



RCNI Opening Statement
to the Joint Oireachtas Committee on Justice and
Equality on
Online Harassment, Harmful Communications
and Related Offences
October 2019

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Introduction: RCNI is grateful to have this opportunity to share its views on online harassment, harmful communications and related offences with the Joint Oireachtas Committee on Justice and Equality. Our clients of all ages are now reporting to us more and more forms of online sexual harassment and harmful communications of an intimate nature.

Effective regulation, via the criminal justice system and otherwise, generally has not kept pace with developments in online technologies and almost universal use of internet-accessible devices. Many forms of online sexual harassment and harmful communications, and related offences against children are covered by the Criminal Law (Sexual Offences) Act 2017¹ and related legislation on “child pornography”². There are wide gaps in the criminal law as far as **adult victims** are concerned.

To us, these forms of sexual harassment are a form of sexual violence, and should be regarded as seriously as contact sexual offences. Their impacts on their victims are just as grave and potentially far-reaching. Accordingly, we think it is appropriate to describe this behaviour as “image-based sexual abuse”. It is difficult to compile an exhaustive list of all the forms which this might take. These forms include “sexting”, “sextortion”, “deep-faking”, “flashing”, what is commonly but inaccurately referred to as “revenge porn”, and perhaps most disturbingly, the recording and distribution of videos of acts of sexual assault and rape. They need to be addressed **urgently** to deter and where necessary, punish, perpetrators of grave harm through online technologies.

There have been some very encouraging positive developments in recent years, not least the Harassment, Harmful Communications and Related Offences Private Members’ Bill³ (2017) put forward by Brendan Howlin TD, itself based mainly on the relevant provisions in the draft Bill in the Law Reform Commission Report on Harmful Communications and Digital Safety from 2016⁴. RCNI broadly welcomes this Bill and would like to see it progress as quickly as possible. In particular, we welcome the inclusion of Section 4, “Distributing etc of intimate images without consent”, which will address that form of image-based sexual abuse which consists of “one-off” sending of intimate images online to third parties. The current law on harassment covers **only** persistent communications directly to the victim.

To give another positive example, the Law Reform Commission also put forward the idea of a Digital Safety Commissioner’s Office which would be responsible for regulating online service providers’ procedures and practices, especially in relation to take-down of harmful material. This has also

¹ Accessible online via this web-link: <http://revisedacts.lawreform.ie/eli/2017/act/2/front/revised/en/html>

² Esp Child Trafficking and Pornography Act 1998, accessible via this web-link: <http://revisedacts.lawreform.ie/eli/1998/act/22/front/revised/en/html>

³ Accessible online via this web-link: <https://data.oireachtas.ie/ie/oireachtas/bill/2017/63/eng/initiated/b6317d.pdf>

⁴ Accessible online via this web-link: https://www.lawreform.ie/_fileupload/Reports/Full%20Colour%20Cover%20Report%20on%20Harmful%20Communications%20and%20Digital%20Safety.pdf

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found expression in proposed legislation, for example the Digital Safety Commissioner Private Members' Bill⁵ put forward by Donnchadh O'Laoghaire TD.

We refer briefly to some of the **principal recommendations** which RCNI makes in its full Submission:

RCNI Recommendations for possible amendments to the Harassment, Harmful Communications and Related Offences Private Members' Bill 2017 (HHCRO 2017):

1. Consider separating the current proposed Section 4 HHCRO 2017 into three distinct offences, generation of intimate images without consent, alteration of images to make them appear to be intimate images without consent, and finally, their storage, distribution, publication, sale, etc. (also without consent);
2. Ensure that the wording of any offence or definition used in any offence covers originally innocent images of the victim which have been altered to appear to include intimate images of third parties, so that it cannot be argued by the defence that the genitalia, anal region, etc **of the victim** are not in fact depicted in the intimate image in question;
3. Include separate voyeurism-related offences, to cover viewing victims without consent in intimate settings, installing equipment to record intimate images of them, recording such images, storing, distributing, publishing or selling them, in each case without consent;
4. Create a new offence of producing and distributing audio-visual images of acts of sexual violence without consent, and attach significant penalties to it. This activity should be an offence whether it takes place online or "offline".
5. Consider criminalising the intentional or reckless impersonation of others (real or fictional) in online interactions. This can be extremely harmful in a sexual context.
6. HHCRO 2017 should include a review clause and should give responsibility for carrying out the review to the Digital Safety Commissioner, or similar official, once s/he has been established. Pending the creation of a new Digital Safety Commissioner's Office, or similar body, responsibility for reviewing the legislation should be given to the Department of Communications, Climate Action and the Environment.
7. HHCRO 2017 should also include provision to hear cases related to online harassment, harmful communications and related offences, in camera, ideally whether or not their content amounts to image-based sexual abuse.

Finally, RCNI would like to thank the Committee most sincerely for taking the time to consider these most important issues through the submission process and these hearings.

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⁵ Available online via: <https://data.oireachtas.ie/ie/oireachtas/bill/2017/144/eng/initiated/b14417d.pdf>

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