

RESPONSE TEMPLATE FOR CONSULTATION ON PROSECUTING SOCIAL MEDIA CASES

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The Centre for Gender Equal Media at Durham University (GEM) is a newly established think-tank generating evidence and policy ideas to work towards a gender equal media. Founded by a partnership between leading researchers and policy experts in the field, GEM's aim is for a democratic media in the UK, open and accessible to all, including print media, online spaces and social media, film, gaming and music videos.

1. Does the expanded section on Category 2 offences - *Communications targeting specific individuals* - cover all the main offences of this type? If not, what other offences might be covered?

We welcome the recognition in the new Guidance that the offence of disclosing private sexual images without consent ('revenge pornography') is an offence causing serious harm and coming within Category 2.

Recommend using terminology other than 'revenge porn': disclosing private sexual images without consent

While we understand that the term 'revenge pornography' is commonly used, we urge the CPS to refer to the offence using different terminology, such as 'disclosing private sexual images without consent'. The previous CPS Guidance referred to 'malicious use of intimate photographs'.

The term 'revenge pornography' is commonly understood to refer to only to one, albeit pernicious, form of abuse and there is a risk, therefore, that the Guidance is assumed to apply to only cases where ex-partners maliciously distribute images without consent. The use of the term 'pornography' is also inappropriate in this context as it focuses on the perceived actions of the victim (producing 'porn'), and associates these images with consensually produced sexual material and the commercial pornography industry.

The Scottish Parliament Justice Committee and the Australian Senate Inquiry on 'Revenge Porn' both recommend the use of the term '*non-consensual sharing of intimate images*', due to the inappropriate, insensitive and often misleading nature of the term 'revenge porn'.

We recommend the term '*image-based sexual abuse*' as it conveys the serious harms of this form of abuse and its clear links to other forms of violence against women.

'Not "revenge pornography", but abuse: let's call it image-based sexual abuse', Clare McGlynn and Erika Rackley
<http://everydayvictimblaming.com/news/not-revenge-porn-but-abuse-lets-call-it-image-based-sexual-abuse-by-%E2%80%8Fmcglynnclare-erikarackley/>

Scottish Parliament Justice Committee 2nd Report, 2016 (Session 4): Stage 1 Report on the Abusive Behaviour and Sexual Harm (Scotland) Bill
<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/93068.aspx>

Australian Senate, Legal and Constitutional Affairs Reference Committee, *Phenomenon Colloquially referred to as 'revenge porn'*
http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Revenge_porn/Report

2. Does the new section on VAWG cover the key issues in social media VAWG offences? If not, what other issues might be included?

Welcome inclusion of VAWG-specific guidance

We warmly welcome the specific inclusion of guidance on VAWG in the context of social media offences. This was a major omission in the last guidance as there is significant and growing evidence that many offences via social media are forms of VAWG and are perpetrated against women and girls on the basis of their gender. This now links the guidance appropriately to the Home Office-led VAWG strategy and related actions. It will also mean that prosecutors better understand the motivation for these offences and will lead to better data recording and policy-development around prevention.

We also welcome the recognition that technology-related violence against women is on the rise and law enforcement must ensure we take online crime as seriously as offline offending. It is still the experience of front-line women's support services that these crimes are often minimised by criminal justice professionals.

Revise Guidance on Threshold for Category 4 social media offences

We are concerned that the 'high' threshold for Category 4 social media offences does not take into account the variety and severity of harms suffered by victims, mostly women, of online abuses. Further, we agree with the End Violence Against Women coalition which advised in 2013 that concerns with free speech need to be balanced with Article 8 of the European Convention on Human Rights (right to respect for private and family life) in conjunction with Article 14 (Prohibition of Discrimination). Further, while concern is expressed regarding the potentially large number of communications that might fall under section 1 of the Malicious Communications Act 1988 and section 127 of the Communications Act 2003, this underlines for us the seriousness of the issue. A potentially high number of criminal offences being committed daily suggests the vital need for clear action challenging these growing practices. Just because there is a high volume of crime, does not mean we should effectively disregard the law.

Unnecessarily Limited Scope of Grossly Offensive:

The examples of what comes within 'grossly offensive' in the Guidance are

extremely limited. The Interim Guidance states that the following *may* be considered ‘grossly offensive’: ‘very serious injuries’, women being raped, or sadistic violence accompanied by supportive text.

This is a worryingly limited category of images or videos. We urge the CPS to revise this guidance so that it is reflective of the harms suffered by victims, by including all forms of sexual assault, all serious injuries (not just ‘very’ serious) and including sadistic violence with or without accompanying text.

Guidance on Indecency in context of VAWG

Further, the Interim Guidance provides no reference to interpretations of ‘indecent’ in the communications offences. This is a broader category than ‘grossly offensive’ and should encompass a wider range of forms of communications abuses suffered by women, including all forms of image-based sexual abuse.

Guidance on ‘Context and approach’

We recommend that the VAWG section is strengthened to provide further guidance on the ‘context and approach’ when considering VAWG category 4 offences. This part of the guidance cautions prosecutors against taking action in view of the ‘instantaneous’ often ‘jokey’ nature of social media. This must be balanced with guidance on the specific adverse impact of online abuse for women and girls. Online abuse is a gendered phenomenon, affecting predominantly women and girls.

Communications which may be presented as ‘banter’ amongst or by men, may have devastating consequences for women in view of social attitudes of society, friends, families and employers. Online harassment and abuse can have the effect of limiting women’s online activities, curtailing their rights to freedom of expression and limiting their engagement with social media.

We urge the Guidance, therefore, to state that prosecutors must ensure great emphasis on the harms to victims, rather than just on the motives or justifications of perpetrators.

The Public Interest

We note that prosecutors are guided to weigh the effect on the victim, particularly where there is a hate crime element. We would suggest that VAWG should also be included here, as it is currently an anomaly not to include it.

3. Does the new section on *Hate Crime* cover the key issues in social media Hate Crime offences? If not, what other issues might be included?

Yes

4. Does the new section on *Ancillary Orders* cover the main principles to consider when imposing conditions and prohibitions relating to internet use and access? If not, what other principles might be covered?

Yes.

5. Do you have any other comments on the guidance you would like to offer?

We note that **Category 3: Breach of court orders and statutory prohibitions** includes anonymity under Section 5 of the Sexual Offences (Amendment) Act 1992 for a 'victim of a sexual offence'. We would strongly suggest that this wording should be amended in line with the legislation to refer to 'complainants' which is correct in law. A 'victim' may be understood to only refer to witnesses where there has been a finding of guilt in court, whereas the law provides for anonymity based on the complaint made, regardless of the finding in court.

How did you hear about this consultation?

- **National press**