**Image-Based Sexual Abuse: A Psychological Perspective**

Dean Fido & Craig A. Harper

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**Chapter 1**

**An Introduction to Image-Based Sexual Abuse**

**Abstract**

Non-consensual image-based sexual offending is a complex term which can be used to describe a constellation of non-consensual offences involving the creation and dissemination of private sexual images. In this opening chapter, we offer clear definitions of what we mean by *revenge pornography*, *upskirting, deepfake media production,* and *cyberflashing* and discuss their often nuanced, yet important differences and how they manifest within the general population. Subsequently, we draw on legal literature to evidence how such offences are considered and dealt with differently across the World, and how such differences matter in the experience of both victims and perpetrators.

***Key words:*** legislation, revenge pornography, deepfaking, upskirting, cyberflashing

**Introduction**

Welcome to this *Introduction to Image-Based Sexual Abuse.* This book summarises much of what we currently know about this relatively new type of offending behaviour, and guides the reader through key details relating to:

1. the impact of offending behaviour on victims;
2. variations in related legislation;
3. potential motivations for this type of offending;
4. how the general public views and understands such crimes; and
5. hypotheses related to future research that is needed to be undertaken in this area.

We have designed this book to be as accessible as possible, regardless of the reader’s prior knowledge of image-based sexual abuse, or psychological research more generally. Although we acknowledge that the information within will likely be of particular interest to students and academics in fields of forensic psychology and/or cyberpsychology, we also recognise that this subject matter is both widely discussed in the media, studied by legal experts, and, sadly, experienced day-to-day within the general population. As such, we aimed to ensure that anybody could read the material presented within this book and take something away from it.

Although much of the existing research and discussion related to image-based sexual abuse has taken place in the legal realm (via the work of Professor Clare McGlynn and colleagues, for example), we approach this subject from a social science perspective, and in particular using a psychological lens. Moreover, much of the book focuses on offending behaviour where both the perpetrators and victims are adults. However, we make clear that image-based sexual abuse can be carried out by and on anybody - and the experiences of all victims are valid and important. For further reading about sexual offending involving child victims, for example, please see the work of Michael Seto, and his book *Internet Sex Offenders*.

**Delineation of Terms**

Before proceeding, it is essential to disentangle and define some of the terminology featured within the literature. Such knowledge is not only important for you to fully access and understand the material presented throughout this book, but more importantly, so that you can start to critically read and assess the wider literature in this area, as well as articles and stories presented within the press and through social media.

First, we define what we mean by *image-based sexual abuse*, which is a broad label used to describe a range of behaviours, and emerges from the legal and sociological research domains (see DeKeseredy & Schwartz, 2016; Henry & Powell, 2015a; 2015b; Henry, Powell, & Flynn, 2017; McGlynn, Rackley, & Houghton, 2017). Although it is quite unusual to have to define the key terms that appear in the title of a book, we expect that many of our readers are accessing this material based on their recognition of the colloquial concepts of ‘revenge porn’ or ‘upskirting’. Although such offences are important in their own right, and as such will be discussed throughout this book, and in turn below, ‘image-based sexual abuse’ acts as the umbrella term that encompasses these individual offences. We operationalise image-based sexual abuse by drawing upon McGlynn et al.’s (2017) work, which proposed a continuum of offences involving the non-consensual generation, taking, and/or distribution of private sexual images. However, following our recent work, we adapt this to represent a taxonomic, rather than continuous framework (Harper, Fido, & Petronzi, 2020). This distinction is important, because it means that we do not imply a hierarchy of image-based sexual abuse offences but rather see these as a collection of distinct behaviours, each as important to understand as the next, that gather under this broad legal term. These behaviours are briefly defined in Table 1.1.

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| **Table 1.1.** Behaviours considered to be ‘non-consensual sexual image offending’ in this article |
| **Behaviour label** | **Description** |
| Revenge pornography | The non-consensual distribution of private, explicit images of an individual without their consent, with the intention to cause harm through embarrassment and/or distress.  |
| Upskirting | The non-consensual and surreptitious capturing of intimate images under an individual’s clothing.  |
| Deepfake media production | Using visual editing software to superimpose the likeness of another onto sexually explicit material.  |
| Cyber-flashing | Sharing sexually explicit images via digital technologies (e.g., text messaging, instant social media, or Bluetooth)to unsuspecting or non-consenting recipients. |

Second, before discussing each offence type in detail we would like to spend some time breaking down some of the key terminology which features within the descriptions themselves. The term *‘images’* should be taken to refer to a range of physical or digital media, including photographs, videos, and audio recordings (or any combination of these). Our use of *‘image(s)’* throughout this book is simply a reflection of the popular discourse related to this type of behaviour at the time of writing. The term *‘non-consensual’* can refer to the production (upskirting, deepfake media), distribution (‘revenge pornography’), or sending (cyber-flashing) of such media without the consent of the individual depicted in and/or receiving it. Where the term *‘private’* is used, this relates to the notion that the media in question would not ordinarily be found within the public domain. As we will see in the following sections of this chapter, this distinction of non-consensual production, distribution, or sending plays a key component in some of the legislation pertinent to image-based sexual abuse. Finally, where we use the term ‘sexual’ within this text, we are referring to the person or people depicted in the media being involved in sexual acts, that the media depicts their genitalia and/or buttocks (and/or breasts, in the case of women and girls), and/or that the media is produced or shared for the purposes of sexual gratification. Although this leads to a rather broad framing of the term ‘sexual’, we feel this is necessary in order to fully encompass the depth and breadth of image-based sexual abuse offences, especially as they are often discussed with brevity within social and national media reports.

Through the following sections, we will be explaining the offences of revenge pornography, upskirting, deepfake media production, and cyber-flashing in more detail, and in turn. Moreover, we will be discussing some of the core areas of law across Europe, the United States of America, and further afield, which pertain to these offences.

***Revenge Pornography***

‘Revenge pornography’ is the most commonly used term when defining the non-consensual sharing of private sexual images of another person (Ministry of Justice, 2015). Although motivations to offend will be discussed in more detail throughout *Chapter 2* of this book, historically, such images were usually uploaded onto dedicated revenge pornography websites (Franks & Keats-Citron, 2014); commonly following the breakdown of a relationship (Dawkins, 2015) and as a means of damaging an ex partner’s social reputation (Henry & Powell, 2014). Such websites include IsAnyoneUp.com (Visser, 2012), which averaged 150,000–240,000 unique page views per day (Dodero, 2012), and which raised over $13,000 in advertising revenue each month. This site was taken down from the internet in 2012 following a flurry of legal cases being brought forward against the owner, Mr. Hunter Moore. However, as a direct result of the internet, and in particular the ubiquity of hand-held mobile devices facilitating connections between individuals and wider social groups, such images or media can be shared – and re-shared – across any social media site at a fast pace. This means that those who initially distribute private sexual images instantaneously lose control of the dissemination of these materials. The images are commonly uploaded to pornographic websites, and/or disseminated alongside personal information, such as real names, work and home contact addresses, telephone numbers, e-mail addresses, and social media profiles. Some victims have been reported to be as young as 11 years of age (Ridely, 2015).

Although Keats-Citron (2009) suggested that the prevalence of the distribution of non-consensual sexual images is low, factors such as embarrassment or thoughts of not being taken serious by the police, family, and friends mean that this could be the result of widespread under-reporting of victimisation. As such, consideration of the impact of revenge pornography offences on the victims of this form of image-based sexual abuse is key. Victims are not only faced with social consequences, such as embarrassment and harm to familial and friendship relationships due to their hampered reputation, but there may be broader consequences such as having their employment terminated on the grounds of damaging an organization’s reputation (Bloom, 2014; Citron & Franks, 2014). They are also likely to experience psychological effects related to their victimisation, just as those experiencing any form of sexual offending are likely to. These effects include symptoms of depression, anxiety, and stress related to trust and self image (Bates, 2017), which, if persistent and severe enough, could result in elevated rates of suicide attempts and completions (Dahl, 2013; Stroud, 2014). Moreover, due to the inability to control the spread and distribution of said media, victims are left unable to distance themselves from further harassment, neither online nor in real life (Lichter, 2013), constantly questioning if (or when) they might next be faced with a re-emergence of their images.

Thus far, we have referred to this offence using the label ‘revenge pornography’, as we thought it the most suitable to allow the wider reader base to access and understand the offence and literature related to it. Further, this is the frequent terminology (alongside the more colloquial ‘revenge porn’) that is used in academic journals and by mainstream/social media outlets. However, although this label presents a convenient means of describing the offence through so-called buzzwords, it implicitly creates a very narrow conceptualisation of the offence, which should be considered problematic.

Although motivations to offend will be discussed in more detailed throughout *Chapter 2*, the prefix ‘revenge’ suggests that the core motivator for offending in such manner is in response to a misdemeanour being initially committed by the victim (Franks, 2013a). Whilst it stands that the most common scenario describing the non-consensual dissemination of a sexual images involves a heterosexual male sharing images of a female ex-intimate partner who freely and consensually shared the images in the first instance (Bloom, 2014; Sioen & Vankersshaever, 2014), this instantly discounts both the potential for offences to be conducted by an individual who is not an ex-partner of the victim, as well as a multitude of other potential motivators such as financial gain, coercion, notoriety, entertainment, or misogyny (Bartow, 2009; Franks, 2016).

Moreover, the words ‘pornography’ or ‘porn’ are words used in the discourse surrounding a consensual sexual act between adults that is captured through images or video, and distributed to a broader audience (again, consensually). As such, in the context of image-based sexual abuse, the use of this phrase discounts situations whereby images have either been captured covertly or in secret, and/or where consensually produced images have been shared more widely without consent, and/or where images feature individuals below the legal age of consent. This rationale mirrors that underpinning the adoption of the term ‘child sexual abuse material’ over the commonly used phrase ‘child pornography’, which formerly featured heavily throughout the Sexual Offences Bill 2014 (MacGuill, 2014). As such, Franks (2013b) uses the terminology non-consensual pornography to describe this offence, which spans “...recording and broadcasting of a sexual assault for prurient purposes and distributing sexually graphic images obtained through hacking or other illicit means” (pp. 1), whereby ‘illicit means’ could also include coercion. Case studies of such offending include those of American actors Jenifer Lawrence, Kate Upton, and Kirsten Dunst (to name a few), who had their iCloud accounts hacked in 2014 by 26-year-old George Garofano. As a result, private sexual images of said individuals were personally stored and publicly disseminated.

Nevertheless, underpinning both problematic stances is the potential for victim blaming attitudes to situate partial responsibility within victims for their own victimhood (Hall & Hearn, 2017; Starr & Lavis, 2018). Although in its infancy, current research in this area suggests that even though victims are not held fully accountable for the actions of others (Eikren & Ingram-Waters, 2016), perceptions of them and their actions are being scrutinized as a function of their past [sexualised] behaviour, much in the same way as people make judgements about the victims of contact sexual offences. For example, the initial taking of the images publicly-perceived to be ‘reckless’, ‘careless’, and ‘naive’ (Henry & Powell, 2015) and that individuals should be aware of the risks posed to them (Henry et al., 2017), but that responsibility lies with the victim to ensure that any images they sent of themselves to another are erased after the breakdown of a relationship (Gavin & Scott, 2019).

The key take-home message here is that regardless of how an image came to exist, or whether it was consensually shared in the first instance, conversations, reporting, and legalities surrounding ‘revenge pornography’ should be based around the non-consensual dissemination of such images to another source (Henry & Powell, 2015a) with the focus placed on (or shifted towards) the perpetrator (Henry & Powell, 2016). Indeed, Franks and Keats-Citron (2014) highlight that consent in the first instant is often viewed by the public as meaning blanket consent for wider dissemination, when this is very much not the case (Martinez, 2014).

***Deepfake Media Production***

Deepfake media production refers to the use of machine learning software (such as Google’s TensorFlow or FakeApp) and artificial intelligence to dynamically consolidate and transpose one image (or a series of similar images) onto a still or motion picture, whilst maintaining proportions and spatial arrangements (Rofer, 2016). This then gives the illusion that those individuals in the initial media are engaging in whatever behaviour is being depicted in the resultant product. Such media may or may not then be disseminated without the prior consent of those depicted (or supposedly depicted) within it (Attwood, 2005). The software to produce deepfake media is widely available and relatively easy to use; thus ‘lowering the technical threshold’ (Delfino, 2019, p. 890) to achieve images which are considered very difficult to distinguish from real life images (Gillespie, 2015; Harris, 2019). Although such techniques could be used to generate harmless media, such as the presence of Princess Leia in *Star Wars: Rogue One*, after the death of actress Carrie Fisher (Rense, 2018), the same techniques mean than virtually anybody who wishes to can produce deepfake sexualised images of another person. This is particularly pernicious in our hyper-connected technological context where images of people can be obtained from a multitude of sources, such as news outlets, social media, and via private consensual dissemination of images between known people. This action is also commonly referred to as ‘morph porn’ or ‘deepfake porn’ across literature and popular media (Hickey 2018). Although this will be discussed in more detail throughout *Chapter 2*, motivations to offend in such a manner might involve humiliation, extortion, the initiation or satiation of sexual arousal, or even to cause distress or harassment of the individual within the image (Harper et al., 2020; Harris, 2019).

As described by Delfino (2019), the majority of deepfake videos involve the superimposition of female celebrities onto the bodies of individuals who are engaging in sexual acts – all of which gain notoriety across the internet as a result of a combination of their sexual nature and the celebrity status of the individuals they profess to portray. In the first instance, X-rated videos were generated and posted onto the Reddit thread ‘r/deepfakes’. After quickly gaining thousands of subscribers, the media made their way onto pornography websites such as PornHub.com, which allows for the upload of private sexual videos that are self-produced by those with accounts. Even though such sites have previously commented that, in line with their terms of service, they would remove any non-consensual content – including deepfake media (Cole, 2018) – at the time of writing, deepfake sexualised material of Emma Watson, Gal Gadot, Taylor Swift, Meghan Markle, and Scarlett Johansson appear in search engine results. Akin to revenge pornography, deepfake media appears to primarily target women (mainly celebrities), although Delfino (2019) describes other scenarios whereby identical digital techniques could be used for nefarious reasons, such as presenting politicians accepting bribes, behaving unlawfully, or even ‘announcing an impending terrorist attack’. Nevertheless, although such actions have the potential to cause great harm both to individuals, as well as democracy more widely, campaigners posit that the most urgent threat via the use of deepfakes is through pornography, and not politics (Abram, 2020).

Rather troublingly, recent work that we conducted with one of our students found that only 5% of a random sample of 800 people were able to name (or get close to naming) deepfake pornography production as a specific offence (Rao, Fido, & Harper, 2020). This suggests that even though it is becoming more prevalent, this type of behaviour it is not yet as well-known within the general population that other forms of image-based sexual abuse (e.g., revenge pornography). Although more work needs to be conducted into the public perceptions of perpetrators, victims, or the act of deepfake media production more broadly, Delfino (2019) highlights the point that unlike revenge pornography, such images are do not depict a person who exists, only their facial likeness to another. They also raise the issue that most discussion takes place around the ‘victim’ of deepfake media production being the individual who’s face is transposed onto the body of another, however this leads to the individual who’s body is the subject of the issue being disregarded as a victim. Some people may argue that the owners of such bodies (most commonly pornographic actresses) would expect their likeness to be disseminated and available to view on the internet in such contexts. However, this negates the issue that they have not consented for this modification to take place (which in itself may represent a copyright infringement), or the effects that being depicted in other forms may take in terms of personal or professional reputation.

***Upskirting***

‘Upskirting’ is a colloquial term that describes the action or practice of secretly taking private sexual images underneath the clothing of a non-consenting (and often unaware) individual. Usually, the victims of these offences (as with most forms of image-based sexual abuse) are women. At its core, such behaviour might be conceptualised as being similar to that of voyeurism, in which individuals covertly observe others who are in a state of undress, and/or who are engaging in private sexual activities (Kaplan & Krueger, 1997). Such behaviour in general is typically viewed as an abnormality of sexual interest (McManus, Hargreaves, Rainbow, & Alison, 2013). In specific regards to upskirting, the British Broadcasting Corporation (BBC, 2019) reported a recent rise in the number of police reports pertaining to this type of image-based sexual abuse, from 78 between April 2015 and April 2017 to 94 for the single year of 2018. This indicates that more people are reporting being the victim of upskirting – possibly due to high profile campaigns to raise awareness in recent years. However, it is still possible that such an increase does not reflect the true rate of victimisation, owing to a combination of the surreptitious nature of upskirting as a behaviour, and victim under-reporting.

***Cyber-Flashing***

The term ‘cyber-flashing’ encompasses a number of different behaviours, from the sending of self-produced sexual media (colloquially, we see frequent references in modern society to ‘dick pics’ sent by men to (un)suspecting women; Waling & Pym, 2017) to the non-consensual transfer of pornographic media via digital technologies such as Bluetooth or Apple’s AirDrop feature. It is important to note that we do not include consensual sexting behaviour within established personal or romantic relationships as a form of cyber-flashing, as such interactions do not fit within our specific definition of image-based sexual abuse. Cyber-flashing is relatively common, with more than 50% of college students (Drouin & Landgraff, 2012) and 41% of women aged between 18 and 36 years (Thompson, 2019) reporting having been sent sexually explicit images or videos. The key feature of cyber-flashing that dictates whether a behaviour falls under the image-based sexual abuse umbrella is that the media shared is done so in a non-consensual and/or intrusive manner. As such, there are links here between cyber-flashing and the existing literature on exhibitionism, whereby individuals expose themselves to unsuspecting others.

**Sexting and the Normative Use of Social Media in Relationships**

Given the information presented above, it is important at this juncture for us to note that the use of social media and mobile technologies has become a normative means of relationship building and maintenance. That is to say that although images distributed in revenge pornography have often been produced consensual ‘sexting’ (Hasinoff, 2015), the sending of sexually suggestive messages, either using explicit language or nude/nearly nude photos and videos via digital technologies is an important and common behaviour in many long distance and modern relationships (March & Wagstaff, 2017; Uhl et al, 2018). A study by internet safety provider McAfee (2013) outlined that, even nearly a decade ago, more than 50% of adults reported sharing sexually explicit material through their mobile devices (with 16% of these sharing private sexual messages or media with strangers). Further, 50% had also saved their images online using cloud-based storage solutions. March and Wagstaff (2017) associated sexting predominantly with males who highly rate their own value as a mate, and who use such actions as a means of facilitating short-term mating. They also hypothesised that, based on the notion that women supposedly prefer short-term mates who take risks, the sending of one’s private sexual images could be a conscious strategy towards mating success.

However, while adults typically do not report being pressured into taking and sending private sexual images of themselves to other people (Lee et al., 2015), we also recognize the potential for such images (potentially in the case of younger individuals) to be coerced into such activities (Henry & Powell, 2016; Ringrose et al., 2012). This is highlighted by a recent study that noted how up to half of young people believe that there is pressure to engage in sexting (Alonso-Ruido, Rodríguez-Castro, Lameiras-Fernández, Martínez-Román, 2018). Sexting prevalence sits at around 15% of the population (Madigan et al., 2018), with the number of intimate messages sent and received decreasing among those aged 30 or older (Wysocki & Childers, 2011). Specifically, Garcia (2016) notes that the likelihood of sending a sexually explicit image decreases by 6%, and risk-related concerns related to sexting increase by 4%, for each year after this age. Of interest to the context of image-based sexual abuse, individuals who have previously engaged in sexting are less likely to blame victims for any detrimental use of their images (e.g., via revenge pornography victimisation; Hudson, 2014; Scott & Gavin, 2018). We explore such social attitudes and judgements in *Chapter 3*.

**Legislation**

An essential component of any text on offence-related literature is to contextualise said discussions within a legal perspective. Like many other offences, however, this becomes troublesome when it comes to image-based sexual abuse due to the absence of any consensus both between and within countries regarding definitions, legalities, and punishments, as well as the range of behaviours encompassing this umbrella label. Moreover, this area is further complicated by the rapid development of technologies that facilitate such offending (Moses, 2007). Throughout this section, we will take the offences of revenge pornography, upskirting, deepfake media production, and cyber-flashing in turn, and briefly outline some of the more notable laws, punishments, and deviations from previously discussion legislation across the world.

***Revenge Pornography***

Nigam (2018) highlights that to some extent, legislation taking action against revenge pornography legislation is a feature in many legal contexts across Europe (e.g., England, Wales, Scotland, Northern Ireland, Malta, Germany, France), the United States of America (e.g., Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin), Australia (e.g., New South Wales, South Australia, Western Australia, Victoria), Canada, the Philippines, Israel, and Japan. The following section will outline some of the established legalisation in this area and identify key differences, but please see Beyens & Lievens (2016) for an in-depth account of laws pertaining to revenge pornography in which they identify a set of minimum standards that policy makers and legislators should strive to achieve in order to ensure proportional and adequate provisions are included in legislation decisions. Such standards included the provision clear definition of terminology as well as the scope of the laws (i.e., to prevent the exclusion of selfies or necessitating degrees of nudity within the images), acknowledgement that it is the non-consensual nature of the offence which is the ‘trigger for criminalisation’, the provision of relevant defences and mitigating circumstances, and the integration of sufficient repercussions for the offence in the form of prison sentences and/or monetary fines.

In England and Wales, revenge pornography offences are covered under the Criminal Justice and Courts Act (2015) and are punishable by up to 2 years in prison, and/or a fine. Section 34 of the Act defines this offence as the “electronic disclosure of a photograph or film, for example by posting it on a website or e-mailing to someone. It also includes the disclosure of a physical document, for example by giving a printed photograph to another person or displaying it in a place where other people would see it”. There is also a public feature within the legislation, such that it includes imagery which would not typically be seen within the public – but importantly, nudity is not a requirement for the image or media clip to be classed under revenge pornography legislation. Images are “sexual” if “(a) it shows all or part of an individual’s exposed genitals or pubic area, (b) it shows something that a reasonable person would consider to be sexual because of its nature or (c) its content, taken as a whole, is such that a reasonable person would consider it to be sexual”. Hence, nudity is not a requirement per se. Under Section 35(5) of the legislation, however, adapting or altering personal images to become sexualised in some way (e.g., using image editing software, such as Photoshop) is counted as revenge pornography. One of the most defining (and controversial) aspects of the legislation is that it requires that the perpetrator acted with the intent to cause distress to the victim, however this is problematic as it is both difficult to prove and reduces the sexual agency of victim. Moreover, it is important to accurately conceptualise the term revenge as this has the capacity to create a legal loophole whereby a perpetrator might argue an absence of revenge; thus absolving them of liability for the crime (Lichter, 2013). The ‘reasonable person’ standard within the definition of ‘sexual’ also opens this possibility, with defendants being able to argue that the media distributed in lower-level cases of revenge pornography offending might not be considered sexual by ‘reasonable people’, with this being a standard that may change over time. In spite of this law being recently passed, from the roughly 1,000 cases reported by police forces in England and Wales in the latter half of 2015, 61% resulted in no action being taken against the perpetrator (Sherlock, 2016).

Elsewhere, there is currently no federal law against publishing non-consensual sexual images of another person that covers the entirety of the United States of America. At the time of writing, 46 States have local legislation against revenge pornography (Glaser, 2019) - seven more states than this time last year (Harris, 2019). Currently, only Massachusetts, Mississippi, South Carolina, and Wyoming have no legislation in relation to revenge pornography. The first state to criminalise revenge pornography was New Jersey in 2004 (Beyens & Lievens, 2016). Here, revenge pornography offending represents a third-degree felony, which criminalises the distribution of images in the absence of consent. This is punishable by a prison sentence of 3-5 years, and the possibility of a fine of up to $30,000. However there is an avenue for defence in the form of if the suspect acted with a lawful purpose and provided prior notice to the pictured person involved, such as “when a person other than the actual victim reports a case of non-consensual dissemination of sexual images to the police after having notified the victim of his or her intention to file the report and has printed out some of the sexual images from an infringing Facebook account as proof of the crime committed”. In this case, the person filing the report will be distributing a private sexual image in a non-consensual way but would face no punishment for their behaviour.

As summarised by Delfino (2019), many State-level laws pertaining to revenge pornography (for example, in California, Texas, New York, and Florida) require an element of intent from the perpetrator. For example, the legislation within the state of New York (where a conviction can be met with up to one year in prison and $1,000 fine) requires the individual who shared the image to have done so with the purpose of “harassing, alarming, or annoying” the victim (Glaser, 2019). This means that not only does one have to prove *mens rea* (the knowledge of wrongdoing), but that several cases would otherwise fail to be brought to trial in the presence of proposed alternative explanations of offending – such as for entertainment, the achievement of social status, or the perpetrators own personal sexual gratification. Wider motivations to offend will be discussed throughout *Chapter 2*. Moreover, many states include a requirement for harm or emotional distress to feature for the victim, which in a court setting could lead to further traumatisation as it leads to victims being required to further expose their private lives to reach an initial conviction (Delfino, 2019). This requirement also means that the act of distributing private sexual images is not illegal if the person depicted in the material remains unaware of this behaviour. Finally, although now superseded, the original California Senate Bill 255 did not include images which were taken by the victim themselves (Beyens & Lievens, 2016). This places further focus on the victim as a contributor to their victimisation. We discuss the implications of this type of thinking in relation to social judgements in *Chapter 3*. Taken together, much of the existing legislation places the onus of responsibility on the victim to prove the impact of their experiences, and relies on a limited range of potential perpetrator motivations. This is in contrast to viewing perpetrators’ actions of non-consensually disseminating private sexual images as being criminal in-and-of themselves (Delfino, 2019).

***Upskirting***

Although upskirting has been illegal in Scotland since 2010 under the Sexual Offences (Scotland) Act 2009, whereby it sits under the wider frame of voyeurism, it has only recently been made illegal in England and Wales. This occurred after calls for legislation were initiated by a campaign sparked by the experiences of 27-year-old Gina Martin, who experienced a man taking pictures underneath her skirt whilst attending London's British Summer Time music festival in July 2017. Reporting the incident to the police yielded less than helpful results due to said actions being deemed to not violate any specific offence at that time (BBC, 2019). Previously, such behaviour was addressed through the common law offence of outraging public decency, or as an act of voyeurism under the Sexual Offences Act 2003. However, the use of such offences was limited due to the wording of legislation pertaining to outraging public decency. That is, these laws can only be enacted if two or more people to have witnessed the act – a condition that often cannot be met in the case of upskirting. Moreover, as upskirting was not then categorised as a sexual offence, severe or repeated incidents would not lead a perpetrator to be subject to the same reporting requirements of other individuals with sexual convictions.

Although a first reading of The Voyeurism (Offences) Bill was initially blocked by one Member of Parliament (MP) who objected to a lack of thorough debate about the proposed legislation. However, a second reading led to upskirting becoming a criminal offence in April 2019 under an amendment to the Sexual Offences Act 2003. This offence can be dealt with in both a Magistrates’ Court and the Crown Court, and the punishment for committing such offences is up to two years' imprisonment, with a potential for said individuals to be added to the Violent and Sex Offender Register when the purpose of the offence is for sexual gratification. In law, upskirting occurs when *“*without consent, an individual operates equipment or records an image beneath a person's clothing to observe their genitalia or buttocks, whether covered or uncovered by underwear garments” and when the offender “has a motive of either obtaining sexual gratification or causing humiliation, distress or alarm to the victim”.

At the time of writing, strides are being made to develop and implement working legislation in relation to upskirting across many European countries, including France and Germany (Thompson, 2019). Legislation has already been implemented more broadly, however (e.g., in the USA, Australia, New Zealand, and India). For example, in Australia, upskirting is covered by Section 91L of the Crimes Act 1900, which makes it illegal if a person “for the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification, films another person’s private parts, in circumstances in which a reasonable person would reasonably expect the person’s private parts could not be filmed without the consent of the person being filmed to being filmed for that purpose, and knowing that the person being filmed does not consent to being filmed for that purpose”. This legislation, however, means that police have to prove that the perpetrator acted for the purpose of sexual arousal or sexual gratification, which, as we will show in *Chapter 2*, may not be the only motivation to perpetrate such an offence.

In America, as with revenge pornography there exists no federal law covering upskirting. In 2014, Massachusetts made it illegal to covertly record images, videos, or conduct electronic surveillance up a woman’s skirt or down their neckline. This legislation was implemented after Michael Robertson was arrested after using a mobile phone camera to covertly take photographs up the skirts of female passengers on Boston’s public transportation system. Their appeal was granted two days before the legislation was passed, as the legislation in place at the time of the offence required victims to be either nude or semi-nude (Memmott, 2014). Elsewhere, States including New York, Washington, Hawaii, and Florida have enacted laws that specifically make it criminal to surreptitiously photograph or otherwise record images taken of a people's “intimate areas” without their consent. In general, these statutes define “intimate area” as parts of the body or undergarments covered by clothing, and/or intended to be protected from public view.

***Deepfake Media Production***

From the above, there is clear support for Delfino’s (2019) concerns that the law has not been able to keep up with the many ways in which image-based sexual abuse might manifest. When turning our attention to deepfake media production specifically, this becomes especially difficult due to the use of artificial intelligence making it increasingly hard to tease apart fact from fiction – a concern which law enforcement has not had to deal with previously (Bates 2016; Delfino, 2019).

At the time of writing, there is currently no *explicit* legislation pertaining to deepfake media production in England and Wales. The reason for using the term ‘explicit’, however, is important as disparity between wording within Sections 34 and 35 of the Criminal Justice and Courts Act (2015) in relation to the non-consensual dissemination of one’s private sexual images might cause confusion in relation to deepfakes. Specifically, when delineating the terms ‘private’ and ‘sexual’ in Section 35 of the act, the legislation suggests that media pertaining to such offences *is not defined* *as such* if said media is only private or sexual as a function of it being altered. This suggests that digitally altering one’s image to be sexual (the definition of deepfake media production) would not be classified as an offence under this Act. However, in Section 34, editing a pre-existing, non-sexual image into one which is sexually explicit appears to be covered under the line: “photographed or filmed images includes photographed or filmed images that have been altered in any way”. This contradiction likely creates unnecessary confusion – especially in the context that much of the impact for the victim is comparable in that sexualised media of them is being disseminated to other parties without their consent. There is clearly a need for specificity regarding legislation relating to deepfake pornography production.

Despite a recent “flood” of proposals related to deepfake media in relation to both reporting (Deepfake Report Act) and perpetration (The Deep Fakes Accountability Act), there currently exists no federal law which legislates against deepfake media production (Ruiz, 2020). As such, victims are often forced to rely on existing legislation pertaining to other related offences, including revenge pornography legislation, to govern their cases (Delfino, 2019; Harris, 2019). However, much of this legislation does not appear to be fit for this purpose. For example, the Communications Decency Act (1996) provides protection only for the websites which may find themselves unknowingly hosting non-consensual images (which are often submitted by anonymous users), by the law not treating these sites as publishers of the media. In reality, this means that although images can be requested to be removed, recompense cannot be sought from the website owners themselves – thus, placing the emphasis on the victim or those working on their behalf to identify the original contributor. Focusing on revenge pornography-related legislation, specifically, Virginia makes it illegal to insert a “digital likeness” into a pornographic video without the prior consent of the individual depicted in the likeness. Legislation in North Carolina focuses on the dissemination of media in such cases where an individual “knowingly discloses an image of another person with the intent to do either of the following: coerce, harass, intimidate, demean, humiliate, or cause financial loss to the depicted person”.

Harris (2019) highlights a series of potential dangers with such legislation. First, these States, along with twenty-four others at the time of writing, mention some variant of the intent to ‘harass’, meaning that perpetrators who claim other motivations for their actions (such as those discussed within *Chapter 2* of this book) may be able to avoid criminal liability. Second, Harris (2019) describes that legislation varies over the definitions of phrases such as “intimate parts” or being “engaged in a sexual act”, which may not apply to all incidents of deepfake pornography offending, even though victims would likely face comparable consequences. That is, an individual who is morphed into a pornographic clip may not have *their* ‘intimate parts’ displayed, but still face the same emotional impacts as those who do in revenge pornography cases. Third, legislation, as well as the majority of the discussion around image-based sexual abuse, fails to consider the individuals whose bodies feature in such images. In such cases, Delfino (2019) describes the difficulty in which such individuals might have in proving that their body is significantly identifiable to justify a case of misrepresentation. Finally, it must be noted that where deepfake-related legislation is in place, these are often not limited to sexually-explicit depictions. For example, legislation in both Texas and California pertains only to digital interference, such as fraudulently representing politicians to gain political favour, and legislation in New York is only applicable to the likenesses of deceased individuals.

Strides towards a unified approach to legislate against deepfake media production in the USA were made when Senator Ben Sasse introduced the Malicious Deep Fake Prohibition Act of 2018. This Act proposed the prohibition of creating, with the intent to distribute, fraudulent audio-visual records, defined as media which had been “created or altered in a manner [which] would falsely appear to a reasonable observer to be an authentic record or the actual speech or conduct of an individual”. However, Delfino (2019) argues that even though this is a reasonable step forward, the Act maintains focus on the implications of political deepfakes and fake news – and so negates to incorporate any pornographic-specific outcomes for said victims. This Act has since expired and at the time of writing, there are no accounts of it being re-introduced for discussion. Moreover, the Deep Fake Accountability Act mentioned earlier in this section also does little to aid victims of deepfake media production who have been depicted in a sexualised manner as it only necessitates the need to include a watermark to indicate that the media is fake (Ruiz, 2020). The penalties for failing to do so is a fine of up to $150,000 and/or imprisonment up to 5 years. Of course, individuals will still see the sexualised depiction of the victim, and this does not prevent others from removing the watermark at a later date, once the image has left the control of the creator.

***Cyber-Flashing***

Unlike the offences of revenge pornography, upskirting, and deepfake media production discussed above, very little legislation worldwide addressed incidents of cyber-flashing. In Scotland, cyber-flashing falls under Section 6 of the Sexual Offences (Scotland) Act 2009, which prohibits causing a person to look at a sexual image without their consent, however no specific cyber-flashing legislation exists in England and Wales. Here, such behaviour could be dealt with under the Protection from Harassment Act 1997 (and to a lesser degree, the Sexual Offences Act 2003), but such legislation is extremely inconsistent and does not fully protect against this niche method of offending (Thompson, 2019). Elsewhere, Griffiths (2019) describes the criminalisation of cyber-flashing as part of a wider addressing of online sexual harassment within Singapore’s Penal Code. Here, sending unsolicited images containing genitalia could lead to a custodial sentence of up to two years; with an enhanced sentence in cases involving victims below 14 years of age. Moreover, in Australia, the Crimes Amendment (Intimate Images) Bill 2017 implicitly covers cyber-flashing by disallowing any distribution of sexually explicit and intimate images without consent. It remains to be seen how other countries around the world will generate (or adapt existing) legislation to help tackle this form of image-based sexual abuse.

**Chapter Summary and Overview of Remaining Chapters**

Throughout this chapter, we have aimed to delineate working definitions of *revenge pornography*, *upskirting*, *deepfake media production*, and *cyber-flashing*; offences which fall under the umbrella of image-based sexual abuse. To achieve this, we covered several prominent debates within the literature, such as the pitfalls of referring to the non-consensual distribution of sexual images as revenge pornography, and the degrees to which individuals whose bodies (instead of faces) appear in deepfakes should be treated as victims of said crimes. Moreover, we contextualised such discussion within a wider framework of accepting the use of sexting as a modern day means of developing and maintaining interpersonal relationships, before setting out to provide an overview of legislation pertaining to image-based sexual abuse across the globe.

Although there is not the scope to cover this as in depth as can be observed in the works of both Delfino (2019) and Beyens and Lievens (2016), there appears to be vast disparity in terms of legislation pertaining to victims of image-based sexual abuse, with culturally-differing definitions, punishments, and caveats to offending all being in operation. Given that victims of said offences suffer equally, regardless of their nationality or the perpetrators’ motivations to offend, there is a clear argument for uniformed punishments and legislation to be applied in a globally connected world.

Looking forward to the remainder of this book, in Chapter 2, we examine the different motivations for each form of image-based sexual abuse. In doing so, we seek to situate the academic and theoretical discussion of these behaviours within the forensic psychological literature of sexual offending. In Chapter 3 we take this one step broader and consider the psychological characteristics of social judgements about image-based sexual abuse, paying particular attention to social and cultural beliefs about these behaviours, their perpetrators, and their victims. Finally, in Chapter 4, we move away from *what is known* to *what is yet to be known* within the literature; and by doing so, we seek to facilitate discussion between academics, policy makers, victim groups, and key stakeholders – a process which is vital in order to ensure that future literature is victim-focused, empirically-driven, and meaningful to the wider international community.

**Discussion Questions**

At the end of each chapter of this book, we challenge the reader with three questions to get you thinking more broadly about the research and information presented within. Academics are welcome to use these discussion points as a basis for lectures and workshops, but we write these in the hope of inspiring your engagement in future research to help answer them in an empirical, research-driven fashion. For non-academics, we also welcome your opinions and feedback because ultimately these discussions relate to offences which can be relevant to us all and academia is nothing without engaging with those that our research proposedly serves. Please use the following e-mail addresses:

Dr. Dean Fido: deanfido.psych@gmail.com

Dr. Craig Harper: craigaharper19@gmail.com

**[1]** Compare and contrast your understanding of non-consensual image-based sexual offences before and after reading this chapter. How accurate was your knowledge and where you believed otherwise, what might have been the key contributors to this misunderstanding?

**[2]** What do you think are some of the most prominent pitfalls of not having an international, and unified legal approach to dealing with non-consensual image-based sexual offences? Do you think there are any benefits for having variations in law and why might this be?

**[3]** Using the definitions provided throughout this chapter, how important do you think the wording surrounding non-consensual image-based sexual offences is in both the media, and the manner by which we discuss and frame victims of such crimes?

**Suggestions for Further Reading for Chapter 1**

**[1]** Beyens, J., & Lievens, E. (2016). A legal perspective on the non-consensual dissemination of sexual images: Identifying strengths and weaknesses of legislation in the US, UK and Belgium. *International Journal of Law, Crime and Justice*, *47*, 31-43.

**[2]** Delfino, R. (2019). Pornographic deepfakes: The case for federal criminalization of revenge porn’s next tragic act. *Actual Problems of Economics and Law*, *14*, 887-938.

**[3]** Hall, M., & Hearn, J. (2017). *Revenge pornography: Gender, sexuality and motivations*. London: Routledge.

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