

UNIVERSITY OF LATVIA

European Master's Degree in Human Rights and Democratisation
A.Y. 2016/2017

Revenge porn:
the concept and practice of combatting nonconsensual sexual
images in Europe

Author: Francesca Coletti
Supervisors: Dr. Artūrs Kučs and Lolita Bērziņa

Abstract

There have been numerous high profile instances of nonconsensual sexual images, or ‘revenge porn’, within the EU in recent years, and growing social and political awareness of its existence. However, previous research focusing on the online violations of human rights has included little emphasis towards the impact of a horizontal relationship, and the potential for response. This thesis attempts to rectify this omission by considering the defining aspects of revenge porn, impacts for those affected, how far we can consider revenge porn ‘gendered’ or an act of violence, and whether it is a violation of human dignity. Building upon this, national and possible regional responses are weighed in turn. The existing revenge porn laws in the UK are measured for efficacy and impact, in contrast to the current data protection laws in Italy and the recent case of Tiziana Cantone. We then turn to the potential for a regional response from the EU; data protection laws, the right to be forgotten, and ratification of the Istanbul Convention are analysed through the lens of a potential regional revenge porn response. These areas combine and lead us toward an overarching realisation of the actors required, and next steps needed, to combat revenge porn within the EU.

Acknowledgements

My sincerest gratitude to Artūrs and Lolita for their support, patience, criticism, and gentle reminders that deadlines are important.

Thank you to my family for always listening (and debating) about feminism, revenge porn, politics, and human rights, and your unwavering belief that I could do anything I decided upon.

A special thanks to Emma for the repeated read throughs, to both Emma and Meg for actually writing and recording a song to get me through the dark thesis writing hours, Mathieu for confirming that yes, that is how the law works, and the nasty women chat for support, discussion, and hilarity in equal measure.

And finally, thank you to the whole of E.MA for one of the best years of my life, home is whenever I'm with EIUC.

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List of abbreviations

CEDAW The Convention on the Elimination of all Forms of Discrimination Against Women

CJEU Court of Justice of the European Union

CNIL Commission nationale de l'informatique et des libertés (National Commission on Informatics and Liberty)

ECHR European Convention on Human Rights

ECtHR European Court of Human Rights

EIGE The European Institute for Gender Equality

EU European Union

FOI Freedom of Information

FRA Fundamental Rights Agency

GREVIO The Group of Experts on Action against Violence against Women and Domestic Violence

MEP Member of the European Parliament

PTSD Post-traumatic Stress Disorder

TFEU Treaty on the Functioning of the European Union

UN United Nations

Introduction

In the past thirty years the ways in which we interact with each other, and the scope of information available to us have been consistently changing and expanding. At the time of writing, just over 46% of the world's population have internet connection¹, a figure which includes 76.7% of the population of Europe². The sheer magnitude of this technological advent has unsurprisingly had drastic and lasting impacts on each aspect of life, from the individual to more social and national levels. Internet access has empowered human rights activists as a key medium for quickly reporting violations, and enabled whistleblowers, therefore creating greater accountability; information can now reach huge and geographically diverse groups in a matter of minutes³. Frank La Rue, the previous UN Special Rapporteur on the promotion and protection of freedom of opinion, believes the internet to be “one of the most powerful instruments of the 21st century” for creating transparency, access to information, and increasing participation⁴. There is little doubt concerning the overall impact the internet has had.

Yet, it is important to remember that the internet can only be a product of those who use it. When discussing uprisings in Arab countries, Ziad Khalil AbuZayyad has noted the vital role played by internet access, but has been careful to state that the internet itself is not the reason for change, simply a vehicle, as it is “the minds that are using it in every possible way⁵.” It stands to reason then, that whilst the internet exists as a tool for positive change, it can also be open to many abuses and violations parallel with the offline world. This sentiment is reflected in the 2012 UN Human

¹ Internet connection meaning here: An individual who can access the internet at home via any connection, type, or device.

² Internetlivestatscom, 'Internet Live Stats' (Internetlivestatscom, 20 October 2013) <<http://www.internetlivestats.com/watch/internet-users/>> accessed 24 April 2017; Internetworldstatscom, 'Internet World Stats' (Internetworldstatscom, 31 March 2017) <<http://www.internetworldstats.com/stats4.htm#europe>> accessed 24 April 2017.

³ Rikke Frank Jørgensen, *Framing The Net* (1st edn, Edward Elgar 2013), 44; UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression: Addendum, Communications to and from Governments, 16 May 2011, A/HRC/17/27, available at: <http://www.refworld.org/docid/50f3db632.html> [accessed 03 April 2017], 1.

⁴ UN Human Rights Council, A/HRC/17/27, 1.

⁵ Ziad Khalil AbuZayyad, 'Human Rights, The Internet And Social Media: Has Technology Changed The Way We See Things?' (2013) 18 *Palestine-Israel Journal*, 38.

Rights Council Resolution with its message that “the same rights people have offline must also be protected online⁶.”

In continuation, there are aspects of the online experience that require a unique response. The vast number of groups with a focus on protecting human rights standards solely online, ranging from data retention to filtering and blocking, highlight the ever growing need for a tailored answer to violations within the online sphere⁷. This is compounded further when we consider the global nature of the internet and its disregard for national boundaries or borders. The issues of jurisdiction and responsibility potentially call for a more cooperative international response than the current human rights frameworks consider; it seems insufficient to only consider online rights by national legislation when the internet is not a national entity.

With this context in mind then, we turn to the issue of the colloquially termed ‘revenge porn⁸.’ When Frank La Rue described the internet as representing “a significant leap forward as an interactive medium,⁹” the ability of people to post sexual images without the consent of those depicted, for the full view of anyone with an internet connection, is undoubtably not an aspect that was anticipated. Indeed, much discussion concerning human rights violations online pertain to a government restricting the rights of their citizens, be it through limiting freedom of expression, the ability to receive information, or internet access itself¹⁰. This focus is both understandable and necessary due to the scope and pervasive nature of the violations, but emphasis must also be placed upon the ability for horizontal violations of rights in the online sphere, and the obligation of states to protect individuals from these occurrences.

It is true that recently this has begun to receive more attention on both national and regional levels. In the last few years, revenge porn has been targeted directly with specific legislation making it

⁶ UN Human Rights Council, Human rights and arbitrary deprivation of nationality : resolution / adopted by the Human Rights Council, 16 July 2012, A/HRC/RES/20/5, available at: <http://www.refworld.org/docid/5016631b2.html> [accessed 22 May 2017].

⁷ Jørgensen, Framing The Net, 44.

⁸ This is a contested term, for discussion on this and the definition please refer to chapter 1.4.

⁹ UN Human Rights Council, A/HRC/17/27, 6.

¹⁰ Jørgensen, Framing The Net, 44.

illegal in countries including Japan, Israel, the U.K and various states in the US¹¹. There has also been some direct attention paid at a regional level through the work of Malta MEP Roberta Metsola, which has led to MEPs calling on Member States to take all necessary actions, including criminal sanctions and education¹². This increased awareness is largely due to some high profile examples in the U.K, Italy, and Malta that have reached national and international media, and therefore incited a public response¹³. This has been compounded by what has been termed ‘celebrity photo hacks’ or ‘leaks’ of images and video, which gain traction in the media due to the public persona of the individuals involved¹⁴. The assumption exists then, that internationally known cases - usually including celebrities or resulting in suicide - are the total, when in reality these instances unfortunately represent only the tip of the iceberg of a larger problem.

The lack of comprehensive legislative response, coupled with intent to shame being a key aspect of this topic, means that solid data including the numbers affected by revenge porn is particularly difficult to gather and obtain. From April 2015- December 2015 there were 1,160 reported incidents of revenge pornography in the U.K alone¹⁵. A recent survey has found that 1 in 25, or roughly 4% of internet users in the U.S, have been a victim of threats or posting of nude images without their permission¹⁶. Yet, we need to remember that these numbers contain only the reported figures, and the underreporting of similarly ‘shame’ based violations such as rape or sexual assault is

¹¹ 'Police Receive 110 Reports Related To 'Revenge Porn' In One Month' (The Japan Times, 2015) <<http://www.japantimes.co.jp/news/2015/04/02/national/crime-legal/police-receive-110-reports-related-revenge-porn-one-month/>> accessed 13 April 2017 and Yifa Yaakov, 'Israeli Law Makes Revenge Porn A Sex Crime' (The Times of Israel, 2014) <<http://www.timesofisrael.com/israeli-law-labels-revenge-porn-a-sex-crime/>> accessed 13 April 2017 and 'Revenge Porn: More Than 200 Prosecuted Under New Law - BBC News' (BBC News, 2016) <<http://www.bbc.com/news/uk-37278264>> accessed 13 April 2017 and '37 States + DC Have Revenge Porn Laws - Cyber Civil Rights Initiative' (Cyber Civil Rights Initiative, 2017) <<https://www.cybercivilrights.org/revenge-porn-laws/>> accessed 13 April 2017.

¹² 'Roberta Metsola Heads EU Campaign To Stop 'Revenge Porn' (Independent.com.mt, 2016) <<http://www.independent.com.mt/articles/2016-11-24/local-news/Roberta-Metsola-heads-EU-campaign-to-stop-revenge-porn-6736167053>> accessed 13 April 2017.

¹³ 'Roberta Metsola Heads EU Campaign To Stop 'Revenge Porn' (Independent.com.mt, 2016) and Stephanie Kirchgaessner, 'Tiziana Cantone: Seeking Justice For Woman Who Killed Herself Over Sex Tape' (The Guardian, 2017) <<https://www.theguardian.com/world/2016/oct/13/tiziana-cantone-trail-justice-woman-killed-herself-sex-tape-italy>> accessed 1 May 2017.

¹⁴ Lee Munson, 'Jennifer Lawrence, Rihanna, 98 Other Celebs' Nude Photos Leaked Online' (Naked Security, 2014) <<https://nakedsecurity.sophos.com/2014/09/01/jennifer-lawrence-rihanna-98-other-celebs-nude-photos-leaked-online/>> accessed 13 April 2017.

¹⁵ Peter Sherlock, 'Revenge Pornography Victims As Young As 11, Investigation Finds - BBC News' (BBC News, 2016) <<http://www.bbc.com/news/uk-england-36054273>> accessed 5 May 2017.

¹⁶ Data & Society, 'Nonconsensual Image Sharing' (2016) <https://datasociety.net/pubs/oh/Nonconsensual_Image_Sharing_2016.pdf> accessed 5 April 2017, 4.

prevalent¹⁷. It seems reasonable to extrapolate this to more countries within Europe that do not have consistent methods for reporting, though of course we cannot be sure of the exact figures.

In an attempt to obtain some data the 'location' search feature on myex.com, one of the current largest sites dedicated to the posting and viewing of revenge porn, was utilised by the author. Using just this website on 5th May 2017, nonconsensual posts of sexual images concerning individuals from most countries within Europe were found, some with a large volume¹⁸. This is just one U.S based, English speaking website when there are currently an estimated 2,000 revenge porn hosting websites worldwide¹⁹. Looking at it from this angle, we can begin to see the scope, and that is before considering that up to 1 in 10 ex-partners have threatened to post sexual images online; using blackmail and shame as a tool without necessarily posting the images themselves²⁰. It is difficult to deny, then, that the phenomena of posting nonconsensual sexual images in Europe exists, despite the lack of coherent response in most countries and subsequent difficulty in obtaining data. Furthermore, the internet does not consider national borders and so it seems naive to assume that violations committed whilst using it would either; this is by no means a phenomena contained to one country or geographical location. Therefore, we must question the efficacy of a single national response and whether we should instead be looking for a more regional understanding of the issue.

1.1 Methodology and Chronology

The aim of this thesis is to explicitly establish nonconsensual sexual images as a violation deserving of national and regional responses. Then, building upon this, to determine the method and level of the specific responses needed. To fulfil this aim several research questions have been identified below. In order to reach the fullest understanding of both nonconsensual sexual images and potential responses this paper is a multidisciplinary one, and will engage in social, academic, and legal reasonings and arguments.

¹⁷ 'The Criminal Justice System: Statistics' (Rainn.org, 2016) <<https://www.rainn.org/statistics/criminal-justice-system>> accessed 5 May 2017.

¹⁸ 'Myex.Com! Naked Pics Of Your Ex' (Myex.com, 2017) <<http://www.myex.com/>> accessed 5 May 2017. Location search function results: UK- 787, Germany 258, France 109, Italy 46, Netherlands 41, Sweden 34, Poland 37, Czech Republic 27, Romania 25, Estonia 5 Latvia 5, Lithuania 3, Iceland 2.

¹⁹ Juju Chang, Jake Lefferman and Lauren Effron, 'Briaandchrissy' Youtube Star Opens Up About Revenge Porn Legal Battle' (ABC News, 2017) <<http://abcnews.go.com/US/chrissy-chambers-youtube-sensation-briaandchrissy-opens-revenge-porn/story?id=38087941>> accessed 5 May 2017.

²⁰ 'Action Sheet On Revenge Porn' (McAllister Olivarius, 2017) <<http://www.mcolaw.com/white-papers-research/action-sheet-on-revenge-porn/>> accessed 5 May 2017.

The initial question posed by this thesis is *can revenge porn be defined as a human rights violation?* We will engage with a variety of academic and scientific arguments in an attempt to understand the potential violation from each angle, namely: *Is it legitimate to position nonconsensual sexually explicit images as a gendered violation?* Furthering this, *could the argument be made that this falls in the category of domestic or sexual violence?*

In continuation, we will discuss the likelihood of nonconsensual sexual images being accompanied by blackmail, coercion and stalking. Furthering this will be an analysis of the specific impacts on those affected; mental health issues, employment problems, PTSD, suicide, freedom of speech restrictions, and the potential argument for existence of a ‘culture of fear,’ and its impacts on those who live within it. We will engage with existing literature and consider various quantitative research. In the hope of the widest understanding being achieved a broad use of academic, scientific and newspaper articles will be employed, along with more anecdotal evidence from survivors. Finally, with each of these aspects in mind the question will be posed, *would we classify nonconsensual sexual images as an affront to human dignity?*

We will examine national responses to ‘revenge porn’ and begin to understand the impact that these have had. Revenge porn has been illegal in the England and Wales since April 2015, and due to FOI requests from British media, statistics are available concerning the numbers reported and prosecuted²¹. Using this data we will consider the lessons to be learned from a British response and whether improvements can be made. We will also consider existing criticisms of the revenge porn law, including anonymity and training of police, in the hopes of realising the efficacy of the legislation and how it can be improved. In contrast, we will then consider Italy’s existing data protection law and its use in the recent high profile revenge porn case of Tiziana Cantone. By engaging with the specific events of this case study we will analyse the effectiveness of data protection law for protecting against revenge porn in Italy. Leading us to the question, *is data protection law sufficient protection against revenge porn?* We will weigh the responses of the UK and Italy and assess the ability of national legislation to protect individuals from nonconsensual sexual images.

²¹ Sherlock, 'Revenge Pornography Victims As Young As 11, Investigation Finds - accessed 5 May 2017.

We will then shift our focus to view the problem at a broader level, and consider the current framework of protection existing within the EU. We will consider the Data Protection Directive and soon to be implemented Regulation, but also the political will for greater protection online. We will then closely analyse the right to be forgotten both as an independent right, and how it directly assists in the defence against nonconsensual sexual images, and ask: *is the right to be forgotten enough of a protection against revenge porn?* In contrast, we shall analyse the current strategies of the EU when responding to gendered violence, and the potential framework and responsibilities that will result from the EU ratification of the Istanbul Convention. The question will then be, *'if we consider revenge porn as both gendered and a form of violence, should the EU combat it via these means?'* And then, *which method could have the greatest potential impact for the EU to address revenge porn?*

With both national and regional actors in mind we will consider the best level of response moving forward; and at which level any form of response needs to originate from to realise any lasting impact. Our considerations need to work for each of these actors in terms of freedoms, but also ensure the best possible response for the victims or survivors of nonconsensual sexual images themselves.

1.2 Limitations

The scope of the thesis is a wide one, but focusing on the EU and national contexts allows for the greatest balance between depth and breadth with the space available. It also has the greatest potential in terms of effecting change; a world-wide or cross-regional approach seemed counter productive as there is (currently) no overarching body that could potentially legislate for the internet in a global sense, to match its global nature.

Examples and research from U.S cases and academics have been used, but generally as a comparison or indicator of scale. Most of the preexisting research is based in the U.S and so it is important to use that as a baseline or reference point with which to look at the EU member states situation as a whole.

The U.K and Italy have been chosen as the two states for deeper analysis for a number of reasons, the most pertinent being that the most data and discussion exists concerning these states. There is also great potential for discussion when considering a state that has passed specific legislation in

tandem with a state with only Data Protection laws. Given the opportunity to expand this project further a greater analysis including varying states within the EU would be explored, and possibly a further comparison of attitudes towards the issue.

Concerning the body of the work itself, it's been found that sexual minorities have generally been found to be more vulnerable to cyber harassment than heterosexual individuals²². Similar studies have been found in relation to class, race, and ethnicity²³. Whilst it is considered on some level in the work, the true intersectional nature of nonconsensual sexual images online - and the impacts - needs properly detailed researching in a manner that has yet to be achieved. This thesis will seek to establish the colloquial 'revenge porn' as an abuse that needs immediate addressing and hope to highlight potential responses, but a further step would be to investigate the further power dynamics and social inequalities that exist in relation to its victims.

1.3 Ethical considerations

The author is fully aware that to hold something up for scrutiny and definition can also lead to negative consequences for the victims. Nonconsensual sexual images can have wide reaching and enduring impacts on an individual's personal, social and professional life and the research is approached from this viewpoint. Raising awareness may not always have the desired positive effects²⁴, but we can seek to mitigate this through not naming individuals without consent. The purpose of this paper is to establish revenge porn as a violation that needs addressing on a national and EU level, but this cannot be accomplished by placing groups - such as men and women - in binary opposition. This is a phenomena that requires nuance and delicacy in its handling, with the hope to provoke further response and discussion in much the same vein.

²² Danielle Keats Citron and Mary Anne Franks, 'Criminalizing Revenge Porn' (2014) 49 Wake Forest L. Rev., 5

²³ S. Bates, 'Revenge Porn And Mental Health: A Qualitative Analysis Of The Mental Health Effects Of Revenge Porn On Female Survivors' (2016) 12 Feminist Criminology, 28, 39; Ganaele Langlois and Andrea Slane, 'Economies Of Reputation: The Case Of Revenge Porn' (2017) 14 Communication and Critical/Cultural Studies, 123-4.

²⁴ Singal J, 'Awareness Is Overrated' (Science of Us, 2014) <<http://nymag.com/scienceofus/2014/07/awareness-is-overrated.html>> accessed 15 June 2017

1.4 Definitions of terms

1.4.1 Defining revenge porn

In the public understanding revenge porn is commonly characterised as someone (usually a male) sharing intimate photos or video online in order to ‘get revenge’ on a (female) ex partner. The assumption is that these images were initially taken consensually but then used by the ‘wronged’ or ‘jealous’ partner after the relationship has ended²⁵. In 2010 Hunter Moore created what is widely considered the first revenge porn site: IsAnyoneUp. He was attempting to share naked images of a girlfriend with friends, and had more than 14,000 unique internet visitors within the first week²⁶. The site became solely dedicated to images posted for revenge with unique traffic of up to 350,000 a day²⁷. The website also gave personal information - such as full names, addresses and phone numbers of the victims, and linked to their social media accounts. This continues to be a pervasive, additional aspect of revenge porn which works to specifically intensify the harm done to the victim²⁸. This is often not discussed in public discourse but needs to be remembered as a key component of the violation.

Continuing this, the practice of personal images being released is not a solely internet based phenomena; Marilyn Monroe was a victim of an early form. Facing financial hardship she agreed to pose nude for a photographer. As her career began to take off three years later the images were released without her consent, threatening to destroy her career²⁹. Little appears to have changed from the 1950s - except from scale - as the 2014 iCloud Celebrity ‘photo leak’ posted online nude and personal images of near 100 celebrities³⁰. ‘Revenge porn’ as a term or indicator does not cover varying aspects of the nonconsensual dissemination of sexual images - there was no ‘revenge’ element here - despite the term being general vernacular when discussing this phenomena.

²⁵ J Fairbairn, 'Rape Threats And Revenge Porn: Defining Sexual Violence In The Digital Age', eGIRLS, eCITIZENS (University of Ottawa Press 2015), 238.

²⁶ Scott Stroud, 'The Dark Side Of The Online Self: A Pragmatist Critique Of The Growing Plague Of Revenge Porn' (2014) 29 Journal of Mass Media Ethics, 170.

²⁷ A Morris, 'Hunter Moore: The Most Hated Man On The Internet' (Rolling Stone, 2012) <<http://www.rollingstone.com/culture/news/the-most-hated-man-on-the-internet-20121113>> accessed 10 April 2017.

²⁸ Md Nabil, 'From Sex Tapes To Revenge Porn: Construction Of A Genre' (Master Thesis, Stockholms Universitet 2014), 2.

²⁹ Samantha Scheller, 'A Picture Is Worth A Thousand Words: The Legal Implications Of Revenge Porn' (2015) 93 North Carolina Law Review, 556.

³⁰ Munson, 'Jennifer Lawrence, Rihanna, 98 Other Celebs,' accessed 13 April 2017.

Unsurprisingly, there is debate amongst academics and charities concerning the specific language and definitions that need to be employed in this discussion³¹. This remains a struggle, as whilst the political and social vernacular of the topic employs ‘revenge porn’ as a universal term, its continued use propagates the assumption that there is a universal experience or narrative, and that is flawed. It is not uncommon for photos to become public as a result of hacking - for non-celebrities as well as celebrities - and that appears to generally be employed on an ‘entertainment’ and not revenge basis³². Continuing to use ‘revenge porn’ in relation to these instances propagates the assumption that the only postings that matter are between partners, and that an element of blame can be placed at the feet of the victims. ‘Revenge’ implies retribution for an act that was done onto the perpetrator, and implies a level of justification for the uploader, which is not the case. Therefore, ‘revenge porn’ is an insufficient term for the different types of nonconsensual sexual images.

Another underlying issue with the use of the term ‘revenge porn’ is that it is a term employed from the position of those who would post or view this content. It’s provocative in its imagery and yet it focuses on the revenge and not the lack of consent of those being viewed in the sexual images. By employing a term such as ‘involuntary porn’ or ‘nonconsensual pornography’³³ the emphasis instead remains on those this phenomena victimises or seeks to harm, and is careful not to legitimise those who make the images or videos public.

Yet, knowing this, there are many academics who acknowledge the failings of ‘revenge porn’ but proceed to use it as a signifier of both revenge porn and nonconsensual pornography³⁴. It is true that it has entered common lexicon as a term, but it has also entered legal and political discourse. The Government of England and Wales defines revenge porn as: *“the sharing of private, sexual materials, either photos or videos, of another person. It is done without their consent and with the*

³¹ ‘Revenge porn’: Citron and Franks, 'Criminalizing Revenge Porn,' 1; Stroud, 'The Dark Side,' 169; Nabil, 'From Sex Tapes To Revenge Porn,' 5. ‘Nonconsensual pornography’: Bates, 'Revenge Porn And Mental Health,' 23; Holly Coppens, 'The Victim May Forgive, But The Internet Will Never Forget: The Need To Adopt A Variant Right To Be Forgotten As A Remedy For Nonconsensual Pornography' (2017) 915 Law School Student Scholarship 2017, ‘Technology facilitated sexual violence’: A Pina et al, 'The Malevolent Side Of Revenge Porn Proclivity:' (2017) 8 International Journal of Technoethics, 15.

³² Langlois and Slane, 'Economies Of Reputation,' 121.

³³ Scheller, 'A Picture Is Worth A Thousand Words,' 58.

³⁴ Citron and Franks, 'Criminalizing Revenge Porn,' 2.

*purpose of causing embarrassment or distress.*³⁵ This clearly takes the narrower revenge porn subject and expands it to include not only specifically partner related sharing of images, but of anyone. It also makes a point to emphasise the intent of the perpetrator which is an interesting qualification, which shall be discussed in chapter 2. The Revenge Porn Helpline also employs this term to define the spectrum of potential violations, but does allow that it is, “also referred to as nonconsensual pornography *or* image based sexual abuse.”³⁶

Samantha Bates has made clear that whilst the public may refer to ‘revenge porn’ outside of typical understanding of ‘revenge’ situations, a more umbrella term to be used that more widely covers this topic is ‘nonconsensual pornography’: the distribution of sexually graphic images without the subject’s consent.³⁷ Holly Coppens also employs the term ‘nonconsensual pornography’ and clearly breaks it down into three subcategories which includes ‘revenge porn’ as one aspect:

- (1) Images or video both filmed and distributed without consent
 - Can include hidden recordings of consensual acts, or recordings of sexual assaults
- (2) Consensual photography or videos taken that are later stolen and distributed
 - The Celebrity iCloud hack of 2014 falls in this category
- (3) Images or videos originally obtained with consent, but distributed without consent³⁸.
 - This is the common definition for ‘revenge porn’
 - The Marilyn Monroe photo scandal falls under this bracket.

Coppens’ definition is a largely comprehensive one but it does leave some ambiguity concerning existing different sub-categories. In the interests of ensuring that the definition is both clear and inclusive a further sub-category could also be constructed:

³⁵ 'Revenge Porn - GOV.UK' (Gov.uk, 2015) <<https://www.gov.uk/government/publications/revenge-porn>> accessed 12 April 2017.

³⁶ 'Revenge Porn Helpline' (Revengepornhelpline.org.uk, 2017) <<https://revengepornhelpline.org.uk/about/>> accessed 12 April 2017.

³⁷ Bates, 'Revenge Porn And Mental Health,' 23.

³⁸ Coppens, 'The Victim May Forgive, But The Internet Will Never Forget,' 7.

(3b) Images or videos consensual, sent by the victim to a [usually] trusted individual, and then more widely distributed without consent.

- whilst this still falls under ‘obtained with consent’ the key difference here between definitions (3) and (3b) is that in (3b) the images are purposefully sent to the eventual perpetrator by the victim.

The largest differentiation between the two is one of discourse, and the level of victim-blaming that arises from this specific scenario compared to the others. Examples of this are no less impactful to the victim and should be explicitly recognised as fitting the definition. The need for this recognition will become particularly poignant when we discuss the Italian case of Tiziana Cantone in chapter 3.2.

Whilst linguistically the use of ‘nonconsensual pornography’ is correct, there is also issue with the usage of ‘pornography’ in relation to a topic that needs to be focused more on the empathy for those shown, than the design or intent of the uploader or viewer. As such, in this paper we shall employ a fluid usage and definition of the terms ‘revenge porn’, ‘nonconsensual pornography’ and ‘nonconsensual sexual images’ - engaging with all of them contextually through the language employed in legal frameworks and varying when the victim self-labels the specific abuse they have undergone.

1.4.2 Victims or Survivors

One further piece of language which needs discussing is a recognition of the ongoing debate between labelling those who have undergone traumatic events such as rape, sexual assault/violence as ‘victims’ or ‘survivors’. Historically, ‘victim’ has been employed, but as a term it places the abused in a position without agency, and implies a permanence to the abuse - continuously a victim regardless of the time that has passed³⁹. ‘Survivor’ is now in more common usage as it recognises the agency of the individual, and has a sense of mobility⁴⁰. However, there has been further argument that individuals do not always identify as ‘survivors’, that there is no shame in

³⁹ J Bird, 'People Who've Been Raped Are Survivors Not Just Victims' (the Guardian, 2014) <<https://www.theguardian.com/commentisfree/2014/dec/22/people-raped-survivors-not-just-victims>> accessed 13 April 2017.

⁴⁰ Wu G, 'Survivor' Versus 'Victim': Why Choosing Your Words Carefully Is Important' (HelloFlo, 2017) <<http://helloflo.com/survivor-vs-victim-why-choosing-your-words-carefully-is-important/>> accessed 13 April 2017.

victimhood, and that survival is a process and not a label to apply⁴¹. Samantha Bates' study included individuals who self identified as either 'victims' or 'survivors' of revenge porn; the results were mixed with many using the terms interchangeably⁴².

There is no conflict with people being able to exist as both victim and survivor, with varying degrees of either. Yet, the self determination of the individual is the key aspect here, and as such we will follow their lead on the language they choose to apply to themselves. If neither term is used by individuals we will refer to them as either, or both, so as not to diminish agency or limit autonomy by defining a diverse group of individuals as either/or.

⁴¹ Ferguson, '5 Reasons Why I Identify As A Rape Victim, Not A Rape Survivor' (Everyday Feminism, 2016) <<http://everydayfeminism.com/2016/07/rape-victim-not-a-rape-survivor/>> accessed 13 April 2017.

⁴² Bates, 'Revenge Porn And Mental Health,' 27.

2.

How damaging is revenge porn?

Before looking at existing and potential responses to nonconsensual sexual images as a whole, we must first analyse the depth and impact, for it is impossible to measure the efficacy and proportionality of a response without first understanding the depth of the violation. In this section we will discuss the key aspects that amount to the damage inflicted by revenge porn: its online nature, anonymity of the online, the impact of revenge porn being image based, the use of shame, and intent behind posting. We will then consider the relevance that gender plays, and also how far this is a form of violence. Finally, this chapter also provides analysis of the specific types of impacts upon victims or survivors, and seeks to answer the question: is this a violation of human dignity?

2.1 The online isn't 'real'

Given that the core experience of nonconsensual sexual images are experienced in the online sphere, we must look at the impact this has on the violation itself. Harm experienced from online forms of abuse can often be played down or minimised because of their lack of physicality⁴³. Efforts to recant threats have been hinged on this lack of reality and tangibility: “I wasn't really going to rape her.⁴⁴” But, this argument holds little weight when held up to scrutiny. We spend most of our lives on the internet in some form, be it with work, education or socialising, and therefore the boundary between online/offline is becoming more and more artificial⁴⁵. To say that the online world is not real and therefore actions in it are also not real, is to discount the human interaction that exists within it.

Jordan Fairbairn has raised the argument that abuse online is a, “manifestation of current social ills such as misogyny, racism and homophobia” and therefore needs to be taken seriously⁴⁶. This position is reflected in the UN Report “Cyber Violence Against Women and Girls: A Worldwide

⁴³ C Hill, 'Gendered Nature Of Cyber Victimization As A Mechanism Of Social Control' (Master of Arts, University of Ottawa 2016), 12.

⁴⁴ Fairbairn, 'Rape Threats And Revenge Porn,' 228.

⁴⁵ Fairbairn, 'Rape Threats And Revenge Porn,' 234.

⁴⁶ Fairbairn, 'Rape Threats And Revenge Porn', 229.

Wake-Up Call,” which makes the polarising statement that, “cyber touch is recognised as equally as harmful as physical touch.⁴⁷” This recognises the impact and severity that online abuse and violence can have upon individuals despite the lack of physicality.

A specific argument for victims of nonconsensual pornography, however, is that compounded by the realities of the online and mental health impact, there is a potential also for a transfer to the physical when the photo or video is accompanied by personal information⁴⁸. In a study of 1,244 individuals over 50% of victims reported their full name and social media profile link were posted next to the sexual image, whilst 20% had their email or phone numbers posted along with encouragement to contact them offline⁴⁹. There is no denying the reality of the online world for both online abuse in general and the targets of revenge porn.

2.2 Anonymity and the comments section

A further important aspect to consider is the availability of anonymity on the internet, something afforded in few other mediums, but a key aspect of revenge porn. It is well documented that anonymity can “bring out the worst in many people⁵⁰.” The individual user is given a power to speak and be heard, but also remould and hide their identity if they so wish. The PEW Research Centre online harassment survey in 2014 found that over half of respondents did not know the person in their most recent incident of online harassment⁵¹. Anonymity can create a feeling of power and lack of consequences for the uploader or harasser, and research is starting to illuminate the strong links between sexual violence and the anonymity of online spaces⁵².

There are many positives concerning online anonymity, but victims of revenge porn commonly describe the receiving of anonymous unsolicited messages from strangers, taunts, and threats of

⁴⁷ 'UN Report Cyber Violence Against Women And Girls' (UN Broadband Commission for Digital Development Working Group 2015) <<http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/images/wsis/GenderReport2015FINAL.pdf>> accessed 13 April 2017, 48.

⁴⁸ Clay Calvert, 'Revenge Porn And Freedom Of Expression' (2014) 24 Fordham Intell, 678.

⁴⁹ Citron and Franks, 'Criminalizing Revenge Porn,' 3.

⁵⁰ Hill, 'Gendered Nature Of Cyber Victimization,' 33.

⁵¹ Duggan M, 'Online Harassment' (Pew Research Center, 2017) <<http://www.pewinternet.org/2014/10/22/online-harassment/>> accessed 18 April 2017

⁵² Fairbairn, 'Rape Threats And Revenge Porn,' 239; Stroud, 'The Dark Side,' 174.

sexual violence, as an aspect of their victimisation⁵³. Ganaele Langlois and Andrea Slane have found the majority of comments to be negative disgust, “she is a dirty skank”, or positive framing as a porn object, “I’d like to fuck her.⁵⁴” Both maintaining the standard that the victim is an object to be assessed and shamed. The anonymity of the online world allows for greater freedom on the part of the commenter but at the apparent expense of those whose images are posted for public viewing.

2.3 A picture is worth a thousand words

We also should not underplay the importance of the visual when we discuss nonconsensual pornography, for the impact can be wholly different to that of language. In cases where the nonconsensual pornography depicts a sexual assault the photograph allows the propagation of the event to continue almost indefinitely, and is what Alexa Dodge has described as, “the photograph’s power of temporal existence in action.⁵⁵” This power of the image allows the reoccurrence or immortality of a moment in a way that is felt on a more visceral level than words. We must also consider that an image’s power to shock is vast, vastly exceeding that of writing⁵⁶. By using the image as a tool the shock or impact of content then is combined with a feeling of permanence.

This is extended when we consider that the ECtHR Grand Chamber has passed judgments concerning the publishing of images, stating that a person’s image “constitutes one of the chief attributes of his or her personality” whilst considering the importance of an “individual’s control over the use of [their] image”⁵⁷. By having these photos published online the victims loses the ability to construct and maintain their own identity and ‘personality’ both on and offline. This removal of agency, when combined with the perceived permanence, highlights why image based sexual abuse is so effective from the perspective of the uploader, and is consistently employed in the online space.

⁵³ Langlois and Slane, 'Economies Of Reputation,' 124.

⁵⁴ Langlois and Slane, 'Economies Of Reputation,' 124.

⁵⁵ Alexa Dodge, 'Digitizing Rape Culture: Online Sexual Violence And The Power Of The Digital Photograph' (2016) 12 *Crime, Media, Culture*, 69.

⁵⁶ Calvert, 'Revenge Porn,' 676.

⁵⁷ *von Hannover v. Germany (no. 2)*(Applications no. 40660/08 and 60641/08) (2012) 55 EHHR 15. § 109 - 113 § 96.

2.4 Permanent shaming and intent

A further aspect of nonconsensual sexual images to understand is the concept of public shaming. Public shaming is by no means a new social tool; the novel 'The Scarlet Letter' is an example of shame being used to punish and ostracise a person from community. Yet, this shaming has a longer lasting effect when the permanency of the image is compounded by the online distribution, sharing, liking, copying and servers saving, of the internet⁵⁸.

Revenge porn websites such as myex.com collect, accumulate and preserve nonconsensual sexual images for long periods, for exhibition and consumption in the public space, and work to make the finding of a specific person or image easier through a search function⁵⁹. Once the images have been posted the total removal of them is extremely difficult⁶⁰. Putting aside internet servers and unwillingness of revenge porn sites to remove content, there is nothing to stop an anonymous viewer saving or downloading an image to keep or re-upload in various places across the web. Danielle Keats Citron has referred to phenomena such as this as "group polarisation;" when individuals come across others with the same viewpoints, a sense of cohesion is formed and the viewpoint intensifies or becomes more radical⁶¹.

Most of the revenge porn sites do eventually get taken down due to social or legal pressure (as was the case with IsAnyoneUp). Yet, there is every chance they can reopen from a different server and web address, and there is nothing to stop numerous copycat sites springing up in their wake⁶². Revenge porn can be hugely profitable in terms of ad revenue and literal blackmail for taking down pictures⁶³. And so the capability for permanence in the exposure of victims is huge; not only is the image itself a propagation of an event but, bolstered by anonymity and group mentality, this 'shaming' contains the threat of never ending.

⁵⁸ Langlois and Slane, 'Economies Of Reputation,' 121.

⁵⁹ Nabil, 'From Sex Tapes To Revenge Porn,' 6.

⁶⁰ Hill, 'Gendered Nature Of Cyber Victimization,' 9.

⁶¹ Hill, 'Gendered Nature Of Cyber Victimization,' 9.

⁶² Stroud, 'The Dark Side,' 170.

⁶³ Morris, 'Hunter Moore,' accessed 10 April 2017.

If we can agree that nonconsensual sexually explicit images are a prolonged form of social shaming, we need also accept the intent behind the posting. The implicit assumption of the 'revenge' in the term 'revenge porn' is the uploader's feeling of blame or malice towards those depicted. Indeed, the legislation in England and Wales has gone so far as to include 'intent to cause distress' as one aspect of its definition of the crime⁶⁴.

The most obvious way that this is achieved past the physical uploading of the images themselves is through linking the 'real' identity of the victim to the images; often through simultaneously posting the victim's names, social media, or contact information alongside the images⁶⁵. By creating this connection the uploader ensures that the victim is a direct target through the comments of other users on the site (receiving personal messages from those who have seen the pictures⁶⁶) but also, that friends, family and employers, are far more likely to view the images. In the eyes of the uploader, it's not 'enough' of a punishment to post the pictures, they need to also ensure that the victim is fully aware of the photo's existence, and that them being uploaded directly impacts their life.

Conversely, we should remain careful of limiting the posting of names, addresses or social media accounts as sole indicators of 'intent' . Of course they depict the intent to shame, and they are important to consider as aspects of the violation, but they cannot be the benchmark. We cannot assume that all uploaders even have the information to post. An attorney representing plaintiffs in the lawsuit filed against revenge porn site texxxan.com stated, "If they know the names, they'll post the names. If they have the address, they'll post the address."⁶⁷ It undoubtably magnifies the shaming of the individual to post the imaged concurrently with full name and contact information, despite the initial posting without consent being the central violation.

Furthering this, there is a clear issue with including intent in the threshold of the definition at all; the difficulty that inevitably surrounds proving the 'intent' of the uploader. If the uploader did not share the photos maliciously we can still class it under the broader umbrella of nonconsensual sexual images, but not entirely under the definition of 'revenge porn'. This distinction leads to

⁶⁴ 'Revenge Porn - GOV.UK' (Gov.uk, 2015), accessed 12 April 2017.

⁶⁵ Bates, 'Revenge Porn And Mental Health,' 23.

⁶⁶ Langlois and Slane, 'Economies Of Reputation,' 124.

⁶⁷ Calvert, 'Revenge Porn,' 676.

further complications; a Swedish Court has recently reduced the damages to be paid to a teenage girl who had a “private sex video” shared on porn sites without her consent, with the argument that “sexual openness is... increasingly socially acceptable”⁶⁸. If the definition and seriousness of the act can be altered by the intent behind it, does it not draw focus from the impact on the victim? The argument of a more ‘sexually open’ society seems largely irrelevant when the images are posted without someone’s consent, and - revenge or no - the potential impact remains the same in terms of loss of privacy and autonomy.

2.5 Are nonconsensual sexual images gendered?

A key component of establishing nonconsensual sexual images as a violation is to analyse those who it impacts and to consider why they are the targeted victims. Existing studies concerning online abuse have found it to disproportionately affect women over men⁶⁹. Therefore, is it a fair assessment to argue that this specific phenomena impacts women on a disproportionate level to men? We will first analyse the available statistics concerning revenge porn victims, but then attempt to situate them in our current culture and how the levels of potential impact may differ according to the gender of the target.

Initially then, let us consider the available statistics concerning revenge porn and what they can indicate in terms of gender. It is to only be expected that these statistics will vary but most seem to follow a common trend; Cyber Civil Rights Initiative found 90% of victims to be female⁷⁰, whilst Md Nabil’s research found those targeted to be 88% women and 12% male⁷¹. [withoutmyconsent.org](http://www.withoutmyconsent.org) has released the data from a survey of 496 respondents: 82% identified as female, 14% male, 2% transgender, 2% other⁷². It immediately appears that in terms of volume, women are disproportionately affected, and therefore gender must play some part in the propagation of revenge porn.

⁶⁸ 'Damages Slashed For Swedish Teen Sex Video' (Thelocal.se, 2013) <<https://www.thelocal.se/20131022/50932>> accessed 12 April 2017

⁶⁹ Citron and Franks, 'Criminalizing Revenge Porn,' 5; Nabil, 'From Sex Tapes To Revenge Porn,' 15; Hill, 'Gendered Nature Of Cyber Victimization,' 30.

⁷⁰ (Cyber civil rights initiative, 2016) <<https://www.cybercivilrights.org/ncpstats/>> accessed 5 March 2017

⁷¹ Nabil, 'From Sex Tapes To Revenge Porn', 23.

⁷² Taube D, Kolmes K and Voge C, 'Preliminary Report: Without My Consent Survey Of Online Stalking, Harassment And Violations Of Privacy' (Without my consent 2017) <http://www.withoutmyconsent.org/sites/default/files/wmc_prelim_survey_report.pdf> accessed 8 May 2017

We should remember to view these statistics in context of the differing experiences of men and women online, and the resulting impact. According to feminist theory, violence against women is a result of gender inequality on a societal level, which - as we have established that the internet is an extension of our reality - implies that online abuse towards women is a manifestation of broad societal ills such as misogyny, and the internet represents another space for which such actions can occur⁷³. Can we then apply the same logic to nonconsensual sexual images? Filipovic has argued that revenge porn is “explicitly purposed to shame, humiliate and destroy the lives and reputations of young women,” as an aspect of “a deeply sexist online culture.”⁷⁴ It would appear correct from the statistics above that women are the majority of targets, but is that enough to claim an ‘explicit purpose’ directed at females only? We need also consider the victims who do not identify as female to reach a fuller understanding.

We must also query the existence of the approximately 10% non-female victims; many of the surveys and studies rely upon self identification and a willingness to fill in an online survey detailing experiences. It is widely documented that male victims of rape or sexual assault are far less likely than women to report- it’s estimated that from 2011-2012 in the UK just 1 in 1250 instances of male rape were reported to the police⁷⁵. Lack of reporting is largely attributed to the shame and feelings of emasculation experienced by victims, but there is an added level of nuance in that homosexual victims are judged more harshly than heterosexual victims, and so may be even more unlikely to come forward⁷⁶. There are parallels between rape and nonconsensual sexual images that will be discussed more in the proceeding chapter, but for both straight and gay men, it is not unlikely to consider a similar skewing of the number in relation to revenge porn reporting.

Some of the existing data does appear to support the hypothesis that there may be more male victims than reported. The data gathered from revenge porn site MyEx.com during the period July 2012 - April 2014 totalled 6963 posts; 5815 depicting women and 1148 men⁷⁷. The uploads

⁷³ Fairbairn, 'Rape Threats And Revenge Porn,' 229; Hill, 'Gendered Nature Of Cyber Victimization,' 31.

⁷⁴ Stroud, 'The Dark Side,' 178.

⁷⁵ Merz, 'Men And Boys Get Raped Too' (Telegraph.co.uk, 2014) <<http://www.telegraph.co.uk/men/thinking-man/10657485/Men-and-boys-get-raped-too.html>> accessed 15 April 2017.

⁷⁶ Davies and P Rogers, 'Perceptions Of Male Victims In Depicted Sexual Assaults: A Review Of The Literature' (2006) 11 *Aggression and Violent Behavior*, 371.

⁷⁷ Nabil, 'From Sex Tapes To Revenge Porn,' 2.

themselves cannot be skewed by a lack of reporting and so may be a close indicator of gender, and a higher percentage, than the 10% previously stated. In continuation of this, we should then consider Scott R Stroud's argument that revenge porn is less about gender and more about "a growing culture of quick online revenge"⁷⁸. He explains that we should not be limited by characterising revenge porn as misogyny and instead view it as of a result of our online world, anonymity, and potential for profit, considering that sites allow the posting of all genders and not just women⁷⁹.

It is true that revenge porn is a symptom of our culture, and the lure of an immediate revenge may be a tempting one for those who post, but does that then discount the gender imbalances that exist? Revenge porn can only be a product of our technology and desire for quick revenge if the intent to shame exists, and why does this appear to disproportionately affect women? For example, Nabil's study of myex.com also found that the posts of women had a far higher viewer count than the uploads depicting men, suggesting a higher visibility for female victims⁸⁰. We need to look further than the numbers of uploads in order to fully understand the gendered aspects of nonconsensual sexual images; we need to consider the wider context of porn as an online genre, how it is constructed, and for which viewer.

By positioning revenge porn in its context - not simply a tool for quick revenge but also for sexual gratification- we can hope to understand more about the gender imbalance. Revenge porn is a culturally understood 'genre' of online pornography, or, "material [which is] predominantly sexually explicit and intended for the purposes of sexual arousal."⁸¹ Historically, the depiction of female bodies in mainstream media and especially in heterosexual pornography have been criticised for perpetuating a gendered imbalance of power; women as the object and men creating the conventions of how they appear⁸². Homemade pornography uploaded online acts in a similar vein to revenge porn except that it's consensually posted. This genre typically depicts the male viewpoint and focuses solely on the female, which has been termed as indicative of the "male gaze;" isolating

⁷⁸ Stroud, 'The Dark Side,' 180.

⁷⁹ Stroud, 'The Dark Side,' 180.

⁸⁰ Nabil, 'From Sex Tapes To Revenge Porn,' 23.

⁸¹ Ana J. Bridges et al, 'Aggression And Sexual Behavior In Best-Selling Pornography Videos: A Content Analysis Update' (2010) 16 *Violence Against Women*, 1066.

⁸² Nabil, 'From Sex Tapes To Revenge Porn,' 8.

the viewer in their maleness and reinforcing misogynistic cultural perceptions⁸³. The concept that women are depicted as passive or objectified in porn is by no means a new one, but it's an important aspect of the genre to consider when discussing revenge porn. The victim has agency removed from them by the act of uploading the images without consent, but this is easy to read as a continuation of a preexisting condition within our cultural understandings of sex and porn. You cannot remove agency from that which is perceived already as a sexual object.

This is worrying when we consider the potential for youth to draw their understandings of female sexuality from sources in popular culture - which we can now consider to include online porn⁸⁴. It follows then, that the severity and harm of online sexual victimisation is downplayed by both victims and perpetrators,⁸⁵ for if an act is seen as a 'normal' or 'accepted' aspect of society of course little will be thought of it. On the other hand, there have also been feminist readings of user generated pornography as a form of 'cyber sexuality' which frames it as a form of empowerment for women, as women can also authentically represent themselves online⁸⁶. This is referred to as a 'liberation' perspective of new media and technologies, in contrast to the 'victimisation perspective' which considers the online a continuation of women's victimisation and abuse in society⁸⁷. When an individual has control of their own sexual representation and existence both online and offline this is undoubtedly an aspect of empowerment. Yet, nonconsensual sexual images removes power from those depicted in a manner that often has a larger impact on women, not just in volume but as individuals, due to existing sexual double standards in our society⁸⁸ and a prevailing social belief that women somehow provoke violence enacted against them.

An example of the larger blame attributed to women are the terms coined by Glick and Fiske as benevolent and hostile sexism. 'Hostile sexism' is overt sexual prejudice or misogyny, whilst 'benevolent sexism' is defined as attitudes towards women that are sexist in terms of "viewing

⁸³ Nabil, 'From Sex Tapes To Revenge Porn,' 12.

⁸⁴ Shariff et al, 'Defining the Legal Lines: eGirls and Intimate images', eGIRLS, eCITIZENS (University of Ottawa Press 2015), 292.

⁸⁵ Hill, 'Gendered Nature Of Cyber Victimisation,' 3.

⁸⁶ Nabil, 'From Sex Tapes To Revenge Porn,' 9.

⁸⁷ Nabil, 'From Sex Tapes To Revenge Porn,' 11.

⁸⁸ Here I am referring to the language employed against promiscuous women 'slut, whore' in relation to men 'stud' etc. For a female, sexuality is understood as negative, whilst for men it's often considered a positive/desirable trait.

women stereotypically and in restricted roles but that are subjectively positive in tone⁸⁹.” The theory is that women are mentally categorised; benevolence is directed at women who conform to traditional roles and hostility is directed at those who do not. The enjoyment of sex, possible promiscuity, the taking of sexual images, and women being aware of their own sexuality, are all outside the norm of ‘traditional’ roles assigned to women. Nonconsensual sexual images can then be justified in the public view, for a level of responsibility is assigned to the woman for failing to comply with ‘acceptable’ feminine traits; if you didn’t want the pictures or videos to be on the internet, why did you take them in the first place? This type of rhetoric was common in the celebrity hack of 2014, where female celebrities were blamed for the existence of images - and often labelled ‘sluts’ - in contrast to having their privacy defended⁹⁰. For women then, the violation of the images themselves is coupled with the sexist rhetoric that surrounds the images, and the level of blame attributed to them.

The discussion of gender is a multilayered and complex issue. It is undoubtable that women constitute a majority of victims, but men and other genders are also at risk; nonconsensual sexual images are an issue that has the potential to affect all people that exist within the online space. Stroud is correct that there are economic and ‘quick revenge’ aspects at play, but his limiting of gender as a factor is both troubling and frankly, reductionist. To say that our culturally constructed ideas of gender and sexuality are not imperative to the revenge porn narrative is to discount the overwhelming evidence that victims are blamed because of the sexual double standards that exist in our society. We can agree with Nabil’s succinct explanation concerning online sexual harassment that, “as like in the real world [it can] happen to anyone, but most victims are women.⁹¹” The same is true of nonconsensual images, but there also exists an added layer of blame and responsibility culturally placed upon women, heightening the violation.

⁸⁹ Dominic Abrams et al, 'Perceptions Of Stranger And Acquaintance Rape: The Role Of Benevolent And Hostile Sexism In Victim Blame And Rape Proclivity.' (2003) 84 *Journal of Personality and Social Psychology*, 112.

⁹⁰ Gray E, 'Jennifer Lawrence's Leaked Photos Remind Us How Crappy The Internet Can Be For Women' (HuffPost, 2014) <http://www.huffingtonpost.com/2014/09/02/jennifer-lawrence-leaked-nude-photos-bad-for-all-women_n_5749852.html> accessed 10 May 2017.

⁹¹ Nabil, 'From Sex Tapes To Revenge Porn,' 15.

2.6 Are nonconsensual sexual images a form of violence?

A further aspect to consider in the analysis of nonconsensual pornography is the question of whether we can or should classify it as a sexual violation or assault. It is difficult to deny that there is a sexual element present in the violation - the socially recognised term of ‘revenge porn’ frames it in terms of the sexual satisfaction of the viewer or uploader, but is that enough to justify its existence as a violation of a sexual nature? It has been argued that revenge porn should be classified as a sexual offence because of its similarity to other sexual offences, such as sexual assault and sexual harassment⁹². We must first seek a definition of sexual assault, for despite the similarities there are many key differences; the online nature of the abuse, the lack of physicality, and issues surrounding consent. We will examine these points in turn but then seek to position revenge porn in a wider context, considering assertions of ‘rape culture,’ ‘slut shaming’, and ideas surrounding risk management. By examining each of these aspects we can hope to understand the fuller picture of nonconsensual sexual images and whether we can position them as a sexual violation for the victims.

The legal definition of sexual assault varies according to each country’s national legislation. Italy uses the term ‘sexual violence:’ to force another person to commit or suffer sexual acts⁹³. The U.K definition is “intentional touch” that is sexual, where the person does not consent⁹⁴. Both of these definitions focus on the physical nature of the abuse, which is - theoretically - a provable and tangible line for the perpetrator to have crossed. By this standard there can be no legal sexual assault from revenge porn unless the initial acts included some form of coercion or lack of consent. Yet, this black and white understanding refuses to acknowledge the similar levels of harm experienced by victims of nonconsensual sexual images⁹⁵ and the reality of the online space. Conversely, in General Comment 19 CEDAW defined gender based violence to, “include acts that inflict physical, mental or sexual harm or suffering [or] threats of such acts⁹⁶”. The inclusion of

⁹² Bates, 'Revenge Porn And Mental Health,' 24.

⁹³ 'Italy - Sexual Assault (Excl. Rape)' (EIGE, 2017) <<http://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/italy-sexual-assault-excl-rape>> accessed 12 May 2017.

⁹⁴ 'Italy - Sexual Assault (Excl. Rape)' (EIGE, 2017), accessed 12 May 2017.

⁹⁵ Please refer to chapter 2.7.

⁹⁶ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 19: Violence against women, 1992, available at: <http://www.refworld.org/docid/52d920c54.html> [accessed 15 May 2017]

mental suffering is key here, for it forces us to consider that national definitions may be insufficient in scope by not recognising certain online violations.

Firstly, let us consider the online nature inherent within revenge porn. We have established the permanence, and potential for anonymity of abusers that exist within the online space⁹⁷. Abuses often parallel those offline - online stalking or 'cyber stalking' by trailing and harassing a user through their social media can cause unease and panic⁹⁸. If we underplay this kind of abuse and only understand a lack of safety in regards to the strictly physical we downplay the complexities of our current world; women have lost jobs, job opportunities, or had to change their whole online identity, from online sexual abuse, which can be a precursor to or exacerbate isolation or poverty⁹⁹. To assume these circumstances would not have an impact on the physical state of the person affected seems misguided; the immediate lack of physicality of an act does not discount ramifications for the victim that fall within the scope of physical abuse.

Furthering this, we can consider a feminist analysis of violence and assault. The specifics may vary, but it is generally understood that crimes of violence are concerned with fulfilling a need for power or aggression within the perpetrator, and exerting that power over someone else by undermining their "sexual or gender integrity"¹⁰⁰. The search for power appears to fit into the uploading of nonconsensual sexual images, as the uploader (and viewers) exist in a vaulted position over the abused, often anticipating the amount of suffering they hope to inflict¹⁰¹. Stroud's analysis of the 'quick online revenge¹⁰²' nature of revenge porn as a phenomena would comply with the desire for power as a motivation of the violation. Yet, we should not forget that whilst the desire for a feeling of power or superiority may be a motivating factor, the method employed is one of shaming a victim through images of them in sexual situations. The connection between this method and motivator is difficult to deny; the method is used because it's an effective means of exerting control over an individual. This connection between the dynamics of power and sexuality in an online, or

⁹⁷ A. Barak, 'Sexual Harassment On The Internet' (2005) 23 Social Science Computer Review, 87.

⁹⁸ Barak, 'Sexual Harassment On The Internet,' 80.

⁹⁹ Fairbairn, 'Rape Threats And Revenge Porn,' 244.

¹⁰⁰ Fairbairn, 'Rape Threats And Revenge Porn,' 233; Culbertson et al, 'The Impact Of Sexual Assault, Sexual Assault Perpetrator Type, And Location Of Sexual Assault On Ratings Of Perceived Safety' (2001) 7 Violence Against Women, 859.

¹⁰¹ Bates, 'Revenge Porn And Mental Health,' 25.

¹⁰² Stroud, 'The Dark Side,' 170.

offline, space highlight how nonconsensual sexual images can be positioned as an act of violence against an individual, not because of the physical, but because of the abuse of power inherent within it.

Considering the potential for nonconsensual sexual images to be defined as a form of violence without the physicality is an interesting avenue, but there is an element of this that is integral to understanding the seriousness of the violation. The movement to recognise domestic violence, sexual assault, and harassment have been extensive and difficult; it was only in 1991 that marital rape became illegal in the U.K, and rape was defined in Italy as a “crime against morality” and not a person until 1996¹⁰³. The way that we define illegality and construct our legislature shifts and adapts to how society changes and grows. Legislature has struggled to keep up with our expanding technologies and globalised communications and there is an argument to be made to expand current definitions of violence to reflect the reality of our current online space. Conversely, we need also consider the potential harm that failing to recognise and criminalise abuse in the online (and offline) space can allow. Online sexual violence harms the individuals it is targeted towards, but it also participates in the construction and propagation of a culture where harassment is expected, tolerated or encouraged and victims are blamed for their own victimisation¹⁰⁴. If violence is defined as only the physical, anything less than that can be seen as an acceptable action, despite its ability to have parallel or long lasting effects.

One of the ingrained features of our current social structures is a societal response to sexual violence against women which condones, normalises or minimises violent behaviours or attitudes. This was defined by feminists as ‘rape culture’ in the 1970s, and is still used today to describe many attitudes towards violence¹⁰⁵. Discussions and the language used concerning revenge porn online are similar to those surrounding sexual violence, namely victim blaming “why did she take that photo?” and position men as inevitable predators with no self control, “of course he shared it, what do you expect?”¹⁰⁶ ‘Rape culture’ is the understanding that sexual assault and violence are an irrefutable fact of life, implicitly removing blame from the violator by defining a violation as the ‘norm’ or the ‘expected’. Due to the gendered nature of online abuse this does disproportionately

¹⁰³ Italy - Sexual Assault (Excl. Rape) (EIGE, 2017), accessed 12 May 2017.

¹⁰⁴ Fairbairn, 'Rape Threats And Revenge Porn,' 234.

¹⁰⁵ Shariff et al, 'Defining the Legal Lines,' 296; Dodge, 'Digitizing Rape Culture,' 67.

¹⁰⁶ Dodge, 'Digitizing Rape Culture,' 67.

affect women and girls, but its existence should be of concern to all; rape culture does not frame either gender positively, it positions men as ‘expected’ to abuse, and women as therefore responsible for their own protection - be it by clothing, attitude, body language, or not trusting someone with their naked pictures or videos.

When analysed to any depth the idea that a woman should be responsible for her own victimisation is nonsensical. The myth that only a certain ‘type’ of women - those who might be perceived as acting or dressing indecently - can be raped or assaulted denies that reality that all women and girls can be vulnerable¹⁰⁷. As Pool has discussed, “peers, adults, media and courts all give attention to how much make-up a girl uses, the type of clothing she wears, how late she stays out, and how she acts towards males.¹⁰⁸” These aspects are then used as justifications or explanations, when the blame should only be placed upon the abuser. We can view this further with the gendered double standard present throughout society termed ‘slut shaming’. This is the act of criticising an individual based on her perceived sexual history in an attempt to shame, stemming from the belief that female sexuality is inherently shameful¹⁰⁹. The double standard and continuation of gender inequality is present through this, for a man’s sexual activity is rarely criticised, and often praised¹¹⁰. Revenge porn - and our responses to it - can serve to perpetuate slut shaming and suppress female sexual autonomy¹¹¹. The assumed promiscuity of an individual should have little relevance to their right to privacy or to not be assaulted. Therefore, if we maintain that nonconsensual sexual images are not an act of violence we minimise the seriousness of the violation and perpetuate the gender inequalities inherent in ‘rape culture’ and ‘slut shaming’.

A commonly employed argument which perpetuates victim blaming concerning nonconsensual sexual images is ‘risk management’. This argues that women should avoid certain situations to avoid being sexually assaulted, such as not walking alone at night or to avoid dressing a specific way¹¹². One online blog lists “8 sexting rules” to avoid becoming a victim of revenge porn with tips

¹⁰⁷ Abrams et al, 'Perceptions Of Stranger And Acquaintance Rape,' 111.

¹⁰⁸ Shariff et al, 'Defining the Legal Lines,' 292.

¹⁰⁹ Rachel E Budde, 'Taking The Sting Out Of Revenge Porn: Using Criminal Statutes To Safeguard Sexual Autonomy In The Digital Age' [2015] SSRN Electronic Journal, 419; Shariff et al, 'Defining the Legal Lines,' 128.

¹¹⁰ Budde, 'Taking The Sting Out Of Revenge Porn,' 420,

¹¹¹ Sexual autonomy: an individual’s ability to express themselves sexually on their own terms. Budde, 'Taking The Sting Out Of Revenge Porn,' 420.

¹¹² Bates, 'Revenge Porn And Mental Health,' 25.

such as: women should not send sexual images to a partner unless they have been in a relationship for at least 1 year, and not to send photos with their face in the photo¹¹³. Comment sections discussing the celebrity photo hack in 2014 argued that if women did not want their photos online, they should not have taken in them in the first place¹¹⁴. Emphasis on risk management not only removes blame from the perpetrator, it acts as a method of control over women's behaviour¹¹⁵. If a woman does not fulfil all of the 'risk management' criteria, the next logical step is that she is at least partially responsible for violence done to her. The lack of legislation recognising nonconsensual sexual images as a form of abuse or an act of violence against a women feeds in to that cultural understanding that person can be somehow responsible for their own abuse.

Another discussed criticism of revenge porn survivors is that, by taking the images in the first place, or sharing them with another person, consent is implicitly given for someone to do what they like with them such as sharing them online. This is similar to the 'risk management' argument but it positions consent for the pictures to be taken or viewed with consent for anything to happen to the pictures¹¹⁶. What this fails to consider is the situational nature of consent; by taking or sharing the pictures a person does not automatically agree to have them posted in a public space. Citron uses the analogy that we should no more blame victims for trusting loved ones than we should someone trusting a financial advisor not to share sensitive information with strangers on the street¹¹⁷. A woman creating sexual images of herself is in full control of her sexual life and behaviour, choosing to express herself sexually in this specific way, but their distribution without consent, by extension, leads to a violation of her sexual autonomy¹¹⁸. If we fail to recognise the seriousness of sharing images without consent we are reinforcing the belief that a woman's consent to each specific situation is not necessary or integral, or that consent cannot be removed as easily as it is given. By failing to recognise the importance of consent we contradict women's agency and minimise violations.

¹¹³ Bates, 'Revenge Porn And Mental Health,' 25.

¹¹⁴ Gray E, 'Jennifer Lawrence's Leaked Photos,' accessed 10 May 2017.

¹¹⁵ Hill, 'Gendered Nature Of Cyber Victimisation,' 41.

¹¹⁶ Citron and Franks, 'Criminalizing Revenge Porn,' 5.

¹¹⁷ Citron and Franks, 'Criminalizing Revenge Porn,' 2.

¹¹⁸ Budde, 'Taking The Sting Out Of Revenge Porn,' 419.

In certain situations the argument can be made that nonconsensual sexual images are a form of domestic abuse. Women are far more likely to be sexually assaulted by someone they know, but Koss found that sexual assault survivors were less likely to report when the perpetrator was someone they knew due to shame, embarrassment, and a feeling they would not be believed¹¹⁹. For revenge porn specifically the chances of the perpetrator being an ex-partner is much higher; in 30% of cases the uploader often also writes about their relationship with the victim, and why they have posted the pictures¹²⁰. Domestic violence is often a form of coercive control and manipulation over a partner, and the threat of posting images online can serve to continue this abusive behaviour, during the relationship or after separation¹²¹. To then discount this and say that revenge porn cannot be a form of violence is to ignore the blackmail, or controlling nature that is often interwoven with posting. Violence and abuse can be psychological as well as physical, and so revenge porn can be an aspect of domestic abuse.

Our society and culture are structured in such a way to minimise the seriousness of offences and direct responsibility or blame at those who are violated; rape culture, slut shaming, and risk management are all societal understandings which serve to minimise the impacts of abuse and level some blame toward those abused. Within this wider context, when we understand gendered acts of violence as a means of exerting power over an individual, we can begin to understand that nonconsensual sexual images are an online example of violence. Our current national legal definitions are fuelled by our contexts, and - at worse - serve to perpetuate or validate them. Jordan Fairbairn is correct when he states that defining something as violence is a “call to action”, and a method of explicitly conveying that certain behaviours are “(1) an abuse of power; (2) harmful; and (3) unacceptable.¹²²” An explicit inclusion of nonconsensual sexual images - with other psychological abuses - in national definitions of violence would go a long way towards shifting cultural preconceptions and understandings of the intertwined nature of power and violence.

¹¹⁹ Bates, 'Revenge Porn And Mental Health,' 26.

¹²⁰ Nabil, 'From Sex Tapes To Revenge Porn,' 24.

¹²¹ 'Revenge Porn' Laws: Ministers Urged To Go Further' (BBC News, 2014) <<http://www.bbc.com/news/uk-28123128>> accessed 15 June 2017.

¹²² Fairbairn, 'Rape Threats And Revenge Porn,' 235.

2.7 What are the impacts for those affected?

We have already discussed some of the impacts experienced by survivors of nonconsensual sexual images including feelings of permanence and shame. Yet, we need also recognise the multiple other consequences that distribution can have on victims. No individual's response or reaction is uniform, and people respond to trauma and violence in a multitude of ways¹²³. But, it is important to recognise patterns of responses and impacts in order to understand the true effects that nonconsensual sexual image posting can have. Initially, we will discuss the instances of blackmail, losing jobs or being unable to find work, and stalking. We will then consider more psychological effects impacting mental health such as Post-traumatic Stress Disorder (PTSD), anxiety, a feeling of no control, depression, and suicide. With the above in mind we will then consider the existence of a 'culture of fear' which extends beyond the immediate survivors of revenge porn.

The use of blackmail as a tool in instances of revenge porn seems an almost common narrative; the shame aspect surrounding the images make the threat of their posting an effective tool for the blackmailer¹²⁴. A recent case in the U.K concerned a 20 year old man blackmailing more than one woman for both sex and money with the threat to post their sexual images on Facebook¹²⁵. The level of power that the abuser is able to exert over their victims with the threat of revenge porn is deeply unsettling. Being able to coerce unwilling partners into sex is nothing less than rape, and a further validation of the argument that nonconsensual sexual images - or the threat of them - is a violent abuse of power. Revenge over a partner is not the only reason for abusing the power that society imbues the possession of these sexual images; profit, coercion, and torment have all apparently been motivators with which to blackmail someone¹²⁶. Blackmail is a clear example of how the propagation of nonconsensual sexual images expands the potential for violations against an individual; the sharing of sexual images without consent is rarely the only impact that survivors have to contend with.

¹²³ Bates, 'Revenge Porn And Mental Health,' 33.

¹²⁴ Nabil, 'From Sex Tapes To Revenge Porn,' 42.

¹²⁵ Yorke H, 'Boarder At One Of UK's Best Private Schools Used Facebook Revenge Porn Threats To Blackmail Girls Into Sleeping With Him' (The Telegraph, 2017) <<http://www.telegraph.co.uk/news/2017/01/10/boarder-one-uks-best-private-schools-used-facebook-revenge-porn/>> accessed 20 April 2017.

¹²⁶ Pina et al, 'The Malevolent Side,' 30.

A further markedly common material impact of revenge porn is victims being unable to find work, or being let go from their current job. There have been examples of the images or videos being directly sent to colleagues or places of work, coupled with the online availability of the images¹²⁷. There have been multiple examples of teachers and government employees being fired from their jobs after the images were posted online, but it can be a consequence for many victims¹²⁸. Compounded with losing a job can be the inability of finding a new one; a 2009 study commissioned by Microsoft found that 80% of employers use search engines to find out more about job applicants and that 70% of the time they reject applicants because of these findings¹²⁹. Regardless of the arguments concerning the morality or fairness of this it's a fact that employers don't want to hire individuals whose search results they fear could impact negatively upon them¹³⁰. Therefore, the economic ramifications can be huge for an individual who - as a result of the violation itself - is already in a vulnerable position. An inability to financially support themselves, and the stress, fear and uncertainty this would undoubtedly cause further intensify the impact of nonconsensual sexual images.

We have already highlighted the high percentages of revenge porn that is accompanied by the victim's full name and contact information, but a further possible aspect of this violation of privacy is stalking. Noah Berlatsky states that, "the web has made it possible to crowdsource misogyny [...] and stalking,¹³¹" and that statement certainly rings true of nonconsensual sexual images. In an instance where a survivor's phone number was posted alongside the pictures, she received calls averaging once every six minutes, whilst another received death threats directed at her and her family¹³². Studies conducted on the impact of stalking describe severe emotional and behavioural effects, health problems, and contemplation of suicide¹³³. The fear of physical threat and unrelenting nature means the abuse can be perpetuated past the online space. This is another method of perpetuating control over the victim and ensuring that they cannot escape from the abuse.

¹²⁷ Budde, 'Taking The Sting Out Of Revenge Porn,' 409; Bates, 'Revenge Porn And Mental Health,' 29.

¹²⁸ Citron and Franks, 'Criminalizing Revenge Porn,' 1, 4; Bates, 'Revenge Porn And Mental Health,' 29.

¹²⁹ Citron and Franks, 'Criminalizing Revenge Porn,' 4.

¹³⁰ Citron and Franks, 'Criminalizing Revenge Porn,' 4.

¹³¹ Pina et al, 'The Malevolent Side,' 31.

¹³² Georgia Diebelius, 'Jilted Lover Jailed For Three Years After Posting Revenge Porn On Facebook' (Metro, 2017) <<http://metro.co.uk/2017/04/15/jilted-lover-jailed-for-three-years-after-posting-revenge-porn-on-facebook-6577120/>> accessed 5 June 2017; Bates, 'Revenge Porn And Mental Health,' 33.

¹³³ Barak, 'Sexual Harassment On The Internet,' 85.

Turning to the more psychological impacts, decreased mental health is a very common response to being victimised by revenge porn¹³⁴. If we define mental health as a state which “allows the full performance of all its functions [...] [and] gives an individual the feeling of worth, control and understanding of internal and external functioning,¹³⁵” it’s unsurprising that the violation of revenge porn would disrupt this. It’s been found that there is a striking similarity between the mental health effects of sexual assault and revenge porn; victims report a loss of interest in daily life, altered sleep patterns, eating irregularities, hopelessness, loss of control, shame, and many more symptoms¹³⁶. Citron also found that victims internalise the abuse sent to them by both the perpetrator and anonymous commenters, messages such as, “First I will rape you, then I’ll kill you.¹³⁷” Of course no experience is uniform, but the quantity of those experiencing mental health ramifications from revenge porn is vast. Mental health problems are a prevalent and undeniable impact that must be remembered when we consider the seriousness of the violation itself.

In continuation, anxiety and PTSD are prevalent in survivors of nonconsensual sexual images; according to the Cyber Civil rights initiative over 80% of revenge porn victims experience severe emotional distress and anxiety¹³⁸. AnneMarie was diagnosed with depression and PTSD after an ex-boyfriend made a website with naked picture of her. She became obsessive in checking that the photos had not resurfaced online and suffered extreme anxiety¹³⁹. Many victims report a loss of trust in others and not wanting to leave their home because they no longer feel safe¹⁴⁰. The symptoms and ramifications of both PTSD and anxiety can be long lasting and often debilitating in that sufferers are often unable to continue with their previous routines and activities¹⁴¹. The mental health implications of revenge porn against an individual can therefore be vast, and should not be discounted as an indicator of impact upon the lives of survivors after the images are posted online.

¹³⁴ Culbertson et al, 'The Impact Of Sexual Assault, 859.

¹³⁵ Barak, 'Sexual Harassment On The Internet,' 85.

¹³⁶ Culbertson et al, 'The Impact Of Sexual Assault,' 859; Bates, 'Revenge Porn And Mental Health,' 33; Barak, 'Sexual Harassment On The Internet,' 85.

¹³⁷ Citron and Franks, 'Criminalizing Revenge Porn,' 5.

¹³⁸ Citron and Franks, 'Criminalizing Revenge Porn,' 3.

¹³⁹ Bates, 'Revenge Porn And Mental Health,' 31.

¹⁴⁰ Budde, 'Taking The Sting Out Of Revenge Porn,' 410; Bates, 'Revenge Porn And Mental Health,' 33; Diebelius, 'Jilted Lover Jailed For Three Years, accessed 5 June 2017.

¹⁴¹ Hill, 'Gendered Nature Of Cyber Victimisation,' 7.

Again, we can find that the initial violation can lead to far reaching and lasting impacts, far past that of the initial shame of the posting itself.

In some cases that have become high profile the victims of revenge porn have ended their lives. Depression and suicide are common themes when discussing the impacts, and many survivors have talked about being suicidal and actively considering suicide¹⁴². A revenge porn survivor who asked to be referred to as ‘Regina’ recounted her mental state after the violation:

“I can admit now that I was suicidal, and . . . to let you know how suicidal I was, I didn’t tell anybody because I knew if I told anyone that I just wanted to kill myself that they would try to stop me, so I didn’t tell anyone because I didn’t want anyone to stop me . . . I lost my reputation . . . financially I’m ruined, I lost my career, a 25-year stellar career . . . I had a doctorate degree. I lost everything. So, how did that make me feel? Um, devastated. I just don’t even have words to describe it. Horrifying, humiliated, embarrassed, betrayed, I mean . . . So I just felt very, very worthless.¹⁴³”

Regina’s experience and thought process is far from uncommon, and strongly mirrors that of survivors of physical sexual assault¹⁴⁴. It has been stated by Bates that a “loss of control over one’s body,” is a particularly violating aspect of revenge porn¹⁴⁵, which may explain the parallels of experience and psychological effects experienced by both physical and non physical victims of sexual violence. Whilst the victims of revenge porn were usually not physically assaulted, the violation of posting the sexual images without consent amounts to a loss of control over their own body and how they are perceived and viewed by others. Suicide and suicidal thoughts need to be seriously considered as a potential impact that revenge porn can have upon an individual; it speaks to the true depth of the impact itself and the seriousness of the violation of revenge porn that suicide or suicidal thoughts are a result of the enduring ramifications and lasting impacts that revenge porn has.

¹⁴² Bates, 'Revenge Porn And Mental Health,' 31; Hill, 'Gendered Nature Of Cyber Victimization,' 8; Langlois and Slane, 'Economies Of Reputation,' 124.

¹⁴³ Bates, 'Revenge Porn And Mental Health,' 32.

¹⁴⁴ Hill, 'Gendered Nature Of Cyber Victimization,' 8.

¹⁴⁵ Bates, 'Revenge Porn And Mental Health,' 34.

Finally then, we need also discuss the phenomena referred to as a ‘culture of fear;’ knowing that there is violence against women in a society instils fear in women regardless of personal experiences¹⁴⁶. This is a logical step of self preservation, but it results in behaviour modification and diminishes the sense of freedom and safety in one’s physical space. This has been identified as a response to rape; women become more careful in the spaces they inhabit and may modify the way they dress¹⁴⁷. Considering our understanding of the parallels between sexual assault and nonconsensual sexual images it seems realistic that women experience a, possibly subconscious, impact on the manner in which they live their lives, just from being aware of the existence of and potential for revenge porn. Revenge porn has both been described as limiting sexual agency and the survivor’s ability to function in the online space¹⁴⁸. Simply being aware that revenge porn exists could have a similar, if lesser, impact on women who have not been directly victimised by it due to a culture of fear surrounding it. We cannot discount the cultural impacts and ramifications that nonconsensual sexual images can have on a wider level than the survivors.

In conclusion, the impacts of revenge porn are numerous and need to be considered when attempting to understand the pervasive nature of the violation. Physical ramifications such as blackmail or stalking exist alongside the economic ramifications of being able to find or keep jobs and income. This is then compounded by the realities of mental health problems which have both serious and long lasting implications for the survivors, which can include PTSD, and sometimes suicide. It’s also important to remember that whilst we have discussed these impacts in a linear form, victims of nonconsensual sexual images are often forced to confront multiple impacts at once, if not all of the above¹⁴⁹. The existence of our society’s ‘culture of fear’ ensures that other’s behaviours are also impacted by the existence of revenge porn. The effects of revenge porn far outlast the initial posting of the images themselves, and whilst this is an important aspect, we should be careful not to characterise the issue as one event, or even necessarily ending when the images are no longer online.

¹⁴⁶ Carrie Yodanis, 'Gender Inequality, Violence Against Women, And Fear' (2004) 19 *Journal of Interpersonal Violence*, 671.

¹⁴⁷ Hill, 'Gendered Nature Of Cyber Victimisation', 45.

¹⁴⁸ Citron and Franks, 'Criminalizing Revenge Porn,' 20.

¹⁴⁹ Bates, 'Revenge Porn And Mental Health,' 33.

2.8 A violation of human dignity?

The concept of human dignity has long underpinned our understandings and justifications of human rights. There are innumerable historical approaches from world faiths and traditions that are centred around human dignity, and it is now commonly found in “close proximity” to human rights¹⁵⁰. Dignity is a broader moral category than our current human rights legislation; it is possible to violate dignity without violating someone’s human rights¹⁵¹. But, by placing nonconsensual sexual images in the context of dignity we can seek to understand the depth of the violation as a contradiction not only of specific rights - such as the right to privacy or family life¹⁵² - but as a violation of the autonomy and integrity of an individual in a broader and more immediate sense.

Initially, let us consider how dignity is a common concept in human rights related documents. The Charter of the United Nations preamble seeks to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person,” The Universal Declaration of Human Rights preamble states recognition for the, “inherent dignity” of all humans, and the Charter of Fundamental Rights of the European Union Article 1 recognises dignity as “inviolable,” stating that it must be “respected and protected”¹⁵³. It clearly forms much of our understanding of human rights; ‘dignity’ is used as a term to describe the integral worth of individuals and that within us which recognises the rights of others. Yet, despite it underpinning many human rights documents, dignity is used more as a springboard for more specific rights than its own defined concept; Mark Lagon has argued that to be meaningful human dignity must be institutionalised in practice and governance¹⁵⁴. Whilst there is a truth in this, dignity can also provide a direction or guide for action, and the two spheres can have a circular impact upon each other; a moral reasoning can impact the legal interpretation, but the legal interpretation contributes to further moral reasoning¹⁵⁵. In this sense then, we should consider the definition of dignity and whether understandings of the morality surrounding nonconsensual sexual images can influence legal practice.

¹⁵⁰ Mark Lagon and Anthony Arend, ‘Human Dignity And The Future Of Global Institutions’ (Georgetown University Press 2014), 9; John Tasioulas, ‘Human Dignity And The Foundations Of Human Rights’ [2015] SSRN Electronic Journal, 1.

¹⁵¹ Tasioulas, ‘Human Dignity,’ 18, 21.

¹⁵² Alison Bisset, *Blackstone's International Human Rights Documents* (Oxford University Press 2014), 266.

¹⁵³ Bisset, *Blackstone's International Human Rights Documents*, 2, 10, 354.

¹⁵⁴ Lagon and Arend, ‘Human Dignity,’ 16.

¹⁵⁵ Jean-Paul Lehnert, ‘On Dignity: Multidisciplinary Approaches’ (E.M.A, 2016), 4.

The assumption is that we possess dignity by the simple virtue of being human: Kant wrote that, “What has a price can be replaced by something else as its equivalent; what on the other hand is raised above all price and therefore admits of no equivalent has a dignity¹⁵⁶”. Put in a more immediate understanding: humans don’t just have value, they are above being assigned a value¹⁵⁷. Possibly in inspiration of his and other German philosophers’ ideas, the Basic law of Germany starts with emphasising the inviolability of human dignity¹⁵⁸. The inherent dignity of each person means that they must be respected as autonomous and cannot be replaced, for example: we cannot sacrifice some for the good of the many, that would violate the dignity of those being sacrificed. There is much scholarly debate concerning a precise definition but Montero simplifies the concept well for our current purposes by stating that, “respecting human dignity amounts to respecting the freedom of each individual to lead her own life in her own way so long as she does not impair the equal right of others.”¹⁵⁹ If we can agree that human dignity is the inherent worth and value of each human, and that to have ‘dignity’ is to have the ability to live a life of freedom, we can begin to understand how revenge porn can be positioned as a violation of human dignity.

Our next question must then be, does revenge porn itself constitute a violation of a person’s autonomy and personhood? Slane consistently characterises revenge porn as an, “attack on human dignity” and “a gross invasion of bodily privacy.¹⁶⁰” The integral violation of revenge porn is posting the sexual images without the consent of those pictured, but it is the content of the pictures or images used that creates a sense of shame for the victim. Initially then, the nonconsensual posting of the images online leads to a loss of control and violation of autonomy for the victim. As we have discussed in chapter 2.6, revenge porn is a form of violence against a person regardless of the lack of physicality; revenge porn inflicts psychological suffering. Furthering this, we need also consider the importance of the intent behind the posting - to shame or cause distress, and as with other forms of violence, much of the violation centres around a feeling of power or control from the

¹⁵⁶ Lehnert, 'On Dignity,' 3.

¹⁵⁷ Lagon and Arend, 'Human Dignity,' 10.

¹⁵⁸ Germany: Basic Law for the Federal Republic of Germany [Germany], 23 May 1949 as last amended by Article 1 of the Act of 23 December 2014 (Federal Law Gazette I p. 2438).

¹⁵⁹ Julio Montero, 'Human Rights, Personal Responsibility, And Human Dignity: What Are Our Moral Duties To Promote The Universal Realization Of Human Rights?' (2016) 18 Human Rights Review, 705.

¹⁶⁰ Langlois and Slane, 'Economies Of Reputation,' 124

perpetrator, which removes the control or autonomy from the victim¹⁶¹. The sexual nature of the images are socially believed to be shameful and this deeply worsens the violation, but it is the posting without consent that positions nonconsensual sexual images as an act against human dignity.

Furthering this, the impacts of nonconsensual sexual images are not uniform, but they are both pervasive and long lasting, and so it would be remiss to not consider them as an aspect of the violation. As we have discussed in 2.7 the ramifications of being victimised by revenge porn can have economic, social and psychological effects, and contribute to the propagation of a society where women feel unsafe. We need to consider this alongside Fukuyama's statement that dignity is constructed socially, that a human's "sense of self worth is intimately connected with the value that other people place on [them].¹⁶²" If revenge porn has the power to remove someone's sense of self worth and understanding of their own value, does that then constitute a violation of dignity in its own right? Lehnert has spoken of the "duty to respect the dignity of others" and how dignity does not occur within the context of "misery, suffering and humiliation"¹⁶³. The core of nonconsensual sexual images is that of humiliation and shame for the victim¹⁶⁴. Considering this further, the lack of consent for the images is the invalidation of someone's sense of self worth, a further aspect of revenge porn which violates dignity.

If we consider dignity to be the recognised value and worth of humans then surely nonconsensual sexual images are in direct opposition to that. The lack of consent is tantamount to the violation itself, and it is the purposeful act of uploading without consent that is the initial violation of dignity of the victim, but this is also coupled with the further ramifications which are often long lasting. Human dignity is the core moral concept behind our reasoned understanding of human rights, and by recognising nonconsensual sexual images as the undermining of an individual's dignity we can come closer to explicitly reflecting this in legislation both national and regional, and as a society condemn it on a wider and more unified scale.

¹⁶¹ Shariff et al, 'Defining the Legal Lines,' 28.

¹⁶² Lagon and Arend, 'Human Dignity,' 14.

¹⁶³ Lehnert, 'On Dignity,' 10, 11.

¹⁶⁴ Stroud, 'The Dark Side,' 173, 174.

National responses: the UK and Italy

We have established that revenge porn is a violation that is both gendered and a form of violence against an individual. The next logical step is to consider the current responses that states have in place and consider whether more can, or should, be done. National laws are always the first potential recourse for any violation that exists within a state's territory. Further analysis in this thesis will concentrate on the examples of the UK and Italy, as they have both encountered high profile revenge porn cases in the last few years¹⁶⁵. The two countries make for interesting comparison; Italy technically has revenge porn covered under its data protection laws - as is the case with many other countries in the EU, whilst the UK brought in revenge porn specific legislation in 2015¹⁶⁶. Therefore, by analysing the political and legislative landscape of the two we can seek to examine the benefits and potential pitfalls of both approaches, and pinpoint areas for improvement. We can also hope to understand the efficacy of a national response to a globalised issue, and how states can move forward in protecting the rights of their citizens online.

3.1 The UK's revenge porn legislation

The UK is an interesting case study when seeking to understand revenge porn, for a notably high number of cases have been reported. In 2014 it was estimated that there were approximately 30 different sites hosted in the UK which specialised in revenge porn content¹⁶⁷. In recognition of a problem, Sections 33-35 of the Criminal Courts and Justice Act created the offence of disclosing private sexual photographs and videos, online and offline, with "intent to cause distress", which came into force on 13th April 2015¹⁶⁸. We will first consider the effectiveness of the new law and

¹⁶⁵ 'Revenge Porn: More Than 200 Prosecuted' (BBC News, 2016), accessed 13 April 2017; Kirchgaessner, 'Tiziana Cantone', accessed 1 May 2017.

¹⁶⁶ 'Sex Tape Woman 'Should Have Been Protected' (TheLocal.it, 2016) <<https://www.thelocal.it/20160917/sex-tape-suicide-woman-should-have-been-protected>> accessed 3 June 2017.

¹⁶⁷ Jack Simpson, 'Revenge Porn: What Is It And How Widespread Is The Problem?' (The Independent, 2014) <<http://www.independent.co.uk/news/uk/home-news/what-is-revenge-porn-9580251.html>> accessed 8 June 2017.

¹⁶⁸ Criminal Justice and Courts Act 2015; 'Revenge Porn Law Does Not Give Victims Anonymity – Ethical Dilemma? - Griffin Law' (Griffin Law, 2017) <<http://www.griffin.law/revenge-porn-law-does-not-give-victims-anonymity-ethical-dilemma/>> accessed 8 June 2017.

the impact that it's had, and then analyse the data available of revenge porn claims made and the amount of prosecutions. We will then analyse the criticisms and potential improvements concerning the lack of anonymity, awareness and instruction for police, and funding for the national helpline. We can hope to learn the impact that the law has had, but also any potentials for improvement, and whether other countries within the EU can look to the UK as an example of successful implementation of revenge porn national law.

Our first step must be to analyse the efficacy of the revenge porn law, though it becomes harder to achieve this as statistics from before the law's implementation are virtually nonexistent, and our only reliable avenue is the numbers reported. We cannot doubt the intent behind the law itself; when the revenge porn law first came into force the Justice Secretary Chris Grayling stated that they want, "those who fall victim to this type of disgusting behaviour to know that we are on their side and will do everything we can to bring offenders to justice."¹⁶⁹ In September 2016 more than 200 individuals had reportedly been prosecuted since the law came into force, which was coupled with the highest number of prosecutions for rape ever being recorded, at 4,643¹⁷⁰. Considering the underreporting of sexual violence, the implications behind the rise in numbers are potentially due to an increase in trust in the criminal justice system¹⁷¹. Percentages of convictions are always disappointingly low for gendered crimes, but an increase in reporting and the prosecution numbers for revenge porn do show a promising indication towards greater trust. A study of a potential correlation between the numbers of revenge porn and other gendered crimes being reported would need to be properly undertaken over a longer period of time to receive any concrete indicators, but it seems logical that the explicit codifying of a violation such as revenge porn into national law could have a dual impact. Firstly, that victims have greater awareness of the illegality of the act, which they may not be if it comes solely under data protection law; and secondly, there exists a greater expectation that gendered and violent crimes will be taken seriously and successfully prosecuted.

We can view this further from analysis of the UK online Facebook campaign to both spread awareness of revenge porn and ensure people are aware of its illegality. The campaign is largely

¹⁶⁹ 'New Law To Tackle Revenge Porn' (Gov.uk, 2014) <<https://www.gov.uk/government/news/new-law-to-tackle-revenge-porn>> accessed 3 June 2017.

¹⁷⁰ 'Revenge Porn: More Than 200 Prosecuted' (BBC News, 2016), accessed 13 April 2017.

¹⁷¹ 'Revenge Porn: More Than 200 Prosecuted' (BBC News, 2016), accessed 13 April 2017.

image based, using blurred faces of actors and bold text such as, “maliciously sharing intimate images of others without their consent is a crime,” and “those photos were meant for just the two of us. Breaking up with him didn’t give him the right to deliberately humiliate me.¹⁷²” The campaign is called ‘Be aware B4 you share’ and uses the hashtag #notorevengeporn¹⁷³. The campaign reflects a clear attempt to ensure individuals are aware of the illegality of revenge porn, but also makes sure to frame the victims as solely that, placing the full blame upon the uploader. It is interesting also that the images blur the faces of those in the photos, potentially in recognition of the shame based nature of the crime. This can only have a positive impact as it explains the government’s approach to the violation, and works towards encouraging those affected to come forward, to trust that the government will take the offence seriously.

On the other hand, concerning the actual percentages, data obtained from the Crown Prosecution Service in 2016 indicated that 61% of reported offences resulted in no action being taken against the alleged perpetrator¹⁷⁴. The police cite a lack of evidence and victims withdrawing support for action being taken as key reasons behind this percentage¹⁷⁵. There is an aspect of this with many crimes, but the higher numbers are likely connected to the shame aspect that surrounds revenge porn and the lack of anonymity afforded victims¹⁷⁶. This is echoed by Laura Higgins of the Revenge Porn Helpline, who holds that the legislation is flawed as it does not cover historical cases, does not cover images altered via photoshop, and does not ensure the anonymity of victims¹⁷⁷. Revenge porn is not considered a sexual offence by the UK, and therefore is not accorded the automatic anonymity that would bring. It is categorised as such because “it does not require any

¹⁷² 'Be Aware B4 You Share' (Gov.uk, 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403758/rp-digi-postcard-7.jpg> accessed 15 June 2017; 'Be Aware B4 You Share' (Gov.uk, 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403665/revenge-porn-poster-a4.jpg> accessed 15 June 2017.

¹⁷³ 'Revenge Porn: Be Aware B4 You Share' (Gov.uk, 2015) <<https://www.gov.uk/government/publications/revenge-porn-be-aware-b4-you-share>> accessed 15 June 2017.

¹⁷⁴ Henry Bodkin, 'Sexting So Common Revenge Porn Perpetrators Should Not Face 'Stigma' Of Sex Offender Register, Says Court' (The Telegraph, 2017) <<http://www.telegraph.co.uk/news/2017/04/12/sexting-common-revenge-porn-perpetrators-should-not-face-stigma1/>> accessed 13 June 2017.

¹⁷⁵ Philippa Willitts, 'Is Britain's Revenge Porn Law Working?' (Global Comment, 2016) <<http://globalcomment.com/200-prosecutions-under-new-uk-revenge-porn-law/>> accessed 12 June 2017.

¹⁷⁶ 'Anonymity' exists under UK law as withholding the publishing of names, address, images, or other signifiers of identity in a publication, online or offline, for the complainant’s lifetime; Sexual Offences (Amendment) Act 1999.

¹⁷⁷ Sherlock, 'Revenge Pornography Victims As Young As 11,' (BBC News, 2016), accessed 5 May 2017.

element of sexual contact or sexual gratification” and is instead malicious in intent¹⁷⁸. Whilst the line of reasoning behind this is logical, it feels like an oversimplification of the violation. A simplification which does not entirely consider the intent to control and shame which exists at the violation’s core (both characterises which are present in many other cases of sexual violence, such as rape¹⁷⁹), and ignores that fear of further shaming and notoriety are valid concerns for victims when considering coming forward. The police cited reason of ‘victims withdrawing support’ has been explained as the survivors fearing further online backlash, a fear which could be assuaged if they were allowed anonymity¹⁸⁰. Furthermore, an ICM poll found that 75% of men and women questioned supported campaigns to ensure anonymity for revenge porn victims after they have come forward¹⁸¹. Whilst we should be careful with letting public opinion directly alter legislation, the support for this, coupled with a recognition that the shame based nature of the violation needs to be addressed should be considered. As it stands, the only option for individuals is to apply for anonymity under the Coroners and Justice Act of 2009¹⁸², but including anonymity automatically where revenge porn is reported would not only protect victims further, but likely lead to higher rates of prosecution and less withdrawal of support for further action.

A secondary point which needs to be considered is the importance of ensuring that police and others within the criminal justice system in the UK are fully aware of the newly implemented law and how to talk to and respond to those who report being victimised by revenge porn. Alison Saunders, director of public prosecutions, has issued guidance to police and prosecutors that include grounds for a concurrent harassment charge, if the case involves a minor, and whether the images are used to “incite sexual activity”¹⁸³. Yet, it has also be shown that whilst some officers in England and Wales have had specific training there are existing inconsistencies and some officers have not been given,

¹⁷⁸ Sandra Laville, 'Revenge Porn' Victims Should Get Anonymity, Say 75% Of People' (the Guardian, 2016) <<https://www.theguardian.com/law/2016/jul/19/revenge-porn-victims-should-get-anonymity-say-75-per-cent-of-people>> accessed 9 April 2017; 'Revenge Porn' Is Not A Sexual Offence, Minister Tells Yorkshire Victim' (Yorkshirepost.co.uk, 2016) <<http://www.yorkshirepost.co.uk/news/crime/revenge-porn-is-not-a-sexual-offence-minister-tells-yorkshire-victim-1-7682400>> accessed 8 June 2017.

¹⁷⁹ Bates, 'Revenge Porn And Mental Health,' 34.

¹⁸⁰ Laville, 'Revenge Porn' Victims Should Get Anonymity, (the Guardian, 2016), accessed 9 April 2017.

¹⁸¹ Laville, 'Revenge Porn' Victims Should Get Anonymity, (the Guardian, 2016), accessed 9 April 2017.

¹⁸² 'Revenge Porn Law' (Griffin Law, 2017), accessed 8 June 2017.

¹⁸³ Sandra Laville, 'Revenge Porn Decision Sparks Anger At Police' (the Guardian, 2016) <<https://www.theguardian.com/technology/2016/may/08/revenge-porn-decision-sparks-anger-at-police>> accessed 8 June 2017.

“full awareness and understanding of the offence”¹⁸⁴. This will likely improve over time and we cannot expect perfect execution of a new law immediately, but it does highlight an important facet of the revenge porn law that must be considered; the correct handling and implementation of legislation is entirely reliant on the interpretation and understanding of those within the legal system in the UK. In order to foster an environment in which survivors of nonconsensual sexual images can feel comfortable coming forward, the response from law enforcement must be a consistent one.

A further UK specific support for victims of revenge porn is the Revenge Porn Helpline which offers free online, or phone, support for reporting and removing content, and offers advice on gathering evidence and approaching the authorities¹⁸⁵. The site was founded and is run by individuals who have been previously victimised by revenge porn, in the hope that it would “help everyone that needs support and advice”¹⁸⁶. Yet, governmental funding cuts have led to announcements that the helpline will be shut down, and there have been discussions of the possibility of crowdfunding to ensure it remains open¹⁸⁷. The volume of calls that the helpline has received is substantial: over 2,500 in the last year¹⁸⁸. A helpline founded and run by survivors of nonconsensual sexual images is a valuable resource for those seeking support and direction after being victimised. Refuges, helplines and centres such as the Revenge Porn Helpline are key tools in ensuring support; legislation and criminalisation are integral, but support and advice for victims is a fundamental area which must coincide with a legal response. The helpline needs to continue receiving governmental funding which will allow it to remain a fundamental avenue of support in the UK for victims.

In conclusion, the fact that the UK has introduced revenge porn specific legislation has undoubtedly had an impact on the responses and conversation concerning revenge porn; explicit illegality reinforces the condemning of the perpetrators in a manner that data protection laws cannot. The

¹⁸⁴ Sherlock, 'Revenge Pornography Victims As Young As 11,' (BBC News, 2016), accessed 5 May 2017.

¹⁸⁵ 'Revenge Porn Helpline' (Revengepornhelpline.org.uk, 2017), accessed 12 April 2017

¹⁸⁶ Ben Tufft, 'Charity Launches Helpline For Victims Of Revenge Porn' (The Independent, 2015) <<http://www.independent.co.uk/news/uk/home-news/revenge-porn-helpline-launched-for-victims-10031844.html>> accessed 8 June 2017.

¹⁸⁷ Marie Le Conte, "'Invaluable' Revenge Porn Helpline May Turn To Crowdfunding After Losing Government Funding' (BuzzFeed, 2017) <https://www.buzzfeed.com/marieleconte/invaluable-revenge-porn-helpline-may-turn-to-crowdfunding-af?utm_term=.mdw3wVbye#.ndmgDxVPG> accessed 15 June 2017; Sandra Laville, 'Revenge Porn Helpline 'To Close' As Government Cuts Funding' (the Guardian, 2017) <<https://www.theguardian.com/society/2017/feb/02/revenge-porn-helpline-close-government-cuts-funding>> accessed 8 June 2017.

¹⁸⁸ Laville, 'Revenge Porn Helpline' (the Guardian, 2017), accessed 8 June 2017.

extent that this, and the 'Be aware B4 you share' campaign have achieved their goals would require further analysis. But, the high number of revenge porn reports in the first year alone point towards a belief that the government will respond. It is true that the charging and prosecution rates are low, but this is indicative of a larger problem affecting sexual and shame based violations within our society. The Government of England and Wales can do more to confront this; the consistent education of police on not only the legislation itself, but also the appropriate response to those who report would be a fundamental starting point. Ensuring the anonymity of victims would also work towards developing trust between victims and the legal system, and ensure that further victimisation does not occur as a result of coming forward. Finally, the importance of support and advice in the form of charities and helplines run by survivors of revenge porn cannot be overstated. It is integral that victims continue to be supported by this intermediary, and it is a governmental responsibility to ensure the functioning and continued existence of refuges or places of advice, where those who are victimised can receive the support they need.

3.2 Italy and the case of Tiziana Cantone

As a contrast to the UK, at the time of writing Italy does not have revenge porn specific legislation, though the data protection laws state that data cannot be posted without a person's consent¹⁸⁹. Theoretically then, revenge porn posted without the subject's consent should be illegal under the national law. However, there have been a notable number of high profile cyber abuse cases in Italy within the last few years, the most recent and prominent of these being the revenge porn case and subsequent suicide of Tiziana Cantone¹⁹⁰. In order to examine the circumstances of this we first need to understand the specifics of the case and how it was handled by social media in Italy, then we will consider how effective both the data protection law and the EU right to be forgotten were, and finally consider the response of the Italian government in the aftermath. This specific case highlights the potential affects that nonconsensual sexual images can have, but also the avenues for recourse that victims within the EU have available to them, and how they work together.

¹⁸⁹ 'Sex Tape Woman 'Should Have Been Protected' (Thelocal.it, 2016), accessed 3 June 2017.

¹⁹⁰ Tommaso Lecca, 'Italian Lawmakers Fail To Tackle Revenge Porn And Cyberbullying' (The Spoke, 2016) <<https://thespokeneews.com/2016/10/04/italian-lawmakers-fail-to-tackle-revenge-porn-and-cyberbullying/>> accessed 10 June 2017.

Initially, we need to consider the specifics of the Tiziana Cantone case in order to understand how much should have been covered under the data protection law, and the successive response of the Italian government. In the spring of 2015 Cantone sent a video to her ex-boyfriend of herself performing sexual acts on another man, the video began circulating online first via WhatsApp and then other social media platforms¹⁹¹. The video became something of a viral sensation and the phrase spoken by Cantone in it, "stai facendo un video? Bravo" or "are you making a video? Bravo," became a meme talked about on the radio, shared on youtube, photoshopped, and even printed onto T-shirts for people to buy; much discussion of the video also included Cantone's full name¹⁹². Cantone changed her name, eventually won a right to be forgotten ruling, and moved from her hometown with a new identity, but killed herself in September 2016¹⁹³. The notoriety and public shaming of this specific case is unprecedented within the EU, but the intensity of the public abuse, and Cantone having exhausted all avenues available to her, bring into question the efficacy of the current systems in place in Italy.

Theoretically, the video itself should have been covered under Italy's existing data protection law. The prosecutor who did not act on Cantone's complaint did so on the grounds that she had voluntarily shared the video, and had not explicitly stated that she did not want it shared online¹⁹⁴. The placing of responsibility onto victims to state what a video cannot be used for is in direct contradiction of Italy's law, which says that diffusion of sensitive data can only happen with the full consent of the interested party¹⁹⁵. Sharing the video to a person, or even to a group, does not equal consent for that video to be shared further or posted online, especially when the content is of a personal nature. The fact that Cantone shared the video initially should not detract from the violation; consent to one aspect of a situation does not equal consent for another, and in the case of data protection consent can only be given if actively written or confirmed. This was the initial

¹⁹¹ 'Tiziana Cantone's Death' (Know Your Meme, 2016) <<http://knowyourmeme.com/memes/tiziana-cantone-s-death>> accessed 15 June 2017.

¹⁹² 'Quel "Stai Facendo Un Video? Bravo" Diventato Il Tormentone Che Ossessionava Tiziana' (L'Huffington Post, 2016) <http://www.huffingtonpost.it/2016/09/14/tiziana-morte-video-hard-gogna-mediatica_n_12003610.html> accessed 15 June 2017; Katie Mortimer, 'Woman Kills Herself After Sex Tape Becomes A Meme' (The Independent, 2016) <<http://www.independent.co.uk/news/world/europe/tiziana-cantone-sex-tape-suicide-internet-meme-revenge-porn-naples-a7307041.html>>; accessed 15 June 2017.

¹⁹³ di CERVASIO, 'Tiziana, Irrisa Per Il Video Hard: I Giudici Fanno Chiudere Il Profilo Facebook Di Chi La Perseguita' (Repubblica.it, 2017) <http://napoli.repubblica.it/cronaca/2016/09/07/newstiziana_irrisa_per_il_video_hard_il_giudice_ordina_rimuovete_quel_profilo_da_facebook_-147299725/> accessed 10 June 2017.

¹⁹⁴ Agence France-Presse, 'Humiliated By Sex Tape Leak, Woman Commits Suicide' (NDTV.com, 2016) <<http://www.ndtv.com/world-news/humiliated-by-sex-tape-leak-woman-commits-suicide-1459724>> accessed 10 June 2017.

¹⁹⁵ France-Presse, 'Humiliated By Sex Tape Leak' (NDTV.com, 2016), accessed 10 June 2017.

failing in the Cantone case as she should have been protected under domestic law. An explicitly stated revenge porn legislation could seek to mitigate that, and limit the conservative or blatantly incorrect interpretation of national laws which theoretically should provide cover, but can be open to abuse or shifting interpretation.

Furthering the rejection of the data protection claim, Cantone eventually won a right to be forgotten ruling and had the video removed from search engines and Facebook in 2015¹⁹⁶. Yet, she was ordered to pay legal costs of €20,000 on the grounds that she had consented to the original filming¹⁹⁷. This again rings of a continued blame levelled at the victim of an online violation, the original consent of the video does not equal consent to the video being distributed; consent is situational. The head of the psychologists association of a Campania region in Italy, Antonella Bozzaora, stressed that women and girls are “victims of a society in which there is a sexist mentality that leaves women open to constant harassment. It is a mentality that is still deeply rooted in our country and in the Western world in general¹⁹⁸.” This sexist mentality and victimisation of women and girls is painfully clear in the manner with which Cantone was treated. Furthermore, despite the right to be forgotten ruling, the video - and its catchphrase - had become notorious in Italy, and continued to resurface on the internet in various guises¹⁹⁹. The simple removing of links to the video from the searching of Tiziana Cantone’s name had little impact on the societal ridicule and shaming that was taking place. The right to be forgotten simply did not extend far enough for Cantone because the video had reached popular discourse, and the right to be forgotten extends only to search engines and not primary controllers of data.

In direct response to the high profile examples of cyber bullying in Italy, including the case of Tiziana Cantone, lawmakers have passed a cyberbullying bill, making it illegal to post insults or defamatory messages concerning a minor online, blackmail them on the internet, or steal their

¹⁹⁶ Mortimer, 'Woman Kills Herself,' (The Independent, 2016), accessed 15 June 2017.

¹⁹⁷ 'Italy Grapples With Suicide Of Woman Taunted Over Online Sex Video' (the Guardian, 2016) <<https://www.theguardian.com/world/2016/sep/16/italy-grapples-with-suicide-of-woman-taunted-over-online-sex-video>> accessed 10 June 2017.

¹⁹⁸ http://www.ansa.it/english/news/2016/09/14/italy-reacts-to-womans-suicide-after-nude-videos-go-viral_dba8313f-8eac-494f-bdb1-194d9cf32971.html

¹⁹⁹ Maggie Serota, 'Italian Prosecutor Vows To Arrest Those Who 'Incited' Tiziana Cantone's Suicide' (Death and Taxes, 2016) <<http://www.deathandtaxesmag.com/307980/italian-prosecutor-vows-arrest-those-incited-tiziana-cantones-suicide/>> accessed 10 June 2017.

identity²⁰⁰. Under the new laws teenagers over 14, or families of affected minors, can now directly request sites hosting abusive comments to delete them, which if not removed in 48 hours can be referred to an 'independent privacy guarantor' which will intervene with the site's management²⁰¹. In short, the new legislation allows for high levels of online control for under 18s, ensuring that content can be removed from the original uploader or controller within a short period of time. The current bill would not have been applicable for Cantone, or any other nonconsensual sexual images victim over 18, but in a previous part of the bill's drafting the Justice and Social Affairs Committee extended this legal safeguard to all citizens, regardless of age²⁰². Had this passed to include all citizens this would have been a major shift in the discussion of rights online, but also prompted further debate about limiting freedom of expression and access to information. The trajectory of this bill does represent a victory for under 18s in Italy concerning cyberbullying, but also shows the reactionary response to a high profile revenge porn case. The success and impacts of this new bill will need to be monitored and considered for effect and potential applicability on a wider scale.

In conclusion, Italy's data protection laws and current system have been ineffective at dealing with revenge porn, and ultimately failed Tiziana Cantone. This example illustrates the need for a revenge porn specific law that cannot be interpreted in a way which fails to protect the right to privacy and dignity of victims. The Cantone case was not a typical one, as the popularity of the video and how it reached the public consciousness was extensive, but surely that cannot offset the initial and continued violations that the video perpetuated, namely the highly personal nature of the film and the lack of consent to share. The levels of blame attributed to Cantone in both her data protection request and right to be forgotten appeal are indicative of a wider problem and understanding in our society which does need to be addressed, but the law also needs to explicitly ensure that individuals are protected online, and that the same does not happen in the future. When interviewed after Tiziana's death, her mother Maria Teresa said that she wants the name Tiziana Cantone to become a name that helps to save the lives of other women and other victims of cyberbullying²⁰³. Hopefully that can be the case, and the mistakes made for Tiziana will not be repeated in the future.

²⁰⁰ Disposizioni per la prevenzione e il contrasto dei fenomeni del bullismo e del cyberbullismo 2016 [Italy]; 'Italy Unanimously Passes Anti-Cyberbullying Law' (TheLocal.it, 2017) <<https://www.thelocal.it/20170517/italy-unanimously-passes-anti-cyberbullying-law-online-abuse-trolling>> accessed 10 June 2017.

²⁰¹ 'Italy Unanimously Passes Anti-Cyberbullying Law' (TheLocal.it, 2017), accessed 10 June 2017.

²⁰² Lecca, 'Italian Lawmakers Fail' (The Spoke, 2016), accessed 10 June 2017.

²⁰³ 'Leaked Sex Tapes Provoked Tiziana Cantone's Suicide - BBC News' (YouTube, 2017) <https://www.youtube.com/watch?v=_vk78yOKw3c> accessed 10 June 2017.

3.3 A comparison and next steps

The differences in approach between Italy and the UK are stark, and highlight the varying levels of protection available between different states within the EU. Of course, states have a certain margin of appreciation on the basis that they understand the cultural context of their country and society, but this inevitably leaves varied levels of protection between states, which surely cannot be sustainable in the online space; the internet does not function along national borders and so our approaches to online violations should not be limited to such.

As previously indicated, the UK's more proactive approach to nonconsensual sexual images is not a perfect one, but the high reporting rates within the first year of it being in force show the scope of the problem, and the need for it to be directly addressed. By explicitly defining the violation of revenge porn, the UK positions itself in a situation where it can clearly explain revenge porn's illegality to the public as a violation in its own right, not as an aspect of data protection. Though it inevitably achieves little to directly compare, if Italy had the same or similar revenge porn law to the UK, the Cantone case would have likely progressed very differently, with the initial sharer or uploader of the video facing prison sentences²⁰⁴.

Italy's new cyberbullying law shows some existence of political will to ensure safety online, but its current ability to protect only under 18s is not far-reaching or encompassing enough. To argue that the bill should extend to all within Italy would not account for the inevitable restrictions to other rights such as freedom of expression and information, but it's undeniable that greater protection is needed for revenge porn victims. The propensity towards 'catch-all' laws or bills that can be widely applied - such as data protection - play an important role, but a specifically written and applied law for revenge porn needs to be adopted in parallel, which provides greater protection for those affected without limiting the rights of others. Regardless, the unevenness of national responses within the EU do point towards an EU led direct initiative being one answer that would ensure suitable levels of protection for individuals across the member states.

²⁰⁴ Sherlock, 'Revenge Pornography Victims As Young As 11 (BBC News, 2016), accessed 5 May 2017.

Regional protection: The EU

To achieve a cohesive response from states concerning nonconsensual sexual images, the phenomena could be directly addressed at the regional level. The Charter of Fundamental Rights of the European Union (CFEU) and the European Convention on Human Rights (ECHR) both contain a right to respect for private and family life: articles 7 and 8 respectively²⁰⁵. Revenge porn could be found as a violation of rights under these articles, though a specific case has yet to reach either European Court. The EU specifically can be set apart in terms of protection due to its explicit establishment of data protection as a right independent of the right to privacy; Article 8 of the CFEU is intended to respond to the ever-expanding and shifting online world²⁰⁶. It is this focus which leads us to look closer at the EU, and consider what could be achieved in combatting revenge porn at an EU level. Initially, we will consider the current EU initiatives and direction concerning the online space. We will then analyse the right to be forgotten ruling in the light of revenge porn²⁰⁷; does this ruling provide the protection necessary for victims, and does it successfully skirt the fine line between privacy and freedom of expression? We will then also consider EU current policy relating to gender based violence and how far nonconsensual sexual images could be encompassed under this initiative. In light of each aspect, we will engage with a larger question of potential next steps and directions for the EU to consider when attempting to protect those within the EU from revenge porn.

4.1 EU and the internet today

In order to place nonconsensual sexual images within the context of the EU, we need to consider the existing Directives and Regulations, but also the jurisprudence of the Court of Justice of the European Union (CJEU) and how it has interpreted and expanded upon the articles in the CFEU. Data protection has been high on the judicial, legal and political agenda of the EU in the last few

²⁰⁵ Bisset, Blackstone's International Human Rights Documents, 267, 365.

²⁰⁶ Bisset, Blackstone's International Human Rights Documents, 365.

²⁰⁷ Google Spain SL, Google Inc v Agencia Española de Protección de Datos (AEPD), Mario Costeja González, [2014] Court of Justice of the European Union, C-131/12, 1.

years²⁰⁸. The Europe 2020 Strategy sets objectives and goals for the growth of the European Union by 2020; one of the seven pillars of the strategy is a Digital Agenda which aims to better utilise information and connection technologies to, “foster innovation, economic growth and progress.”²⁰⁹ The EU recognises the potential economic benefits and growing importance of the online space, and increasingly globalised nature of our world, so is therefore attempting to reflect that in its development goals. The EU has been working towards a Digital Single Market since 2015, and the Commission published a review of its progress in May of this year²¹⁰. The concept of a Digital Single Market is similar to its Single Market, but builds upon the free movement of people, capital and services with the online space also being open regionally across EU member states, with fair access and competition²¹¹. It is clear that the EU recognises the transnational nature of the internet and seeks to capitalise upon the potential economic benefits, but with greater freedom and economic opportunity also arises the potential for violations committed in the online space, and the EU needs to be able to effectively respond to this. Therefore, The Digital Single Market promises individuals a “high level of consumer and personal data protection, irrespective of their nationality or place of residence”²¹². The assumption being here that the member states will enact a minimum standard of national legislation which furthers the Digital Single Market, whilst also meeting the threshold for ‘high level’ consumer and data protection.

An aspect of ensuring standardised implementation of data protection across the member states is the Data Protection Directive 95/46/EC. This applies to the processing of image data relating to ‘natural persons’ and it sets out the conditions for the processing, retaining, and maintaining of data which includes the rights of the data subject. The scope of this directive encompasses only, “the processing of personal data wholly or partly by automatic means” and the “processing otherwise than by automatic means of personal data which form part of a filing system.”²¹³ The intent of the Directive is towards the processing and gathering of personal data, and the protection of those

²⁰⁸ Mistale Taylor, “Safeguarding The Right To Data Protection In The EU”, 30th And 31st October 2014, Paris, France' (2015).

²⁰⁹ 'Europe 2020 Strategy' (Digital Single Market, 2017) <<https://ec.europa.eu/digital-single-market/en/europe-2020-strategy>> accessed 3 June 2017.

²¹⁰ 'Shaping The Digital Single Market' (Digital Single Market, 2017) <<https://ec.europa.eu/digital-single-market/en/digital-single-market>> accessed 3 June 2017.

²¹¹ 'Shaping The Digital Single Market' accessed 3 June 2017.

²¹² 'Shaping The Digital Single Market' accessed 3 June 2017.

²¹³ Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L 281/40.

whose data is gathered; individuals have a right to request the data that has been collected about them, and object to its processing or retention, and to be informed if the data is transferred to third parties²¹⁴. This Directive shows the EU expansion of data protection as an established human right, distinct from the right to private and family life. Therefore, the concept of data protection and its specifics are both outlined and described in greater depth in the Directive than exists under the right to privacy.

On closer inspection of the Directive we can find that specific types of personal data and consent are both key aspects of the right. Article 8 holds that:

“1. Member States shall prohibit the processing of personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership, and the processing of data concerning health or sex life²¹⁵.”

Yet, 2(a) of the Article 8 states the above shall not apply where “the data subject has given his explicit consent to the processing of those data.²¹⁶” Therefore, consent is recognised as a key factor in the processing of private data in the online space; a violation is no longer a violation if the subject has explicitly consented to the processing or gathering of the data. Consent has been used as a starting point for the Directive²¹⁷. This is mirrored in our understanding of nonconsensual sexual images; individuals display or post the images without the consent of those depicted. Therefore, the importance of consent when handling personal and sensitive data online is explicitly recognised at the EU level and has been implemented into member state legislation. But though this exists at the EU level, it does not - in practice - fully extend to the horizontal violation of data protection rights experienced in the online space by individuals.

On the other hand, however, the Directive’s scope is limited so as to not include information gathered, “by a natural person in the course of a purely personal or household activity²¹⁸.” This has

²¹⁴ Dir 95/46/EC OJ L 281/42.

²¹⁵ Dir 95/46/EC OJ L 281/40.

²¹⁶ Dir 95/46/EC OJ L 281/40, Further exceptions also apply, such as medical reasons or the purview of member states, or the data is necessary for the data controller and they are authorised by the national law.

²¹⁷ J. P. Vandenbroucke and J. Olsen, 'Informed Consent And The New EU Regulation On Data Protection' (2013) 42 *International Journal of Epidemiology*, 1891.

²¹⁸ Dir 95/46/EC OJ L 281/39.

been interpreted in a broader sense by the CJEU as it has previously found a violation of a private person, as Mrs Lindqvist, “availed herself of numerous services connected with the use of the Internet (in particular telecommunications services)”²¹⁹. The implication here being that by cataloguing private data online, even a private individual could be found in violation of the right to data protection of others. This is a relatively newly established understanding in comparison to other rights, but this can only be enhanced by a data protection Regulation which enters into force in May 2018, seeking to simplify the regulatory environment and hopefully empower individuals more when retaining control of their personal data²²⁰. When considering the violation of nonconsensual sexual images online, the Regulation will form the basis for a unified approach as it will be directly applicable within the Member States, unlike the current Directive which allows for much greater leeway.

The new Regulation employs many aspects and entire phrases from the existing Directive, but is far more specific concerning the current contexts of the internet. The Regulation explicitly holds that data controllers must adopt internal policies and measures to protect personal data of subjects and that consent to data processing must be a clear affirmative act (such as ticking a box) and cannot be the assumed state when garnering consent²²¹. This shows an awareness and focus of the EU on data protection as a right that must be applied consistently throughout member states. The Regulation also requires a regulatory authority for each member state with the power to impose administrative fines for infringement²²². There is clear movement on the part of the EU towards a regional response and understanding of data protection online. The question arises then, whether stemming from this precedent, a direct but regional approach to nonconsensual sexual images could also be implemented.

In continuation, the EU does have in place other initiatives in an attempt to remove violations online. There is a European Agenda on Security, an EU cybersecurity plan, and a proposal for a

²¹⁹ Opinion of Advocate General Jääskinen delivered on 25 June 2013 in Case C-131/12 Google Spain SL, Google Inc v Agencia Española de Protección de Datos (AEPD), Mario Costeja González, [2014], §84, 88.

²²⁰ European Parliament and Council Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.

²²¹ Regulation 2016/679 OJ L119/32.

²²² Regulation 2016/679 OJ L119/148, 150.

Cyber Security Directive²²³. Each of these focuses on maintaining and improving online security whether that be against terrorism, organised crime, or viruses, whilst enhancing communications and information between states. But, within these existing initiatives little attention is directly paid to horizontal violations between private citizens. However, the issue of nonconsensual sexual images had been raised in the European Parliament by Roberta Metsola, MEP for Malta. Metsola has advocated a ‘three pronged approach’ to revenge porn which includes education, criminal sanctions, and working more closely with private companies online²²⁴. We might find some fault with her proposals which do focus on educating individuals about the dangers of sending images, instead of educating about the violation of uploading sexual images without consent. Yet, it is true that increasing the visibility of the issue on the EU stage is a positive step towards recognition regionally, and her desire to work with companies such as Facebook and other social media platforms to limit the potential visibility is an interesting proposal²²⁵. Metsola has brought the issue to the attention of the European Parliament but whilst her proposal was announced in November 2016 there has yet to be any follow up or indication of a greater commitment made by the Parliament in the work of combatting revenge porn.

It is evident that the EU has focused on the internet, and recognises the potential in terms of economics and connectivity across the member states. The Directive concerning data protection does show the beginnings of commitment to protecting individuals online. But, this could be interpreted as more of a baseline for states, a minimum harmonisation of legislation, with member states able to expand upon legislation and rights as they see fit²²⁶. The Regulation which will be in force in 2018 will serve to greater harmonise member state’s approaches to data protection. Yet, the EU policy concerning specific horizontal rights violations is sparse, and nonconsensual sexual images are an established and pervasive violation that needs to be addressed. Metsola’s raising of the issue to the European Parliament is indicative of the growing desire for a united and concerted response that includes all of the EU member states, and not simply legislation from individual

²²³ 'EU Cybersecurity Plan' (Digital Single Market, 2017) <<https://ec.europa.eu/digital-single-market/en/news/eu-cybersecurity-plan-protect-open-internet-and-online-freedom-and-opportunity-cyber-security>> accessed 1 June 2017; http://europa.eu/rapid/press-release_IP-13-94_en.htm; 'European Commission Press Release' (Europa.eu, 2013) <http://europa.eu/rapid/press-release_IP-13-94_en.htm; http://europa.eu/rapid/press-release_IP-15-4865_en.htm> accessed 1 June 2017.

²²⁴ 'Roberta Metsola' (Theparliamentmagazine.eu, 2016) <<https://www.theparliamentmagazine.eu/articles/interviews/roberta-metsola-hopes-raise-awareness-dangers-revenge-porn>> accessed 1 June 2017.

²²⁵ 'Roberta Metsola Heads EU Campaign' (Independent.com.mt, 2016), accessed 13 April 2017.

²²⁶ European Commission, 'Code Of EU Rights Online' (European Union 2012), 2.

states. Metsola has advocated for an, “exchange of experiences between the member states and more discussions between authorities on how they are combatting revenge porn²²⁷.” This greater communication and unification of response, directly targeting revenge porn, would send a strong message concerning the importance of fundamental rights and freedoms online within the EU.

4.2 The right to be forgotten

When considering the EU’s application and interpretation of rights and the internet we need also consider the interpretation of the 1995 Data Protection Directive by the CJEU which established - under certain conditions - a ‘right to be forgotten’ in the online space by requiring search engines to remove certain links to information concerning individuals²²⁸. Despite it being named as such it could be technically referred to as, “a right not to be mentioned anymore²²⁹” for law cannot ensure that something be forgotten, only that specific information is harder to gather or learn of. This right is groundbreaking in how it contradicts the otherwise permanence of the online, to allow for greater protection of individual’s rights to privacy and data protection. The initial complaint originated from the fact that if an internet user entered Mr Costeja González’s name into Google there were two links to newspaper pages dated June and March 1998 concerning social security debts²³⁰. Mr González argued that the proceedings had been resolved, and that the events were from over fifteen years ago, meaning that their still being referenced in relation to his name was “entirely irrelevant”²³¹. There are many aspects of the right which could be directly applied to nonconsensual sexual images, but it has a much broader application and purpose. We will consider the contested definition of search engines as ‘controller’, the scope of the right, and its threshold. We will then analyse the balancing of the rights to privacy, freedom of expression, and right to obtain information, which need to be weighed against each other. The right to be forgotten has been criticised by some as exercising a form of control over internet freedom²³², but for the specific

²²⁷ ‘Roberta Metsola’ (Theparliamentmagazine.eu, 2016), accessed 1 June 2017.

²²⁸ Google, ‘The Advisory Council To Google On The Right To Be Forgotten’ (2015), 14.

²²⁹ Google, ‘The Advisory Council To Google On The Right To Be Forgotten’ (2015), 3.

²³⁰ Google, ‘The Advisory Council To Google On The Right To Be Forgotten’ (2015), 14.

²³¹ Mike Wagner and Yun Li-Reilly, ‘The Right To Be Forgotten’ (2014) 72 *The Advocate*, 824; C-131/12, 15

²³² Taylor, “‘Safeguarding The Right To Data Protection In The EU’”, 30th And 31st October 2014, Paris, France’ (2015).

violation of nonconsensual sexual images we may find that the right is a necessity, or potentially, that it does not go far enough to ensure protection of individuals online.

Initially then, let us consider the contested finding of CJEU that Google and other search engines not only process information, but act as controllers of the data itself. It's uncontested that Google process personal data which enables an internet user, when searching on the basis of someone's name, to obtain a "structured review" of the information available concerning that person on the internet²³³. Yet, the judgment also categorises search engines as a controller within the meaning of Article 2 of Directive 95/46/EC, as it defines controller as that which determines the "purposes and means of the processing of personal data," and therefore allocates greater responsibility to the search engine within the objective of ensuring the protection of data subjects²³⁴. It is difficult to deny the integral intermediary role that search engines play in the propagation and dissemination of data online, but it has been argued by both the Advocate General Niilo Jääskinen, and the Article 29 Working Party that this should not be the case. Jääskinen argued that as search engines are not aware of the content of the data, they should not be considered controllers, whilst the Article 29 Working Party stressed that they act purely as intermediaries²³⁵. It could also be argued that by considering search engines as controllers, the 'special categories of data' referred to in Article 8 of the Directive could be accidentally processed by them, and by extension, be considered illegal processing²³⁶. Yet, the ruling defines search engines as controllers - or partial controllers with the initial uploader of the information - and this allows responsibility to be attributed to search engines concerning the private data that can be found after a search when using someone's name. By establishing search engines as controllers and placing greater responsibility on them vis a vis the content of the data processed, a standard is then set which recognises the encompassing nature of search engines online (Google currently processes, on average, over 40,000 search queries every second²³⁷) and their responsibilities which arise from this.

²³³ Wagner and Li-Reilly, 'The Right To Be Forgotten', 284; C-131/12, 57

²³⁴ C-131/12 33,34,35.

²³⁵ Opinion of Advocate General Jääskinen, C-131/12 §84, 88.

²³⁶ Opinion of Advocate General Jääskinen, C-131/12 §90.

²³⁷ 'Google Search Statistics' (Internetlivestats.com, 2017) <<http://www.internetlivestats.com/google-search-statistics/>> accessed 10 June 2017.

A further debated aspect of the ruling is its potential scope; currently Google exercises the right to be forgotten only on its internet search domains within the EU, on the basis that even if an individual types google.com they are redirected to the local or national search engine variation, and this has been enhanced through the implementation of geolocation²³⁸. The assumption here is that Google is fulfilling its requirements by enacting the right to be forgotten only on its national subsidiaries within the EU. According to Google's own data, over 95% of all queries originating in Europe are through local and regional version of the search engine²³⁹. Yet, that does appear to discount the global nature of the online.

It was argued by Sabine Leutheusser-Schnarrenberger, a member of Google's advisory council, that the right to be forgotten should extend to all google domains as the right implies a complete and effective protection of data which can only be realised through universality²⁴⁰. Of course, rising from this are questions concerning the level that Google can be bound by the judgment outside of the EU, and the potential conflict with other actors such as the US' First Amendment²⁴¹. But, the current regional nature of the right to be forgotten is potentially a weakness for the scope and effectiveness of the right; if citizens within Europe are aware that more search results can be garnered from searching through google.com it would take very little manoeuvring (potentially by using easily installed proxies or VPNs) to access desired information through the U.S version of the site. This also means that for specific cases of a more international interest, those outside of EU jurisdiction are able to search and find that which has been removed from a European Google search. The French Data protection agency CNIL has ruled just this; that Google must apply this across all domains, but Google appealed the judgement²⁴². Echoing the arguments of the CNIL and of Leutheusser-Schnarrenberger: for the established right to be comprehensive and universal, surely it needs to be applied to all google domains, in recognition of the potential universality of the internet itself.

²³⁸ Google, 'The Advisory Council To Google On The Right To Be Forgotten' (2015), 19; Frederic Lardinois, 'Google Now Uses Geolocation To Hide 'Right To Be Forgotten' Links From Its Search Results' (TechCrunch, 2016) <<https://techcrunch.com/2016/03/04/google-now-uses-geolocation-to-hide-right-to-be-forgotten-links-from-its-search-results/>> accessed 24 June 2017.

²³⁹ Google, 'The Advisory Council To Google On The Right To Be Forgotten' (2015), 19.

²⁴⁰ Google, 'The Advisory Council To Google On The Right To Be Forgotten' (2015), 26.

²⁴¹ Taylor, "Safeguarding The Right To Data Protection In The EU".

²⁴² Alex Hern, 'Google Takes Right To Be Forgotten Battle To France's Highest Court' (The Guardian, 2016) <<https://www.theguardian.com/technology/2016/may/19/google-right-to-be-forgotten-fight-france-highest-court>> accessed 9 July 2017.

In continuation of arguments of scope are debates surrounding threshold of application - at which point should the right be enforced? According to the judgment the right applies when the “data is inadequate, irrelevant and excessive”²⁴³. Yet, as has been stridently argued by the Article 19 NGO who hold the weighing of varying rights and aspects for each specific case requires a “complex factual legal balancing exercise” which, in their opinion, “only the courts should make, not private providers²⁴⁴”. This stance has been echoed by Stefan Kulk who highlights that through the right to be forgotten Google are making decisions which are publicly relevant, and that as a result Google becomes “almost like a court of government, but without the fundamental checks on its power.²⁴⁵” It appears a valid concern, for Google becomes the active monitor and controller of deciding which data is easily accessible to the public, and the determiner of the ‘relevant’; a truly subjective term which is unlikely to have a binary answer but instead requires a balancing of rights and context of each case. Yet, the argument that through this ruling Google becomes the dictator of the information deemed ‘relevant’ to us ignores the reality that Google, as a private company, determines the relevance of the internet’s content and displays it searchers through complex algorithms which rank the content relevance of each search and display them in a set order²⁴⁶. Google’s entire purpose revolves around determining the relevance of online data.

Furthermore, an accidental leak of Google data in 2015 shows that 95% of Google’s privacy requests concern private individuals and not public figures, with less than 1% of requests relating to serious crimes, public figures, or politics, actually being successful²⁴⁷. Greater transparency regarding the types of requests could always be advocated for, but this shows the small number of successful requests which could be considered truly ‘relevant’ to the public, and positions the right to be forgotten as less of a burden of responsibility upon Google and more of an extension of their current practice, with a mechanism in place to assist in the right to privacy for individuals.

²⁴³ Wagner and Li-Reilly, 'The Right To Be Forgotten', 284.

²⁴⁴ Article 19, 'ARTICLE 19's Response To Google's Advisory Council' (2017), 4.

²⁴⁵ Taylor, “Safeguarding The Right To Data Protection In The EU”.

²⁴⁶ Internet Basics, 'How Google Works' (HowStuffWorks, 2017) <<http://computer.howstuffworks.com/internet/basics/google1.htm>> accessed 10 June 2017.

²⁴⁷ Sylvia Tippmann and Julia Powles, 'Google Accidentally Reveals Data On 'Right To Be Forgotten' Requests' (the Guardian, 2015) <<https://www.theguardian.com/technology/2015/jul/14/google-accidentally-reveals-right-to-be-forgotten-requests>> accessed 13 June 2017.

Yet, this does raise the question about determining the level of ‘public interest’ involved in each case; the right is not equally applied to all for it demands a consideration of the level of ‘interest’ in the topic at hand. This applies most frequently to those in the public eye so, with varying degrees, it impacts public officials and figures relating to concerns such as politics, public health, law enforcement, economic issues and art and culture²⁴⁸. Therefore, when weighing factors in right to be forgotten requests Google must differentiate between those with roles in public life and those without, but there is a sizeable potential grey area of those with only context specific roles in public life such as school directors and public employees²⁴⁹. Google has articulated its criteria of defining issues in the public interests which includes the above, but also: scientific enquiry, historical record, and citizen engagement²⁵⁰. Google also assesses the source of the information and the intent behind posting²⁵¹. In doing so, Google recognises that public interest or right to information can sometimes outweigh the right to privacy of an individual. A certain criticism and level of cynicism can be maintained in response to Google’s claims, as all above information regarding their practices do derive from their public statements, and so the extent at which the above is practiced can be difficult to verify.

Yet, concerning nonconsensual sexual images specifically, Google appears to go further than the explicit demands of the right to be forgotten by recognising that information in image or video form can “heighten the data subject’s privacy interests²⁵².” Therefore, the immediacy of images is recognised and weighed against potential rights to information and public interest in specific topics. The nuance and balance between the weighing of rights in the online space has been addressed and considered by Google through its understanding that many cases must be addressed on a specific basis which weighs all the different elements, but that images themselves can have more impact than other forms of information. This is a further step than the right to be forgotten calls for and theoretically offers enhanced protection for revenge porn survivors.

In further analysis of the balancing of rights inherent to the right to be forgotten, we need also understand the decision of the Google Spain case and its decision on the weighing of varying

²⁴⁸ Article 19, 'ARTICLE 19's Response To Google's Advisory Council' (2017), 5,

²⁴⁹ Google, 'The Advisory Council To Google On The Right To Be Forgotten' (2015), 8.

²⁵⁰ Google, 'The Advisory Council To Google On The Right To Be Forgotten' (2015), 10-13.

²⁵¹ Google, 'The Advisory Council To Google On The Right To Be Forgotten' (2015), 13.

²⁵² Google, 'The Advisory Council To Google On The Right To Be Forgotten' (2015), 8.

stakeholder's rights. The CJEU held that privacy right of individuals, "override, as a rule, not only the economic interests of the operator of the search engine but also the interest of the general public in finding that information upon a search relating to the data subject's name²⁵³." And furthering this, the CJEU found in *Volker und Markus Schecke and Eifert* that the right to respect for private life in relation to processing of personal data, recognised by Articles 7 and 8 of the Charter, concerns *any information* relating to an identified or identifiable individual²⁵⁴. Here, the distinction between 'private' and 'public' remains, but this shows the emphasis and importance placed upon establishing and maintaining the right to privacy in respect for private life. Article 29 Working Party recognises this and includes the determining of personal or private life in its proposed list of criteria for search engines, but emphasises the integral nature of balance²⁵⁵. Furthermore, it must be remembered that through the very existence and popularity of search engines, privacy inevitably becomes more difficult to maintain. Universal diffusion and accessibility of information online can cross the threshold to the unlawful by virtue of the singular nature of the online²⁵⁶. The CJEU recognised that the heightened nature of privacy violations online require a specific emphasis on privacy protection²⁵⁷. Therefore we can find that as search engines through their nature restrict privacy, they have also been held accountable through the right to be forgotten and the CJEU's findings that privacy must be prioritised over other rights.

Conversely, a prioritisation of the right to privacy would be expected to limit other rights in some form. Jääskinen makes the valid argument that the right to information merits "particular protection" in EU law in light of the current global and regional context of authoritarian regimes limiting internet access or censoring available content. Any limiting of the information that is available must be considered in this context, yet even when the content reaches the prescribed threshold and is delisted from Google the information is not rendered unfindable, simply absent from a Google search. The original information will remain available online unless removed by the original data controller and could therefore be found under different search terms (not the

²⁵³ C-131/12 97

²⁵⁴ Opinion of Advocate General Jääskinen, C-131/12 §117.

²⁵⁵ Article 29 Data Protection Working Party, "Guidelines on the implementation of the Court of Justice of the European Union judgment on "Google Spain and inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González" C-131/12, 26 November 2014, 2.

²⁵⁶ Article 29, "Guidelines on the implementation of the Court of Justice," C-131/12, 6.

²⁵⁷ Wagner and Li-Reilly, 'The Right To Be Forgotten', 825; Opinion of Advocate General Jääskinen, C-131/12 para 28. Opinion of Advocate General Jääskinen, C-131/12 §121.

individual's name) or from directly accessing the publisher's original source²⁵⁸. Furthermore, the Telegraph newspaper has a maintained list of their content which has been subject to the right to be forgotten, with links to each article readily available in one place²⁵⁹. Information remains available online but can only be found with increased difficulty, for the connection between the individual and the online data is effectively removed from the Google search. We can then argue that the right to information is not restricted per se, but the ease of obtaining said information is limited. And in fact, a strong case could be made in the other direction: nonconsensual images of a sexual nature are by definition private, and uploaded without consent, we could argue their removal only from search engines and not the original controller a lack of satisfactory conclusion. The images remain available online to be found, only not searchable by name through search engines. In this sense, the right to be forgotten does not provide sufficient recourse for nonconsensual sexual images.

But, it is the issue of finding a workable and acceptable balance both generally and for each specific case that is the core of debate surrounding the right to be forgotten. The ECtHR has recognised the difficulty of balancing rights and so in *Von Hannover v Germany (No. 2)* outlined five relevant criteria for balancing respect to private life with freedom of expression:

- i. Whether the information contributes to a debate of general interest;
- ii. The notoriety of the person concerned;
- iii. The prior conduct of the person concerned and their relationship to the press;
- iv. Content, form and consequences of the publication;
- v. The circumstances in which the material at issue was obtained (e.g. photograph taken with a hidden camera).²⁶⁰

Article 19 NGO has advocated for the above criteria to apply in the right to be forgotten, but argue that ultimately, information in the public domain should remain in the public domain²⁶¹. They argue that the importance of freedom of expression was not fully considered in the Google Spain judgment as it's not explicitly referred to within the text of the judgment as an established right, but

²⁵⁸ Article 29, "Guidelines on the implementation of the Court of Justice," C-131/12, 2.

²⁵⁹ Rhiannon Williams, 'Telegraph Stories Affected By EU 'Right To Be Forgotten' (Telegraph.co.uk, 2015) <<http://www.telegraph.co.uk/technology/google/11036257/Telegraph-stories-affected-by-EU-right-to-be-forgotten.html>> accessed 12 June 2017.

²⁶⁰ von Hannover v. Germany §109 - 113.

²⁶¹ Article 19, 'ARTICLE 19's Response To Google's Advisory Council' (2017), 5.

instead as an ‘interest’ of the general public in finding information²⁶². It is an important consideration in the balancing of the rights, but as outlined above, the right to be forgotten restricts freedom of expression in only a minor sense, by lessening the likelihood of information being read by other interested parties. If the information was removed from the online space by the original data controller, freedom of expression would need to be considered in much greater depth with likely a much higher threshold of application than currently exists for the right to be forgotten.

Conversely, there is a strong argument to be found in the fact that abuse in online spaces (such as nonconsensual sexual images) does in itself restrict freedom of expression for its victims. We have already discussed in depth the impacts for revenge porn survivors, but it warrants stating that when an individual’s safety and integrity are compromised online the individual often becomes marginalised or pushed out of these spaces²⁶³. Exclusion from the online space limits the potential for connectivity with others through social media and serves to silence people, this in turn contributes to an exclusion from debate and engagement with the online world that eventually inhibits personal expression and democratic debate²⁶⁴. Therefore, when we discuss the limits of freedom of expression in the online space we should not discount the limits or barriers to freedom of expression that are imposed on victims of abuse online. As to how representative this is, ‘invasion of privacy’ is cited as a reason for right to be forgotten applications in 58.7% of requests, with the next largest bracket ‘damage to reputation’ at 11.2%²⁶⁵. Of course these are very general, and each case should be examined using the aforementioned criteria, but this informs us that the main utilisation for the right to be forgotten does centre around privacy online. We must consider this in parallel with Franke La Rue’s statement that, “the right to privacy is essential for individuals to express themselves freely.²⁶⁶” Ergo, when discussing the weighing of rights concerning the right to be forgotten, it’s important to remember that an individual’s right to privacy can be violated on a large scale through nonconsensual sexual images, but this is accompanied by ensuing restrictions to enjoyment of freedom of expression online.

²⁶² Article 19, 'ARTICLE 19's Response To Google's Advisory Council' (2017), 2.

²⁶³ Fairbairn, 'Rape Threats And Revenge Porn,' 234; Barak, 'Sexual Harassment On The Internet,' 79.

²⁶⁴ Therese Enarsson and Markus Naartijärvi, 'Is It All Part Of The Game? Victim Differentiation And The Normative Protection Of Victims Of Online Antagonism Under The European Convention On Human Rights' (2016) 22 *International Review of Victimology*, 126.

²⁶⁵ 'Right To Be Forgotten: Statistics And Key Dates' (Reputation VIP, 2015) <<https://www.reputationvip.com/blog/right-to-be-forgotten-statistics-and-key-dates>> accessed 9 June 2017.

²⁶⁶ UN Human Rights Council, A/HRC/17/27, 15

In conclusion, the EU established right to be forgotten is an undeniable tool against revenge porn within Europe, and a clear avenue for its victims. It is true that search engines have been granted a high degree of responsibility in determining the thresholds and application of the right, but the criteria Google employ are in line with those stated in the judgment. The issue of balancing rights is a complex one, but the right to be forgotten in practice has a minor impact upon freedom of expression online. The right is a widely applied one - Google has received over 700,000 requests for removal since the judgment²⁶⁷. However, the argument remains that the application of the right is not enough to effectively combat revenge porn as a phenomenon. By having the hosting website delist images they can be harder to locate, but the current regional nature of enforcement and lack of engagement with primary controllers leave gaps in protection which are reasonable in many other cases, but are not sufficient for revenge porn. Therefore, the right to be forgotten cannot be the singular or even primary recourse for revenge porn survivors within the EU but simply one aspect of a unified and effective response. The right to be forgotten fulfils its purpose in the online and should not be modified or adjusted to further assist revenge porn victims, it needs to instead be recognised as an important aspect of a response which requires targeted legislation that deals with nonconsensual sexual images specifically and explicitly.

4.3 Gender violence and the EU

The EU doesn't only seek to protect individuals in the online space, there are many existing and developing policies intent on protection from human rights violations. As such, whilst the online nature of the violation is an important one, we need also consider how the abuse can be addressed through other avenues. We established in the sections 2.5 and 2.6 that nonconsensual sexual images are both gendered and a form of violence against a person; in many cases revenge porn could also be categorised as a form of domestic violence. Building from this, we need also consider what the EU currently has in place to combat these, and how revenge porn could be addressed from this perspective. Initially we will consider the current EU strategies in place but will then analyse the EU's accession to the Istanbul Convention and the impact that could have. The UN has described

²⁶⁷ 'How Individual Privacy Impacts Search' (Google.com, 2017) <<https://www.google.com/transparencyreport/removals/europeprivacy/?hl=en-US>> accessed 10 June 2017.

the Istanbul Convention as the “gold standard” for tackling violence against women²⁶⁸, and so we will examine its contents but also its potential scope, and the state and EU obligations that will result from EU ratification. Is the nonconsensual sexual image phenomena best tackled through its categorisation as a form of psychological violence, and if so, how would that be implemented?

Initially, let us consider the current framework that exists within the EU regarding gendered and domestic violence. The European Institute for Gender Equality (EIGE) is an autonomous body of the EU which seeks to establish and strengthen the promotion of gender equality and fight discrimination and violence based on gender, much of their work involves collecting and analysing data from member states to inform policy makers²⁶⁹. EIGE’s research shows that domestic violence remains one of the most widespread forms of gender based violence, but that victims are not consistently supported within the member states; for example only 7 member states have developed protocols on sexual violence for the police force²⁷⁰. The EU has implemented legislation on victim’s rights, and raised awareness through co-funding campaigns with national governments but success levels, awareness, and support for victims vary drastically through the member states²⁷¹. The EU has recognised that there is much more work to be done, and seeks to support and work with member states yet one in three women within the EU have experienced physical or sexual violence since the age of 15²⁷². Therefore we can recognise that whilst aware of the work and improvements that need to be done, a unified and effective response had been generally lacking from the EU, despite the frameworks and information gathering that exists in the form of EIGE.

On the other hand, this lack of unification and effective strategy has the potential to change when the EU ratifies the Council of Europe’s Istanbul Convention. On 11th May 2017 the European Council confirmed the EU will sign and ratify the Istanbul Convention, “reaffirming its leading role in ending violence against women.²⁷³” Under Article 216(1) of the TFEU the EU has external

²⁶⁸ Katie Grant, 'The Istanbul Convention: What It Is And Why You Should Care' (iNews, 2017) <<https://inews.co.uk/explainers/emma-watson-stepped-support-istanbul-convention-care/>> accessed 11 June 2017.

²⁶⁹ 'About EIGE' (EIGE, 2017) <<http://eige.europa.eu/about-eige>> accessed 11 June 2017.

²⁷⁰ 'About EIGE' (EIGE, 2017) <<http://eige.europa.eu/about-eige>> accessed 11 June 2017.

²⁷¹ 'Zero Tolerance Of Violence Against Women - European Commission' (Ec.europa.eu, 2017) <http://ec.europa.eu/justice/gender-equality/gender-violence/index_en.htm> accessed 15 June 2017.

²⁷² 'Zero Tolerance Of Violence Against Women' (Ec.europa.eu, 2017), accessed 15 June 2017.

²⁷³ 'EU To Join International Convention Combating Violence Against Women - Consilium' (Consilium.europa.eu, 2017) <<http://www.consilium.europa.eu/en/press/press-releases/2017/05/11-violence-against-women/>> accessed 10 June 2017.

competence to conclude international agreements where the agreement is necessary to achieve one of the objectives referred to by the Treaties and under Article 19 of the TFEU the EU has a strong competence to combat discrimination on the basis of gender²⁷⁴. Not all of the member states have ratified or signed the Convention yet, but EU accession will bind those who have not signed to the extent of EU competence²⁷⁵. This move could also make EU law more coherent and streamlined on the issue of gendered violence and will certainly function as a step towards a greater regional response to violence, for it enforces a baseline standard that states will need to comply with and work towards.

To understand the potential regional response and how the Istanbul Convention will address nonconsensual sexual images we need to examine its content in some depth. The preamble of the convention condemns all forms of violence against women and domestic violence, and also recognises that women and girls are at a higher risk of gender based violence than men²⁷⁶. Article 1 states the purposes are to eliminate all forms of violence, design a “comprehensive framework, policies and measures” to protect and assist, and promote international cooperation concerning these aims²⁷⁷. This recognition that gender based violence stems from inequality within society, and that it disproportionately impacts women, is an important one for it requires policies and frameworks to be put in place for victims, but also highlights the need for changes in education and understandings within society. The convention is also careful to explicitly define some of its key terms: Article 3 defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit between former or current spouses or partners.²⁷⁸” This expansion beyond more traditional definitions includes the psychological, highlights that violence is not singularly physical. It is also a wider definition than the General Assembly who have termed it “violence which exists in the private sphere,²⁷⁹” leaving unfortunate ambiguity on the potential for domestic violence in the public space, such as online. Yet, the

²⁷⁴ The European Commission, 'Legal Implications Of EU Accession To The Istanbul Convention' (Publications Office of the European Union 2015), 47.

²⁷⁵ European Commission, 'Legal Implications Of EU Accession To The Istanbul Convention,' 84.

²⁷⁶ Council of Europe, 'Council of Europe Convention on preventing and combating violence against women and domestic violence,' 11 May 2011, <<http://www.refworld.org/docid/4ddb74f72.html>> accessed 05 June 2017, preamble.

²⁷⁷ 'Council of Europe Convention on preventing and combating violence against women and domestic violence,' Article 1.

²⁷⁸ 'Council of Europe Convention on preventing and combating violence against women and domestic violence,' Article 3.

²⁷⁹ European Commission, 'Legal Implications Of EU Accession To The Istanbul Convention,' 44.

Istanbul Convention is careful to state that it is the violence between current or former partners and not how private it is, which defines domestic violence.

The convention goes further and devotes an article to psychological violence in Article 33, “Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of seriously impairing a person’s psychological integrity through coercion or threats is criminalised²⁸⁰.” It’s clear here that the convention recognises the important psychological aspect of violence - in either coercion or threats, both of which are recurring themes in revenge porn, before the impact of the actual posting of the images themselves (as discussed in section 2.7). Continually, the convention does much the same for other forms of violence which disproportionately affect women: forced marriage, sexual harassment, stalking, forced sterilisation, female genital mutilation²⁸¹. The main sections of the convention focus on four major themes: prevention, protection, prosecution and monitoring²⁸². It is this breadth of focus which shows the potential impact, for it seeks to both support victims and ensure steps are taken to prevent victimisation occurring.

Yet, building upon the definitions, the most integral aspects of the convention are the state obligations and independent monitoring body. Looking initially at the state obligations we can find the purpose of the convention and how it builds upon existing EU strategies. Some of the requirements include ensuring the state parties take measures to eliminate gender prejudices and biases through addressing cultural, religious, traditional and social norms that uphold gender inequality²⁸³. Article 14 focuses on the importance of education:

“1 Parties shall take, where appropriate, the necessary steps to include teaching material on issues such as equality between women and men, non-stereotyped gender roles, mutual respect, non-violent conflict resolution in interpersonal relationships, gender-based violence against women and the right to personal integrity, adapted to the evolving capacity of learners, in formal curricula and at all levels of education.

²⁸⁰ ‘Council of Europe Convention on preventing and combating violence against women and domestic violence,’ Article 33.

²⁸¹ European Commission, 'Legal Implications Of EU Accession To The Istanbul Convention,' 44.

²⁸² 'Council Of Europe - Istanbul Convention' (Stopvaw.org, 2014) <http://www.stopvaw.org/council_of_europe_-_istanbul_convention> accessed 11 June 2017.

²⁸³ European Commission, 'Legal Implications Of EU Accession To The Istanbul Convention,' 8.

2 Parties shall take the necessary steps to promote the principles referred to in paragraph 1 in informal educational facilities, as well as in sports, cultural and leisure facilities and the media.”

This approach is so integral for it accepts the importance of education, but also exposure to media, in shaping individual’s understandings of relationships and relating to themselves and others. It emphasises the state responsibility to proactively work towards reducing discrimination and violence in society, not simply reacting when it occurs. The convention also holds that members must take “necessary legislative or other measures²⁸⁴” to protect victims from violence, but also ensure there are appropriate and specific measures in place for specific types of victimisation such as shelters, telephone hotlines and crisis centres²⁸⁵. The Istanbul Convention has been referred to as the “strongest move that has ever been made to combat violence against women and girls globally,²⁸⁶” and this is evident in its broad reaching and proactive approach to the topic that ensures legislation but also support for victims. Nonconsensual sexual images clearly fall under the umbrella as a form of psychological and (potentially) domestic violence.²⁸⁷ Therefore, states need to not only educate about it and its consequences, but also ensure support exists, and that effective legislation is in place for those who post it. The Istanbul Convention covers a wide remit but is explicitly clear about the responsibilities of state parties to work towards ending violence on their territories and revenge porn is one aspect of that.

Finally, another key aspect of the Istanbul Convention is its establishing of an international mechanism to monitor its implementation, which the EU will need to submit regular reports to concerning its policies, and progress it has made. There are two pillars: the first is the Committee of the Parties, and the second is The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), established in Article 66-70 of the convention²⁸⁸. GREVIO will

²⁸⁴ ‘Council of Europe Convention on preventing and combating violence against women and domestic violence,’ Article 18.

²⁸⁵ ‘Council of Europe Convention on preventing and combating violence against women and domestic violence,’ Articles 23-25.

²⁸⁶ Nathalie Greenfield, 'The Istanbul Convention: What Is It And Why Should You Care?' (HuffPost UK, 2016) <http://www.huffingtonpost.co.uk/nathalie-greenfield/the-istanbul-convention-w_b_13408890.html> accessed 10 June 2017.

²⁸⁷ ‘domestic’ is dependent on each individual situation but please refer to chapter 2.6 for further discussion.

²⁸⁸ ‘GREVIO’ (Tackling Violence against Women, 2017) <<http://blogs.lse.ac.uk/vaw/regional/europe/grevio/>> accessed 10 June 2017.

receive regular reports from members and also draw information about compliance from civil society, with the aim to raise awareness at the regional level and inform decision making throughout the Council of Europe²⁸⁹. This monitoring body enhances the accountability for those party to the convention, and will ensure that the EU continues to work towards its targets of reducing gendered violence. In accordance with the evaluation timetable, the reports from Albania and Denmark have already been received and published, and GREVIO plans to complete an evaluation after visits to assess the situation on the ground²⁹⁰. The regional potential for enforcement through GREVIO, The Council of Europe, and the EU's compliance is substantial. This shows not only a harmonisation of policies and initiatives member states will need to commit to, but also the importance of cooperation at the regional level and enforcement of regional policies when confronting issues as widespread and pervasive as gender based violence and domestic violence.

In conclusion, the EU signing and ratification of the Istanbul Convention has significant potential in the combatting of gender based and domestic violence within the EU, and by extension, revenge porn. The EU has implemented policies and worked with member states to reduce gendered violence but lacks a clear and cohesive response. Yet, the Istanbul Convention has the potential to change that through its progressive interpretation and focus on the four areas of prevention, protection prosecution and monitoring²⁹¹. The requirement for states to ensure education concerning domestic violence, and issues such as revenge porn as a form of gendered violence, could hopefully lead to a shift in how nonconsensual sexual images are thought about and addressed in media, and society as a whole. The newly established monitoring system should also ensure that the EU continues to work towards its targets and harmonises its response further across the member states. It may take a few years for the impacts to be felt after ratification, but hopefully we will find that a regional response to nonconsensual sexual images is an effective one, with the focus on education being a particularly compelling aspect that may function as part of a long term change in how society views and treats perpetrators and victims of domestic and gendered violence.

²⁸⁹'GREVIO' (Tackling Violence against Women, 2017) accessed 10 June 2017.

²⁹⁰'GREVIO Receives State Reports From Albania And Denmark' (Istanbul Convention Action against violence against women and domestic violence, 2017) <<http://www.coe.int/en/web/istanbul-convention/-/grevio-receives-first-state-reports-from-albania-and-denmark?desktop=true>> accessed 10 June 2017.

²⁹¹'Council Of Europe - Istanbul Convention' (Stopvaw.org, 2014) accessed 11 June 2017.

4.4 Impact and next steps

It has become clear through discussion of EU response to nonconsensual sexual images that whilst there is nothing regional in place which specifically addresses the issue, the potential and the momentum exists for there to be one. Roberta Metsola's raising of the violation to the European Parliament is strongly indicative of the desire for a cohesive response: the violation needs to be understood as an online violation, but also as a form of violence against an individual, and the EU is currently poised with the potential to highlight these aspects and bring them together in a unified and regional answer.

In continuation, the new Regulation considers the realities of the internet today and continues the focus on consent being a key aspect of data protection; the regulation will be enforced in all EU member states by May 2018²⁹². The right to be forgotten is an established, but no less important, aspect of online protection and avenue of recourse for victims, and whilst not intended directly for revenge porn it does assist in limiting the exposure through secondary controllers. It is true that more could be accomplished through the direct targeting of primary data controllers and a scope that expands past the EU domains, but the right to be forgotten remains an important aspect of online protection regardless.

On the other hand, the ratification of Istanbul Convention by the EU shows a fundamental step forward and greater commitment to truly addressing domestic and gender based violence in the member states of the EU. Both the right to be forgotten and ratification of the Istanbul Convention signal a move towards greater regional cohesion and a unified response. The combatting of nonconsensual sexual images in the online space can only be achieved through maximising and utilising each of these potential areas; it is integral to chip away at the violation from each possible angle through utilising both social and legislative methods. Yet, a regional response is a truly fundamental one, for the violation supersedes national borders and therefore so will the answer. It is clear from the current EU focus on data protection and gendered violence that a regional response could be realised which is specifically targeted to revenge porn, but until that is formulated, both of the existing avenues - data protection online and the ensuing work from the ratification of the

²⁹² Regulation (EU) 2016/679, 1.

Istanbul Convention - need to function together within the EU to provide the greatest level of prevention, protection and legal recourse possible.

Conclusions

1. This thesis has established that revenge porn is a violation which needs to be both taken seriously, and addressed by a variety of actors. National and regional responses must be aligned with social and community action, but the initial step is the importance of recognition from national governments.
2. The existence and propagation of nonconsensual sexual images is a reflection of the views and structure of our society, and this must be addressed socially at both national and regional levels. The sections in chapter 2 highlight the seriousness of nonconsensual sexual images and its impact on victims, but also how much of its power is held through shame, and perpetuated because of existing attitudes concerning social taboos. These are attitudes which disproportionately affect women. We have found nonconsensual sexual images to be gendered, a form of violence against the victim, and a violation of human dignity. These realities and their implications need to be recognised and reflected in future responses.
3. Existing attitudes surrounding women and sexuality can also direct the interpretation of laws, as shown in the Tiziana Cantone case. Therefore, a key aspect of combatting revenge porn is within the endeavour of shifting the narrative within society that surround sexual freedom, and women specifically. This cannot be something to happen overnight, but the Istanbul Convention's focus on the importance of education and the media are a promising start which can begin to alter the shame narrative for women in society and remove the cultural blame that is laid at victim's feet, making it far more likely for them to come forward in reporting. Education is key, and both national and regional levels need to focus on this in tandem with policy making or legislation.
4. The UK's revenge porn legislation can be improved, but its existence shows a recognition of the online violation. In contrast, the case of Tiziana Cantone in Italy exemplifies the importance of explicit recognition; this case study highlights the improper protection available under data protection law. Data protection is clearly not enough of a response to revenge porn, at a national or EU level. States need to follow the lead of certain countries like the UK, and enact specific legislation against the posting of revenge porn, or risk unfavourable or conservative interpretation of their data protection laws.

5. As a regional body with existing interest in data protection and the internet, the EU is distinctly poised to work with states and ensure revenge porn specific laws are in place. The EU cannot rely on the data protection Directive - or new Regulation - as sufficient protection against nonconsensual sexual images. The same can be said for the right to be forgotten which has intent on a much broader scale, and therefore cannot be expected to provide adequate and complete protection for victims of nonconsensual sexual images.

6. Furthermore, the impending ratification of the Istanbul Convention imbues the EU with specific responsibilities concerning gendered violence that it will need to work towards, and revenge porn is an important aspect of that. Following high profile cases of revenge porn in recent years, the political momentum for change exists. The new Regulation, right to be forgotten, and Istanbul Convention ratification do highlight a direction of greater regional integration which must be capitalised on to fight against revenge porn. It may also prove fruitful to consider the interplay and responsibilities of data controllers and data processors. Recent court cases and decisions concerning revenge porn show the potential for increased responsibility of actors such as Facebook, Instagram and Reddit²⁹³. The prospect of greater accountability for these actors requires greater analysis, but they have the potential to work within national and regional frameworks to protect individuals online.

7. The approach to nonconsensual sexual images must encompass both social and educational long term change with that enacting of revenge porn specific legislation at national level. This must also be properly communicated to both citizens and law enforcement. The first steps from the EU and member states in this process are to voice a commitment to these aims, but also ensure that those directly victimised by revenge porn are listened to and included in the process, allowing for an approach led by those best placed to understand its issues, the support needed, and directions which can offer the greatest protection and most desirable outcomes for survivors.

²⁹³ Alexandra Topping, 'Facebook Revenge Pornography Trial 'Could Open Floodgates' (the Guardian, 2016) <<https://www.theguardian.com/technology/2016/oct/09/facebook-revenge-pornography-case-could-open-floodgates>> accessed 8 June 2017.

Bibliography

Table of Cases

Google Spain SL, Google Inc v Agencia Española de Protección de Datos (AEPD), Mario Costeja González, [2014] Court of Justice of the European Union, C-131/12.

von Hannover v. Germany (no. 2)(Applications no. 40660/08 and 60641/08) (2012) 55 EHHR 15.

Table of Legislation

Criminal Justice and Courts Act 2015 [UK].

Council Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1995] OJ L 281/40.

European Parliament Regulation 2016/679 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119.

Germany: Basic Law for the Federal Republic of Germany [Germany], 23 May 1949 as last amended by Article 1 of the Act of 23 December 2014 (Federal Law Gazette I p. 2438).

Disposizioni per la prevenzione e il contrasto dei fenomeni del bullismo e del cyberbullismo 2016 [Italy]

Sexual Offences (Amendment) Act 1999 [UK].

Secondary Sources

'37 States + DC Have Revenge Porn Laws - Cyber Civil Rights Initiative' (Cyber Civil Rights Initiative, 2017) <<https://www.cybercivilrights.org/revenge-porn-laws/>> accessed 13 April 2017.

'About EIGE' (EIGE, 2017) <<http://eige.europa.eu/about-eige>> accessed 11 June 2017.

Abrams D et al, 'Perceptions Of Stranger And Acquaintance Rape: The Role Of Benevolent And Hostile Sexism In Victim Blame And Rape Proclivity.' (2003) 84 Journal of Personality and Social Psychology.

'Action Sheet On Revenge Porn' (McAllister Olivarius, 2017) <<http://www.mcolaw.com/white-papers-research/action-sheet-on-revenge-porn/>> accessed 5 May 2017.

Article 19, 'ARTICLE 19's Response To Google's Advisory Council' (2017).

Article 29 Data Protection Working Party, "Guidelines on the implementation of the Court of Justice of the European Union judgment on "Google Spain and inc v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González" C-131/12, 26 November 2014.

Barak A, 'Sexual Harassment On The Internet' (2005) 23 Social Science Computer Review.

Basics I, 'How Google Works' (HowStuffWorks, 2017) <<http://computer.howstuffworks.com/internet/basics/google1.htm>> accessed 10 June 2017.

Bates S, 'Revenge Porn And Mental Health: A Qualitative Analysis Of The Mental Health Effects Of Revenge Porn On Female Survivors' (2016) 12 Feminist Criminology.

'Be Aware B4 You Share' (Gov.uk, 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403665/revenge-porn-poster-a4.jpg> accessed 15 June 2017.

'Be Aware B4 You Share' (Gov.uk, 2017) <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/403758/rp-digi-postcard-7.jpg> accessed 15 June 2017.

Bird J, 'People Who've Been Raped Are Survivors Not Just Victims' (the Guardian, 2014) <<https://www.theguardian.com/commentisfree/2014/dec/22/people-raped-survivors-not-just-victims>> accessed 13 April 2017.

Bisset A, Blackstone's International Human Rights Documents (Oxford University Press 2014).

Bodkin H, 'Sexting So Common Revenge Porn Perpetrators Should Not Face 'Stigma' Of Sex Offender Register, Says Court' (The Telegraph, 2017) <<http://www.telegraph.co.uk/news/2017/04/12/sexting-common-revenge-porn-perpetrators-should-not-face-stigma1/>> accessed 13 June 2017.

Bridges A et al, 'Aggression And Sexual Behavior In Best-Selling Pornography Videos: A Content Analysis Update' (2010) 16 Violence Against Women.

Budde R, 'Taking The Sting Out Of Revenge Porn: Using Criminal Statutes To Safeguard Sexual Autonomy In The Digital Age' [2015] SSRN Electronic Journal.

Calvert C, 'Revenge Porn And Freedom Of Expression' (2014) 24 Fordham Intell.

Caroline Mortimer K, 'Woman Kills Herself After Sex Tape Becomes A Meme' (The Independent, 2016) <<http://www.independent.co.uk/news/world/europe/tiziana-cantone-sex-tape-suicide-internet-meme-revenge-porn-naples-a7307041.html>;> accessed 15 June 2017.

Chang J, LeffermanJ and Effron L, 'Briaandchrissy' Youtube Star Opens Up About Revenge Porn Legal Battle' (ABC News, 2017) <<http://abcnews.go.com/US/chrissy-chambers-youtube-sensation-briaandchrissy-opens-revenge-porn/story?id=38087941>> accessed 5 May 2017.

Citron D and Franks M, 'Criminalizing Revenge Porn' (2014) 49 Wake Forest L. Rev.

Coppens H, 'The Victim May Forgive, But The Internet Will Never Forget: The Need To Adopt A Variant Right To Be Forgotten As A Remedy For Nonconsensual Pornography' (2017) 915 Law School Student Scholarship.

'Council Of Europe - Istanbul Convention' (Stopvaw.org, 2014) <http://www.stopvaw.org/council_of_europe_-_istanbul_convention> accessed 11 June 2017.

Council of Europe, Council of Europe Convention on preventing and combating violence against women and domestic violence, 11 May 2011, <<http://www.refworld.org/docid/4ddb74f72.html>> accessed 05 June 2017.

Culbertson et al, 'The Impact Of Sexual Assault, Sexual Assault Perpetrator Type, And Location Of Sexual Assault On Ratings Of Perceived Safety' (2001) 7 Violence Against Women.

(Cyber civil rights initiative, 2016) <<https://www.cybercivilrights.org/ncpstats/>> accessed 5 March 2017.

Davies M and Rogers P, 'Perceptions Of Male Victims In Depicted Sexual Assaults: A Review Of The Literature' (2006) 11 Aggression and Violent Behavior.

'Damages Slashed For Swedish Teen Sex Video' (Thelocal.se, 2013) <<https://www.thelocal.se/20131022/50932>> accessed 12 April 2017.

Dodge A, 'Digitizing Rape Culture: Online Sexual Violence And The Power Of The Digital Photograph' (2016) 12 Crime, Media, Culture.

Data & Society, 'Nonconsensual Image Sharing' (2016) <https://datasociety.net/pubs/oh/Nonconsensual_Image_Sharing_2016.pdf> accessed 5 April 2017.

Diebelius G, 'Jilted Lover Jailed For Three Years After Posting Revenge Porn On Facebook' (Metro, 2017) <<http://metro.co.uk/2017/04/15/jilted-lover-jailed-for-three-years-after-posting-revenge-porn-on-facebook-6577120/>> accessed 5 June 2017.

Duggan M, 'Online Harassment' (Pew Research Center, 2017) <<http://www.pewinternet.org/2014/10/22/online-harassment/>> accessed 18 April 2017.

Enarsson T and Naarttijärvi M, 'Is It All Part Of The Game? Victim Differentiation And The Normative Protection Of Victims Of Online Antagonism Under The European Convention On Human Rights' (2016) 22 International Review of Victimology.

'EU Cybersecurity Plan' (Digital Single Market, 2017) <<https://ec.europa.eu/digital-single-market/en/news/eu-cybersecurity-plan-protect-open-internet-and-online-freedom-and-opportunity-cyber-security>> accessed 1 June 2017.

'Europe 2020 Strategy' (Digital Single Market, 2017) <<https://ec.europa.eu/digital-single-market/en/europe-2020-strategy>> accessed 3 June 2017.

European Commission, 'Code Of EU Rights Online' (European Union 2012).

European Commission - PRESS RELEASES - Press release - EU Cybersecurity plan to protect open inter.

'European Commission Press Release' (Europa.eu, 2013) <http://europa.eu/rapid/press-release_IP-13-94_en.htm; http://europa.eu/rapid/press-release_IP-15-4865_en.htm> accessed 1 June 2017.

'EU To Join International Convention Combating Violence Against Women - Consilium' (Consilium.europa.eu, 2017) <<http://www.consilium.europa.eu/en/press/press-releases/2017/05/11-violence-against-women/>> accessed 10 June 2017.

Ferguson S, '5 Reasons Why I Identify As A Rape Victim, Not A Rape Survivor' (Everyday Feminism, 2016) <<http://everydayfeminism.com/2016/07/rape-victim-not-a-rape-survivor/>> accessed 13 April 2017.

Fairbairn J, 'Rape Threats And Revenge Porn: Defining Sexual Violence In The Digital Age', eGIRLS, eCITIZENS (University of Ottawa Press 2015)

Greenfield N, 'The Istanbul Convention: What Is It And Why Should You Care?' (HuffPost UK, 2016) <http://www.huffingtonpost.co.uk/nathalie-greenfield/the-istanbul-convention-w_b_13408890.html> accessed 10 June 2017.

'Google Search Statistics' (Internetlivestats.com, 2017) <<http://www.internetlivestats.com/google-search-statistics/>> accessed 10 June 2017.

Grant K, 'The Istanbul Convention: What It Is And Why You Should Care' (iNews, 2017) <<https://inews.co.uk/explainers/emma-watson-stepped-support-istanbul-convention-care/>> accessed 11 June 2017.

Gray E, 'Jennifer Lawrence's Leaked Photos Remind Us How Crappy The Internet Can Be For Women' (HuffPost, 2014) <http://www.huffingtonpost.com/2014/09/02/jennifer-lawrence-leaked-nude-photos-bad-for-all-women_n_5749852.html> accessed 10 May 2017.

'GREVIO Receives State Reports From Albania And Denmark' (Istanbul Convention Action against violence against women and domestic violence, 2017) <<http://www.coe.int/en/web/istanbul-convention/-/grevio-receives-first-state-reports-from-albania-and-denmark?desktop=true>> accessed 10 June 2017.

'GREVIO' (Tackling Violence against Women, 2017) <<http://blogs.lse.ac.uk/vaw/regional/europe/grevio/>> accessed 10 June 2017.

Hern A, 'Google Takes Right To Be Forgotten Battle To France's Highest Court' (The Guardian, 2016) <<https://www.theguardian.com/technology/2016/may/19/google-right-to-be-forgotten-fight-france-highest-court>> accessed 9 July 2017.

Hill C, 'Gendered Nature Of Cyber Victimisation As A Mechanism Of Social Control' (Master of Arts, University of Ottawa 2016).

'How Individual Privacy Impacts Search' (Google.com, 2017) <<https://www.google.com/transparencyreport/removals/europeprivacy/?hl=en-US>> accessed 10 June 2017.

'Italy Grapples With Suicide Of Woman Taunted Over Online Sex Video' (the Guardian, 2016) <<https://www.theguardian.com/world/2016/sep/16/italy-grapples-with-suicide-of-woman-taunted-over-online-sex-video>> accessed 10 June 2017.

'Italy - Sexual Assault (Excl. Rape)' (EIGE, 2017) <<http://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu/italy-sexual-assault-excl-rape>> accessed 12 May 2017.

'Italy Unanimously Passes Anti-Cyberbullying Law' (TheLocal.it, 2017) <<https://www.thelocal.it/20170517/italy-unanimously-passes-anti-cyberbullying-law-online-abuse-trolling>> accessed 10 June 2017.

Internetlivestatscom, 'Internet Live Stats' (Internetlivestatscom, 20 October 2013) <<http://www.internetlivestats.com/watch/internet-users/>> accessed 24 April 2017.

Internetworldstatscom, 'Internet World Stats' (Internetworldstatscom, 31 March 2017) <<http://www.internetworldstats.com/stats4.htm#europe>> accessed 24 April 2017.

Jørgensen R, Framing The Net (1st edn, Edward Elgar 2013).

Khalil AbuZayyad Z, 'Human Rights, The Internet And Social Media: Has Technology Changed The Way We See Things?' (2013) 18 Palestine-Israel Journal.

Kirchgaessner S, 'Tiziana Cantone: Seeking Justice For Woman Who Killed Herself Over Sex Tape' (The Guardian, 2017) <<https://www.theguardian.com/world/2016/oct/13/tiziana-cantone-trail-justice-woman-killed-herself-sex-tape-italy>> accessed 1 May 2017.

Lagon M and Arend A, Human Dignity And The Future Of Global Institutions (Georgetown University Press 2014).

Langlois G and Slane A, 'Economies Of Reputation: The Case Of Revenge Porn' (2017) 14 Communication and Critical/Cultural Studies.

Laville S, 'Revenge Porn' Victims Should Get Anonymity, Say 75% Of People' (the Guardian, 2016) <<https://www.theguardian.com/law/2016/jul/19/revenge-porn-victims-should-get-anonymity-say-75-per-cent-of-people>> accessed 9 April 2017.

Laville S, 'Revenge Porn Decision Sparks Anger At Police' (the Guardian, 2016) <<https://www.theguardian.com/technology/2016/may/08/revenge-porn-decision-sparks-anger-at-police>> accessed 8 June 2017.

Laville S, 'Revenge Porn Helpline 'To Close' As Government Cuts Funding' (the Guardian, 2017) <<https://www.theguardian.com/society/2017/feb/02/revenge-porn-helpline-close-government-cuts-funding>> accessed 8 June 2017.

Lecca T, 'Italian Lawmakers Fail To Tackle Revenge Porn And Cyberbullying' (The Spoke, 2016) <<https://thespokenews.com/2016/10/04/italian-lawmakers-fail-to-tackle-revenge-porn-and-cyberbullying/>> accessed 10 June 2017.

Le Conte M, '"Invaluable" Revenge Porn Helpline May Turn To Crowdfunding After Losing Government Funding' (BuzzFeed, 2017) <https://www.buzzfeed.com/marieleconte/invaluable-revenge-porn-helpline-may-turn-to-crowdfunding-af?utm_term=.mdw3wVbye#.ndmgDxVPG> accessed 15 June 2017.

'Leaked Sex Tapes Provoked Tiziana Cantone's Suicide - BBC News' (YouTube, 2017) <https://www.youtube.com/watch?v=_vk78yOKw3c> accessed 10 June 2017.

'Legal Definitions In The EU Member States' (EIGE, 2017) <<http://eige.europa.eu/gender-based-violence/regulatory-and-legal-framework/legal-definitions-in-the-eu>> accessed 10 May 2017.

Lehners J, 'On Dignity: Multidisciplinary Approaches' (E.MA, 2016).

Lardinois F, 'Google Now Uses Geolocation To Hide 'Right To Be Forgotten' Links From Its Search Results' (TechCrunch, 2016) <<https://techcrunch.com/2016/03/04/google-now-uses-geolocation-to-hide-right-to-be-forgotten-links-from-its-search-results/>> accessed 24 June 2017.

Merz T, 'Men And Boys Get Raped Too' (Telegraph.co.uk, 2014) <<http://www.telegraph.co.uk/men/thinking-man/10657485/Men-and-boys-get-raped-too.html>> accessed 15 April 2017.

Morris A, 'Hunter Moore: The Most Hated Man On The Internet' (Rolling Stone, 2012) <<http://www.rollingstone.com/culture/news/the-most-hated-man-on-the-internet-20121113>> accessed 10 April 2017.

Montero J, 'Human Rights, Personal Responsibility, And Human Dignity: What Are Our Moral Duties To Promote The Universal Realization Of Human Rights?' (2016) 18 Human Rights Review.

Munson L, 'Jennifer Lawrence, Rihanna, 98 Other Celebs' Nude Photos Leaked Online' (Naked Security, 2014) <<https://nakedsecurity.sophos.com/2014/09/01/jennifer-lawrence-rihanna-98-other-celebs-nude-photos-leaked-online/>> accessed 13 April 2017.

'Myex.Com! Naked Pics Of Your Ex' (Myex.com, 2017) <<http://www.myex.com/>> accessed 5 May 2017.

Nabil M, 'From Sex Tapes To Revenge Porn: Construction Of A Genre' (Master Thesis, Stockholms Universitet 2014).

'New Law To Tackle Revenge Porn' (Gov.uk, 2014) <<https://www.gov.uk/government/news/new-law-to-tackle-revenge-porn>> accessed 3 June 2017.

Opinion of Advocate General Jääskinen delivered on 25 June 2013 in Case C-131/12 Google Spain SL, Google Inc v Agencia Española de Protección de Datos (AEPD), Mario Costeja González, [2014] Court of Justice of the European Union.

Pina A, Holland J and James M, 'The Malevolent Side Of Revenge Porn Proclivity:' (2017) 8 International Journal of Technoethics.

'Police Receive 110 Reports Related To 'Revenge Porn' In One Month' (The Japan Times, 2015) <<http://www.japantimes.co.jp/news/2015/04/02/national/crime-legal/police-receive-110-reports-related-revenge-porn-one-month/>> accessed 13 April 2017.

'Quel "Stai Facendo Un Video? Bravo" Diventato Il Tormentone Che Ossessionava Tiziana' (L'Huffington Post, 2016) <http://www.huffingtonpost.it/2016/09/14/tiziana-morte-video-hard-gogna-mediatica_n_12003610.html> accessed 15 June 2017.

'Revenge Porn: Be Aware B4 You Share' (Gov.uk, 2015) <<https://www.gov.uk/government/publications/revenge-porn-be-aware-b4-you-share>> accessed 15 June 2017.

'Revenge Porn - GOV.UK' (Gov.uk, 2015) <<https://www.gov.uk/government/publications/revenge-porn>> accessed 12 April 2017.

'Revenge Porn Helpline' (Revengepornhelpline.org.uk, 2017) <<https://revengepornhelpline.org.uk/about/>> accessed 12 April 2017.

'"Revenge Porn" Is Not A Sexual Offence, Minister Tells Yorkshire Victim' (Yorkshirepost.co.uk, 2016) <<http://www.yorkshirepost.co.uk/news/crime/revenge-porn-is-not-a-sexual-offence-minister-tells-yorkshire-victim-1-7682400>> accessed 8 June 2017.

'Revenge Porn Law Does Not Give Victims Anonymity – Ethical Dilemma? - Griffin Law' (Griffin Law, 2017) <<http://www.griffin.law/revenge-porn-law-does-not-give-victims-anonymity-ethical-dilemma/>> accessed 8 June 2017.

'Revenge Porn' Laws: Ministers Urged To Go Further' (BBC News, 2014) <<http://www.bbc.com/news/uk-28123128>> accessed 15 June 2017.

'Revenge Porn: More Than 200 Prosecuted Under New Law - BBC News' (BBC News, 2016) <<http://www.bbc.com/news/uk-37278264>> accessed 13 April 2017.

'Right To Be Forgotten: Statistics And Key Dates' (Reputation VIP, 2015) <<https://www.reputationvip.com/blog/right-to-be-forgotten-statistics-and-key-dates>> accessed 9 June 2017.

'Roberta Metsola Heads EU Campaign To Stop 'Revenge Porn' (Independent.com.mt, 2016) <<http://www.independent.com.mt/articles/2016-11-24/local-news/Roberta-Metsola-heads-EU-campaign-to-stop-revenge-porn-6736167053>> accessed 13 April 2017.

'Roberta Metsola' (Theparliamentmagazine.eu, 2017) <<https://www.theparliamentmagazine.eu/articles/interviews/roberta-metsola-hopes-raise-awareness-dangers-revenge-porn>> accessed 1 June 2017.

Scheller S, 'A Picture Is Worth A Thousand Words: The Legal Implications Of Revenge Porn' (2015) 93 North Carolina Law Review.

Serota M, 'Italian Prosecutor Vows To Arrest Those Who 'Incited' Tiziana Cantone's Suicide' (Death and Taxes, 2016) <<http://www.deathandtaxesmag.com/307980/italian-prosecutor-vows-arrest-those-incited-tiziana-cantones-suicide/>> accessed 10 June 2017.

'Sex Tape Woman 'Should Have Been Protected' (TheLocal.it, 2016) <<https://www.thelocal.it/20160917/sex-tape-suicide-woman-should-have-been-protected>> accessed 3 June 2017.

Singal J, 'Awareness Is Overrated' (Science of Us, 2014) <<http://nymag.com/scienceofus/2014/07/awareness-is-overrated.html>> accessed 15 June 2017.

Simpson J, 'Revenge Porn: What Is It And How Widespread Is The Problem?' (The Independent, 2014) <<http://www.independent.co.uk/news/uk/home-news/what-is-revenge-porn-9580251.html>> accessed 8 June 2017.

'Shaping The Digital Single Market' (Digital Single Market, 2017) <<https://ec.europa.eu/digital-single-market/en/digital-single-market>> accessed 3 June 2017.

Shariff, Shaheen and Ashley DeMartini, 'Defining the Legal Lines: eGirls and Intimate images', eGIRLS, eCITIZENS (University of Ottawa Press 2015).

Sherlock P, 'Revenge Pornography Victims As Young As 11, Investigation Finds - BBC News' (BBC News, 2016) <<http://www.bbc.com/news/uk-england-36054273>> accessed 5 May 2017.

Stroud S, 'The Dark Side Of The Online Self: A Pragmatist Critique Of The Growing Plague Of Revenge Porn' (2014) 29 Journal of Mass Media Ethics.

Taube D, Kolmes K and Vogele C, 'Preliminary Report: Without My Consent Survey Of Online Stalking, Harassment And Violations Of Privacy' (Without my consent 2017) <http://www.withoutmyconsent.org/sites/default/files/wmc_prelim_survey_report.pdf> accessed 8 May 2017.

Tasioulas J, 'Human Dignity And The Foundations Of Human Rights' [2015] SSRN Electronic Journal.

Taylor M, "Safeguarding The Right To Data Protection In The EU", 30th And 31st October 2014, Paris, France' (2015).

Tippmann S and Powles J, 'Google Accidentally Reveals Data On 'Right To Be Forgotten' Requests' (the Guardian, 2015) <<https://www.theguardian.com/technology/2015/jul/14/google-accidentally-reveals-right-to-be-forgotten-requests>> accessed 13 June 2017.

'The Criminal Justice System: Statistics' (Rainn.org, 2016) <<https://www.rainn.org/statistics/criminal-justice-system>> accessed 5 May 2017.

The European Commission, 'Legal Implications Of EU Accession To The Istanbul Convention' (Publications Office of the European Union 2015).

'Tiziana Cantone's Death' (Know Your Meme, 2016) <<http://knowyourmeme.com/memes/tiziana-cantone-s-death>> accessed 24 June 2017.

Topping A, 'Facebook Revenge Pornography Trial 'Could Open Floodgates' (the Guardian, 2016) <<https://www.theguardian.com/technology/2016/oct/09/facebook-revenge-pornography-case-could-open-floodgates>> accessed 8 June 2017.

Tufft B, 'Charity Launches Helpline For Victims Of Revenge Porn' (The Independent, 2015) <<http://www.independent.co.uk/news/uk/home-news/revenge-porn-helpline-launched-for-victims-10031844.html>> accessed 8 June 2017.

UN Human Rights Council, Human rights and arbitrary deprivation of nationality : resolution / adopted by the Human Rights Council, 16 July 2012, A/HRC/RES/20/5, available at: <http://www.refworld.org/docid/5016631b2.html> [accessed 05 May 2017].

UN Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression : Addendum, Communications to and from Governments, 16 May 2011, A/HRC/17/27, available at: <http://www.refworld.org/docid/50f3db632.html> [accessed 03 April 2017].

'UN Report Cyber Violence Against Women And Girls' (UN Broadband Commission for Digital Development Working Group 2015) <<http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/images/wsis/GenderReport2015FINAL.pdf>> accessed 13 April 2017.

Vandenbroucke J and Olsen J, 'Informed Consent And The New EU Regulation On Data Protection' (2013) 42 International Journal of Epidemiology.

Williams R, 'Telegraph Stories Affected By EU 'Right To Be Forgotten' (Telegraph.co.uk, 2015) <<http://www.telegraph.co.uk/technology/google/11036257/Telegraph-stories-affected-by-EU-right-to-be-forgotten.html>> accessed 12 June 2017.

Willitts P, 'Is Britain's Revenge Porn Law Working?' (Global Comment, 2016) <<http://globalcomment.com/200-prosecutions-under-new-uk-revenge-porn-law/>> accessed 12 June 2017.

Wu G, 'Survivor' Versus 'Victim': Why Choosing Your Words Carefully Is Important' (HelloFlo, 2017) <<http://helloflo.com/survivor-vs-victim-why-choosing-your-words-carefully-is-important/>> accessed 13 April 2017.

Yaakov Y, 'Israeli Law Makes Revenge Porn A Sex Crime' (The Times of Israel, 2014) <<http://www.timesofisrael.com/israeli-law-labels-revenge-porn-a-sex-crime/>> accessed 13 April 2017.

Yodanis C, 'Gender Inequality, Violence Against Women, And Fear' (2004) 19 Journal of Interpersonal Violence.

Yorke H, 'Boarder At One Of UK's Best Private Schools Used Facebook Revenge Porn Threats To Blackmail Girls Into Sleeping With Him' (The Telegraph, 2017) <<http://www.telegraph.co.uk/news/2017/01/10/boarder-one-uks-best-private-schools-used-facebook-revenge-porn/>> accessed 20 April 2017.

'Zero Tolerance Of Violence Against Women - European Commission' (Ec.europa.eu, 2017) <http://ec.europa.eu/justice/gender-equality/gender-violence/index_en.htm> accessed 25 June 2017.