Further Views and Responses on Security Bureau's Consultation Paper 'Proposed Introduction of Offences of Voyeurism, Intimate Prying, Non-consensual Photography of Intimate Parts, and Related Offences'

(*This document is to be read together with the Response Form submitted by ACSVAW*)

Submitted by

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Preface

Established on 8 March 1997, the Association Concerning Sexual Violence Against Women (ACSVAW) has been striving to promote women's rights and gender equity in Hong Kong. With particular focus on sexual violence, ACSVAW urges the Government to address relevant issues and provide victim support, mobilizes the public to join the fight for victim's rights, with a view to restore a life of confidence and dignity to the victims. In 2000, ACSVAW set up RainLily—the first ever one-stop sexual violence crisis centre in Hong Kong—to provide all-round services for survivors of sexual violence.

In recent years, we notice increasing prevalence of **image-based sexual violence**, including non-consensual taking, distribution and selling of intimate images, threats to distribute intimate images, and creating fake pornography ('deepfake'). We conducted a survey in 2019 on public's experiences of image-based sexual violence and published ***Survey Report on Image-based Sexual Violence*** in March, 2020 (see Appendix). Results show that image-based sexual violence brings lifelong trauma to victims. For victims who muster up and report, a majority of them were snubbed by the police, who often excuse themselves for having 'no legislation in place' to initiate investigation. Most respondents opine that it is necessary to legislate specific offences against image-based sexual violence.

We support the Security Bureau's proposals to create the offences set out in the Consultation Paper, subject to our specific responses stated below in **Section A** of this document. However, in order to fully address the myriad forms of image-based sexual violence, we contend that there is an urgent need to penalize the act of 'threatening to distribute intimate images', provide injunctive sanction against such act, and court orders for removal of images. **ACSVAW proposes to introduce a new offence on 'threatening to distribute intimate images' and relevant interim and removal orders**, further elaborated in **Section B** of this document. We hope the Government will adopt our views and carry out the legal reforms as soon as possible.

Ms WONG Sau Yung, Linda
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Section A

Our Further Responses to Proposals in the Consultation Paper

Responses to Proposals 1 and 2: Voyeurism and Intimate Prying

Here are our further responses to Questions 1 and 2.

1. We suggest that there should be one single offence with the maximum penalty of 5 years' imprisonment to penalize the acts of "voyeurism" (Proposal 1) and "intimate prying" (Proposal 2), regardless of purpose. The reasons are as follows.

2. ***Motive or purpose of perpetrator irrelevant.*** The motive or purpose of the perpetrator, whether for sexual gratification or not, is irrelevant to the gravamen of the offence. The gravamen of a sexual offence that is based on sexual autonomy[1] is usually of two parts: (a) non-consensual (b) intrusion of a sexual nature. Examples of such intrusion by *physical* contact include sexual assault (previously known as "indecent assault") and sexual assault by penetration (previously "rape"). The new offences proposed in the Consultation Paper purport to penalize *non-physical* intrusions of a sexual nature. The underlying principle of these offences is respect to one's sexual autonomy: all acts with a sexual denotation, physical or non-physical, should never be forced upon.

3. We submit that the issue is always, and should always be, whether *the complainant's* sexual autonomy has been violated. That is, whether there has been a sexual intrusion, physical or non-physical, and whether the complainant has given consent. These would sufficiently constitute the basis and elements of a sexual offence. It is neither conducive nor meaningful to divert the spotlight of inquiry towards *the perpetrator*, or to trace the motive or purpose of the perpetrator's conduct, for that could be wide-ranging and frivolous: out of curiosity, excitement to violate the law, retaliation, shaming of the victim, profit, or—sexual gratification. One may appropriate or weaponize sex for a million reasons; but the wrong is never in the purpose, it is in the very act of such appropriation or weaponization.

4. ***Other purposes are no less than a sexual purpose.*** To create two disparate classes of offences, merely by the distinction of sexual gratification, will lead to a foreseeable moot point in trial: is the defendant's conduct for satisfying

[1] In the Law Reform Commission's *Report on Review of Substantive Sexual Offences* (dated December 2019), sexual offences are classified into three categories: (1) offences based on sexual autonomy; (2) offences based on the protective principle; and (3) offences based on public morality (paras. 1.15-1.19). The new offences proposed in this Consultation Paper, would arguably fall under the first category.

his/her/their own subjective sexual desire, or something else? Such inquiry is not meaningful—why is it more blameworthy if one does that for private sexual consumption? Yet again, the overarching wrong, is always the *appropriation or weaponizing of sex* to benefit oneself or to harm others, which can be achieved out of a sexual or non-sexual motive, damage done by one is no graver than the other.

5. Did a group of bullies, who watched the victim shower on livestream from another room, allegedly out of mischief and shaming, commit a crime less wrong than people who admittedly did the same for sexual desire? Why should an offender, backed by a psychiatric report stating that he/she/they broke the law for pathological thrill, get away with a graver offence? What is the reason for disparage in treatment? These futile threads of inquiries in court stray away from the true focus, which should be on the complainant—whether he/she/they have been non-consensually and sexually violated.

6. ***Level of culpability can be reflected in sentencing.*** To put down in black and white that "to obtain sexual gratification" attracts graver penalty than other purposes, alludes that "sexual gratification" is a meaningful "blameworthiness calibrator" of the array of purposes that can emerge, while it is not. Examples above demonstrate how non-sexual purposes can be as shaming and harmful, if not more shaming and harmful in some cases. The relative culpability behind each motive or purpose can instead be sufficiently reflected in the mitigation and sentencing process, tailoring to each case's specific factual matrix.

7. ***No requirement of sexual gratification in existing sexual offences.*** The offences of "sexual assault" and "sexual assault by penetration" require no proof of sexual gratification on the part of the perpetrator. In the case of sexual assault, the element to prove is on whether the act is "sexual", not whether it's for "sexual gratification". In the case of the new offences proposed in this Consultation Paper, the requirement that some "intimate act" or "intimate parts" have been pried or photographed, has already sufficiently imbued a sexual element to the offences. The extra proof of "sexual gratification" is not a necessary indicator in establishing a sexual offence.

8. ***Evidential hurdle in proving sexual gratification.*** The prosecution has to prove beyond reasonable doubt that the defendant committed the offence for subjective sexual gratification. Or, the court has to draw the only irresistible inference. For the wide-ranging possible purposes listed above, it may not be too difficult to raise

a reasonable doubt. Sexual gratification is also hard to define. It will be rather hard to collect relevant circumstantial evidence; the most concrete evidence will inevitably come from an admission. We have looked into English case law on "sexual gratification", and also the latest UK *Archbold*, the leading authority on criminal law, both avenues provide no definition, except that in *R. v Abdullahi* [2006] EWCA Crim 2060, it is ruled that "the defendant's purpose could be any form of sexual gratification and it did not matter whether it was short-term or long-term, immediate or deferred, or immediate and deferred" (para. 17); and in *R v Court* [1989] AC 28, the court took the approach that indecent intention can be inferred from the circumstances. In other words, it requires some guesswork and pick-and-choose of evidence from the bench.

9. ***Putting the defendant's sexual identity and orientation at trial.*** It is highly foreseeable that the perpetrator's sexual orientation will be a contentious issue at trial. For example, a man who surreptitiously observes a woman in shower may raise the defence that he is gay, and therefore impossible to obtain sexual gratification from the prying. The prosecution will inevitably need to challenge his evidence by suggesting that he's not telling the truth. By present day's standard, such line of inquiry is considered intrusive to one's private life. It also defies the concept that a person's sexual orientation and identity may be fluid, and such inquiry is unfair to a defendant who embraces a fluid sexual orientation and identity. If the law recognizes that non-consensual intimate prying is a wrong, does it matter if, say, a man is pried by another straight, gay, bisexual, pansexual, asexual, or transgender man, or even an intersex person? The law may intend to penalise sexual disorders or sexually deviant behaviour, but as discussed above, the harm and danger of such behavior for non-sexual purposes can be as grave; and an offender of the later type is no less a sexual predator because it is the *appropriation or weaponizing of sex* to benefit oneself or to harm others that truly defines a sexual predator. **By suggesting to do away with the sexual gratification requirement, we are not downplaying the gravity of a wrongful act for one's sexual desire, instead, we are emphasizing that appropriation or weaponizing of sex for non-sexual purposes are equally damaging and blameworthy.**

10. ***Lack of convincing justification for the sexual gratification element.*** With due respect, a careful inspection of the Law Reform Commission's *Report on Voyeurism and Non-Consensual Upskirt-Photography* dated April 2019 and *Report on Review of Substantive Sexual Offences* dated December 2019 reveal

little or no justification on introducing a purpose element to the voyeurism offence, and there was almost no discussion or analysis on the necessity of the same. It seems that the proposed offences are modelled after those in overseas jurisdictions without detailed analysis on the rationales behind.

11. The explanatory notes[2] accompanying section 67 of the *Sexual Offences Act 2003* (England and Wales), on the offence of Voyeurism, did not illustrate the rationale behind the need for a sexual gratification. That of the New Zealand and New South Wales equivalents are also unclear. The relevant discussion in the Scottish Parliament[3] offers no explanation on the sexual gratification requirement.

12. Rather, some guidance might be sought in the Canadian Consultation Paper: Voyeurism as a Criminal Offence. In Part One of the Paper[4], under the heading "Defining Voyeurism", a "voyeur" is, defined under the *Canadian Oxford Dictionary*, as "a person who derives sexual gratification from the covert observation of others as they undress or engage in sexual activities". The need for an element of sexual gratification follows from this purely lexical and literary interpretation of the word "voyeur".

13. In Part Two[5] of the same paper, under the heading "Rationale", the policy rationale is set out as follows:

> "The policy intent is to create two alternative ways in which a criminal voyeurism offence could be committed. <u>The first branch</u> of the offence would involve surreptitious viewing or recording of another person for a sexual purpose while that person is in a place and in circumstances where there is a reasonable expectation of privacy. <u>By this formulation of the offence, as long as the viewing or recording is done for a sexual purpose, it does not matter whether or not the victim was naked, engaged in explicit sexual activity, etc. when the viewing or recording took place. The second branch of the offence would recognize that it may be difficult to establish that the viewing or recording was done "for a sexual purpose" in circumstances where the victim</u>

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[2] https://www.legislation.gov.uk/ukpga/2003/42/notes/division/5/1/53
[3] Scottish Parliament Justice Committee, Official Report of Meeting 17 March 2009 (Consideration ofamendments, Day 1) see: http://archive.scottish.parliament.uk/s3/committees/justice/or-09/ju09-0902.htm
[4] Department of Justice, Canada (2015). Voyeurism as a Criminal Offence: A Consultation Paper. See: https://justice.gc.ca/eng/cons/voy/part1_context.html#def
[5] Department of Justice, Canada (2015). Voyeurism as a Criminal Offence: A Consultation Paper. See: https://justice.gc.ca/eng/cons/voy/part2_crim.html

and the offender do not have physical contact. This formulation recognizes that the viewing or recording may be done for other purposes, such as to generate visual representations for commercial sale, to harass or intimidate the victim, or to amuse others at the victim's expense. If the policy rationale for the creation of an offence is to protect persons from sexual exploitation, it can be argued that this rationale is relevant whether the accused committed the offence for a sexual purpose or for some other purpose. As with the first branch of the voyeurism offence, the Crown would have to prove beyond a reasonable doubt that the viewing or recording was done surreptitiously, in circumstances where the victim had a reasonable expectation of privacy. In the second branch of the criminal voyeurism offence the mental element and the physical element of the offence would "match up" in the sense that the viewing or recording would have to have been done for the purpose of viewing the victim in a state of nudity, or undress where the breast, sexual organs or anal region are exposed, or while the victim is engaged in explicit sexual activity. Furthermore, the actual observations or recordings of the victim must also have captured the victim in one of the physical states mentioned in the offence or engaged in explicit sexual activity. Both branches of the criminal voyeurism offence, therefore, would create specific intent offences."

14. In other words, the Canadian policy rationale is that some "sexual" nature has to be proved; therefore, in the case where a sexual purpose is present, the victims does not have to be exposed or engaging in a sexual activity; but in the case where the victim is in a state of nudity or undressing, or engaging in a sexual activity, a sexual purpose is not necessary.

15. The proposed Hong Kong model is different in this regard—as aforementioned, the elements of "intimate parts" or "intimate act" already imbue a sexual nature to the prying. Therefore, non-physical intrusion is not any less sexual than a physical one. In some cases of sexual assault (formerly known as indecent assault), it may be even harder to prove a sexual nature if the touching seems innocuous.

Here is our further response to Question 3.

16. We agree with the proposed scope of acts for Proposals 1 and 2.

Responses to Proposals 3 and 4: Non-consensual Photography of Intimate Parts

Here are our further responses to <u>Questions 4 and 5</u>.

17. We suggest that there should be one single offence with the maximum penalty of 5 years' imprisonment to penalize non-consensual photography of intimate parts, for sexual gratification (Proposal 3) or otherwise (Proposal 4), for reasons illustrated in paras. 2-15 above.

18. Additionally, the element of 'to obtain sexual gratification' as a purpose is not necessary for constituting similar offences in some overseas jurisdictions, such as New Zealand, Australian Capital Territory New South Wales, Victoria, South Australia and Queensland (see **Table 1** Comparison of offences of voyeurism and non-consensual photography of intimate images of overseas jurisdictions, on pp.14-15).

Here are our further responses to <u>Question 6</u>.

19. We think that the proposed scope of acts for Proposals 3 and 4 is too narrow, because it fails to cover the act of 'down-blousing'. Below are our arguments for supporting the inclusion of 'down-blousing'.

Here are our further response to <u>Question 7</u>, concerning down-blousing.

20. We are of the opinion that the offence of non-consensual photography of intimate parts should cover 'down-blousing'. In our experience, the seriousness of 'down-blousing' is the same as recording intimate image beneath one's clothing (i.e. 'upskirt photography'). Different from the Government's views, we notice that the calls for criminalizing 'down-blousing' are as strong as criminalizing 'upskirt photography'. One female interviewee of *Survey Report on Image-based Sexual Violence* (see Appendix), Florence[6], who experienced 'down-blousing' and a stranger taking photo of her breasts in a public occasion, expressed tremendous distress as she felt a loss of control over her bodily expression and sexual autonomy:

[6] Pseudonym

Case study: down-blousing

Florence, who experienced 'down-blousing' with someone taking photos of her breasts in public places, her images were later uploaded onto and circulated on social media sites. Through the sneak shots, the perpetrator attempted to portray Florence as someone who shows off her breasts on purpose, intentionally solicits attention to her breasts by wearing a spaghetti strap dress and deliberately leans down to attract people filming her.

She saw for herself how her body expression was arbitrarily distorted while the photos were circulated, but she was unable to do anything about it. Florence expressed that the perpetrator deprived her of the right to express and control her body.

Source:
Survey Report on Image-based Sexual Violence (ACSVAW 2020) (see Appendix)

21. The Government put forward in the Consultation Paper (on p.7) that the definition of 'down-blousing' is unclear such that it will constitute a barrier in law enforcement. However, we take the view that the definition is clear, because one of the elements is the *recording of image is taking place in circumstances where the intimate parts would not otherwise be visible to the public*. If someone(A) takes picture of another person's(B) breasts from the top angle such that A can view the part of breasts that B does not suppose others could see and above all, B does not consent to A's act, then it will fall into the definition of non-consensual 'down-blousing'.

Responses to Proposals 5 and 6: Distribution of Surreptitious Intimate Images and Non-consensual Distribution of Intimate Images

Here are our further responses to Questions 8 and 10.

22. We agree with the introduction of the offence against the distribution of surreptitious intimate images (Proposal 5).

23. We agree with the introduction of the offence against the non-consensual distribution of intimate images, in cases where consent might have been given or was given for the taking of such intimate images (including stills and videos), but not for the subsequent distribution (Proposal 6).

Here are our further responses to Questions 9 and 11, concerning the scope of act of Proposals 5 and 6.

24. For the proposed scope of act for Proposals 5 and 6, it is too narrow. We propose to the Government that the offence should extend its scope to cover distribution of pornographic or sexually explicit images that have been photoshopped, where a victim's head being pasted on to a commercially produced pornographic image. The definition of 'intimate image' of overseas jurisdictions, such as New South Wales[7] and Queensland[8] of Australia, includes images that have been altered to appear to show a person's private parts or show a person engaged in a private act. Therefore, we suggest the offences of Proposals 5 and 6 should also cover distribution of 'deepfake' pornography or photoshopped explicit images.

25. For the proposed scope of act for Proposal 6, we recommend that it be extended to cover distribution of intimate images which show the victim's *intimate parts,* in addition to 'images showing the victim doing an intimate act' as stated in the Consultation Paper.

26. Furthermore, we suggest extending the proposed scope of acts for both Proposals 5 and 6 by including the act of 'threatening to distribute intimate images', referencing section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016[9]. **Legislation of new offence on 'threatening to distribute intimate**

[7] Section 91N Definitions of Division 15C Recording and distributing intimate images, *Crimes Act 1900 No 40 (NSW)*

[8] Section 207A Definitions of Chapter 22 Offences against morality, *Criminal Code Act 1899 (Qld)*

[9] Note: the name of the section is 'Disclosing, or threatening to disclose, an intimate photograph or film'

images' of Section B entails our detailed submission in this regard.

Here are our further responses to Questions 12 and 13.

27. For Proposal 6, we agree that the offence should be constituted if the distributor knows the victim did not give any consent for the distribution, or is reckless as to whether the victim gave such consent.

28. For Proposal 6, we agree that the offence should be constituted if the distributor intends to cause the victim distress, or knows or has reason to believe that the distribution will or is likely to cause the victim's humiliation, alarm or distress.

Responses to the definitions of Intimate Acts and Intimate Parts

Here are our further responses to Questions 14 to 16.

29. We take the view that "intimate acts" should mean acts, in a place which would reasonably be expected to provide privacy, by a person when the person's intimate parts are exposed or covered only with underwear. Instances of a person changing clothes, showering or bathing also be included in the definition.

30. We agree that "intimate parts" should be taken to mean a person's genitals, buttocks, or breasts, whether exposed or covered only with underwear.

31. We agree that the definition of "intimate parts" should include breasts and chest, *irrespective of gender,* including men, women, transgender people, intersex people, etc. in alignment with "gender neutrality" principle laid down by the Law Reform Commission. We suggest that the wording of the legislation should be gender-neutral as well as sensitive to people of non-binary gender identity. Para.20 of the above illustrates the reasons for covering non-consensual observation and/or photography of one's breasts by presenting its harms done to victims.

Responses to Proposal 7: Defence(s)

Here are our further responses to Question 17.

32. We agree that a defence of lawful authority or reasonable excuse should be provided for the proposed offences under Proposals 2, 4, 5, 6. But we emphasize

that it is important to craft such provision with great care so that only the most compelling and justifiable circumstances can be excused; because above all, a person's consent is at the heart of the entire debate. To override a person's consent requires the most compelling justification and utmost scrutiny by the court.

Here is our further response to Question 18.

33. We are of the view that the proposed offences should encompass all purposes and make no distinction for an offence committed for sexual gratification. Therefore, we are of the view that the defence provision should be open to the offences committed regardless of purposes. It will however be quite clear that logically, someone who commits the offence out of sexual gratification would not, at the same time, be doing the act with lawful authority or reasonable excuse.

Here is our further response to Questions 19.

34. Specific defences to be provided could be made reference to section 221BD (3) of the Criminal Code of Western Australia, Australia.

Responses to Proposal 8: Sexual Conviction Record Check Scheme

Here is our further response to Question 20.

35. We take the view that the *all* proposed offences under Proposals 1 to 6 should be included in the Specified List of Sexual Offences under the Sexual Conviction Record Check Scheme.

Table 1 Comparison of offences of voyeurism and non-consensual photography of intimate images of overseas jurisdictions

		Offence(s)	**Obtaining sexual gratification required as an element**
England and Wales		Voyeurism[10] Voyeurism: Additional offences[11]	For the purpose of obtaining sexual gratification and humiliating, distressing or alarming B
Scotland		Voyeurism[12]	For the purpose of obtaining sexual gratification and humiliating, distressing or alarming B
New Zealand		Prohibition on making intimate visual recording[13]	✗
Australia	**Australian Capital Territory**	Intimate observations or capturing visual data etc[14]	✗
	New South Wales	Voyeurism[15]; Filming a person engaged in private act[16]; Filming a person's private parts[17]	For the purpose of obtaining, or enabling another person to obtain, sexual arousal or sexual gratification
		Record intimate image without consent[18]	✗

[10] *Sexual Offences Act 2003,* s 67
[11] *Sexual Offences Act 2003,* s 67A
[12] *Sexual Offences (Scotland) Act 2009*, s 9
[13] *Crimes Act 1961 (New Zealand)*, s 216H
[14] *Crimes Act 1900 (Australian Capital Territory)*, s 61B
[15] *Crimes Act 1900 (NSW)*, s 91J
[16] *Crimes Act 1900 (NSW)*, s 91K
[17] *Crimes Act 1900 (NSW)*, s 91L
[18] *Crimes Act 1900 (NSW)*, s 91P

		Offence	Obtaining sexual gratification required as an element
Australia	**Victoria**	Observation of genital or anal region[19]; Visually capturing genital or anal region[20]	✗
	South Australia	Indecent filming[21]	✗
	Queensland	Observations or recordings in breach of privacy[22]	✗

[19] *Summary Offences Act 1966 (Victoria)*, s 41A
[20] *Summary Offences Act 1966(Victoria)*, s 41B
[21] *Summary Offences Act 1953 (South Australia)*, s26D
[22] *Criminal Code Act 1899 (Queensland)*, s 227A

Section B

Further views on

Legislation of new offence on ‘threatening to distribute intimate images’; Interim and image-removal orders made by the Court

Legislation of new offence on 'threatening to distribute intimate'

36. It is noted that the act of 'threatening to distribute intimate images' is not included in the proposed offences of the Consultation Paper and we propose to the Government the introduction of a new offence of 'threatening to distribute intimate images'.

The inseparable nature of 'threatening to distribute intimate image' and non-consensual taking and distributing intimate images

37. According to the service data of RainLily, it came to our attention that victims who suffered from non-consensual taking or distribution of intimate images usually succumb to threats to distribute intimate images at the same time. Among the three kinds of image-based sexual violence, the most common form is non-consensual *taking* of intimate images, followed by threats to distribute and non-consensual distribution sequentially. **In other words, threatening to distribute intimate images is more ubiquitous than distribution.** In some cases, it is unclear if the perpetrator does take hold of the intimate images—the victim, being in an intimate relationship with the perpetrator, cannot be sure if any intimate images had been taken unbeknownst to him/her/them.

38. The same pattern is also observed in the survey results published in the *Survey Report on Image-based Sexual Violence* ('the survey report') (ACSVAW, 2020) (see Appendix). It is found that non-consensual taking of intimate images and observation of private acts were the most common and then followed by threats or blackmail to distribute intimate images.

Table 2 Image-based sexual violence experienced in the past 3 years (N=206) (multiple choices allowed)

Type of image-based sexual violence	Frequency
Intimate images being taken without consent	151
Private acts being observed without consent/voyeurism	82
Threatened or blackmailed with distribution of intimate images	62
Intimate images being distributed without consent	60
Intimate images being stolen	44
Hidden cameras uncovered	25
Sexualised photoshopping	16
Source: *Survey Report on Image-based Sexual Violence* (ACSVAW, 2020)(see Appendix)	

39. The victims' experience where non-consensual *taking*, non-consensual *distribution* of intimate images and *threatening* to distribute intimate images are happening as continuous events, is theorized to be a continuum of practices that form the concept of 'image-based sexual abuse' (McGlynn et al. 2017, p.27). Addressing them as a 'continuum' is to reveal the common characters

underpinning these seemingly disparate phenomena, which are coercion, intimidation, abuse, threat and force used to manipulate victims, and to also emphasize the close connections among the acts such that they are 'a series of elements or events that pass into one another and which cannot be easily distinguished' (Kelly 1988, p.76).

40. Therefore, not criminalizing the act of threatening to distribute intimate images fails to adequately address the breadth of the victim's experience. It fails to offer comprehensive protection to victims such that they are unable to seek help from the judicial system when they face destructive threats from perpetrators.

Harms of 'threatening to distribute intimate image' from a victim's perspective

41. Before the actual distribution of the intimate images, perpetrators often exert threats for a persisting period of time in order to impose control, manipulate, intimidate, harass and/or blackmail the other person. Threatening to distribute intimate images is a common means to force the person to stay in a violent relationship and compel them to acquiesce to unreasonable demands.

42. In our experience, the harms and fears caused by the threat to distribute intimate images are as significant as actual distribution. The destructive power of threats and extortion on a person's life cannot be overlooked. In the survey report, which included in-depth interviews with victims who experienced the threats to share intimate images, shows that perpetrators are often known to the victims, such as their intimate partners. In our observation, the perpetrators' motives are usually unrelated to sexual desires, but often arise out of the desire to control and dominate their partners. By using intimate images as a tool of control, perpetrators manipulate their partners by threatening to spread their intimate images to their families and friends.

43. One interviewee of the survey report, Rain,[23] received threats from her ex-partner to spread her intimate videos her friends and family, if not, to the internet. Rain's case demonstrates a typical scenario for victims of coercions of such nature: they live in constant fear and yet feel utterly powerless in stopping the perpetrator or seeking help from a third party:

> *Case study: threats to distribute intimate images*
>
> Rain received threats from her ex-partner to post her intimate videos to a social media page related to the company she works for and to send the videos to her close friends, in order to ruin Rain's reputation. In face of such extortion, Rain was worried that any tiny act of hers may trigger her ex-partner and that he really would send the photos to her colleagues. Therefore, Rain succumbed to the unreasonable requests from her ex-partner for more than half a year.
>
> Since then, Rain was reluctant to join gatherings organized by her friends for a long period of time, worrying that her friends might suddenly tell her that they had received her nude photos from an unfamiliar Facebook account. Rain was also afraid of going to the internet, fearing that she might see her own nude images when browsing certain websites.
>
> Source:
> *Survey Report on Image-based Sexual Violence* (ACSVAW 2020) (Appendix)

44. Intimate images are like ticking time bombs that haunt every second of the victims' lives. The fact that the images may be distributed at any time exerts immense pressure on the victims. Like the dilemma faced by Rain, the victims are often too afraid to take any actions because they fear any resistance may agitate the perpetrators, and they would put the threats into action and distribute the images for real. Once the images are uploaded onto the internet or sent to others' phones, it is virtually impossible to completely remove the relevant images and the victims therefore feel that things are irreversible.

45. The genuine stress caused by these threats may paralyze the lives of the victims, causing them to lose their jobs and unable to support their living, and worse still, severely affect their mental wellbeing. According to the survey report, among those who reported to have experienced threats of distributing intimate images, 63% reported feelings of helplessness and alarmingly, 29% of them 'had the thought of committing suicide or had committed suicide' (ACSVAW, 2020). The impacts of threatening to distribute intimate images must not be underestimated.

Necessity to introduce a specific offence

46. It is necessary to create a specific offence against the act of 'threatening to

[23] Pseudonym

distribute intimate image' for the following reasons.

47. ***Existing criminal offences are insufficient to address the situation.*** Currently, instances of threatening to distribute intimate image may be prosecuted under the offences of 'blackmail' (Section 23 of the Theft Ordinance), 'criminal intimidation' (Section 24 of the Crimes Ordinance) and 'procuring another person to do an unlawful sexual act by threats or intimidation' (Section 119 of the Crimes Ordinance). However, these three offences are coined in general and broad terms, not specifically intended nor envisioned to deal with threats to distribute intimate images. This leads to the following problems: no suitable legal remedies in place to deal with the harm of distribution, and defendants convicted of these existing offences will not be included in the Specified List of Sexual Offences under the Sexual Conviction Record Check Scheme.

48. ***Incentivizing police investigation.*** The survey report investigates an example of threat to distribute intimate images in which the victim reported to the police after being threatened by his ex-partner. However, the police refused to follow up and even persuaded him to find a way to deal with it on his own and via interpersonal negotiations (ACSVAW, 2020) (see Section 4.5.of the survey report of Appendix). Without specific laws in place, the police might not be aware of the severity of such behavior and would simply classify these incidents as private disputes. They believe that private disputes are not be resolved by resorting to the judicial system, rather, communication and reconciliation on a personal level is sufficient. An offence for threats to distribute intimate images in criminal system will provide a pivotal guidance to police in addressing the severity of the act and enhance their incentive in initiating investigation.

49. ***Clear message of deterrence to the public.*** Creating an offence of threatening to distribute intimate images will have a deterrent effect as it sends a clear message that such behavior is no longer tolerated or considered a grey area of the law, but is instead criminalized by the laws of Hong Kong. Labelling it as a legal wrong in a clear way would deter the public from committing such act and reduce crimes.

50. ***Keeping up with overseas standards.*** There is already a global trend to legislate against threats to distribute intimate images in many overseas jurisdictions, and Hong Kong is recommended to keep up with overseas practices. Common law jurisdictions, including Scotland, New Zealand and six states of Australia, have already established specific offences targeting threats to distribute intimate images without consent (see **Table 3** Offence against 'threats to distribute intimate images' of overseas jurisdictions):

Table 3 Offences against 'threats to distribute intimate images' in overseas jurisdictions

Jurisdiction	Offence
Scotland	*Abusive Behaviour and Sexual Harm (Scotland) Act 2016* Section 2 Disclosing, or threatening to disclose, an intimate photograph or film
Australian Capital Territory, Australia	*Crimes Act 1900* (Australian Capital Territory) Section 72E Threaten to capture or distribute intimate images
New South Wales, Australia	*Crimes Act 1900 No. 40* (NSW) Section 91R Threaten to record or distribute intimate image
South Australia, Australia	*Summary Offences Act 1953* (SA) Section 26DA Threat to distribute invasive image or image obtained from indecent filming
Queensland, Australia	*Criminal Code Act 1899* (Qld) Section 229A Threats to distribute intimate image or prohibited visual recording
Victoria, Australia	*Summary Offences Act 1966* (Vic) Section 41DB Threat to distribute intimate image
Northern Territory, Australia	*Criminal Code Act 1983* (NT) Section 208AC Threaten to distribute intimate images
New Zealand	*Harmful Digital Communications Act 2015* (NZ) Principles 1- 5

51. Governments around the world have long been aware of its prevalence and make legal remedies available to tackle intimate image extortion. It is therefore necessary for the law in Hong Kong to keep up with the latest global developments. The following part will illustrate our concrete recommendations for the legislation.

Our recommendations for the legislation

52. With reference to the relevant offences in overseas jurisdictions listed in Table 3, we propose two ways for Hong Kong to legislate for threatening to distribute intimate images:

    (1) First, to **extend the proposed scope of acts for proposals 5 and 6** of the Consultation Paper (i.e. Non-consensual Distribution of Intimate Images) by including the act of threatening to distribute intimate images, referencing section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016.

    (2) Second, to **create a standalone offence** against threatening to distribute intimate images, referencing section 208AC of Criminal Code Act 1983 of Northern Territory, Australia.

    <u>Scotland</u>

    Section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016:
    'A person ("A") commits an offence if—

(1) A discloses, or threatens to disclose, a photograph or film which shows, or appears to show, another person ("B") in an intimate situation,
(2) by doing so, A intends to cause B fear, alarm or distress or A is reckless as to whether B will be caused fear, alarm or distress, and
(3) the photograph or film has not previously been disclosed to the public at large, or any section of the public, by B or with B's consent.'

Northern Territory, Australia

Section 208AC of the Criminal Code Act 1983 (NT):
'(1) A person commits an offence if the person:
(a) intentionally threatens to distribute an intimate image of another person; and
(b) intends the other person to fear that the threat would be carried out.
(2) In a prosecution for an offence against this section:
(a) a threat may be made by any conduct, whether explicit, implicit, conditional or unconditional; and
(b) it is not necessary to prove that the other person actually feared that the threat would be carried out; and
(c) a person may be found guilty even if carrying out the threat is impossible.
Examples for subsection (2)(c)
1 The image does not exist
2 Technical limitations prevent the person from distributing the image'

53. Whether or not 'threatening to distribute intimate image' is established as a standalone offence or incorporated into the scope of the offences under Proposals 5 and 6, we recommend following the framework of the *Criminal Code Act 1983* of Northern Territory, Australia because: 1) it contains detailed provisions on the definition of threat; 2) it provides threats can be carried out whether or not the image exists and; 3) there is no requirement to prove whether the victim actually feared that the threat would be carried out.

54. It is crucial to have an inclusive definition of threat such as that of Northern Territory's, i.e. the threat can be verbal or physical, explicit or implicit, and conditional or unconditional because it encompasses all types of threats and leaves no grey area for dispute. The offence should apply regardless of whether the intimate images exist or not: in our dealings with cases involving threats to distribute intimate image, it is true that some do not know whether or not the intimate images are actually in existence, especially in situations where the perpetrator threatened to share images that are filmed without the person's knowledge. As the intention to cause fear is an important element in establishing culpability, the focus should not be on whether the intimate images actually exist, but whether the perpetrator intends to cause harm.

55. Furthermore, we also recommend following the Abusive Behaviour and Sexual

Harm (Scotland) Act 2016 and include an element of recklessness – *'by doing so, A intends to cause B fear, alarm or distress or A is reckless as to whether B will be caused fear, alarm or distress'* – as the *mens rea* element of this particular offence. The inclusion of reckless intention will thus be able to encompass situations where the perpetrator may not intend to make a threat, but ought to know he/she/they has made one.

Interim and image-removal orders made by the Court

56. We are of the opinion that the Court should be able to order an individual to remove the relevant images, if he/she/they is found guilty of an offence against voyeurism, intimate prying, non-consensual photography of intimate parts, non-consensual distribution of intimate images and threatening to distribute intimate images. The Court should also have the power to order the online content host to take down the images. A failure to comply with the order by the convicted person should be enforceable.

Importance of Court-mandated removal of intimate images and interim orders

57. For victims who experienced intimate image sexual violence, the source of their worries stems from the existence of the images. As long as the images are still in the perpetrator's possession, the victim will live in perpetual fear. The distress will not dissipate until the image is deleted or destroyed.

58. For victims whose intimate images were distributed to the internet or sent to the others, they are terrified that the images will be re-posted by netizens and circulated widely. While victims can request the online content hosts to take down the images, the hosts still have the discretion to decide whether or not to take down the images. Therefore, it is of paramount importance for the Court to intervene in this process. The Court should be empowered to make orders to remove the intimate images in order to minimize the traumas suffered by the victims and offer meaningful protection to them.

59. It should be noted that the criminal proceedings can be lengthy, and the publicity of a criminal case can bring further harm to the victim if he/she/they have no relief to take down the intimate images pending trial. To provide comprehensive protection to the victim, interim orders should also be available.

Similar provisions in overseas jurisdictions

60. There are similar provisions regarding orders of removal and takedown in overseas jurisdictions such as New Zealand and Queensland, which are of probative value to Hong Kong.

61. Section 19 of the *Harmful Digital Communications Act 2015* (HDC Act) of New Zealand provides that the court has power to make orders against the defendant:

    New Zealand

    Section 19 of the HDC Act (NZ) outlines a variety of orders that can be made by the court against a defendant:
    '(a) an order to take down or disable material:
    (b) an order that the defendant cease or refrain from the conduct concerned:

(c) an order that the defendant not encourage any other persons to engage in similar communications towards the affected individual:
(d) an order that a correction be published:
(e) an order that a right of reply be given to the affected individual:
(f) an order that an apology be published.'[24]

62. Section 19 of the HDC Act (NZ) also empowers a court to make the following orders against an online content host:
'(a) an order to take down or disable public access to material that has been posted or sent:
(b) an order that the identity of the author of an anonymous or pseudonymous communication be released to the court:
(c) an order that a correction be published in any manner that the court specifies in the order:
(d) an order that a right of reply be given to the affected individual in any manner that the court specifies in the order.'[25]

63. Non-compliance with the a court order will commit an offence and the offender is liable on conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding $5,000 for a natural person and a fine not exceeding $20,000 for a body corporate.[26]

64. Section 18 of the HDC Act (NZ) provides for the court to grant interim orders for relief set out in section 19.
'18 Interim orders
(1) The District Court may, if the court considers it is desirable to do so, grant any interim orders pending the determination of the application for orders under section 19.
(2) An interim order under this section may do anything that may be done by order under section 19 and expires when the application under that section is determined.' [27]

65. In Queensland, section 229AA of the Criminal Code Act 1899 (Qld) provides a rectification order in which the court may order the person to take reasonable action to remove, retract, recover, delete or destroy an intimate image, if the person is convicted of an offence against non-consensual distribution of intimate images, observations or recordings in breach of privacy and threats to distribute intimate image:

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[24] *Harmful Digital Communications Act 2015 (NZ)*, s 19(1)
[25] *Harmful Digital Communications Act 2015 (NZ)*, s 19(2)
[26] *Harmful Digital Communications Act 2015 (NZ)*, s 21
[27] *Harmful Digital Communications Act 2015 (NZ)*, s 18

<u>Queensland, Australia</u>

'229AA Rectification order

(1) If a person is convicted of an offence against section 223 (1) [Distributing intimate images] , 227A (1) or (2) [Observations or recordings in breach of privacy], 227B (1) [Distributing prohibited visual recordings] or 229A (1) or (2) [Threats to distribute intimate image or prohibited visual recording] the court may order the person to take reasonable action to remove, retract, recover, delete or destroy an intimate image or prohibited visual recording involved in the offence within a stated period.

(2) A person who fails to comply with an order made under subsection (1) commits a misdemeanor

Maximum penalty—2 years imprisonment.'[28]

66. However, the rectification order in Queensland applies to the convicted person only, but not the online content host. The HDC Act (NZ), therefore, includes a more comprehensive set of orders targeting both the defendant and the online content host and the interim orders to be made by the court. Below are our recommendations for the constituents of the image-removal orders and interim orders, made by the Courts in Hong Kong.

Orders can be made by the Court

67. The order should include a time frame (such as three weeks) in which the defendant must take action to remove the images distributed without consent. Whether the defendant has taken actions to remove the images should have bearing on sentencing. In other words, non-compliance with a court order may lead to heavier penalty or amount to a further offence, similar to the Queensland Act and the HDC Act (NZ). Sanctions for non-compliance should be stated in the order as a warning to the perpetrators of the consequences for failure to comply.

68. The HDC Act (NZ) empowers the Court to make orders against an online content host, including takedown or disabling public access to the material. We are of the opinion that Hong Kong Courts should have the same power because it can effectively cease the online circulation of the intimate images shared without consent. Some victims may find it empowering to take the initiative to contact websites and social media platforms to request the removal of images distributed without consent. The Court should therefore support these victims in this process by handing them an enforceable order to compel takedowns of the intimate images from websites.

69. We concern, the criminal proceedings are lengthy, and the publicity of a criminal

[28] *Criminal Code Act 1899 (Qld),* s 229AA

case can bring further harm to the victim if he/she/they have no relief to take down the intimate images pending trial. To provide comprehensive protection to the victim, interim orders should also be available. In this regard, we recommend Hong Kong make reference to Section 18 of the HDC Act (NZ) in this regard.

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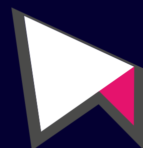
Appendix: *Survey Report on Image-based Sexual Violence*

影像性暴力經驗調查報告

Survey Report on
Image-Based Sexual Violence

2020年3月



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前言

關注婦女性暴力協會鼓勵更多幸存者打破沉默，讓社會人士更關注婦女遭受性暴力的問題，我們分別成立服務單位風雨蘭（全港首間性暴力危機中心），以及教育中心，分別在校園及社區推動社會關注性暴力議題。

近期冒起的性暴力問題—**影像性暴力**—備受社會關注，影像性暴力的獨特之處在於受害人的私密影像可能會被繼續散佈，在網絡上永久留存，而受害人即使報警，在未有法律規範下，至今仍無法阻止私密照在網上停止散佈。為了堵塞法例的漏洞，我們於2018年將建議書遞交法律改革委員會（法改會），建議政府在訂立窺淫罪之上，補足有關漏洞：即是針對未經同意下，為了性目的而對另一人進行視像記錄的行為刑事化。去年，我們又與法律界人士、社福團體、以及商業團體舉辦多個研討會，促使政府盡快修例。在我們努力下，法改會於2019年就「窺淫及未經同意下拍攝裙底」發表報告，加快立法進程。

教育方面，很多人對影像性暴力的問題認知不足，特別是當遇到影像性暴力的行為如何作出反擊、旁觀者可以如何制止事件發生。有見及此，我們亦與偵探社、律師、大專院校、藝術家、及民間團體合作，舉辦藝術展覽及大專巡迴教育，用輕鬆及貼近年輕人的手法逐步改變社會文化。當然，加強專業人士對影像性暴力的敏感度，也是十分重要的，因為這可以減少受害人揭發事件是引致的二度傷害。在提供服務方面，我們提供輔導，也會陪同受害人報警、處理有關報警程序及教導他們如何蒐集證據，也嘗試尋找不同的方法停止私密照繼續散佈。

現時，首要是鼓勵受害人求助，我們了解到，影像性暴力受害人因為怕被人責怪或者過於自我責備的緣故，未必敢於求助。況且，現時香港並未對影像性暴力這問題有深入認識，也沒有這方面的專門服務支援，所以期望這個調查報告能讓公眾對影像性暴力的問題有較詳盡了解。

關注婦女性暴力協會
總幹事
王秀容
2020年3月7日

報告摘要

關注婦女性暴力協會於2019年展開「偷拍+未經同意散佈私密影像經驗問卷調查」（調查），收集公眾的「影像性暴力」經歷。這類的性暴力行為包括：未經同意下拍攝性私密影像、未經同意下散佈、分享、售賣性私密影像；要脅、恐嚇、勒索散佈性私密影像；以及，將當事人的樣子移花接木至色情影像。

本次調查以問卷調查和深入訪談作爲研究方法，研究對象是過去三年內曾遭遇影像性暴力的公眾人士。問卷收集到206個有效回應；另外，我們和通過問卷接觸到11位受害人進行深入訪談，也有和1位社福機構同工進行訪談。是次研究的目標包括：收集描述公眾遭遇不同類別的影像性暴力的普遍程度之數據；收集描述公眾遇到的影像性暴力形態之數據，包括常見的發生地點或空間、侵犯者身份；探討公眾遭遇影像性暴力的具體處境和感受、對他/她們的影響；探討影像性暴力受害人面對暴力時的反應、採取的行動和原因；以及，就著社會如何減少及預防影像性暴力、減低對受害人的傷害，提出具體建議。

根據問卷調查的結果，受訪者的影像性暴力經驗中，最普遍是偷拍，其餘的依次是：偷窺、被威脅或勒索、被散佈私密影像、被盜取私密影像、發現隱藏鏡頭和移花接木。大部分的受害人的年齡介乎24歲或以下；最常見的發生地點是交通工具、街道、通訊應用程式、家居；侵犯者最多是陌生人，其次是伴侶和朋友。大部分人經歷了影像性暴力後感到憤怒、驚慌、擔心，值得留意的是，有受害人表示曾想過自殺或曾經自殺。

關於面對影像性暴力的反應，大部分人表示不知如何反應、假裝若無其事、離開該地方，相對較少人表示有報警、向身邊的人求助、向社會服務機構求助和通知負責職員/人士。對於從未向他人求助或提及的人而言，最常見的原因是：怕麻煩或不想把事情搞大、覺得求助沒用、不知道如何反應、憂慮別人認為自己小題大作。在曾經求助的受害人中，有受害者報警，然而，結果遭受拒絕落案的佔多數，常見的拒絕原因包括證據不足、無法例、案情不嚴重。關於減少影響性暴力的建議，最多人認為設立針對影像性暴力的特定法例。

根據個人訪談的結果，受訪者認為影像性暴力的行爲是漠視或違背自己的意願，令自己的性自主權受損。影像性暴力對他/她們帶來的傷害持續很長的時間，影像被散佈的後果對他/她們而言更是難以逆轉。有受訪者除了被人散佈私密影像到網絡，同時遭侵犯者公開自己的私人資訊、及後被陌生網友騷擾，有受訪者則同時遭受網絡欺凌，這些網絡現象進一步加劇了對當事人的傷害。面對深遠的傷害，受訪者卻抗拒向他人透露自己的經歷或求助，認為別人會責備自己而不敢出聲。有受訪者嘗試報警，卻遭警察以錯誤的準則判斷是否落案，最終案件不被受理。加上警察對影像性暴力缺乏認識，現行的司法程序增加了受害人求助的困難。

就著社會如何減少及預防影像性暴力、減低對受害人的傷害，報告提出以下建議：一、推行法例改革：設立針對影像性暴力的特定法例，傳遞行爲的嚴重性；二、加強公眾教育：教育公眾不要成為侵犯者；三、加強公眾教育：強調旁觀者在減少影像性暴力的責任；四、建議網絡平台負責人訂立相關的使用政策和檢舉機制；五、為警察提供有關親密關係暴力及影像性暴力的培訓。

Executive Summary

The Association Concerning Sexual Violence Against Women launched the survey 'Taking and Distributing Intimate Images Without Consent' in 2019 to collect the public's experiences in 'Image-Based Sexual Violence (IBSV)'. These experiences include: taking intimate images without consent; distributing, sharing, circulating and selling intimate images without consent; threatening or extorting to distribute intimate images; and creating fake pornography.

The research is comprised of a questionnaire survey and in-depth interviews to collect both quantitative and qualitative data. The target population is people who have experienced any kind(s) of IBSV in the past 3 years. A total of 206 people have filled in the questionnaire. Through the questionnaire, we got in touch with 11 victims and conducted in-depth interviews with them. We also conducted an in-depth interview with 1 co-worker of social welfare organization. The research aims to delineate the prevalence of different kinds of IBSV encountered by the public; to collect the data of the forms of IBSV experienced by the public, including the common places of occurrence and identities of the perpetrators; to study victims' situations and feelings when facing IBSV and the impacts of IBSV on them; to study victims' responses and actions taken when facing IBSV and the reasons; and, to give concrete recommendations on reducing and preventing IBSV from happening and minimizing the harms brought to victims.

According to the key findings of the questionnaire, non-consensual taking of intimate images was the most common form of IBSV. It is then respectively followed by voyeurism, threats or extortion, distribution of intimate images without consent, theft of intimate images, discovery of hidden cameras, and creation of fake pornography. Most respondents were aged 24 or below. The most common places of occurrence were public transports, streets, mobile messaging apps and homes. Most perpetrators were strangers, partners and friends of victims. Most respondents felt angry, frightened and worried, while some disclosed that they have thought to commit suicide or had committed suicide, which is noteworthy. When facing IBSV, most respondents revealed that they did not know how to react, pretended that nothing had happened and left the place; relatively fewer respondents have reported the case to the police, sought help from people around them, sought help from social service organizations or notified the staff. As for the respondents who never sought help from or mentioned to others, the common reasons are 'don't want to make trouble or make things worse', 'deemed help-seeking to be useless', 'don't know how to respond' and 'afraid of blaming of hypersensitivity from others'. For respondents who had reported the case to the police, the majority of them were rejected. The common reasons of rejection include insufficiency of evidence, lack of laws and the police deeming the case to be not serious. For recommendations on reducing IBSV, most respondents agreed to have specific legislation.

According to the key findings of individual in-depth interviews, the respondents felt violated in terms of sexual autonomy from the perpetrator's behaviors that disregarded or violated their will. IBSV brought continuous impacts that lasted for long time. It brought irreversible consequences for respondents whose intimate images were distributed on the internet. Apart from intimate images being distributed on the internet, some respondents experienced doxing while some experienced cyber bullying, which aggravated the harms. Regarding the far-reaching harm, the respondents refused to disclose their experiences or ask for help, worrying that others would blame

themselves. A respondent tried to report to the police, but the police judged whether the case should be filed based on wrong criteria, and the case was ultimately rejected. Coupled with the police's lack of knowledge on handling IBSV cases, current judicial structures have increased the difficulty for victims to seek help.

The report makes the following recommendations on how society can reduce and prevent IBSV and harms to victims: first, to establish specific sexual offences in Hong Kong to tackle different forms of IBSV; second, to strengthen public education which teaches people not to commit IBVS; third, to strengthen public education which stresses the responsibilities of bystanders in reducing IBSV; fourth, internet platform providers to establish users' guide and removal mechanisms regarding non-consensual distribution of intimate images; fifth, to provide training on intimate partner violence and IBSV for law enforcement agencies.

1 甚麼是影像性暴力

影像性暴力是指：

- **未得當事人同意下拍攝**私密影像*，有時則牽涉偷窺的行爲。*「私密影像」指含有裸露或以內衣遮蓋私密部位（生殖器官、臀部、女性胸部）的影像；
- **未得當事人同意下散佈、分享、傳閱、售賣**私密影像，包括經當事人同意或不同意拍攝的影像；
- **要脅、恐嚇、勒索**對方散佈其私密影像，包括經當事人同意或不同意拍攝的影像；
- **未取得同意下**將當事人的樣子**移花接木**至色情影像。

常見例子：

- 偷拍更衣或沐浴；
- 偷拍裙底；
- 偷錄影性愛過程；
- 被對方强逼拍攝私密影像；
- 對方將私密照上載至網上論壇、分享到社交群組、私訊給朋友；
- 伴侶以性愛片進行要脅；
- 朋友未經同意下登入我的google賬號，盜取私密影像；
- 私影攝影師未得我的同意將私影照散佈到網上論壇；
- 對方將自己的樣子移花接木到色情影像，以勒索金錢。

「影像性暴力」屬連續體行爲

「影像性暴力（image-based sexual abuse）」一詞的來源是英國學者Clare McGlynn，Erika Rackley, Ruth Houghton在2017年發表在學刊*Feminist Legal Studies* 的論文 Beyond 'Revenge Porn': The Continuum of Image-based Sexual Abuse。作者認爲，影像性暴力所囊括的行爲—拍攝、散佈、傳閱、要脅、移花接木—是一個「連續體（continuum）」，這些行爲之間有緊密的關係、難以分割：散佈的私密影像可能是偷拍得來的，將影像移花接木之後用來要脅對方或散佈到網絡。此外，影像性暴力和其他的性暴力，擁有相似的特徵，包括：這些行爲均未獲得當事人的同意；它們侵犯了一個人的性自主權；而侵犯者常見的動機是羞辱、威嚇、控制、騷擾、支配對方。基於上述原因，Clare McGlynn等人建立了「影像性暴力」概念，以準確描述和傳遞行爲的本質和影響。

「影像性暴力」此概念有足夠的寬度去囊括我們較認識的概念：偷拍、偷窺、偷拍裙底、床照流出、裸照外流、復仇色情；它串連起上述的行爲，呈現它們的共同特徵。與此同時，它是一個有用的工具，不但幫助我們瞭解及分析這一連串與影像有關的性暴力，也幫助社會整全地思考政策和法律改革。

考慮到公眾對「影像性暴力」的概念或許感到陌生，本會將問卷調查命名爲**「偷拍+未經同意散佈私密影像經驗問卷調查」**，讓他們第一眼就掌握是次問卷調查所針對的行爲；然而，調查實際涵蓋所有影像性暴力行爲。

2 影像性暴力經驗調查

研究背景

近年有通訊程式被揭發有大量有關偷拍、散佈私密影像的群組，成員在群組內分享私密照片，並針對相中人士發表侮辱性的言論[1]；同時，網上論壇亦冒起很多以偷拍爲主題的討論區[2]。

上述現象警惕我們影像性暴力的普遍性，同時亦說明有很多人正在經歷影像性暴力，然而，本港未有描述及分析這類受害人經驗的數據。有鑒於此，本會於2019年開展「偷拍+未經同意散佈私密影像經驗問卷調查」，以收集公眾的影像性暴力經驗。

研究目標

- 描述公眾遭遇不同類別的影像性暴力的普遍程度；
- 描述公眾遇到的影像性暴力之形態，包括常見的發生地點或空間、侵犯者身份；
- 探討公眾遭遇影像性暴力的具體處境和感受，這些遭遇對他/她們的影響；
- 探討影像性暴力受害人面對暴力時的反應、採取的行動和原因；
- 就減少及預防影像性暴力的發生提出具體建議。

研究方法

本次調查採取混合式的研究方法，結合問卷調查和個人深入訪談，從而檢視公眾遭遇影像性暴力的經驗。

問卷調查方面，本會設計了一份網上問卷，上載到關注婦女性暴力協會的官方網站，目標對象是過去三年内曾遭遇影像性暴力的人士。數據採集工作於2019年5月6日至2020年1月31日期間進行。最後，我們收集到206個有效回應，包括187位女性、18位男性及1位跨性别人士。

至於**深入訪談**，由於問卷的其中一道題目詢問填寫人士是否有興趣作進一步個人訪談以及留下聯絡，負責職員最後成功以電郵及電話成功接觸到11個受害人，包括2位男性、8位女性、1位跨性别人士。有關訪問形式，其中1個女受訪者以視頻方式進行訪談、1個女受訪者以電話通話進行訪談，其餘均爲會面訪談。除此之外，本次調查也訪問了1名曾協助受害人的社福機構女性同工。

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1 例如通訊軟件Telegram被揭發內有大量關於偷拍的群組，包括有「街拍谷」、「校服谷」、「黑絲/腳腳谷」、「制服谷」等等，每個群組成員由1000至逾3000人不等，成員在群組内討論偷拍話題、散佈偷拍照。參考：香港01（2017年07月29日）「Telegram偷拍群組湧現，成員逾千分享黑絲短裙照」：https://www.hk01.com/熱爆話題/106789/telegram偷拍群組湧現-成員逾千分享黑絲短裙照-警-適時執法。

2 例如香港一世發hk148forum、VooHK討論區、貓壇。

3 問卷調查結果

3.1. 受訪者背景

有關受訪者的性別，187人是女性、18人是男性、1人是跨性別（圖1），受訪者的年齡最多介乎20-24歲（n=71）、15-19歲（n=51）以及25-29歲（n=30）（圖2）。

圖1：性別 (N=206)

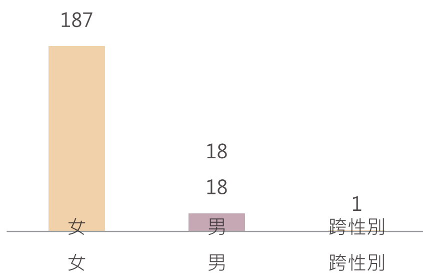


圖2：年齡 (N=206)

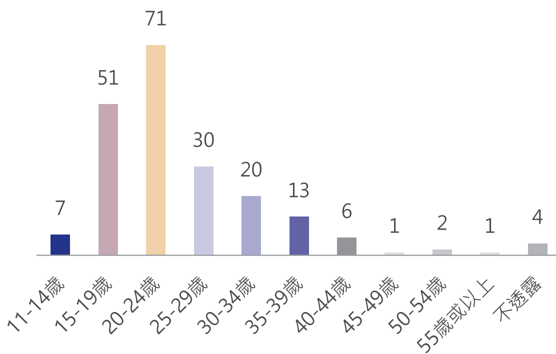


圖3：過去三年遭遇的影像性暴力 (N=206)
（可選多項）

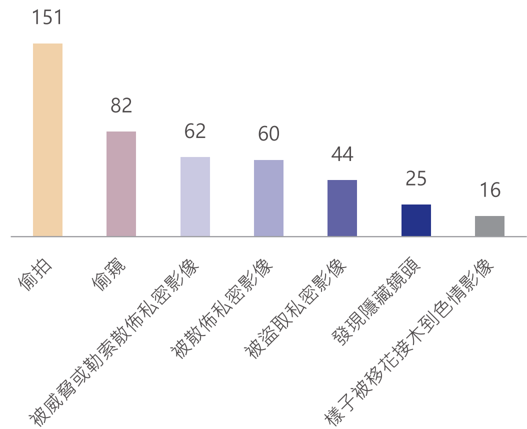
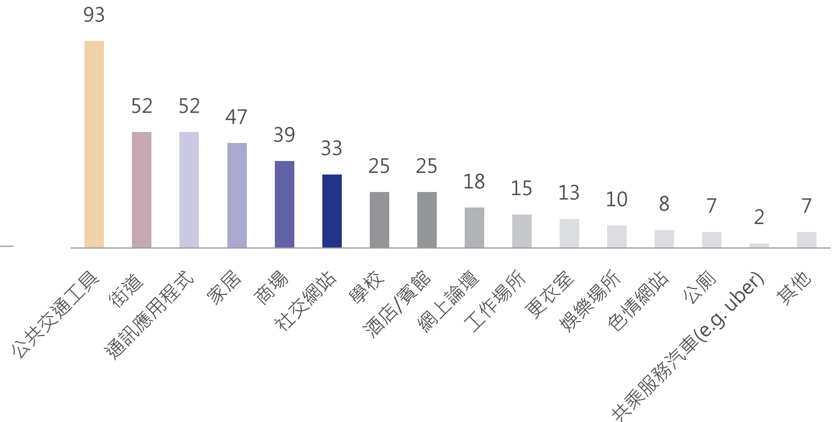


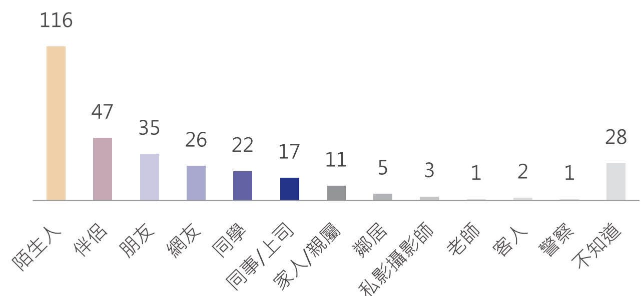
圖4：影像性暴力發生的地點/空間 (N=206)
（可選多項）



3.2. 受訪者的影像性暴力經驗之形態

最多受訪者在過去三年遭遇偷拍（n=151）、偷窺（n=82）、被威脅或勒索散佈私密影像（n=62）（圖3）；關於事發地點或空間，最常見是公共交通工具（n=93）、街道（n=52）、通訊應用程式（n=52）（圖4）；有關侵犯者的身份，最多受訪者表示是陌生人（n=116）、伴侶（n=47）（圖5），而侵犯者的性別絕大多數是男性（n = 178）（圖6）

圖5：侵犯者的身份 (N=206)
（可選多項）

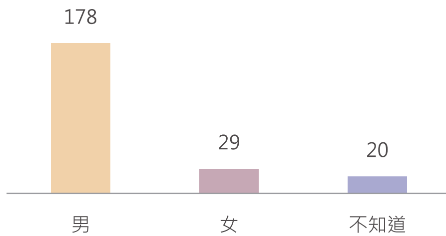


112
100 96 89 87
54 47
29 18

憤怒 驚慌 擔心 不知所措 無助 被羞辱 恐懼 自責 價值受損 想過自殺 曾自殺 其他

圖6：侵犯者的性別 (N=206)

（可選多項）



3.3. 受訪者面對影像性暴力的處境

面對影像性暴力，最多受訪者感到憤怒（n=128）、驚慌（n=119）、擔心（n=112），值得留意的是，有29個受訪者想過自殺/曾自殺（圖7）。至於受訪者的反應，最多人表示自己不知如何反應（n=85）、假裝若無其事（n=65）、離開事發地方（n=61）、沒有做任何舉動（n=56）（圖8）。在206個受訪者當中，有106人從來沒有向他人求助或提及自己的經歷，最常見的原因是怕麻煩/不想把事情搞大（n=48）、覺得求助無用（n=48）、不知如何反應（n=43）、憂慮別人覺得自己小題大作（n=38）（圖9）。

圖7：感受 (N=206)

（可選多項）

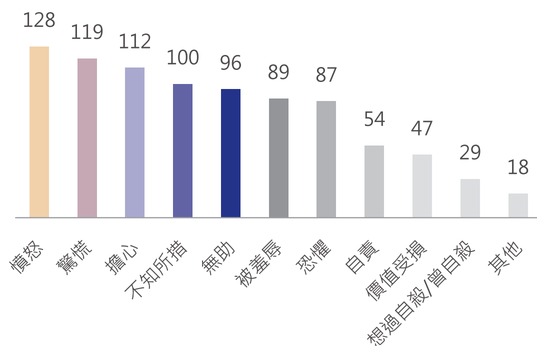


圖8：反應 (N=206)

（可選多項）

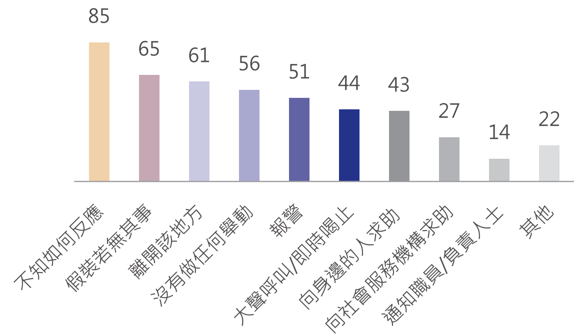
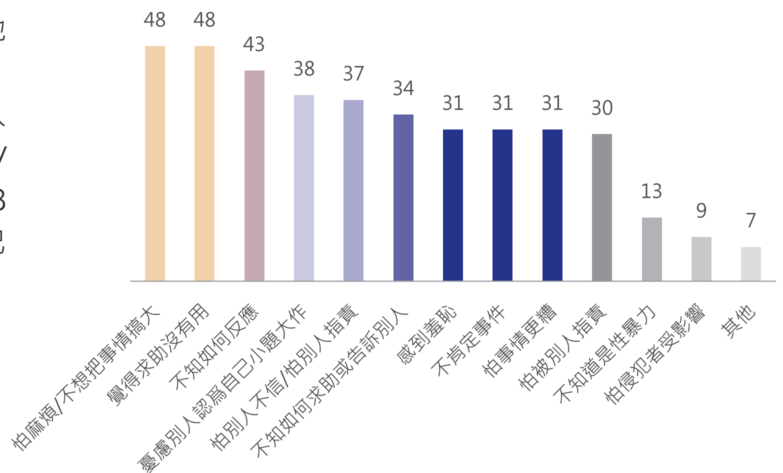


圖9：從未向任何人求助或提及的原因 (N=106)

（可選多項）



3.4. 受訪者尋求司法制度援助的情況

圖8顯示，有51個受訪者曾就著影像性暴力的遭遇報警求助，其中35人遭警察拒絕落案，15人獲得到警察落案跟進（圖10）；這35個遭警察拒絕落案的受訪者的回應反映，警察拒絕的原因最普遍是證據不足（n=23）、無法例（n=20）（圖11）。

85
65 61 56 51 44 43
27 14 22

圖10：報警的結果 (N=51)

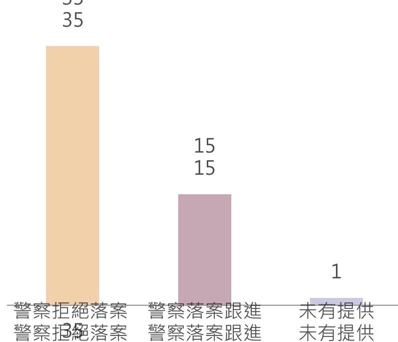
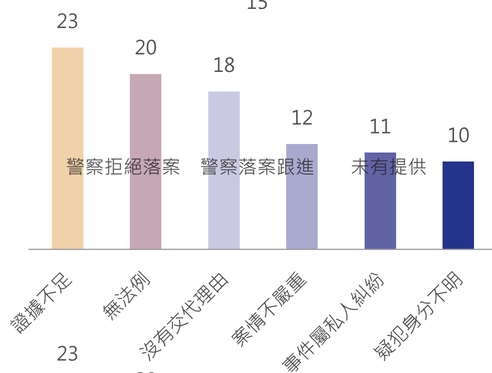


圖11：警察拒絕落案的原因 (N=35)

（可選多項）

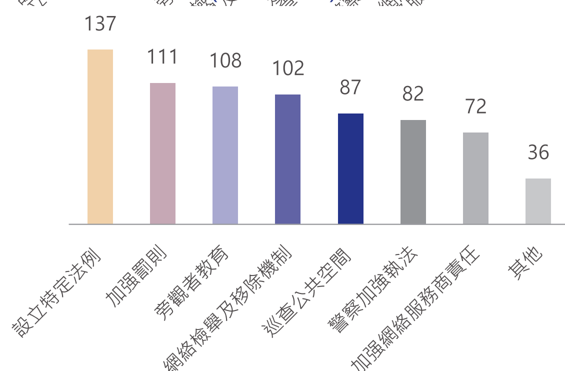


3.5. 受訪者認爲有效減少影像性暴力的建議

關於社會減少影像性暴力的建議措施，最多受訪者認爲是要設立針對影像性暴力的特定法例（n=137）、加強罰則（n=111）、推行旁觀者教育（n=108）、建立網絡檢舉及移除機制（n=102）（圖12）。

圖12：建議 (N=206)

（可選多項）



4 深入訪談結果

我們通過問卷調查接觸到11位影像性暴力受害人，包括2位男性、8位女性、1位跨性別人士。有關他/她們的年齡，其中2個受訪者介乎15-19歲、5個介乎20-24歲、1個介乎25-29歲、2個介乎30-34歲、1個介乎35-39歲。爲了解受害人在求助、報警時的處境和困難，是此研究亦訪問了1位曾經支援女受害人的社福機構同工。`

此部分根據與上述人士深入訪談的結果，從以下面向進行分析及闡述：未經同意的拍攝或散佈屬性暴力、影像性暴力對人帶來的傷害、阻礙受害人求助的社會因素、現行司法制度令受害人受挫的原因。

4.1. 未經同意的拍攝、散佈屬性暴力

偷拍、散佈、移花接木、要脅、恐嚇散佈私密影像等的行爲之所以是「性暴力」，是因爲這些行爲漠視或違背當事人的意願，以及侵犯了當事人對性的自主權。

漠視或違背意願

受訪者的經歷當中，大部分的情況是在未經同意下被偷拍，侵犯者繼而在受訪者不知情的情況下將偷拍的影像散佈出去。無論是拍攝、還是散佈的行爲，侵犯者均未詢問過當事人的意願，漠視了當事人的意願。以受訪者Rain[3]爲例，她被朋友告知網絡流傳一段有她在內的性愛片段，她才發現自己被之前交往的對象偷拍了性愛過程、該人亦瞞著Rain散佈了該性愛片段。Rain對此完全不知情，得知自己被偷拍、散佈私密影像的一刻，Rain感到驚慌：

「跟住佢［即Rain的朋友］話係網上有一段片，覺得係我……我覺得點解可以咁樣，點會係AV網有我呢？跟住，佢播咗俾我睇，到最後我就認得係我……嗰一刻我就喊，好驚，覺得點解會咁樣。」

(受訪者Rain)

另一個情況是，當事人在知情、並同意的情況下拍攝私密影像，但不同意對方散佈；然而，對方卻違背他/她的意願將影像散佈出去，這樣的情況尤其能反映在參與「私影」[4]的受害人的經驗。

問卷的回應者裏面有3位是私影模特兒，侵犯者均是攝影師，其中1位模特兒Rebecca參與了深入訪談。Rebecca在剛加入私影行業的時候遭遇攝影師違反協議，對方擅自將她的裸照放上論壇。Rebecca當時只是同意拍攝所得的私密照供攝影師一人觀看和收藏，並且雙方已有共識，攝影師卻瞞著她上載至網上論壇，Rebecca才發現原來網絡有不少專門用來散佈私影照片的論壇。Rebecca堅定地認爲，模特兒參與私影，只是允許特定的攝影師看見自己私密的身體部位，並不意味將私密的部分分享給公眾，攝影師的散佈行爲是違反了她的意願和雙方協議：

「……嗰個感覺好唔同，係未經我嘅同意底下俾人見到，唔係我想要嘅嘢。」

(受訪者Rebecca)

侵犯性自主權

Rebecca的私影照被散佈後，其他未合作過的攝影師表示已經看過她的裸照，令她感覺，已經無法選擇如何及向誰人展現自己私密的身體：

「通常，係攝影師同埋model溝通嘅過程入面，佢會問『你可唔可以俾自己嘅作品相我睇下啊？』，咁我會俾一啲例如有著衫、時裝，或者尺度冇咁大嘅相俾佢睇。其中一個攝影師咁樣回應我：『其實我有睇過你俾人流出嘅相，你流出嘅相同你俾我嘅好唔同喔！』 我嗰刻嘅感覺就覺得有啲價值受損，根本唔係我想展現嘅嘢，竟然有人可以係另外一種情況下睇到。」

(受訪者Rebecca)

3 爲保障受訪者的私隱和安全，報告引用的名字均爲化名

4 「私影」或私人攝影活動：業餘攝影愛好者通過網絡尋找拍攝對象，雙方約定地點和時間進行拍攝活動。

一個人的性自主權，體現在他/她能決定和控制：在什麽情況下、以何形式、向誰人展現自己身體。而影像性暴力的發生則是因爲侵犯者漠視或否定了當事人上述權利，令受害者感到憤怒、被羞辱、價值受損。

以受訪者Florence爲例，她曾經在公衆場所被人以相機「高炒」拍攝胸部，相片隨後被散佈到社交網站，後來朋友傳來流傳的照片才發現自己被偷拍了。令Florence感到最傷害的是，偷拍者剝奪了她表達自己的身體的控制權，偷拍者通過偷拍所得的影像，將她的形象塑造成故意賣弄身材、浪蕩的女性：相中她仿佛是故意炫耀自己的身材、想吸引別人注視自己的胸部而穿吊帶裙，更刻意俯下身體吸引別人偷拍。她眼看照片被廣傳、身體表達被肆意扭曲，卻無法控制：

「......網上就有好多我烏低身、見到我心口嘅相流出......全部都係從上面影落黎，或者對住我嘅心口影。我覺得影心口對我黎講最傷害性嘅野就係佢會連埋我個樣一齊post，亦都被認識我嘅人見到我呢啲相，我好怕佢哋會覺得我係一個咁嘅人，即係我專登烏低身俾人影，咁就真係塑造到我好特登去吸引人去望咁。我覺得這是最傷害性的。」

(受訪者Florence)

其中一個受訪者Candy在問卷寫道偷拍讓她「感覺價值受損」，Candy在訪問中解釋，被偷拍讓她覺得不被當作一個人那樣看待，她甚至感覺自己的意願對於侵犯者而言並不重要，自己更像一個物件，被人用來滿足性幻想：

「之所以覺得價值受損就係，俾人偷拍完之後我覺得自己成為一件物品咁俾人去影，其實我唔想，唔知點解啲人係覺得ok就可以去隨便影我......我覺得佢哋【偷拍者】係唔識點樣去將佢哋嘅性幻想擺係啱嘅地方......佢哋【偷拍者】會覺得『我幻想咋嘛，唔需要你同意』。」

(受訪者Candy)

從受訪者的經歷可見，影像性暴力剝奪了一個人表達自己身體的自由，令受害人的自我價值受貶。

4.2. 傷害具持續性及難以逆轉

大部分受訪者遭受的影像性暴力由伴侶施行，伴侶通過要脅散佈而施行控制。受訪者的擔心並未隨著分手而消失，他/她們表示只要私密影像還在對方手上，情緒還會被牽動，他/她們害怕對方隨時會散佈到網絡。有受訪者的影像則已被上載到網絡，她們感覺事情已經難以逆轉。

以私密影像操控伴侶

與遭受伴侶威脅的受害人訪談過後，我們發現侵犯者的動機往往與性欲無關，而是出於權力控制、支配的欲望，而私密影像則成爲伴侶實現操控的工具，通過作出威脅、恐嚇，以控制對方順從自己的要求。最常見的操控目的是要求復合：

「講翻佢偷拍嗰陣時，咁其實佢原本都係想留個底有啲咩係可以要脅到我嘅，嗰陣時我已經同佢講分手，佢係想用呢樣嘢箝住我…或者用另外一個講法係病嬌【意即：對配偶有極大的佔有欲，爲了避免失去對方而不擇手段】，咁佢就係想自己得唔到嘅寧願係毀滅咗佢，咁樣要脅我同佢係翻埋一齊。」

（受訪者Benjamin）

由於侵犯者是伴侶，他/她們認識受害者的社交圈子，因而通過威脅散佈給對方的朋友、同事、家人，令對方感到驚恐，受訪者Rain則遭遇對方要脅散佈給自己同事：

「我只是公司裏面的小員工，但公司很多傳聞或醜聞可以發佈出去，大家是有興趣知道，因此很好容易產生傳言。而我公司又真的有傳過一些被偷拍的片子，或一些女生自拍的片子也上傳到互聯網。他對我表示我公司有一個secret page，經常有這些事情發生，因此，他利用這點要脅我，我亦都透過我們之間的共同朋友知道，他亦都保存那段片......」

（受訪者Rain）

面對威脅，Rain提心吊膽，怕自己的一舉一動會刺激到對方，有一天真的把照片傳送給自己的同事。除了擔心和驚慌、卻不知可以做甚麼。

影響具持續性：仿如計時炸彈

這類暴力對人帶來的影響具延續性，只要對方還未完全刪除影像，當事人的情緒都會持續被牽動。

遭前伴侶以私密影像威脅的受訪者Benjamin說，知道對方還持有之前偷拍自己的私密影像，雖然她的威脅行為目前暫停下來，但難保有一天她會突然又拿出來威脅自己，或者毫無預告便傳送給自己的朋友。

縱然事隔五年，Benjamin他的不安和恐懼並沒有隨著時間而消失，至今仍然受影響，私密影像仿佛計時炸彈，隨時爆發的壓力纏繞著他：

「......once佢不爽，都又可能攞出黎【意即：發佈】。所以真係會驚，就算件事過咗成五年都好，其實我都仲驚緊。」

（受訪者Benjamin）

Benjamin的心情是不少受伴侶威脅的受害人的寫照。另一個受訪者Rain說，自從發現之前的交往對象原來擁有自己的私密照、一度拿出來嚇唬自己會傳送給她的朋友和同事後，她有好長一段時間抗拒參與朋友舉辦的聚會，怕朋友突然告訴自己：有個陌生的臉書賬號傳了自己的裸照給他；也害怕上網，怕瀏覽某個網站時見到自己的裸照......影像性暴力的陰影不會隨著時間消失，而是持續地存在。

一旦上載便難以逆轉

網絡資訊的流傳度高，對於被人威脅散佈私密影像的受害者而言，他/她們的恐懼正是擔心侵犯者「付諸行動」，一旦將影像上載到網絡，要徹底清除相關影像存在極大困難，感到事情將無法挽回。的確，當資訊散佈到網絡，短時間內便有眾多網友瀏覽、轉發、分享至其他社交網絡或頁面，有的甚至下載、截圖至自己的電子設備，繼而分享給身邊的好友，難以估量接觸私密影像的人數。

網路讓影像可以長時間地流傳，對受訪者Rain和Rita而言，自己那被散佈的性愛片仿佛將永遠存在於網絡世界。就算知道某個網站已經刪除了，也並不代表它真正消失，它可能早已被轉發到網路世界的其他地方、或存在於某陌生人的電腦硬碟。但茫茫大海，根本無法逐一搜尋、檢舉，受害人除了被不安感纏繞，也感到消極、無力：

「條片已經上了網，有咁多人看過，我自己的感受是，多一個不多少一個不少是沒有分別。而我沒可能永遠刪除一些已流出的東西。正如想當年，某明星的電腦在修理時，被人發現有很多女星的照片，其實事件就算淡化了，你現在還可以找到。而很明顯，他們亦都報了警。所以，我覺得沒有東西有可以永久消失的可能性。我覺得已經沒可能解決到。」

（受訪者Rain）

「上咗去【網絡】就搞唔到。我覺得一定唔會剩係得一個網站有，話唔定仲有其他。我無report過個網，覺得無咩用，就算呢個刪左，其他地方都可能仲有，始終覺得唔secured。」

（受訪者Rita）

受訪者Rebecca被人散佈了私密照在網上論壇之後，向網站舉報，網站負責人卻以不受本地法例監管為由，拒絕採取任何措施，以至照片繼續流傳：

「佢話佢個網站setup、server都唔係香港，所以唔會受香港法例限制，跟住我睇到勁嬲。」

（受訪者Rebecca）

「只是一張相而已，不要小題大作」— 這是旁觀者很容易說出口的話，我們以為是小事；但只要相片被散佈到網絡，將會廣泛流傳，加上網絡平台疏於監管散佈私密影像的行為，難以鏟除影像，對受害人的傷害持續不斷。

4.3. 網絡欺凌和「起底」加劇傷害

影像性暴力和網絡欺凌（cyber bullying）有千絲萬縷的關係。對遭受要脅、散佈的受害者而言，其中一個最大的恐懼便是，來自網友的接踵而來的欺凌和攻擊性評論。

網絡的匿名性（anonymity）讓網民得以隱藏個人的身份，無須負責地發佈任何資訊和言論，對受害者毫無節制地進行羞辱、欺侮、騷擾、謾罵和嘲弄，包括對身材和外貌評頭品足、責怪他/她們行爲「隨便」、認爲是他/她們想出位、刻意招惹別人拍自己，等等。

受訪者Florence被陌生人偷拍胸部後，照片被上載到社交網站，遭網民留言抨擊：認爲她是刻意擺出性感姿勢、招徠別人拍自己。被問到有沒有反擊網民的言論，Florence話寧願扮作看不到、不作聲，因爲如果自己出聲反擊的話，反而越會成爲網民的焦點，到時自己和照片被進一步炒作，需要承受的傷害更多，選擇保持沉默，等事件丟淡：

「我選擇咗扮睇唔到。因為我知道網上嘅文化係，你越出聲呢件事就會炒得越熱，而我唔想做主角，亦都想過咗就算，希望佢哋過兩三日就唔記得，所以我就冇出聲。」

（受訪者Florence）

更嚴重的情況是，有受訪者遭侵犯者散佈照片的同時，公開了自己的私人資訊（doxing），例如社交網絡賬戶名稱、電話號碼、個人電郵等等，之後被陌生人被騷擾，包括具性意味的騷擾：

「我印象中有一次有一組相係有包含我嘅IG【即Instagram】名，因為係嗰一組相流出咗之後嘅三個月內我大概有4到5個人去direct我嘅IG，我有改過自己IG名，但係我發現冇用。我幾肯定有一組相包含我的個人資訊……

有人拎到呢啲相之後，去我嘅IG或者facebook direct我同我講『小妹妹有影相wor，要唔要出黎同哥哥見下面呀』。」

（受訪者Rebecca）

有時就算侵犯者只是上傳照片，沒有公開個人資料，網民卻會透過蛛絲馬跡將受害者「起底」（human flesh search），將其真實姓名、個人手提號碼、地址公開，導致受害者在現實生活中受騷擾。有受訪者的私密照被上載到網上論壇後，每日收到幾十通匿名電話，讓她情緒瀕臨崩潰，一聽到電話響就會心跳加速，嚴重影響工作、生活，最後只能轉換號碼，才能正常生活。可見網絡「起底」現象對受害人的影響可能滲透至現實世界，影響日常生活。

4.4. 指責受害人的文化阻礙求助

大部分受訪者表示，遭遇影像性暴力後抗拒對身邊的人提及或求助，因為他 / 她們擔心，說出來以後會被對方指責自己。這樣的想法尤其凸顯在女受訪者當中。

她們的擔心和瀰漫於社會的「指責受害人（victim blaming）」文化有莫大關係：一旦性暴力發生，社會傾向不指責侵犯者，反而將過錯歸咎於受害者，認為受到傷害一定是因為受害人本身有錯。當中對女性的指責尤其嚴重，包括認爲她們衣着有暴露才會被偷拍，或被批評和陌生人胡亂發生性關係、不帶眼識人才會被偷拍、散佈私密影像，等等。社會對女性的性的污名，令她們容易感到羞恥，不知道如何告訴別人才不會被指責。

責怪受害人的衣著

受訪者Candy深感指責受害人的現象嚴重，她曾遭陌生人偷拍，但不選擇告訴身邊的人。她認爲，假如女性把偷拍的經歷告訴身邊的人，反而會被指責，例如被質疑「為什麼要穿那麼少？那麼露？」、「如果你穿褲，就不會有人拍你」；或者，認爲是她們不懂保護自己才會被人拍到：「是你自己不夠小心吧？」、「你應該好好保護自己啊」，這些責難的話語令自己更難受：

「如果同屋企人講，因為我屋企人係好傳統嗰啲，佢就會話『肯定係你著短褲』 ......啲人第一件事會〔評論〕『佢一定係著短褲喇』、『佢一定係著短裙喇』、『走光嘅話你咪著裙，著長啲囉，著褲囉，解決到㗎』......」

(受訪者Candy)

譴責的聲音背後，假設了女性可以控制自己的行為—她可以選擇穿長褲，或是把自己包得密不透風，只要受害者控制好自己的打扮和行爲，似乎就可以避免侵犯的行為。然而，Candy認爲，其實無論穿褲子還是短裙也解決不了侵犯者千奇百怪的欲望和念頭，更無法控制這些念頭被加諸於自己的身上：

「受害人本身就係受害，你唔好再講呢件事鬧落去，唔關佢事㗎。啲人話偷拍，『你包到伊斯蘭咁咪得囉！』唔關事㗎，你包到咁都係有人影......可能除咗教人唔好偷拍之外，都講話其實偷拍係同你著咩無關，你著到好似木乃伊咁......總會有人覺得值得影，總會有人覺得我可以將我嘅性慾擺上去，唔會因為你著得密實咗而去改變。」

(受訪者Candy)

指責受害者對性的態度

假如遭遇伴侶在發生性行爲期間偷拍自己、或是散佈自己的私密影像，受害者的性生活則會成爲評論的焦點，尤其是女性。女性在性方面遭受各種偏見（bias）和污名（stigma），假如她們被發現在性方面表現主動，會被標籤爲不檢點、隨便、浪蕩，認爲是她們的操守先出了問題，才會令侵犯者得以下手。受訪者Betty在外地旅行期間，在交友軟體認識了男網友，第一次約會期間，雙方發生性行爲，後來發現該男生原來在性行爲的過程偷拍了自己，事後還用那些照片威脅自己與他見面。

社會期待女性對性的態度保守，期待她們的性是乾淨的，就算發生性行爲也只能與固定的伴侶。Betty在訪問中概嘆，縱然女性上網找性伴侶是正常不過的事，但人們還是難以宣之於口，並且對女性做出這樣的選擇帶有偏見。她認爲，假如把網友偷拍和威脅自己的經歷告訴朋友，她擔心話題的焦點不會是對方施行影像性暴力，而是她在交友軟體找性伴侶這件事，朋友會隨之責怪她對性的態度隨便、不帶眼識人，才會導致性暴力發生。因此，Betty抗拒告訴朋友或報警：

「我不想身邊的人知道，自己有『呢啲』行爲，之後有偷拍同威脅嘅事情發生......不選擇報警其中一個原因係，我知道報警的話，會被人challenge、質疑，要重複講發生了什麽事，你會被認爲是不檢點所以才會發生這個情況。佢地會 at the very beginning覺得係你錯左先！」

(受訪者Betty)

利用大衆對女性的性的污名，私密影像成爲侵犯者實現操控伴侶的工具，侵犯者深信一旦私密照被散播出去，女性受到的責難必定比自己多，令「威脅」得以成立：

「......佢再approach我，佢都是話做番朋友。直至到佢覺得我唔願意理佢的時候，佢就用條片威脅我。佢就提番幾年前係網上搵到個prove我係蕩婦嘅證據去威脅我。」

（受訪者Rain）

當性暴力發生時，若我們只會檢討受害者的穿著和操守，漠視或淡化侵犯者的錯，傳達給受害者的訊息只會是：「性暴力之所以發生，必定是你自身的問題！」，令受害者不敢向任何人提及自己的經歷，窒礙求助。

4.5. 現行司法制度令受害人受挫

目前香港沒有針對影像性暴力的特定罪行（specific offence），司法部門只能運用現行法例處理，包括：《防止兒童色情物品條例》、《淫褻及不雅物品管制條例》、公眾地方內擾亂秩序行為[5]、遊蕩導致他人擔心[6]、作出有違公德的行為[7]、恐嚇罪[8]、勒索罪[9]。

5 《公安條例》第 17B（2）條
6 《刑事罪行條例》第160（3）條
7 普通法罪名
8 《刑事罪行條例》第24條
9 《盜竊罪條例》第23條

然而，以這些條例處理影像性暴力的案件卻不倫不類，出現「四不像」的情況。上述條例並非爲了規管影像性暴力而制定，而是針對其他目的而設立，例如，《淫褻及不雅物品管制條例》本意是規管破壞社會道德風氣的刊物；《防止兒童色情物品條例》是禁止兒童色情物品、兒童色情表演或將兒童色情發展成旅遊事業；公眾地方擾亂秩序行為罪、遊蕩罪及有違公德罪，本意則是維護公衆秩序。它們與規管侵犯性自主的行爲完全無關，用它們控告性暴力行爲是捉錯用神。

最能闡述上述現象的例子便是「不誠實使用電腦罪」[10]。律政司過去常用這條罪行檢控任何使用電腦、或智能電話相關的罪行，故此，除了檢控電腦駭客類的案件外，亦常用於手提電話偷拍裙底的案件。然而，2018年的時候，高等法院的法官認爲，這條法例的立法原意是針對電腦駭客，即侵入別人的電腦，並竄改或偷取資料的行爲，而不是用以指控任何以電腦干犯而不是用以指控任何以電腦干犯的罪行，包括手機偷拍案件。[11]。然而，2018年的時候，高等法院的法官認爲，這條法例的立法原意是針對電腦駭客，即侵入別人的電腦，並竄改或偷取資料的行爲，而不是用以指控任何以電腦干犯的罪行，包括手機偷拍案件。　雖然現時無任何法例可以用來檢控偷拍案件，出現了法律真空，卻凸顯了以現行條例檢控影像性暴力案件並不合適的問題。

缺乏針對影像性暴力的法例，容易引導公衆理解這類行爲不嚴重、無需法律約束。加上，社會受性暴力的迷思影響，認爲性暴力是由陌生人施行，如果侵犯者是認識的人，警察傾向定性它們為私人糾紛、個人爭執，並且認爲司法制度無法解決個人糾紛，因而需要以個人層面的溝通、和解來處理。以威脅散佈私密影像爲例，被前度威脅的受訪者Benjamin曾經報警，警察拒絕受理，更勸諭他自己想辦法處理：

「（訪問員：另外你話去報警，警察話唔得，其實成個求助過程，你覺得最難係咩？）

其實我就唔覺得有咩特別難位，只係覺得無奈。我俾人咁樣要脅、仲係用片。啲警察都話你咁樣係報唔到警，落唔到案，咁我真係冇辦法，個警察都建議我：你自己諗下點樣去處理呢件事。所以成件事都拗矖頭，只係無奈。」

（受訪者Benjamin）

當Benjamin詢問警察，如果對方把私密影像傳送給自己的朋友，是否構成刑責？警察認爲傳送給朋友不算，公佈出去才算；換言之，公開發佈才有可能驅使警察落案。這樣看來，警察在斷定個案是否屬於私人糾紛的準則，似乎在於案件是否發生在「公衆領域」：

「（訪問員：就住佢send出去呢件事？）警察講，佢係send俾朋友嗰下，就真係冇得搞。（訪問員：警察詳細係點講？）因為佢講緊佢個動作係send俾朋友，佢唔係publicise【中：公佈】出去，publicise出去就有事，但係朋友之間......大家朋友開心share就冇事，所以就真係搞佢唔掂。」

（受訪者Benjamin）

然而，網絡的「公衆領域」難以定義。以通訊軟體程式Telegram爲例，雖然有的群組裏面只有幾十個成員，但只要有群組的連結（link）便可加入，認證的門檻不高，那麼，這些網絡群組算是私人群組、還是公衆群組？

正如這個報告一直強調，未經同意散佈私密影像對人的傷害，在於它違背了當事人的意願、侵害性自主權，這個事實不會因爲私密照片只傳送給一個認識的朋友而被否定。以散佈行爲是否牽涉「公衆領域」作爲準則決定是否落案，是對錯焦點。

除了執法部門未能辨別行為的本質，因而用錯準則來判斷是否落案，社福機構同工Jade表示警察在處理影像性暴力案件是受性暴力迷思影響、缺乏敏感度，令求助人在報案過程感到挫折。Jade曾陪同被男朋友偷拍裸照、威脅的女受害人報警，她表示當受害人向警察表示自己當時是不情願的時候，警察會對此提出大量質疑，「可惜，這些質疑來自警

10　《刑事罪行條例》第161條

11　香港01（2019-04-04）。「不誠實取用電腦案律政司敗訴，一文看清甚麼罪受影響」，取自：https://www.hk01.com/社會新聞/301123/不誠實取用電腦案-律政司敗訴-一文看清甚麼罪受影響

察對性暴力的想象狹窄，認爲受害人作出激烈的反抗、甚至雙方有肢體衝突才稱得上是不情願」。然而，伴侶之間的權力關係、兩人之間的複雜情感，很難令受害者做出這些反應。她認爲警察可能不掌握這類受害者的處境，難以站在她們的角度思考：

「警察會質疑佢地：如果真係唔想對方影嘅話，點解唔用力反抗？點解唔即刻搶咗佢部電話？點解你之後仲見對方？點解仲繼續同佢拍拖？警察似乎認爲，你要好激烈打對方、要搶佢部手機、嗌嚦交，先覺得你真係唔情願。但情侶之間好難咁樣直接反抗，而且好多發生偷拍、威脅嘅個案裡面，佢哋段關係本身就存在權力不平等，可能侵犯者長期都操控住另一半。

警察將佢哋對性暴力嘅刻板印象放係親密關係、又未必明白私密影像對女性所造成的壓力同困擾。面對警察的質問，受害人好多都唔識答、口啞啞。有女仔聽到警察咁樣質問自己，會變得無自信，可能會想放棄，打擊佢哋繼續司法程序嘅信心。」

（受訪者Jade）

5 總結和建議

未經同意的拍攝或散佈、要脅散佈私密影像的行為之所以構成性暴力，因為侵犯者漠視當事人的意願，認為無必要徵詢當事人的同意；或是明知當事人的意願卻違背，令受害人感到失去表達身體的自由。

根據問卷結果，最多人表示侵犯者是陌生人，其次是伴侶。從訪談結果可見，伴侶施行影像性暴力是權力支配的表現，侵犯者以為是短暫的操控遊戲，但受訪者的經歷反映，一旦影像被散佈到網絡則難以刪除，有受訪者表示網絡平台拒絕採取措施制止影像擴散，令影像無法被清除，對受害人帶來不可逆轉的後果，帶來的影像持續不斷。社會需要意識到這類性暴力的深遠後果。

面對暴力，受害者多數傾向不出聲或向人求助。問卷結果反映，選擇報警、向身邊的人求助、向社會服務機構求助的人相對較少。受訪者也表示，暴力發生的時候，抗拒告訴身邊的人或報警，背後的原因主要是認為社會傾向將責任放在受害者身上，繼而說出責怪受害人的話語。

問卷結果反映，選擇了報警的人，遭拒絕落案的佔多數，主要的拒絕原因是證據不足、無法例、認為案情不嚴重、認為事件屬私人糾紛。這些原因互相影響著案件受理的可能性，其中，無特定法例使警察缺乏執法的基礎。無特定法例難以幫助執法者理解這些行爲侵犯性自主權的本質，容易令執法者輕視案件的嚴重性，將它當作私人爭執處理。除了缺乏法例基礎，警察對親密關係暴力及影像性暴力的認識不足、受迷思影響，也構成受害人在司法制度受挫的原因。

問卷的結果顯示，最多人認為「設立針對影像性暴力的特定法例」可以減少暴力發生，其次是增加罰則，可見公眾認為社會需要以立法確認行為的錯誤和嚴重性。

就著社會可以如何減少及預防影像性暴力、減低對受害人的傷害，餘下部分將從「法律改革」、「公衆教育」、「網絡平台責任」和「警察培訓」的面向提出具體的建議。

法律改革：設立特定法例

法律改革委員會性罪行檢討小組委員會於2019年4月30日發表《窺淫及未經同意下拍攝裙底》報告書，建議本港新增兩項特定罪行：窺淫罪、未經同意下拍攝裙底罪。[12]然而，這兩項改革並不能規管所有影像性暴力的行爲。拍攝、移花接木、散佈、要脅的行爲是一個「連續體」，它們可能同時發生、互爲因果，如果只是涵蓋偷拍，而不涵蓋其他的行爲，漠視了受害人的現實處境，建議法例應該全面涵蓋影像性暴力。

有普通法地區已經設有針對散佈和要脅的特定法例，其中，澳洲昆士蘭州的法律較全面。當地政府在2019年的4月於刑事法Criminal Code Act 1899新增並落實以下條例：散佈私密影像（s.223[13]、要脅散佈私密影像（s.229A）[14]，最高刑罰監禁三年；法例所指的「私密影像」除了涵蓋拍攝所得的影像，還涵蓋移花接木的影像。改革同時新增了糾正令（s.229AA）[15]：一經定罪，法院可要求該人士採取合理步驟刪除影像，否則要多面臨兩年的監禁。

在英國，當地設有窺淫罪[16]，並在2019年初改革罪行令它得以涵蓋拍攝裙底[17]。然而，政府認爲僅是窺淫罪並不足夠，當地沒有任何特定條例全面地規管未經同意拍攝、製作、散佈私密影像的行為，於是，政府在同年7月要求法律委員會（Law

12 目前兩項法例在建議階段，尚未落實

13 s223: Distributing intimate image, Criminal Code Act 1899 (Queensland)

14 s229A: Threats to distribute intimate image or prohibited visual recording, Criminal Code Act 1899 (Queensland)

15 s229AA:Rectification order , Criminal Code Act 1899 (Queensland)

16 s67: Voyeurism, Sexual Offences Act 2003 (England and Wales)

17 s67A Voyeurism: additional offences, Sexual Offences Act 2003 (England and Wales)

Commission）檢討現行法例及推行公眾諮詢，目的是爲了確保法律與新興技術保持同步，報告將於不久後公布。[18]

由此可見，各地政府早已意識影像性暴力的普遍、嚴重性，法律需要與時並進，我們建議香港政府和法律改革委員會是時候開展立法工作：參考海外的法例提出改革建議，並將特定法例訂爲性罪行條例。

公衆教育：不要成爲侵犯者

「偷拍+未經同意散佈私密影像經驗問卷調查」發現影像性暴力多發生在熟悉的人之間，情侶間的尤其嚴重。可見，親密關係教育、性同意（sexual consent）的教育很重要。即便雙方是情侶，發生性行爲、拍攝私密影像、散佈，均需要「分別」詢問、並遵從當事人的意願，這些行爲之間并沒有所謂默許或暗示的空間，也並非理所當然。雙方是情侶，也並不等於對方必須服從所有的要求，每個人都有自己的界線和表達意願的自由，不要剝奪對方的權利，一意孤行，成爲侵犯者。

同時，我們也需要教育大衆影像性暴力對人的傷害，避免成爲侵犯者。有人可能覺得散佈私密影像很好玩、或者認爲「一張相而已，沒有什麽大不了」，沒有思慮後果便上載到網絡，可是，只要一旦上載，要徹底清除相關影像存在極大困難，事情將無法挽回。受害者除了出現常見的負面情緒，有29個人表示曾經自殺或有自殺念頭，可見這類暴力的創傷十分大，不可忽視。

公衆教育：強調旁觀者責任

除了侵犯者有責任，在影像性暴力的個案中，旁觀者的觀看、下載、轉發、均是有份參與和助長暴力的發生，甚至影響當事人是否求助的決定。

18 Law Commission, UK. 'Taking, making and sharing intimate images without consent', see: https://www.lawcom.gov.uk/project/taking-making-and-sharing-intimate-images-without-consent/

影像性暴力每天發生，受害者可能是我們的朋友、家人、同事。我們每個人都可能成爲被傾訴的對象、被求助的人；此外，作爲網民，我們也很習慣對事情作出各式各樣的意見、評論、判斷。我們可能以爲自己微不足道，但與受害者的傾談後發現，旁觀者的一字一句影響著受害人是否向他人傾訴、求助的決定。

因此，我們的公衆教育需要強調旁觀者的角色，教育每個人反思「指責受害人」的現象，避免說出傷害受害者的說話，這些都是協助受害者的關鍵：

「因為我知身邊好多女仔佢哋最怕嗰個位就係身邊嘅人點睇，佢哋未必係怕影佢嗰個人。但佢哋可能係會俾身邊嘅人影響，人哋同佢講係佢嘅問題，佢就真係信，唔敢做任何嘢……

同埋可能係因為我自己個性比較開放可以願意同身邊朋友討論。佢哋自己都會開始留意到，其實好多時真係無必要去怪責受害者。當身邊嘅朋友都有一個正確嘅觀念、大家都去互相影響，對我嘅傷害就冇咁大。」

（受訪者Florence）

除了教育旁觀者改變自己的言論，也可以從行爲入手，教育他/她們可以主動出手，介入影像性暴力事件。曾經遭遇陌生人偷拍的Florence認爲，被偷拍的時候，心裏都很希望旁觀者可以挺身而出，令受害者不需要單獨面對：

「（訪問員：如果有旁觀者，你覺得佢哋做啲咩可以幫到你？）我覺得佢可以行埋嚟問我：小姐你有冇事？。咁我覺得你對嗰個人做最大嘅support係行埋去好大聲問佢o唔ok，除咗係安慰嗰個人之外，可以俾隔離嘅人知佢唔係自己一個，所以有時我係地鐵度見到我懷疑係偷拍緊，我都會即刻行埋去大聲問：小姐你有冇事？其實我主要嘅用意係嚇走嗰個男人，所以我嗰刻係好想有人咁樣同自己講。」

（受訪者Florence）

除此之外，當網民在網上看到未經散佈的私密影像、相關的貼文或是欺凌受害人的文章，除了不看、不下載、不讚好、不分享、不轉發，網民可多做一步：主動檢舉，要求網站移除，停止對受害者的傷害。

我們的公眾教育可以多強調：旁觀者是有能力去改變的，可以選擇積極介入，阻止影像性暴力的發生。

網絡平台責任：訂立使用政策和檢舉機制

各類網絡平台，包括網上論壇、交友軟件、社交網站，都可能出現影像性暴力的情況，我們建議這些平台可以針對影像性暴力訂立使用守則、舉報機制。

影像性暴力侵犯了一個人的侵犯性自主權，問卷調查的結果也反映，影像性暴力影響著受害者的身心健康。網民在享有言論自由的前提是不傷害他人。尊重私隱、尊重他人意願是倡議網絡平台訂立政策的前提。

我們建議網絡平台明確地禁止網民散佈未取得當事人同意的私密影像、禁止網民對影像的主角發表欺凌的言論、禁止網民公開當事人的個人資料；網絡平台並應嚴格執行守則，如果發現違反守則的影像、貼文，平台負責人主動刪除相關貼文，並對發佈者提出警告。

與此同時，建議網絡平台訂立的指引列明舉報的途徑，並提供舉報的表格，供網民可以方便地檢舉違反指守則的貼文；為保障舉報者的安全，網絡平台允許舉報者以匿名及不透露個人資訊的方式舉報。

當收到網民檢舉和投訴，網絡平台應該積極跟進，儘快移除相關內容和影像，減少內容被轉載或下載的可能性。如果不同的網絡平台可以就影像性暴力訂立政策和具體執行措施，將有效減少影像性暴力的發生。

警察培訓：認識親密關係暴力及影像性暴力

警察對性暴力的認識狹窄，認爲性暴力只發生在陌生人之間，缺乏對親密關係暴力的瞭解。假如警察更好地掌握這類受害者的處境，站在她們的角度思考，可減少求助人在報案過程遭遇的挫折。

因此，建議培訓警察認識親密關係暴力及影像性暴力的課題，瞭解受害人的處境，增加他們在處理這類性暴力的敏感度，建立對受害人的同理心，才能幫助受害人在取得司法公義的路走得更順暢。

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香港法律改革委員會（2019年4月30日）。《窺淫及未經同意下拍攝裙底》：
https://www.hkreform.gov.hk/tc/publications/rvoyeurism.htm

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