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make the right
connections

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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November 14th, 2016

To the Committee -

Re: Phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm

I am writing on behalf of WIRE, the Women's Information and Referral Exchange. We appreciate this opportunity to join the discussion regarding how Australia's legal system should respond to the issue of "revenge porn".

CONSENT

The focus on consent regarding intimate sexual material is pivotal. A woman may consent to creating sexual material with a partner, but that consent does not necessarily extend to sharing the material outside the relationship. We would recommend that any consent given during a relationship is deemed to end when the relationship ends, unless explicitly renegotiated.

Some subjects may consent freely to sharing of sexually graphic material. However, consent in this context, like consent in the context of any sexual activity, needs to be unambiguous and unequivocal. Even if consent has been given to share explicit sexual material, that consent is able to be revoked by the subject at any time. Consent needs to be explicit, not implicit - silence does not constitute consent. Any sharing of sexual material requires explicit, informed, and free (non-coerced) consent, and the onus is on the person sharing the material to seek that consent.

Any discussion of "revenge porn" must also be mindful not to assign blame to the victim of non-consensual sharing of sexual images. No action taken by a victim excuses or condones this violation of privacy and consent.

THREATS

The *threat* to distribute private sexual material is often used as a coercive tactic by a perpetrator of family violence.

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The very existence of private sexual material that a woman does not want to be shared with her friends, family or even her workplace gives a perpetrator a mechanism of control. Whether or not the perpetrator genuinely intends to share the material does not diminish the impact the *threat* has on the victim.

Even where no material has actually been shared, the impact on a woman can still be significant. It may include the stress and anxiety caused by the threat to share the material, and may include activities or choices made by the woman under the coercion of the threat.

CONTROL

It is appropriate that the offence consider the intention of the perpetrator, in that the intention is to cause harm or distress, or where there is a risk that the behaviour would cause harm or distress. The other intention to consider is that of control - that the threat may be made with the intention to control, coerce, or manipulate the victim, typically into either not leaving the relationship or into further sexual activity.

Megan called WIRE to talk about the physical violence she was experiencing from her partner. She has tried to leave the relationship before, but returned when her partner has threatened to send photos and videos of her engaging in sexual activity to her parents. Although she consented to the filming at the time, she now feels powerless to leave the relationship because of her partner's threats to share this material. She has asked him to destroy the material but he refused.*

YOUNG WOMEN

WIRE believes that this issue affects a broad range of women, in every age group and every socio-economic strata. However, our experience suggests that younger women are more likely to experience non-consensual sharing of private sexual imagery.

Young women are more likely to create private sexual imagery, in the consensual context of a relationship. Sexually explicit images and texts are often seen as “relationship currency” by young people, as a requirement of entering into or maintaining a sexual relationship. The overlap in young people’s lives between the pervasive, immersive nature of social media and the increased prevalence of mainstream sexual imagery creates a greater risk for misuse and abuse of private sexual images.

Young women should be considered an especially high-risk and high-impact group as victims of non-consensual sharing of sexual images.

TAKEDOWN

Once material has been released onto the internet, it is impossible to control the distribution or destination of images. This is of great concern to victims, that once material has been shared it is impossible to control where the images may end up. It is important that any legislative approach to this issue acknowledges the urgency of action against sites that share material, and provides timely, appropriate mechanisms for taking down material shared without the subject's consent. When private sexual material is shared, a prolonged legal response where the material continues to be publicly available for an extended period of time would make the point of takedown moot. Timely takedown of identified material shared without consent is of fundamental importance.

We support the inclusion in the legislation of the responsibility of sites that host this type of material, as well as the individuals who share it. The increased popularity of "amateur porn" makes the sharing of sexual content easier, more commonplace, and also provides a "consumer market" for the material.

Belinda contacted WIRE to talk about her conflicted feelings regarding her partner. They were in an "on again, off again" relationship, and engaged in drug taking and sexual activity, which was filmed without her knowledge or her consent. The perpetrator then showed her the video footage later. Belinda doesn't know what to do - she still cares for the perpetrator but now feels fearful knowing that he has the material and she has no control over what he might choose to do with it. She has no option except to "wait and see" if he chooses to keep it private.*

THE CONTEXT OF FAMILY VIOLENCE

Non-consensual sharing of private sexual imagery should also be considered within the context of family violence. For example, the creation of the sexual imagery may in the first instance have been under duress or coercion. The consent given to any sharing of the imagery may similarly have been obtained through fear or coercion. A context of family violence may limit a woman's ability to withdraw her consent, because she knows that doing so may provoke violence - whether physical, emotional, or psychological. The act of "revenge porn" may also be accompanied by other activities designed to threaten the victim, to make her fearful and to control her behaviour, including stalking both in person and online, and physical or verbal abuse.

Non-consensual sharing of sexual imagery is a violation of a woman's sexual autonomy. It is intended to cause extreme distress, humiliation and shame, and may be used to "punish" a woman, particularly for leaving or trying to leave an

abusive relationship. In an increasingly online society, it is an increasingly prevalent and serious act. Like stalking, it should be considered as one more element in the “toolbox” of a perpetrator of family violence, and the interplay between a context of family violence and the impact of revenge porn should be taken into account when considering the severity of the crime.

GENDER

WIRE acknowledges the importance of making the legislation apply equally to all people, regardless of their gender identity. However, WIRE has no doubt that victims of the crime of “revenge porn” will predominantly be women, and perpetrators will predominantly be men. In this sense, the crime is a gendered one and this should not be overlooked.

As a partner to the UN’s Sustainable Development Goals, Australia has a public, long-term commitment to promoting gender equality (SDG 5). WIRE believes that legislative reform, including this proposed bill, is an important tool to help empower women to retain control of their own lives. However, it needs to be part of a broader, cross-sector approach to promoting gender equality. We support the framework launched in 2015 by Our Watch, *A Shared Framework for the Primary Prevention of Violence Against Women and Their Children in Australia*, and we agree that “mutually reinforcing actions are needed through legislation, institutional, policy and program responses”.

WIRE appreciates the opportunity to be part of this discussion, regarding the criminalisation of non-consensual sharing of private sexual material. We would welcome any further discussion of the issues raised in this submission.

Regards,

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Women’s Information and Referral Exchange