts, except where what appears to be shown is something of a kind ordinarily seen in public.
- This definition of image would exclude, for example, AI [generated images with emojis](#) covering nipples.
- The offence does not clearly cover solicitation, asking another to create the video/image.

7. Options for Law Reform

- A creation offence should be a part of a **comprehensive response to image-based sexual abuse**, together with civil law provisions enabling compensation, deletion and take-down, technological solutions, platform regulation, support for survivors, education and civil society efforts to combat this phenomenon.
- Image-based abuse laws, civil and criminal options, should cover all forms of the creation, soliciting, taking, sharing, and threats to share, of sexually explicit deepfakes of intimate images or videos. Nonetheless, this Opinion considers a range of alternatives to a comprehensive offence.

7.1 Offence could be limited to adults

- An offence may be limited to only adults, with deepfake child sexual abuse material being criminalised under child sexual abuse laws for systematic clarity and appropriate sanctioning.
- Even now, deepfake sexual abuse [amongst teenagers](#) and [in schools](#) is becoming a problem that needs to be addressed. Here, educating the children and young adults about the unacceptability of this behaviour and the harms it causes is integral.

7.2 Scope of imagery to be included

There are various alternatives to the scope of images/videos a creation offence could cover

- **'Sexual' images/videos (including genitals, buttocks, breasts):** this would include material that by its nature is sexual and/or that a reasonable person would assume to be sexual.
- **Videos of 'sexual activities':** The EU Directive's provision on distribution of sexually explicit deepfakes is limited to imagery showing 'engagement' in 'sexual activities'. This suggests active participation and movement, ie conventionally understood pornographic videos. This definition – used in the EU Directive on Violence Against Women - would limit the offence and exclude images/videos where the person is shown either fully or partially nude. This is mostly the case when ordinary photos of women stolen online are uploaded to 'nudification' apps to alter the otherwise 'innocent' photo. This would also exclude the deepfakes of women doing other private activities of not a sexual nature, like going to the toilet.
- **Nude or partially nude images/videos:** Nudify apps produce (still) nude images (though no doubt technology will evolve to develop further imagery). Including nude imagery would also ensure images reproducing private activity such as toileting is covered. Such images are also a violation and are commonly used for sexual gratification (personal use and shared online).
- **Use of emojis and other ways to avoid liability:** Care needs to be taken to ensure that any definition does not exclude harmful material and/or provide an easy defence. For example,

some sexually explicit deepfakes are made with emojis over nipples, or a black strip across a nipple. These images remain harmful and wrong (for a very detailed definition of images of a person in an 'intimate state' see the [current English law](#)).

- **'Intimate' images/videos:** The term 'intimate' can be used to cover privacy and autonomy breaches beyond conventional nude/sexual imagery, such as showing a person without clothing or accessories of religious or cultural significance that they consistently wear in public. For example, a Muslim woman who consistently wears a niqab while in public or a Sikh man who consistently wears a turban in public. Legislation in [Australia](#) provides for civil law protections against the sharing of this type of 'intimate image'. Although such a broad formulation is the most inclusive, what is considered intimate will be culturally and historically grounded, making it harder for criminal law to grasp.

7.3 Motive requirements as an additional threshold for prosecution

- The most comprehensive creation offence would be based on the non-consensual creation of the sexually explicit deepfakes and not limit the offence to certain motives of perpetrators.
- Motives are hard to prove and ultimately do not matter in the harms that victim-survivors experience.
- A limited creation offence could cover certain motives of perpetration like intent to distribute, harass, gain sexual gratification, monetary gain. Choosing to limit the offence to certain motives might have the aim of excluding creations that are for art or humour.
- Raising a defence of 'humour' will be straightforward, particularly as websites and nudify apps promote themselves as being for fun. The popular nudify app Clothoff, for example, [justifies itself](#) by stating that: "Hundreds of thousands of people appreciate the humor and just receive positive emotions, which can be proven by numerous positive reviews and tens of thousands of likes in social networks'.

7.4 An 'Artistic Creation' Defence

- A comprehensive creation offence would not leave room for an artistic creation defence. A sexually explicit deepfake justified as 'art' is still non-consensually produced and breaches the victim's fundamental rights to privacy, autonomy and identity. An artistic defence would be very difficult to refute. A creation will only come to the attention of prosecutors if the creator has made others aware of the creation (giving notice of the very real threat of distribution).

7.5 Excluding imagery of those in the Public Eye, e.g., Celebrities

- This would be a possible way to limit the scope of an offence as many sexually explicit deepfakes are of celebrities. This exception therefore would cover many who create and share sexually explicit deepfakes of celebrities only. Many deepfake creators seek to justify their actions on the basis that there is 'no harm' when making deepfakes of celebrities.
- However, this approach would undermine the foundational principles of non-consent and protection of autonomy and integrity. It would also ignore the real harms experienced by all women victims including celebrities. It would also be difficult to determine the scope, ie who is in the public eye and who is not.
- It would also ignore the real harms experienced by all women victims including celebrities, as witnessed in a [recent UK case](#) where a man convicted of plotting to murder and rape a TV celebrity was found to have sexually explicit deepfakes of her.

7.6 Only include certain 'extreme' deepfakes

- Another way to limit an offence would be to only include the creation of specific types of sexually explicit image, such as images of rape and bestiality. It should be said that [some jurisdictions](#) might already have laws banning such extreme pornography and sharing the deepfakes made with that material would already be illegal.
- However, limiting an offence in this way may lead to definitional problems and undermines the value of criminalising all sexual digital forgeries.

7.7 Civil offence only

- If a criminal offence was not to be adopted, an alternative is to create a specific civil offence, a civil right to sue for compensation for harm (and such legislation may also include civil orders to delete and remove material).
- Many states in Canada have such provisions, and there are legislative proposals being debate in the US which would create such a civil right.
- Civil rights have many benefits, including providing a range of options for survivors. However, they can also only be used where there is a known (and financially solvent) perpetrator and it may be costly to bring such actions.
- Ideally, civil law options are introduced as well as criminal sanctions.

7.8 Procuring (soliciting) creation

- 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.
- 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.
- A law on creation should therefore ensure it specifically covers solicitation. If a simple creation offence is not to be introduced, an offence of solicitation would at least include circumstances where more than one person is involved and there is a clear risk of distribution (depending on where the solicited imagery is stored and methods of sharing the creation).

7.9 An offence of creation with intent to distribute

- A creation offence might be limited to where the material is produced with an intention to distribute. Such a provision was recently adopted in South Korea following a significant case where thousands were participating in Telegram chatrooms where material was created and shared. An offence of creation with intent would ensure all those involved in such activities were covered.
- Nonetheless, a specific creation offence would also cover such individuals, as well as those where proving such an intention is challenging.

7.10 Creation as an aggravating factor

- The creation of the non-consensual imagery could be an aggravating factor to a distribution offence, increasing sentencing. This is the [current proposal](#) in Australia. This does not make it a separate offence to create sexual digital forgeries and requires proof of the distribution offence.

7.11 Defences: reasonable excuse, public interest, community standards

- Legislation could have defences such as where creation was in the 'public interest' or the person has a 'reasonable excuse' (as used in some common law offences).
- An alternative is where an offence may only be committed where 'contrary to community standards of acceptable conduct'. Community standards of acceptable conduct include consideration of matters such as: The nature and content of the image; The circumstances in which the image was created; The age, intellectual capacity, vulnerability or other relevant circumstances of a person depicted in the image.

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: <https://theconversation.com/deepfake-porn-why-we-need-to-make-it-a-crime-to-create-it-not-just-share-it-227177>
- This Opinion is drawn from the forthcoming academic research: Clare McGlynn and Rüya Tuna Toparlak, 'The New Voyeurism: criminalising the creation of 'deepfake porn'' forthcoming

Author biographies

Professor Clare McGlynn is a Professor of Law at Durham University, UK, 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 and she regularly advises parliaments, governments, civil society and internet platforms including Meta, Google, TikTok and Bumble. She worked with a coalition of women's rights organisations to [strengthen](#) the UK's Online Safety Act 2023 provisions on violence against women and girls. She was awarded an honorary doctorate from Lund University in Sweden in recognition of the international influence of her research. 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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