



NATIONAL STATEMENT OF PRINCIPLES RELATING TO THE CRIMINALISATION OF THE NON-CONSENSUAL SHARING OF INTIMATE IMAGES

INTRODUCTION

These principles have been developed by the cross-jurisdictional National Cybercrime Working Group, established under the Law, Crime and Community Safety Council in 2010.

Recognising that states and territories have responsibility for their respective criminal justice and policy systems, these principles are non-binding. This document identifies best practice principles to be considered as each jurisdiction continues to develop and review its criminal law, policy and practices to suit local needs, and for each jurisdiction to adopt and implement as that jurisdiction sees fit.

Building on the progress by all jurisdictions to prevent technology-facilitated abuse, these principles for nationally consistent criminal offences relating to non-consensual sharing of intimate images represent a further step towards preventing online abuse.

THE NON-CONSENSUAL SHARING OF INTIMATE IMAGES

The non-consensual sharing of intimate images covers a broad range of conduct, relationships, motivations and means of distribution. Distribution or threats to distribute (whether express or implied) can be used to coerce, control, abuse, blackmail, humiliate, intimidate or harass another person. The non-consensual sharing of intimate images can be used as a tool of power and control in the context of domestic and family violence or sexual abuse.

An intimate image may have been initially taken with the consent of the person depicted in the image or taken by the person depicted in the image themselves, then later shared without consent. Intimate images or videos may be obtained via (initially) consensual sharing between two people in an intimate relationship. Alternatively, intimate images may have been obtained without consent (for example, downloading intimate images from social media or online dating profiles, through unauthorised access to the Cloud, or through the use of a hidden recording device). The person distributing the intimate image (the distributor) can share these images through various means, including with specified individuals, by uploading to social media, or pornography websites, by distributing through the post or display in public places.

In some cases, an image may be doctored to falsely portray an individual, or it may be the combination of the image and accompanying identifying information about the person in the image or derogatory commentary that is objectionable.

The non-consensual sharing of intimate images through websites that encourage trading of intimate images or demand payment from victims to remove intimate images may also constitute or contribute to other offences that have an extortion element such as blackmail.

The non-consensual sharing of intimate images can affect anyone, but disproportionately victimises women and girls. It can have a serious impact on victims, including psychological injury and trauma, or a loss of reputation, social standing, or employment.

PRINCIPLES

General principles

1. The distribution of, or threat to distribute, intimate images without consent is unacceptable and breaches community standards of acceptable behaviour.
2. The protection and respect of victims and minimisation of harm to victims is essential in responding to the non-consensual sharing of intimate images.
3. The non-consensual sharing of intimate images may involve a variety of responses as each jurisdiction considers appropriate, including criminal offences of specific or general application, civil responses, education, awareness, prevention and support for those impacted.
4. Responses to the non-consensual sharing of intimate images should be designed to encompass the broad range of conduct, motivations, relationships and means of distribution that such behaviour can involve.

Scope of criminal offences

5. Any criminal offence framework for non-consensual sharing of intimate images should not capture conduct that does not warrant criminal sanctions, such as the sharing of intimate images between consenting adults and the initial taking or sharing of the intimate image by the person depicted in the image.
6. Any offence framework should consider whether, and if so, how, it applies to distributors who are minors. An offence should be clearly distinct from criminal conduct already captured by existing child sexual exploitation laws.
7. Jurisdictions should consider whether offences address threats to distribute intimate images without consent, irrespective of whether or not the intimate image exists.
8. Offences should contemplate existing and emerging technologies.
9. Concepts of sharing or distribution should be kept broad and inclusive to capture the various ways in which intimate images are or might in the future be shared, including public distribution and one-on-one sharing.

10. The form of the intimate images covered by the offences should be defined broadly and inclusively to cover still images and visual recordings.
11. Concepts equivalent to a reasonable expectation of privacy or community standards of acceptable behaviour may be reflected in an offence as each jurisdiction deems appropriate.

Consent and harm

12. Consideration should be given to the merits and risks of offence structures to address the lack of consent to distribution by the person depicted in the intimate image as each jurisdiction deems appropriate.
 - 12.1. The issue of consent may be addressed in a variety of ways, whether by inclusion as an element of the offence, as an available defence, or considered when determining whether conduct is contrary to community standards of acceptable behaviour.
 - 12.2. Where an offence addresses the issue of a lack of consent, criminal liability may apply where a defendant either knew that there was no consent to distribute the image or was reckless as to whether consent had been obtained.
13. An offence for sharing intimate images should not require proof that harm has been *caused* to the person depicted in the image by the sharing of the intimate image.
14. If appropriate for the relevant jurisdiction, an offence for sharing intimate images should not require proof of an *intention* to cause harm or distress or another outcome.

Investigative powers

15. Noting that the non-consensual sharing of intimate images is predominantly committed using technology and telecommunications devices, jurisdictions should have regard to the sufficiency of investigative powers under procedural laws to allow adequate investigation.
16. Consideration should be given to the challenges of enforcement, noting the online nature of the majority of this conduct and its prevalence across jurisdiction boundaries.

Penalties

17. Penalties should reflect a proportionate and necessary response to the seriousness of this criminal conduct. Depending upon the jurisdiction and recognising judicial discretion in sentencing practices, aggravating factors that increase the subjective seriousness of the conduct may be relevant to penalties.