

# Submission to the Senate Legal and Constitutional Affairs Committee Inquiry into 'revenge porn'

20 January 2016

## Introduction

**safe steps** Family Violence Response Centre welcomes the opportunity to provide a response to the Committee's Inquiry into *the phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm*. **safe steps** looks forward to increasing digital privacy and the safety of women online through this Inquiry.

### About safe steps Family Violence Response Centre

**safe steps** Family Violence Response Centre is Victoria's statewide 24 hour, 7 day per week service for women and children experiencing family violence. **safe steps** provides a critical service intervention, including support, accommodation, advocacy and referral throughout Victoria and nationally. **safe steps** ensures that women and children experiencing family violence, including those at the highest risk of harm, receive an immediate response to keep them safe.

## a. The phenomenon colloquially referred to as 'revenge porn'

### Gender inequality

The phenomenon of 'revenge porn' must be seen within the broader context of gender inequality, particularly in relation to different moral standards for men and women regarding sexual behaviour. Traditional gender roles treat women as valuable only if they are sexually inexperienced, and attribute moral culpability for men's sexual misconduct to women. The shame and humiliation inflicted through 'revenge porn' draws from this stigma to shame the victim and make them the target of widespread condemnation. This stigma affects women to a greater extent than men.

### Consent is central

**safe steps** proposes that the definition of 'revenge porn' within the Terms of Reference for this Inquiry as "*sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm*" is limited as it does not capture the phenomenon in entirety, which will provide inadequate protection for women.

For a sexual act to be lawful, most Australian jurisdictions require participants to give mutual, free agreement to the act. Sharing intimate images through 'sexting' has become a form of sexual activity in itself. Thus, non-consensual production, acquisition and distribution of intimate images is a form of electronically-mediated sexual violation, and can

have similar consequences for the victim as other kinds of sexual violence.<sup>1</sup> **safe steps** therefore recommends a policy and legislative approach based on existing legal responses to sexual assault.

**safe steps** recommends that legislative and policy responses to ‘revenge porn’ clearly define the conditions under which electronically mediated sexual activity is lawful, particularly specifying that:

- For distribution of intimate images to be lawful, the subject of the material must give informed consent to the production, acquisition and distribution of the material
- A person’s consent to is limited only to the circumstances and purposes that the person specifies and for no other purpose
- The person’s consent to the particular form and nature of the production and/or distribution of intimate material must be explicitly stated and cannot be assumed
- A person can withdraw their consent to the activity at any time, and continued use of the images or material is therefore unlawful
- Agreement obtained under duress (for example, obtaining images from a person by making threats to distribute images already in the possession of the perpetrator) is not sufficient for an act to be consensual
- A person must have the capacity to give informed consent for the consent to be valid.

The non-consensual nature of the production, acquisition, or distribution of the material should be sufficient to consider it as falling within the definition of ‘revenge porn’ and therefore subject to public policy interventions. Acts of ‘revenge porn’ can be motivated by a range of factors other than the intention to cause harm, including entertainment, shock value, gaining social approval of others, or financial gain. For example, the operators of websites dedicated to distributing ‘revenge porn’ may be motivated by financial gain, desire for notoriety, or entertainment. The phenomenon of ‘revenge porn’ should therefore be seen independently of the intentions of the perpetrator of the act, as the non-consensual nature of the act is sufficient to cause harm, regardless of the intention of the distributor.

‘Revenge porn’, including threats to distribute intimate images, can take place in the context of other kinds of abuse and family violence, as a mechanism to exert control, or invoke fear, coerce the victim into sexual activity, to prevent the victim from reporting abuse or ending the relationship.

### **Nature of the material**

As the case study below demonstrates, the images need not be sexually explicit or depict particular body parts in order to be used to harm the subject.

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<sup>1</sup> Bluett-Boyd, N., Fileborn, B., Quadara, A., & Moore, S. (2013) [\*The role of emerging communication technologies in experiences of sexual violence: A new legal frontier?\*](#), Research Report No. 23, Melbourne Australian Institute of Family Studies, section 5.

### **Case study 1**

Photographs of a Muslim woman in her bra and without her hijab were shared without her consent on the perpetrator’s Facebook account. The photos were accessible by her children and other family members. This caused the woman and her members of her family to experience feelings of shame. Upon contact with **safe steps**, the woman was highly distressed and staff spent a lot of time trying to alleviate her distress.

Each person has differing standards of what are considered private, intimate or sexual. Prescriptive definitions, such as specifying that images must depict particular body parts in order to meet the definition of ‘revenge porn’, are likely to disadvantage people who are already marginalised, such as Muslim women or LGBTI persons, with respect to accessing justice.

### **b. Impact on targets**

Our clients report experiencing frequent abuse through information and communications technology (ICT), of which non-consensual distribution of private images is but one type.

The act of ‘revenge porn’, where the subjects have had an intimate or domestic relationship, can itself be seen as a form of abuse. In some cases the distribution or threats that such material will be distributed, are part of a broader pattern of abuse and can compound abuse that has already occurred, such as when the images or recordings depict the subject being sexually assaulted. In the context of family violence, distribution or threats to distribute intimate images can constitute an aspect of the overall pattern of abuse. In some cases, perpetrators of family violence coerce women to produce these images and threaten to distribute them in order to maintain control and invoke fear, to prevent the victim reporting the abuse or leaving the relationship.

### **Case study 2**

A woman was drugged, and while unconscious was filmed “participating” in sexual acts. This film was uploaded to YouTube and other porn sharing websites without her consent. While this woman did engage **safe steps** briefly, she did not come into our accommodation and wanted to remain anonymous. Shame around image sharing and identification may have contributed to her reluctance to come into service.

In some cases the non-consensual distribution of intimate images is accompanied by identifying information about the victim and/or incitement of others to harass the victim, resulting in increased fear and risk to the victim.

Other potential impacts include:

- The victim experiencing disadvantage in the workplace or in their education or being rendered less employable as a result of a perpetrator targeting the woman’s employer or education provider
- Suffering stigma from peers, acquaintances, friends and family

- Becoming the target of bullying and harassment
- Financial losses through legal fees, foregone income, and other costs associated with removing the material from web sites
- Anxiety, depression and/or other adverse mental health consequences including suicidal ideation
- Social withdrawal and reluctance to engage services or support

Furthermore, due to archiving and government data retention practices in place across the internet, it is very difficult to completely remove any private sexual material distributed without the subject's consent. It can be costly and time consuming to do so.

### **c. Potential public policy responses**

*safe steps* supports a strong justice response to violence against women, including digitally-mediated acts of abuse. In addition to legal penalties for unlawful distribution of intimate images, the following potential interventions may be of benefit to respond to and prevent 'revenge porn':

- Compensation to the victim, particularly to cover legal costs and losses associated with non-consensual distribution of intimate images.
- Increased education about respectful relationships, sexuality, rights and bodily autonomy for young people. This should emphasise that any sharing of intimate images requires the consent of the subject.
- Promoting digital privacy education.
- Working with social media site operators to remove intimate images distributed without the subject's consent, and to improve privacy provisions.

### **For further information**

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