

Current reflections on EU gender equality law  
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# Image-based sexual abuse in the Commission proposal on combating VAW and domestic violence

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## Overview

1. **Understanding image-based sexual abuse:**
  - a. Clarifying **terminology**.
  - b. Examining **nature** and scope.
  - c. Assessing the **scale**.
  - d. Recognising the **harm** inflicted.
  
2. **Regulating image-based sexual abuse:**
  - a. Mapping **national laws**.
  - b. Examining **the Commission proposal**.
  - c. Discussing the current **ambitions and limitations**.

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## Setting the stage

Four types of **online and technology-facilitated violence** arise:

1. Forms of **harassment or violence that are facilitated by specific technologies**, such as intimate partner violence carried out via spyware and other tracking devices.
2. **Abuse that takes place and is amplified online**, such as the non-consensual sharing of intimate images.
3. **Technology has generated new forms of abuse**, such as sexual and intimate deepfakes.
4. **Online environment is used to enable abuse to take place**, such as the use of social media being central to sustain and spread anti-women's rights rhetoric.

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## Describing image-based sexual abuse

“[A]ll forms of the non-consensual creating, taking or sharing of intimate images or videos, including altered or manipulated media, and threats to distribute such material.”

Rigotti, C. & McGlynn, C. (2022) 155

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## Describing image-based sexual abuse (II)

The term 'image-based sexual abuse' is:

- An **umbrella term**, capturing a range of interrelated forms of abuse.
- **Less victim-blaming and more comprehensive** than the mainstream reference to 'revenge pornography.'
- **Future-proof**, when new ways of perpetrating such abuse will be developed.
- Being **increasingly used** in scholarly and policy circles.

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## Image-based sexual abuse: Its nature

- Arising from a context of **gender-based** discrimination, deeply rooted in cultural norms and systemic VAW.
- Being part of the **continuum** of multiple, interrelated, and recurring forms of VAW **that now permeate across online and offline** worlds.
- **Intersectionally** affecting the victim to different degrees or in different ways.

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## Image-based sexual abuse: Its scale

Based on **diverse stakeholders' data**, image-based sexual abuse proves to be:

- **Disturbingly prevalent.**
- **Disproportionately and intersectionally affects women.**
- **Potentially underreported.**

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## Image-based sexual abuse: Individual harm

- **All-encompassing harms** impacting on every aspect of their lives, to the extent that women's lives are divided into 'before' and 'after' the violence.
- **Physical harms**, including threats, experiences of offline abuse, or feelings of unsafety.
- **Psychological harms**, e.g., depression, anxiety, and panic attacks.
- **Economic harms**, covering major professional and financial negative setbacks arising from school absences, training or employment gaps, the financial burden of counselling, legal proceedings, and other support, and the risk of hindering professional growth through online self-censorship.
- **Relational harms**, namely a profound sense of 'social isolation', due to victim-blaming responses, their fear, or general distrust.

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## Image-based sexual abuse: Social harm

- **Restricting freedom of expression online**, due to the self-censoring or withdrawing from cyber-engagement.
- **Reducing diversity** in cyberspace.
- **Perpetuating the digital divide**, women already experience.
- Having **adverse socio-economic consequences** on society.

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## National laws on image-based sexual abuse:

### Divergent, piecemeal, and confusing

- Addressing image-based sexual abuse through **legal reforms**.
- Adopting **specific versus general definitions**.
- Protecting various **legal interests**.
- Interpreting **sexual, intimate, and/or private images**.
- Identifying the **actus reus**.
- Including specific **motivations and harm**.
- **Sanctioning** in different ways.

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## The Commission proposal:

### For a directive on combating violence against women and domestic violence

- Long-standing commitment to combating VAW since 1986, with its digital dimension being mentioned from 2010s onwards.
- On 8 March 2022, the European Commission presented its proposal:
  - With Article 83.1 TFEU as the legal basis.
  - Article 7 «Non-consensual sharing of intimate or manipulated material».
  - Article 8 «Cyber stalking».
  - Article 9 «Cyber harassment».
  - Article 10 «Cyber incitement to violence or hatred».
  - With a comprehensive approach, covering also prevention, cooperation, and victim's assistance.

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## The Commission proposal:

### Article 7 on the non-consensual sharing of intimate or manipulated material

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

- (a) making intimate images, or videos or other material depicting sexual activities, of another person without that person's consent accessible to a multitude of end-users by means of information and communication technologies;
- (b) producing or manipulating and subsequently making accessible to a multitude of end-users, by means of information and communication technologies, images, videos or other material, making it appear as though another person is engaged in sexual activities, without that person's consent;
- (c) threatening to engage in the conduct referred to in points (a) and (b) in order to coerce another person to do, acquiesce or refrain from a certain act.

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## The Commission proposal (II):

### Article 7 on the non-consensual sharing of intimate or manipulated material

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

- (a) making ~~intimate images, or videos or other material depicting sexual activities~~, of another person without that person's consent accessible to a multitude of end-users by means of information and communication technologies;
- (b) producing or manipulating and subsequently making accessible to a multitude of end-users, by means of information and communication technologies, ~~[intimate] images, videos or other material~~, making it appear ~~as though another person is engaged in sexual activities~~, without that person's consent;
- (c) threatening to engage in the conduct referred to in points (a) and (b) in order to coerce another person to do, acquiesce or refrain from a certain act.

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## The Commission proposal: Article 7 on the non-consensual sharing of intimate or manipulated material

Member States shall ensure that **the following intentional conduct** is punishable as a criminal offence:

- (a) making intimate images, or videos or other material depicting sexual activities, of another person without that person's consent accessible to a multitude of end-users by means of information and communication technologies;
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- (b) **producing or manipulating** and subsequently making accessible to a multitude of end-users, by means of information and communication technologies, [intimate] images, videos or other material, [to make it] making it appear as though another person is engaged in sexual activities, without that person's consent;
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## The Commission proposal: Article 7 on the non-consensual sharing of intimate or manipulated material

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

- (a) making intimate images, or videos or other material depicting sexual activities, of another person without that person's consent accessible to **a multitude of [other] end-users** by means of information and communication technologies;
- (b) producing or manipulating and subsequently making accessible to **a multitude of [other] end-users**, by means of information and communication technologies, images, videos or other material, making it appear as though another person is engaged in sexual activities, without that person's consent;
- (c) threatening to engage in the conduct referred to in points (a) and (b) in order to coerce another person to do, acquiesce or refrain from a certain act.

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## The Commission proposal: Article 7 on the non-consensual sharing of intimate or manipulated material

Member States shall ensure that the following intentional conduct is punishable as a criminal offence:

- (a) **making** intimate images, or videos or other material depicting sexual activities, of another person without that person's consent **accessible** to a multitude of end-users by means of information and communication technologies;
- (b) **producing or manipulating and subsequently making accessible** to a multitude of end-users, by means of information and communication technologies, images, videos or other material, making it appear as though another person is engaged in sexual activities, without that person's consent;
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## The Commission proposal: Other relevant provisions

- **Article 22** introduces **a general prohibition on questions, enquiries and evidence concerning the past sexual conduct of the victim** since they are likely to reinforce damaging gender biases and myths.
- **Article 25** requires the Member States to take all the necessary measures **to guarantee the prompt removal of material** referred to in Article 7.
- **Article 36.7** promotes **the development of "digital literacy skills"**, including critical engagement with the digital world, to enable users to identify and address cases of cyber violence, seek support and prevent its perpetration."

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# Thank you!

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