

**Project Respect** submission to the **Senate Legal and Constitutional Affairs References Committee Inquiry** into the 'Phenomenon colloquially referred to as **'revenge porn'**, which involves sharing private images and recordings of a person without their consent, with the intention to cause that person harm'.

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## Introduction

We welcome the opportunity to contribute to the Senate Inquiry into the phenomenon colloquially referred to as 'Revenge Porn', with a particular focus on technologically facilitated sexual violence against women who are in the sex industry.

## Project Respect

Project Respect is a non-profit, feminist, community-based organisation that aims to support women in the sex industry and women who have been trafficked for sexual exploitation. Project Respect was established in 1998 to work with women in the sex industry to protect their human rights, particularly in relation to violence, exploitation and trafficking. For women in the sex industry, Project Respect is a safe place that offers complete support and a non-judgemental community. Project Respect is guided by the needs of women, placing no limits on the length or type of support offered.

Project Respect recognises that not all women in the sex industry experience discrimination, violence or exploitation in the sex industry or outside it. However, based on our work with women, the testimony of women in the sex industry, and local and international research, we recognise that discrimination, violence and exploitation of women in the sex industry is significant, widespread and harmful. Whilst we realise that technologically facilitated violence does not only effect women, our client base consists of women and therefore our submission will address their experiences.

## Source Material

This submission draws on information from several sources: interviews with women in the sex industry who have experienced technologically facilitated sexual violence, Project Respect staff, Project Respect data and research, and academic and other literature. It also draws on research by Kate Connett on stigma. Women's stories have been de-identified to protect their anonymity.

## Issues for women in the sex industry

In recent years some women in the sex industry have described an increase in the violence they experience whilst working in the sex industry. They largely attribute this to increased use of pornography by the public, and the movement of the sex industry online.<sup>1</sup> Women we spoke to on brothel outreach have stated that some clients may either ask to take photos or film a booking, or try to secretly take photos or film the booking on a smart phone device or other similar technology.

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<sup>1</sup> Hall, Bianca, Sex workers at risk of violence as the internet cuts demand for their services, *The Age*, 2015

*When Project Respect sought the voices of women in brothels about non-consensual filming and sharing of images/videos, many women told stories of preventative measures utilised daily to prevent clients filming them. Women described covering clients belongings with towels, covering mobile phones, and being cautious of open bags or other belongings that seemed out of place. One woman recently described how she caught a client filming her with a pen that had a video recording device hidden within it. - Outreach Worker at Project Respect, 2015*

These pre-emptive measures demonstrate the complex measures women implement to protect them from this particular form of violence. Majority of the women we work with keep their participation in the sex industry private, largely due to stigma and discrimination they experience, from their families, friends, employers, and other services providers and government institutions such as the Department of Health and Human Services (DHHS), child protection or other authorities.<sup>2</sup>

Additionally, traffickers at times take photos or recordings of trafficking victims and use these in a threatening manner, with the aim of building control over the woman as part of their enslavement.

Given advancing technological developments and the overall increase in access to smart phones, we believe technologically facilitated sexual violence is becoming increasingly problematic, and this in turn impacts on women in the sex industry. We have found technologically facilitated sexual violence specifically impacts on women in the sex industry in three ways: in the context of family violence, with clients in the sex industry, and in the context of women trafficked for sexual exploitation.

We note that the sex industry is unusual in relation to technologically facilitated sexual violence, as few other industries or work places require sexual interaction. The nature of the sex industry therefore makes women in the sex industry more vulnerable to technologically facilitated sexual violence than women in other industries. Any definition of technologically facilitated violence that focuses only on personal relationships will fail to cover the experiences of people in the sex industry in relation to their work. Because of this, we recommend that legislation consider images or footage as private where it is taken in the sex industry, not solely in the context of personal relationships. We believe the key issue to be considered in drafting legislation should be lack of consent for distribution, rather than the nature of the relationships (personal versus industrial).

Project Respect recognises that technologically facilitated sexual violence is a highly complex issue, combining issues of gender inequality, sexualised violence, Internet

<sup>2</sup> Project Respect 2015, Project Respect Annual Report 2014/2015

regulation, Internet anonymity, privacy, copyright, ethics and the rights of women in the sex industry. Given our organisational mandate, and our vision to empower women who are in the sex industry, including women who have been trafficked for sexual exploitation, this submission will specifically address the concerns and suggestions we have in relation to the impact of technologically facilitated sexual violence on women in the sex industry. In this, we are guided by our experience working with women in the industry.

## **1) The phenomenon colloquially referred to as 'revenge porn', which involves sharing private sexual images and recordings of a person without their consent, with the intention to cause that person harm**

The term 'revenge porn' does not fully encompass the technologically facilitated violence that is experienced by women, particularly those women who are in the sex industry. We discourage the use of the term "revenge porn" because it:

- a) Often blames the victim for producing images or recordings (whether consent was obtained or not) rather than focusing on the exploitive action by the perpetrator(s)
- b) Suggests that the sharing or distribution of images and recordings without consent is solely motivated by revenge.
- c) Labels all images and/or recordings of what is considered 'private material' as pornography, which may be incorrect because the content may not serve the purpose typically served by pornography, or constitute content of such nature.

Due to the non-consensual nature of the distribution of 'private sexual material' without consent, we support using the term "technologically facilitated sexual violence".

## **The gendered nature of technologically facilitated sexual violence**

End Revenge Porn, a non-profit organisation that is part of the Cyber Civil Rights Initiative (CCRI) in the USA that assists thousands of victims worldwide, estimates that 90% of victims of technologically facilitated sexual violence are women.<sup>3</sup> It has also been suggested that women experience a higher severity of harm, due to societal sexualisation of women and the prevalent double standard that comes with shaming women for engaging in sexual behaviour.<sup>4</sup>

<sup>3</sup> Franks, M 2015, 'Drafting an Effective "Revenge Porn" Law: A Guide for Legislators', *End Revenge Porn*, Cyber Civil Rights Initiative, <<http://www.endrevengeporn.org/guide-to-legislation/>>

<sup>4</sup> Laird, L 2013, 'Striking Back at Revenge Porn', *ABA Journal*, vol.99, iss.11, pp.45-50

Project Respect views technologically facilitated sexual violence through a broad lens, particularly focusing on how the sharing of, or threat of sharing, what might be considered 'private images' impacts on women in the sex industry, whether the perpetrator is a client or a partner or ex-partner. We believe that the intention of the perpetrator should be broadened beyond *harm*; our experience and the research cited in this submission tell us that perpetrators of technologically facilitated sexual violence have multiple motivations. These include, but are not limited to: financial gain, notoriety, fun, entertainment, humour, as well as the many malicious intentions, such as causing distress, shame, isolation, destroying relationships, damaging career and educational prospects, causing distress to children and controlling the target of this violence.

Technologically facilitated sexual violence can take many forms, and may include sharing of 'private sexual images' inclusive of nudity, close ups of genital or anal regions of the body, and sexual behaviour. Project Respect believes that 'private sexual material' should not only be inclusive of the above, but should also include images/recordings of things a reasonable person would expect to be kept private, such as depictions of a woman in a brothel lounge, reception or back room, or indeed entering a brothel (thus insinuating that they are working in the sex industry). This should also take into account other relevant behaviour that would be considered private, pertaining to an individual's cultural or religious background.

In the context of family violence, women in the sex industry have told us that men perpetuate family violence against them in many ways, one of which is disclosing or threatening to disclose that their partner or ex-partner has been in the sex industry to others (third parties)<sup>5</sup>. Some women have reported that men use, attempt or threaten to use images or recordings to expose women. In this context, when considering third parties, third parties should be understood broadly to include their children, other family members, friends, children's teachers or school, employers, the police, Child Protection, the Children's Court, the Magistrates Court, the Family Court and the Australian Taxation Office, with a view to discrediting and humiliating the woman. These third parties are particularly pertinent to women in the sex industry, who face discrimination and experience stigma because they are in the sex industry.

## Trafficking for sexual exploitation

Project Respect supports women who have been trafficked for sexual exploitation. Many women who have been trafficked for sexual exploitation have disclosed to Project Respect staff that upon their 'recruitment', traffickers or their agents would take a photograph (nude or suggestive) of the woman, and despite saying it would be kept private, later used the photo to manipulate women by

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<sup>5</sup> Project Respect 2015, Submission to Royal Commission into Family Violence

threatening to show it to the woman's parents or children, or to 'out' their participation in the sex industry to their cultural community.<sup>6</sup>

*One Thai woman stated that her trafficker had a nude photo of her, and she was frightened it would be used to deny her access to her child. She was also afraid that he would distribute the photo, and "chase her". (Ford, 2001)*

## 2) The impact this has on the targets of 'revenge porn', and in the Australian community more broadly

Women in the sex industry experience shame and stigma as one of the biggest challenges whilst working in the sex industry.<sup>7</sup> It is particularly pertinent if women decide they wish to leave the sex industry, and are then impacted by financial struggles, a lack of employment options and workplace skills, social isolation, and insufficient social support.<sup>8</sup> Women often have large unexplainable gaps in resumes, lack of references, low self-esteem and face discrimination from many services. In addition to the trauma that can surface once women have exited the industry, the online presence of non-consensually shared images/recordings online or elsewhere, and/or the fear of such evidence surfacing can be crippling.

*A nineteen-year-old woman consented to nude photographs to be taken of her by an older man, under the agreement they would be used for private use only. He then told her they were destroyed. This man then groomed the young woman into illegal prostitution, and later threatened to distribute the photographs he previously told her were erased when she tried to escape. She lives fearful these photographs will impact her future career prospects and regularly searches the Internet for them. He had all her personal details and threatened to attach them to the photographs when they would be released. – Project Respect Client, 2015*

*A woman consented to having nude photographs taken of her by a man who was not her partner, with the agreement they would remain private. He then coerced her into hours of taking photo against her will, and psychologically abused her in this process. He was manipulative and abusive, and later threatened to share the photographs. She continues to be fearful that the images will surface, and is afraid to search for herself online. – Project Respect Client, 2015*

<sup>6</sup> Ford, M 2001, 'Sex slaves and legal loopholes: Exploring the legal framework and federal responses to the trafficking of Thai 'contract girls' for sexual exploitation to Melbourne, Australia', *Project Respect*

<sup>7</sup> Connett, K, 'Talking about stigma: Women's experiences of stigma related to their experience in the sex industry', Unpublished Research Paper

<sup>8</sup> *ibid*

## **Lack of recognition of technologically facilitated sexual violence for women, particularly in the sex industry**

A lack of legal response to technologically facilitated violence condones a culture that supports the removal of a person's sexual autonomy. It also disregards this harmful type of sexual violence by failing to recognise it as violence and a crime because it occurs in an online or 'virtual' world, rather than in the 'real world'. Due to a lack of legislation and societal attitudes, law enforcement has little capacity to take action against digital harassment, and often do not take allegations of technologically facilitated violence seriously.<sup>9</sup> Research has found there is a belief that when an incident occurs online, it is somehow less meaningful or less harmful than physical sexual assault.<sup>10</sup>

Adding to this, there is often an additional barrier to women in the sex industry who experience technologically facilitated violence going to the police. Some women in the sex industry fear going to the police or other services for assistance or to report incidents of violence due to the discrimination, harassment and stigma they face or fear when attempting to do so. This means there can be little protection for women who are already experiencing higher levels of family violence than other women in the community.<sup>11</sup> A legislative response to technologically facilitated sexual inclusive of women in the sex industry would demonstrate that the government is serious about tackling gender inequality and family violence for this particular cohort, and more broadly within the community.

## **Continues the 'victim blaming' mentality towards sexual violence**

Often in the media and in the community victims of technologically facilitated sexual violence are blamed for taking intimate photos of themselves and sharing them with others, or not being aware that images/recordings are being captured. In a world where technology is pivotal for communication globally, it is inevitable that people in intimate relationships will use technology for sexual expression. People of all genders should have the freedom of sexual agency, and have the right to engage in intimate relations in a consensual, respectful manner. The non-consensual sharing of private images should be viewed as the sexual violation that it is.

For women in the sex industry who have experienced technologically facilitated sexual violence, shame, discrimination and blame is heightened, with the additional harm from stigma from working in the sex industry and continuing to be perceived as a commodity that can be bought, shamed, humiliated and violated.

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<sup>9</sup> Rey, PJ & Boesel, E 2014, 'Cyberbullying, creepshots, and revenge porn: three, case studies in augmented subjectivity', *Association of Internet Researchers*,

<<http://spir.aoir.org/index.php/spir/article/view/982/646>>

<sup>10</sup> *ibid*

<sup>11</sup> Project Respect 2015, Submission to the Royal Commission Into Family Violence

## Direct harms from technologically facilitated sexual violence

The list of harms that are derived from experiencing technologically facilitated violence as experienced by women we work with include:

Loss of trust, fear of technology, fear of intimacy, social anxiety, isolation, fear of finding the images/videos on the internet, fear of meeting new people who may have seen the images/videos online, paranoia, Post Traumatic Stress Disorder, shame, low self esteem, self hatred, self-blaming, loss of control, damaged future career prospects, ruined family relationships, destroyed reputations and a fear of children seeing material.

*One woman had recently split with her partner, who was aware she was in the sex industry. Once they had terminated their relationship, he repeatedly threatened to rape her and to tell her family about her participation in the sex industry if she did not give him \$20,000 and have sex with him whenever he demanded. She refused, and he informed her entire extended family about her work in the sex industry, and stole intimate videos from her personal laptop, with the intention to share them. Years later, she is afraid to have an active Facebook or LinkedIn profile, and regularly searches the internet for the videos, fearful they will surface. – Project Respect Client, 2015*

Perpetrators of rape and other sexual assault are increasingly posting videos of their assaults to further the abuse, and to dissuade the victims from reporting the sexual violation<sup>12</sup>.

*A woman in the sex industry was filmed without consent whilst being sexually violated, and then had the videos posted in a popular online forum. – Project Respect Program and Advocacy Worker, 2015*

## Further implications for Culturally and Linguistically Diverse (CALD) women

For CALD women there is the added shame that may come from their cultural or religious community, or families back in their home countries experiencing violence, shame and other harmful reprisals. This is particularly pertinent for trafficking victims.

<sup>12</sup> Franks, M 2015, 'Drafting an Effective "Revenge Porn" Law: A Guide for Legislators', *End Revenge Porn*, Cyber Civil Rights Initiative, <<http://www.endrevengeporn.org/guide-to-legislation/>>

*A Korean woman was trafficked into Australia. She consented to nude and suggestive photos being taken of her upon arrival. When she arrived she spoke limited English and did not understand what would be done with the photos and was very afraid. She later discussed at length with Project Respect her fear around where the photos would be distributed, what they would be used for and if they would be shown to her family. This was only one aspect of the fear she experienced as a woman trafficked for sexual exploitation. – Outreach Worker, Project Respect 2015*

### 3) Potential policy responses to this emerging problem, including civil and criminal remedies

#### Recommendations:

1. Project Respect advocates for policy responses to include any instance where a person has:

- a) **Threatened to**, or
- b) **Shared** an image or recording of something that would expect to be kept private. This might include: intimate images (taken with or without consent) or footage of a woman working in a brothel, street sex work or other sex work settings; within the context of a personal relationship; or images/recordings that the individual (or someone they know) due to their cultural or religious backgrounds, would be expected to keep private.

2. Policy response should be all encompassing, inclusive of females, males, transgender women and men, and persons who are intersex, and others who identify as outside the gender binary and cisnormativity. It should also be inclusive of any person regardless of their immigration status or able-ness.

3. Policy should include both consensual and non-consensual creation of 'private sexual material'. Project Respect is aware of women who are photographed or filmed without their consent in brothels, and this material is then used in coercive and exploitative manners.

4. The creation of private sexual material created in an industrial environment where a sexual service is provided should be considered as 'private sexual material', unless explicit consent to distribute that material has been obtained. There should not be an implicit assumption that a woman consents to being filmed or photographed, or that her body automatically becomes available for public consumption. A woman is selling a sexual service, not her body and should not be exploited.

In most states and territories, prostitution is either legal or decriminalised, and under the law women are then entitled to work in prostitution. A policy that protected

women in the sex industry from technologically facilitated violence would be a huge step forward in ensuring that women can rely on legal protection, and not just their own self-protective measures.

5. Policy should not be limited to intimate partners, or ex-partners. Whilst many cases of technologically facilitated sexual violence do occur in intimate partner relationships, any persons can obtain/create what might be considered 'private sexual material', such as colleagues, friends, strangers, family members and in the case of women in the sex industry, clients, brothel managers and other staff.

6. The offence should apply to a situation where a person (Person A) makes threats to a person (Person B) that they will share a private sexual image or recording of another person (Person C).