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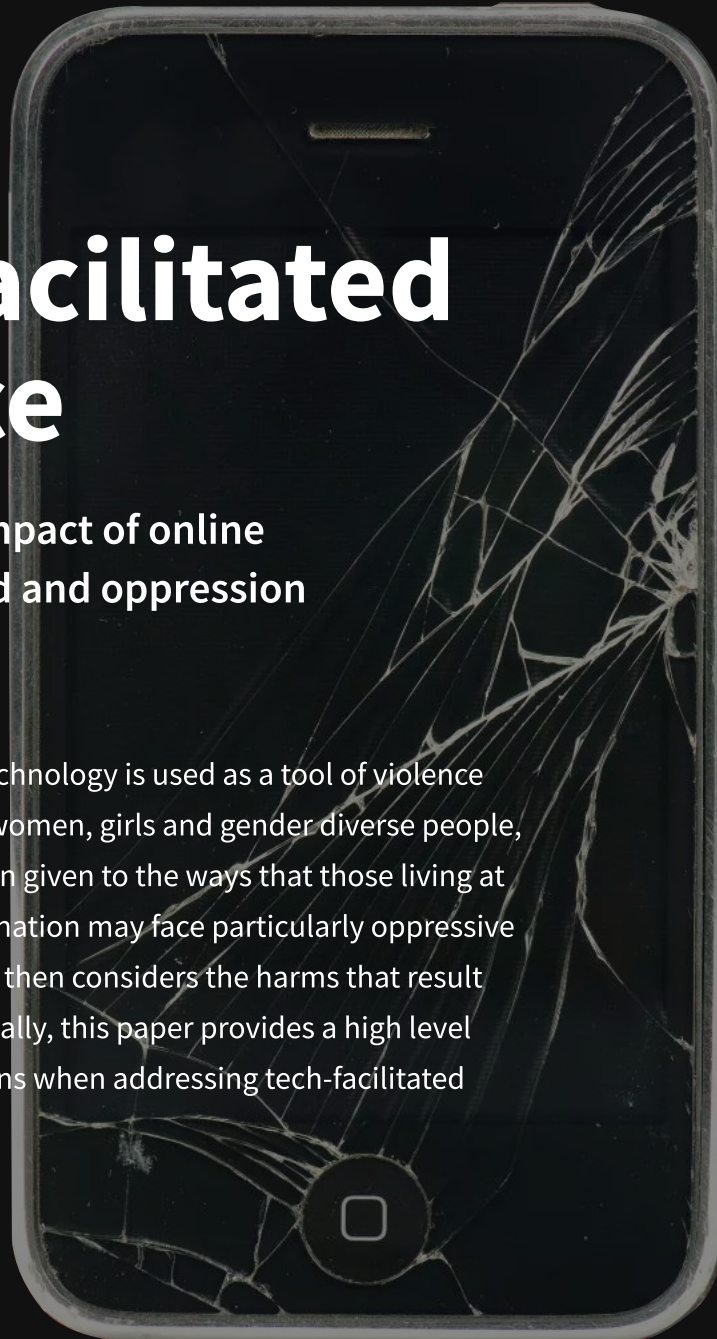
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Tech-Facilitated Violence

The elements and impact of online
gender-based hatred and oppression

This paper examines how technology is used as a tool of violence and discrimination against women, girls and gender diverse people, with additional consideration given to the ways that those living at the intersections of discrimination may face particularly oppressive conduct in the tech world. It then considers the harms that result from this discrimination. Finally, this paper provides a high level overview of possible solutions when addressing tech-facilitated gender-based violence.



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1 | Overview

Misogyny and discrimination have permeated our online and digital world, threatening women and girls' equality and safety.¹ This has led to a creation of another dangerous space, where sexual and gender-based violence has persisted in a largely uncharted realm. With limited monitoring and regulation, there is little consequence for those who engage in digital forms of violence and discrimination against women, girls and gender diverse people, sometimes known as technology-facilitated gender-based violence (TFGBV), and the harms caused by such violence and discrimination are immense. Technology has changed how violence and misogyny cause harm in a multitude of ways, including, for example, prolonging and amplifying the harms through repetitive sharing and viewing, incessant harassment and the tarnishing of one's character.² As detailed below, TFGBV has a particularly dire impact on women who experience intersecting grounds of marginalization.

In the early days of the internet, there were hopes that technology could be used as a tool for creating a community without gender biases, establishing a safe space for people to mobilize against the existing inequalities of the 'real' world. Women were hopeful that this new space would be free from social constructs and inequality. Unfortunately, this ideal did not last and the internet was, in many ways, co-opted by capitalist ideals, incentivizing corporations to monetize data and privacy for profit. This shift contributed to the borderless potential of the internet, consequently leading to a lawless and uncontrolled system of its own and adding to the ways in which misogyny now runs rampant online. The lack of geographical boundaries proved difficult to regulate and perpetrators of misogyny and patriarchal norms have found new ways to exist and inflict abuse, usually anonymously.

At the same time, technology has allowed some women to connect with each other and organize online in order to resist patriarchy, with [cyberfeminists](#) emerging as part of the third wave feminist movement to theorize, critique, and exploit the internet.³ The recent examples of the [#metoo](#) and

¹ Jordan Fairbairn, "Rape Threats and Revenge Porn: Defining Sexual Violence in the Digital Age" in Jane Bailey & Valerie Steeves, ed, *eGirls, eCitizens: Putting Technology, Theory and Policy into Dialogue with Girls' and Young Women's Voices*, ed (University of Ottawa Press, 2015) at 229. The authors discuss women's fight for safe participation in online spaces.

² Nicola Henry and Anastasia Powell, "Technology-Facilitated Sexual Violence: A Literature Review of Empirical Research" (2018) 19:2 *Trauma, Violence, & Abuse* 195-208 at 203. [Henry and Powell]

³ Consalvo, Mia. "Cyberfeminism" (2002) *Encyclopedia of New Media*, Thousand Oaks, CA: SAGE, 109-10. SAGE Reference [Online](#).

[#sayhername](#) movements highlight the ways women can harness technology to mobilize and support other women.⁴

However, online space is ultimately an extension of offline society, but with more insidious possibilities for perpetrators to stay anonymous and intensify the magnitude and volume of attacks with impunity.⁵ Technological advances have resulted in a shift in how we communicate and interact with one another and there is no longer a divide between one's offline experiences and online experiences - the two make up one single reality. With new advances come new challenges of regulation. Technology has become another sophisticated tool in the subjugation of women, girls and gender diverse people.

Terminology

The terms used in this paper were chosen based on research findings, which showed them to be the most accepted and frequently used. To assist the reader, I have compiled a terminology chart with brief explanations, located at the end of this paper in [Appendix A](#).

Methodology

Research for this paper considered published journals, online studies and books as well as media publications, predominantly looking at Canada, USA, the UK and Australia.

⁴ In 2017, women throughout the world used #metoo to bring awareness to their experiences of sexual violence through the use of social media. This was sparked by actress Alyssa Milano, who put out a call for people to share their experiences of sexual violence. An overview of the movement and the Canadian elements of it can be found [here](#).

⁵ Alison Marganski and Lisa Melander, "Intimate Partner Violence Victimization in the Cyber and Real World: Examining the Extent of Cyber Aggression Experiences and Its Association With In-Person Dating Violence. (2018) 33:7 Journal of Interpersonal Violence, 1071-1095 at 1073. [Marganski and Melander]

Over the course of this paper, I will explore:

1. **How technology is used as a form of male aggression,**⁶ which targets women and girls throughout the world. In this section, I examine how men use technology to oppress and harm women and girls, particularly those who experience intersectional axes of discrimination.
2. **How TFGBV impacts and harms women.** I will explore how technology has created new means for men to engage in violence against women and to oppress women through the proliferation of misogynist beliefs and the spread of degrading stereotypes online.
3. **How, at a high level, the law might be harnessed to respond to TFGBV.** This paper is the starting point for LEAF's consideration of potential legal responses to TFGBV. LEAF must first properly identify the harms that TFGBV causes women, girls and gender diverse individuals in order to begin to imagine legal reforms that could meaningfully address those harms.⁷

⁶ Mairead Eastin Maloney and Tony P Love, "Assessing online misogyny: Perspectives from sociology and feminist media studies" (2018) 12:5 Sociology Compass, Wiley at 3, 5 and 8. [Maloney and Love]. The authors discuss the "crisis of masculinity" that exists online and how it has challenged the equal playing field that the internet represented to many. They note that the advancement of women in traditionally male spaces, such as job markets and education, has lead men to seeking new forums in which to "display and reclaim" their "strength, sexual prowess, dominance [and] aggression". See also Marganski and Melander at 1072. See Appendix A for an explanation on the term "manhood acts" and the use of gendered language within the paper.

⁷ Clare McGlynn and Erika Rackley, 'Image-Based Sexual Abuse', (2017) 37:3 Oxford Journal of Legal Studies 534-561 at 535. [McGlynn and Rackley]

2 | How Technologies are Used to Harm Women

This section highlights the common forms of technology-facilitated gender-based violence.⁸ TFGBV is a widespread problem.⁹ Courts in Canada have recognized that online hate speech is prevalent.¹⁰ In a 2018 study on university campuses in Ontario, 58% of young women reported having experienced online gender-based hate speech in the last year.¹¹ Just as technology evolves rapidly, so too do the methods of perpetrating TFGBV, which results in women's online experiences often being riddled with abuse and harassment.¹²

Intimate Partner Violence and Harassment

Intimate partner violence is founded on the exertion of power and control by one partner over the other; technology provides tools that allow for abusive partners to engage in extreme monitoring and control over their spouses, for example, by allowing partners to access and track intimate details of a victim-survivor's life. Those who engage in this type of cyber aggression may use online tools to monitor women's movements and whereabouts, using social networking sites, blogs, phones and other digital technologies. As an extension of real-world intimate partner violence, partner cyber aggression is often obsessive and includes "situational couple violence, intimate terrorism, mutual violent control, and violent resistance."¹³ These terms traditionally described physical world coercion

⁸ Media can also heavily influence the decision of a victim-survivor to report sexual abuse or not. The media attention that someone may receive after reporting can lead to secondary victimization, discussed in more detail in: Debarati Halder and K Jaishankar, *Cyber Crime and the Victimization of Women: Laws, Rights and Regulations* (IGI Global, 2012) 1-264. Accessed online 17 Dec. 2019.

⁹ In addition to those discussed below, there are broader forms of technology usage as a form of control and coercion of women. They include the use of technology as a form of propaganda and the use of media to disseminate targeted messaging to justify conflict, resulting in the widespread negative portrayal of women and the perpetuation of rape culture, Jac sm Kee, "Cultivating violence through technology" (2005) at 26-27, online (pdf): Association for Progressive Communications <https://www.apc.org/sites/default/files/VAW_ICT_EN_0.pdf>.[Jac sm Kee]

¹⁰ *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11 at para 72. See also *Lemire v Canadian Human Rights Commission*, 2014 FCA 18 at para 62.

¹¹ Jenna Cripps and Lana Stermac, "Cyber-Sexual Violence and Negative Emotional States among Women in a Canadian University" (2018) 12:1 *International Journal of Cyber Criminology* at 176. Despite what the title suggests, this study looked at women's experiences in undergrad programs at universities throughout Ontario, Canada, rather than just one.

¹² McGlynn et al at 28.

¹³ Marganski and Melander at 1072, 1074.

however they have entered the online world and form part of the innumerable ways intimate partner violence occurs virtually.

The risk of in-person violence increases when cyber aggression exists. A study conducted by Marganski and Melander found that risk of in-person victimization greatly increased where “intimate partner cyber aggression” was present; 94.8% of those women who reported experiencing partner violence also reported experiencing cyber violence by their partners.¹⁴ All forms of TFGBV highlighted in this paper can occur in the context of intimate partnerships. In addition, there are forms of TFGBV that intimate partners are able to more easily perpetrate as they can exploit their knowledge of and access to their partners to impersonate them online, expose (or threaten to expose) intimate images or information, etc.

Women living with disabilities and using assistive devices are at further risk of invasions of their privacy and being monitored. Some women with disabilities use software to facilitate daily communication and access to information, which risks their personal information being accessed by their abusive partners. This software includes voice dictation and typing programs that read text aloud from their computers and reduces privacy and potentially prevents women with disabilities from seeking information and help, for fear that their partners will find out and retaliate with further violence and abuse.¹⁵

Technology-Facilitated Stalking

An example of technology-facilitated intimate partner surveillance is the tracking and monitoring of partners. Often the perpetrator monitors victim-survivors overtly and may also do so covertly to threaten and control. For example, the abusive partner can install an app on the victim-survivor’s phone and then use that app to access their partner’s personal information remotely. This may be done in secret or it may be done with the victim-survivor’s knowledge as a way to invoke fear and control, restricting her movements. These tools are often referred to as [stalkerware](#), which encompass a range of apps that allow men to engage in highly invasive monitoring and control. For example, the apps allow abusive partners to monitor their partner’s location, view the photographs saved on their phone, read their private messages, or control the temperature in their home. The technology allows

¹⁴ Alison Marganski and Lisa Melander, “Intimate Partner Violence Victimization in the Cyber and Real World: Examining the Extent of Cyber Aggression Experiences and Its Association With In-Person Dating Violence. (2018) 33:7 Journal of Interpersonal Violence, 1071-1095 at 1087. [Marganski and Melander]

¹⁵ Jac SM Kee at 9.

this behaviour without the victim-survivor's consent or knowledge. It is important to note that in the current criminal law regime, if a government were to monitor and track an individual, it would typically require prior judicial authorization. However, no such requirement exists for individuals wanting to track other individuals. Even though the apps are marketed to parents wanting to track their children's movements (which may be problematic in their own right), abusive partners can utilize these apps for more malignant purposes.¹⁶ Further, these apps are often marketed directly to men to spy on their partners as well, without any attempt to hide their true purpose.

Cyberstalking can also take the form of establishing an online friendship with someone, through the use of social media platforms and forums such as Reddit. The harassment may then take the form of "following the target individual around the net and frequenting chat rooms, message boards, online forums, newsgroups or mailing lists".¹⁷ This repeated harassment of women is not new; however, technological advances have made this abuse much easier and have made it more difficult for targets or law enforcement to identify and stop the perpetrators.

Threatening and Aggressive Acts Over the Internet Targeting Women and Perpetrating Intersectional Discrimination

This section examines how women living at multiple intersections of discrimination face heightened threats of harassment in the cyber world, whether it be men flooding a woman's mentions with rape threats, doxxing, publishing her address, or photoshopping her face onto pornographic images and distributing them widely, all of which are explored below. These targeted online attacks further marginalize women of colour, Black women, Indigenous women, LGBTQ2+ persons, poor women, young women, and women living with disabilities.¹⁸ The spread of hatred can escalate rapidly online, which increases the risk that readers will adopt the hateful beliefs and will perpetuate those beliefs in both the tech and physical worlds.

In its [submissions](#) to the House of Commons Standing Committee on Justice and Human Rights regarding Bill C-13, LEAF highlighted the ways in which people target online hate at women, in

¹⁶ Jennifer Valentino-Devries, "Hundreds of Apps Can Empower Stalkers to Track Their Victims" (May 19, 2018), New York Times.

¹⁷ Jac SM Kee at 23.

¹⁸ Canadian Women's Foundation, '[Online Hate: Submission to the House of Commons Standing Committee on Justice and Human Rights](#)', May 10, 2019.

particular women who live at intersecting axes of discrimination.¹⁹ For instance, hate propaganda has included a portrayal of lesbian women as predators, intending to lure and abuse children.²⁰ Black women have been portrayed as “oversexed, diseased, prostitutes, animal-like, and stupid”;²¹ Indigenous women as degraded and dispensable;²² Muslim women wearing niqabs as terrorists intending to destroy and debase our society and as “sick[ening].”²³ Attackers have advocated for eugenics and euthanasia for persons with disabilities. Recently in Canada, racialized and Jewish people as well as specifically women were denigrated in a widely distributed newsletter, including online, resulting in a rare conviction for willfully spreading hate.²⁴

Online Harassment

Online harassment is the “intentional crossing of emotional or physical safety boundaries usually involving repeated communications after the person has been told to go away,”²⁵ causing fear and distress. Unlike intimate partner tech-facilitated violence or cyberstalking, online harassment involves unknown perpetrators. Women, girls and gender-diverse individuals can be targeted and stalked online by people they do not know, and such attacks often convey threats of sexual violence.²⁶ In this

¹⁹ Submissions of the Women’s Legal Education and Action Fund to the House of Commons Standing Committee on Justice and Human Rights Respecting the Committee’s Review of Bill C-13 (June 2014). Online < <https://www.leaf.ca/wp-content/uploads/2016/03/2014-05-20-LEAF-Submission-to-House-Committee-re-Bill-C-13.pdf>>

²⁰ *Schnell v Machiavelli Emprize Inc*, 2002 CanLII 1887 (CHRT) at para 40[Schnell]; E. Faulkner, “Homophobic Hate Propaganda in Canada” (2006/07) *Journal of Hate Studies* 5:63, at 77-79; see *Pardy v. Earle*, 2011 BCHRT 101 (CanLII) for an example of a vitriolic, profanity-laced attack against lesbians.

²¹ *Warman v Guille*, 2008 CHRT 40 at paras 83,119; *Association of Black Social Workers v Arts Plus* (1994), 24 CHRR D/513 (NS Bd Inq)

²² *Warman v Western Canada for Us*, 2006 CHRT 52 at para 19; see also Amnesty International, “No More Stolen Sisters” (London, UK, 2009), <https://www.amnesty.ca/sites/amnesty/files/amr200122009en.pdf> at 5-6; Aboriginal Justice Inquiry of Manitoba, “The Changing Image of Aboriginal Women”, (1999) 13:1, Manitoba. The Aboriginal Justice Implementation Commission, www.ajic.mb.ca/volume1/chapter13.html#5

²³ *Warman v Kouba*, 2006 CHRT 50 at para 47; *Warman v Beaumont*, 2007 CHRT 49 at paras 16, 18.

²⁴ *R v Sears* 2019 ONCJ 104.

²⁵ Jac sm Kee at 23, quoting the definition used by Working to Halt Online Abuse (WHO@), an anti-online-harassment group.

²⁶ Robert Meyer and Michael Cukier, “Assessing the Attack Threat due to IRC Channels”, in *Proceedings of the International Conference on Dependable Systems and Networks* 467 (2006) which noted that individuals writing under female names received twenty-five times more sexually threatening and malicious comments than posters writing under male names.

way, online harassment mirrors harassment of women in the offline world.²⁷ In 2011, women-hating messages were displayed on University of Waterloo campus posters and disseminated by e-mails under the guise of the University President, causing students to close the university women's centre due to their fear that the online threats they received would manifest in "real" physical violence against them.²⁸

Online harassment materializes in many ways, including when a man sends women sexually explicit messages in chat rooms and social media sites; unwanted sexual invitations where the victim-survivor is harassed repeatedly after rejecting the perpetrator; and doxxing, explored below.²⁹ Perpetrators frequently target women online with efforts to invoke fear and remove them from online spaces.³⁰ This usually takes the form of a mob-like attack that has been likened to a gang rape with groups of men cheering on the perpetrators.³¹

For women living at multiple intersections of discrimination, experiences of online harassment are more common and often more hate-fuelled because they can be targeted by a multitude of oppressive behaviours that may include, among others, sexism, racism, homophobia, transphobia and ableism.³²

Social media is often used to target young Indigenous girls for human trafficking. The most vulnerable are often the ones targeted online and studies have shown an increase in exploitation of Indigenous girls on Facebook in western Canada.³³ Historically, traffickers would physically attend reserves to recruit girls, however the distances between reserves proved challenging; social media platforms have provided tools for traffickers to easily access dozens of reserves in the Prince Albert region.³⁴

²⁷ *Warman v Northern Alliance*, 2009 CHRT 10 at para 22; *R v Sears* 2019 ONCJ 104.

²⁸ L D'Amato, "Two UW centres closed following anti-female messages," (19 February 2011), The Record.

²⁹ These examples are explored in Jac sm Kee at 23.

³⁰ Danielle Keats Citron, "Cyber Civil Rights" (2009) 89:1 BUL Rev 61 at 67-68. [Citron]

³¹ *Ibid* at 67.

³² Maloney and Love at 3 and 8.

³³ Dustin William Louie, "Social Media and the Sexual Exploitation of Indigenous Girls" (2017) *Girlhood Studies* 10: 2 97-113 at 100.

³⁴ *Ibid* at 101.

Talat Yaqoob, a Scottish woman of colour and women's rights activist, notes that the abuse, harassment and Islamophobic comments she experiences online is far worse than anything she experiences offline. She speculates that this is because of the anonymity afforded to people in online forums, such as Twitter.³⁵ Imani Gandy, a senior legal analyst, notes the compounded harms she experiences online, being harassed because she is a woman and harassment because of race and being a Black woman: "They will call white women a 'c*nt' and they'll call me a 'n*gger c*nt'. Whatever identity they can pick they will pick it and use it against you. Whatever slur they can come up with for a marginalized group – they use."³⁶

Aggressive online harassment targeting women is often referred to as '[gender trolling](#)'. Gender trolling usually starts when a woman speaks out against patriarchal norms, which brings about a high number of trolls attacking her. It encompasses certain alarming characteristics, which include the high number of trolls who collaboratively attack the victim-survivor, the gendered nature of the attacks, the use of severe language, threats of rape and death, harassment (even ordering pizza to a target's home as a way to instill fear), and the extended length of time of the attack (which can often span years).³⁷

There are parallels between gender trolling and the offline harassment of women and girls, both of which are about silencing women's voices, "patrolling gender boundaries and using insults, hate, and threats of violence and/or rape to ensure that women and girls are either kept out of, or play subservient roles in, male-dominated arenas".³⁸ This active attempt to maintain the patriarchal and male dominated status quo by intimidating those voices that speak out against it is one of the more common ways that technology is used to fuel misogyny and terrorize and control women, girls and gender diverse individuals in the tech world.

Doxxing

Doxxing is the internet-based practice of researching and publicly broadcasting personally identifiable information about an individual, usually their address and phone number. This is an invitation for

³⁵ Amnesty International, "Toxic Twitter – A Toxic Place for Women" Online <<https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>> [Toxic Twitter]

³⁶ Imani Gandy, 'Violence Against Women Online', Toxic Twitter blog series. (2018) Online <<https://www.amnesty.org/en/latest/research/2018/03/imani-gandy-online-violence-against-women/>>

³⁷ Karla Mantilla, "Gendertrolling: Misogyny Adapts to New Media' (2013) 39:2 Feminist Studies, 563 – 570 at 564 – 565, 568.

³⁸ *Ibid.*

online and offline harassment and attacks. Doxxers often expressly guide the readers to follow through on attacks such as rape and stalking,³⁹ which can quickly escalate. When women are more outspoken or involved in online women's groups, they are targeted even more, often by [doxxing](#).⁴⁰ This often has the effect of shutting down the victim-survivor's online accounts or activity and removing them from the online world, thus exerting severe power and control over them.

Similar to gender trolling, doxxing is often done in response to women speaking out against patriarchal norms.⁴¹ It is also a way to prevent women from speaking out offline, out of fear for their safety and the retaliation they inevitably face online. It may also prevent women from reporting sexual assaults or testifying at a trial, particularly when the perpetrator is famous. This was the case in Kobe Bryant's trial where he was accused of sexually assaulting a 19-year-old woman. The victim-survivor's information was leaked to an online chat room, which led to her being severely trolled online, contributing to her decision not to testify at the trial and the criminal charge against Bryant was withdrawn.⁴²

Deepfakes

Deepfaking is the use of technology to alter video and images to portray people doing and saying things they never actually did. Technological advances have allowed for this seamless manipulation of images and video. Initially, deepfake technology was not particularly sophisticated. It began with the use of Photoshop to superimpose someone's face on an image. It now involves the refined use of artificial intelligence (AI) to create highly realistic fake videos, that are often sexually explicit. This [deepfake](#) technology often targets and "weaponize(s)" women specifically,⁴³ where doctored sex

³⁹ Citron at 69-81 where the author provides extensive examples of the online, mob-like hate that is directed at women, including the release of their personal contact information, accompanied by directives to rape her.

⁴⁰ Jessica West, '[Cyber-Violence Against Women](#)', (2014) Battered Women's Support Services, British Columbia. at 13. [West]. See also Citron at 69. See also the research conducted by Amnesty International that looked at how women in politics were specifically targeted as well as feminist movement hashtags: Amnesty International, "Toxic Twitter – A Toxic Place for Women" Online <<https://www.amnesty.org/en/latest/research/2018/03/online-violence-against-women-chapter-1/>>.

⁴¹ Maloney and Love at 5, where they note that women and girl's advancement in education, jobs and other social context have resulted in men using technology in order to re-assert their power.

⁴² Kirk Johnson, 'Information Leaks Prompt Questions in Kobe Bryant Case', New York Times (2004) Online <<https://www.nytimes.com/2004/07/30/us/information-leaks-prompt-questions-in-kobe-bryant-case.html>>.

⁴³ Tess Bonn, "Berkeley professor warns deepfake technology being 'weaponized' against women", (2019). Online <<https://thehill.com/hilltv/rising/452166-berkeley-professor-warns-deep-fake-technology-being-used-to-target-women>>.

videos are uploaded to major porn sites, and are viewed millions of times. For example, actress [Scarlett Johansson](#) was targeted countless times in deepfake videos. She notes that women are particularly vulnerable targets of deepfakes and acknowledges the impossibility of taking down images and videos once they are released onto the internet.⁴⁴

The [technology](#) used to produce deepfakes is widely accessible and anyone with a computer and several images of a woman (often obtained from Facebook or other social media accounts) can create one.⁴⁵ A more recent and concerning example is the collection and release of over 70,000 images of women from the dating application Tinder onto an online cyber-crime forum.⁴⁶

Non-Consensual Capturing and/or Distribution of Intimate Images

This section considers the various forms of non-consensual capturing and/or distribution of intimate images, including voyeurism, image-based sexual abuse, upskirting and sexting. When a woman's image or video is shared without her consent, it can result in lasting and compounded harms, including job loss, an increase in stalking and harassment, or even the need to relocate, all of which is explored in more detail in [section 3](#) of this paper, below. In a strongly worded decision, the Supreme Court of Canada in *R. v. Jarvis* emphasized that “a recording can be saved for long periods of time, replayed and studied at will, dramatically transformed with editing software, and shared with others – including others who the subject of the recording would not have willingly allowed to observe her in the circumstances in which the recording was made”.⁴⁷ The use of technology has resulted in abuse that lasts longer, involves more than one perpetrator, and creates a replaying loop of abuse for the victim-survivor through the repeated and unstoppable sharing of that image or video with others.

Voyeurism

To provide context for the harms that follow, it is helpful to understand voyeurism as a form of non-consensual capturing of images. The act of capturing an image without the subject's consent leads to harm in and of itself. The harm can be compounded when the image is distributed. Voyeurism

⁴⁴ Drew Harwell, “Scarlett Johansson on fake AI-generated sex videos: ‘Nothing can stop someone from cutting and pasting my image’”, (December 31, 2018), The Washington Post. Online. <<https://www.washingtonpost.com/technology/2018/12/31/scarlett-johansson-fake-ai-generated-sex-videos-nothing-can-stop-someone-cutting-pasting-my-image/>> One fake video of her, uploaded to a porn site, was watched more than 1.5 million times.

⁴⁵ *Ibid.*

⁴⁶ Dell Cameron and Shoshana Wodinsky, “[70,000 Tinder Photos of Women Just Got Dumped on a Cyber-Crime Forum](#)” Gizmodo (2020).

⁴⁷ *R v Jarvis*, 2019 SCC 10 at para 74.

encompasses three elements, namely “the surreptitious nature of the observations; the private and intimate nature of what is observed; and sexual gratification” but it may also include the distribution of the images or videos.⁴⁸ The advancement of technology has drastically changed the different possible manifestations of voyeuristic crimes, coming a long way from the ‘peeping-tom’ to a range of technologies such as hidden cameras and iPhones.⁴⁹

Image-Based Sexual Abuse⁵⁰

Image-based sexual abuse is the use of intimate images to threaten or coerce the subject in the photos. In the intimate partner violence context, this is often done to control the victim-survivor, keep them from leaving the relationship, or retaliate against the victim-survivor for leaving. It may involve distributing the images or threatening to do so.

When images of victim-survivors are distributed without their consent or posted to public online forums, they are often accompanied by the woman’s identifying information and address, “resulting in women being bombarded with harassing, degrading, and threatening messages from strangers”.⁵¹ Another term used to describe this abuse is ‘[sextortion](#)’.⁵² The images can quickly go viral and become difficult or impossible to contain. The distribution is facilitated by both the primary distributor (who first shares the image) and the secondary distributor (others who re-share the image). The secondary distributors are usually the reason the images turn viral, exacerbating the harms inflicted on the

⁴⁸ Department of Justice Canada, ‘Voyeurism as a Criminal Offence: A Consultation Paper’ (2002) online <<https://www.justice.gc.ca/eng/cons/voy/>>

⁴⁹ See Paul Dirks, “The Voyeurism Epidemic”, (January 14, 2007), Woman Means Something, Online <<https://womanmeanssomething.com/the-voyeurism-epidemic/>> for a discussion on the gendered nature of voyeurism and the alarming stats that point to predominantly male perpetrators and female victim-survivors.

⁵⁰ This form of abuse is often referred to as ‘[revenge porn](#).’ However, feminist scholars have noted that this term is not accurate or representative of the harm caused, because the term “revenge” focusses on the “motives of perpetrators”. It also has the impact of narrowing the legislative debates to discussions surrounding pornography and the sexual gratification the perpetrator must have gleaned from it, rather than focusing on the abuse and harm that is caused. Having a broader title for these harms refocuses the issue. McGlynn and Rackley use the term “image-based sexual abuse” which helps to highlight it “as a form of sexual violence, locating it within sexual offence law and policies”, McGlynn and Rackley at 535, 537.

⁵¹ Jessica West, ‘[Cyber-Violence Against Women](#)’, (2014) Battered Women’s Support Services, British Columbia at 7 [West].

⁵² Cybertip.ca “What is sextortion?”, Online <https://www.cybertip.ca/app/en/internet_safety-sextortion>

victim-survivor.⁵³ This is a form of collective perpetration that involves a group of people causing irreparable harm, and it is explored in more detail, below.

Streaming of Sexual Assaults – Live Broadcasts and Recorded Media

Live streaming is the online simultaneous recording and broadcasting of media, which is done in real time. There are many apps that offer this capability, including FaceTime, Snapchat, 17, Facebook Live, Instagram Live and Kuaishou. Live streaming of sexual assaults occurs where the perpetrator broadcasts the abuse in real time. It can accompany the abuse and add an additional layer of harm that continues to replay as the image is shared and has the potential to be recorded by recipients for further use. Sexual assaults may also be recorded and distributed at a later time. Additionally, consensual sex may be surreptitiously or consensually recorded and shared without consent. In South Korea, The Telegram chat rooms have been used to illegally trade sexually explicit and degrading photos of women, often children, referred to as the Nth Room.⁵⁴

In recent years, there have been several cases in Canada involving the recording and distribution of sexual assault of girls that resulted in the very tragic suicides of the teen victims. [Rehtaeh Parsons](#), a teenager in Nova Scotia, was photographed naked and throwing up as a boy sexually assaulted her. This was particularly horrifying because onlookers took photos rather than intervene, showing how sexual violence has become normalized through technology. She was targeted by online discriminatory bullying for over a year as a result and it caused her unbearable grief, resulting in her dying by suicide in 2013.⁵⁵ Unfortunately, Parsons' case is not an isolated incident: many women and girls have had sexual images of themselves, including images of sexual assaults, distributed online without their consent.

⁵³ McGlynn and Rackley at 538.

⁵⁴ Haeryun Kang, "South Korea's 'nth rooms' are toxic mixture of tech, sex and crime", (April 10, 2020) Nikkei Asian Review, online < <https://asia.nikkei.com/Opinion/South-Korea-s-nth-rooms-are-toxic-mixture-of-tech-sex-and-crime>>

⁵⁵ Elizabeth Chiu, "The Legacy of Rehtaeh Parsons", (April 6, 2018) CBC, Online <<https://newsinteractives.cbc.ca/longform/five-years-gone>>

The live streaming of sexual assaults is bound to happen more frequently, with the rise of mainstream apps such as FaceTime, Facebook Live and Instagram Live. The law in Canada⁵⁶ does not explicitly restrict the ‘live streaming’ of intimate images, although it does prohibit the non-consensual recording and distribution of intimate images. In one recent Ontario case⁵⁷ that has considered live-streaming, the court defined “recording” in a narrow way, which excluded livestream apps such as FaceTime from the law. In this Ontario case, a young woman was nude and throwing up after she was sexually assaulted and her assailant used FaceTime to stream video of her to three friends. The Crown has appealed the directed verdict on the charge relating to the distribution of recorded images after the trial judge held that it could not be said that FaceTime recorded the images, as it was an instant stream, similar to a phone call. This points to technology’s ability to rapidly evolve and law’s struggle to catch up. It is near impossible to draft legislation that will capture every technological abuse, particularly as new tools and different technologies are created so quickly.

Upskirting

‘Upskirt’ photographs are captured in public spaces by perpetrators who place a phone up a woman’s skirt and photograph her undergarments and/or genitals. Upskirting has received varying responses by law enforcement throughout the world.⁵⁸ In Canada, upskirting may be captured by voyeurism laws. In the UK, British national Gina Martin was the victim of upskirting at a concert. Martin grabbed the phone from her perpetrator, found the police and reported the incident but the police told her they couldn’t do anything since the conduct was not prohibited. Martin ran a long campaign to criminalize upskirting and the UK finally enacted law to make it a [sexual offence](#).⁵⁹

Sexting

As technology becomes part of how people interact with each other as a routine part of their daily lives, it is not surprising that sexual behaviours have started to incorporate technology. One of these

⁵⁶ [Criminal Code, RSC 1985, c C-46, s 162.1](#) covers the non-consensual distribution of intimate images. See also the Voyeurism offence under [s 162](#).

⁵⁷ [R v Walsh 2019 ONSC 1286](#) This is the first case in Canada that has tested the scope of s 162.1 and it has yet to be seen how it will be interpreted by other courts as well as higher courts. It is set for appeal on October 8, 2020.

⁵⁸ Upskirting happens throughout the world, including in Canada. One example being the ‘CanadaCreep’ Twitter page run by a man in Alberta. He plead guilty to charges of voyeurism, distribution of voyeurism and possession of child pornography and : https://www.vice.com/en_ca/article/vbn4zx/canadacreep-guy-pleads-guilty-to-voyeurism-possession-of-child-porn

⁵⁹ *Voyeurism (Offences) Act 2019*, UK Public General Acts 2019 c2, section 1.

ways is [sexting](#), which involves sending sexually explicit content via text. When done between consenting adults, it is a healthy form of sexual experimentation and expression, and a very common one. In a [survey](#) from 2015 more than 80% of respondents reported having sexted within the year.⁶⁰ It has become a part of the way in which people, particularly young people, communicate with their committed or sexual partners. Often, young girls and women of all ages will send nude photos of themselves consensually as a form of sexual activity.

However, “sexting” can also be used in abusive ways, particularly against women and girls. Research has found that “girls are more commonly pressured or coerced into sending naked photos, and this coercive behaviour is normalized through gendered expectations”.⁶¹ Studies have found that sexting is equally common between each sex. What differentiates the experiences of girls and boys is that the boys are the ones that tend to share the images online without consent.⁶²

Most concerning is how the authorities too often respond in misogynistic ways to the images they discover. The response by school administrations has too often been to punish the girls for sending the photos rather than punish the boys who distributed them.⁶³ Distributing the images that girls share can “be seen as a dangerous social weapon, used to inflict humiliation, shame and social repercussions on girls. It can also be used to dehumanize girls, and reduce them to the body parts depicted in the photograph.”⁶⁴ Girls are systemically shamed in these instances, where society sends them “mixed messages by teaching them that the only way they'll be loved is if they show off their bodies, unless they do it too often/the wrong way/to the wrong people, in which case, they're sluts”.⁶⁵

⁶⁰ American Psychological Association, “How Common is Sexting?” (2015) Online <<https://www.apa.org/news/press/releases/2015/08/common-sexting>>

⁶¹ West at 8.

⁶² Amanda Hess, “The Real Difference Between Teenage Boys and Girls' Sexting Habits? Boys Forward More,” (March 4, 2013) *Slate*, online <<https://slate.com/human-interest/2013/03/sexting-statistics-teen-boys-and-girls-sext-in-equal-numbers-but-boys-forward-more.html>>, [Hess]

⁶³ Katie JM Baker, “Girl Sends Sext, Gets Kicked Out of School. Lacrosse Players Share Sext, Get Off Scot Free,” (April 10, 2013) Jezebel. Online <<https://jezebel.com/girl-sends-sext-gets-kicked-out-of-school-lacrosse-pl-471285308>>

⁶⁴ *Ibid* at 9.

⁶⁵ Katie JM Baker, “Will This 15-Year-Old Suicide Victim's PSA Actually Convince Bullies to Knock it Off?” (October 12, 2012) Jezebel Online<<https://jezebel.com/will-this-15-year-old-suicide-victims-psa-actually-conv-5951241>> [Baker Todd Article] where the author talks about 15-year-old Amanda Todd who was bullied as a result of a nude image she sent when she was 13 that was later shared with peers over and over. Amanda sadly committed suicide after years of enduring this.

There are examples of girls' photos being distributed amongst students at school or photos being sent to a woman's employer.⁶⁶ When women's images are non-consensually shared online and to their employers, they are often reprimanded and blamed.⁶⁷ This highlights the gendered nature of this abuse, where girls and women's privacy is violated, and this violation leads to them being punished instead of those who share their images non-consensually with others. Society's blaming and shaming of women, holding them responsible for the violence committed against them, is consistent with archetypal responses to other forms of sexual violence.

3 | The Impact of TFGBV and Scope of Harms Caused

The harm that results from TFGBV is far-reaching and complex. It adds an additional layer to the harms women experience as a result of misogyny and violence in the physical world as TFGBV may occur in tandem with physical violence and harassment. This new frontier for violence and misogyny against women, girls and gender-diverse individuals is alarming because of how technology gives greater reach and longevity to the harms, and there is limited legal regulation available to address them.⁶⁸ Understanding the harms TFGBV causes to women, girls and gender-diverse individuals is critical to developing an adequate response when considering prevention strategies.

TFGBV leads to further objectification of women, girls and gender-diverse individuals. This perpetuates the subordinate role of women within a patriarchal society, amplifying the "societal gender disparities, particularly the persistence of sexual double standards, [which] enable humiliation, stigma and shame to be visited on women, facilitating the production and prevalence of image-based sexual abuse".⁶⁹ In many cases, women are treated as no more than collectible items. This was illustrated in the [#TheFappening](#)⁷⁰, where celebrity women's private accounts were hacked and intimate nude images of them were non-consensually shared widely at a rapid pace. Thousands of

⁶⁶ West at 8 and *ibid*.

⁶⁷ A stark example of this is former Manitoba judge Lori Douglas who, upon her husband uploading sexual images of her to a porn website, a drawn out investigation ensued that led her to agree to early retirement in exchange for a stay of the proceedings. See here: https://en.wikipedia.org/wiki/Lori_Douglas

⁶⁸ Henry and Powell at 203.

⁶⁹ McGlynn and Rackley at 544.

⁷⁰ #TheFappening as a name itself is offensive as it sexualizes women. The incident of the leaked photos was originally referred to as "Celebgate" however it quickly morphed into the offensive marrying of the slang term 'fap', meaning to masturbate, and 'happening'.

men sought to collect all of the photos, offering trades on Twitter and boasting about how many they had collected. This “Objectification is key to dominant-subordinate relationships inherent in patriarchy, as it strips women of personhood and creates critical cognitive and emotional distance”.⁷¹ The objectification of women in the cyber world perpetuates gender inequality because women are denied their subjectivity or agency to shape and control their own image and reputation.

Perpetuation of Rape Culture

Sexual violence, gender stereotypes and racism have become normalized online, perpetuating a rape culture that minimizes and/or ignores sexual violence and blames women for their victimization. Men’s incessant sharing of sexual images, sexual assault videos, threats and descriptions of rape on social media sites leads to people being over-exposed to online rape culture. This causes significant harm and trauma to women and girls. It also perpetuates discriminatory myths and stereotypes which permeate all facets of society including the criminal justice system and undermine women’s access to justice for sexual assault. Rape culture excuses and often encourages men’s misogynistic behaviour online, infecting the online world through the use of chat sites such as Facebook and Reddit where rape jokes are commonplace, offensive memes are shared rapidly, and the portrayal of violence against women and girls is used as [clickbait](#).⁷²

Mainstream pornography often perpetuates online rape culture through the highly accessible videos of violent sex, where women are usually the subject of men performing sex on them, rather than two consensual people participating in healthy sex. These videos which romanticize men’s violent, persistent sexual advances are often young people’s first encounters with sex. Images of rape, which can be found in sub-reddit folders and porn sites, risk normalizing rape and sexual violence against women and girls.

The non-consensual distribution of intimate images is often downplayed as a funny prank and women are portrayed as being “hypersensitive or humourless”.⁷³ This may “help to sustain a culture (...) in which sexual consent is regularly ignored. By extension, this means that acts of sexual violence which

⁷¹ Mairead Eastin Maloney and Tony P Love, ‘#TheFappening: Virtual Manhood Acts in (Homo) Social Media’, (2018) 21:5 Men and Masculinities, 603-623 at 611.

⁷² West at 14. Clickbait entices people to click on a link, image or video and follow it to a website. It usually comes with a dramatic statement or image in order to ‘bait’ the person to want to enquire more and click on it.

⁷³ McGlynn and Rackley at 549

are also predicated on an absence of consent are perhaps less likely to be recognized as such”.⁷⁴ This leads to ‘cultural harm’, which risks minimizing the great harm caused by sexual violence against women and girls leading to women rather than male perpetrators being blamed.

When women accuse powerful men of rape, they are harassed and threatened online, perpetuating rape culture ideals of victim blaming and suspicion. When Dr. Christine Blasey Ford spoke out against the US Supreme Court nominee, Brett Kavanaugh, an incessant stream of threats and harassing messages came her way. A Twitter account released her address and she and her family were forced into hiding.⁷⁵ The response to her brave disclosure was to question her memory and actions, casting doubt on her (and her motivations) with an ensuing mass online perpetuation of rape culture. This sends a message to women not to disclose and it perpetuates the rape culture of woman blaming and propping male rapists up.

Loss of Dignity and Sexual Autonomy

TFGBV impacts women’s right to autonomy and sexual integrity. Historically, women were portrayed as sexual objects yet when they displayed any sexuality they were criticized as being promiscuous. The technological world has amplified these catch-22 conditions. With the advancement of technology, and its increased usage, women have found a new platform for sexual expression, through practices like sexting. However, the use of technology for sexual expression has also allowed men to shame and blame women with photos distributed non-consensually with women and girls being punished for it.⁷⁶ This is a significant attack on women and girls’ dignity and it undermines their capacity to decide who views their body and when, a fundamental right that women have fought to uphold for decades in the “physical” world. It also further threatens women’s right to sexual expression, as the conditions in which this expression occurs are hostile and dangerous to women’s equality and safety.

⁷⁴ *Ibid.*

⁷⁵ Erin Durkin, ‘Christine Blasey Ford’s life ‘turned upside down’ after accusing Kavanaugh’, The Guardian (2018) Online <<https://www.theguardian.com/us-news/2018/sep/19/christine-blasey-ford-brett-kavanaugh-sexual-assault-accuser-threats>>

⁷⁶ Hess *supra* note 62.

Negative Mental Health Outcomes

Violence against women leads to deep layers of trauma and fear, which often persists for long periods of time. Some of these harms are considered below in the context of perpetration through technology.

Sexual assault negatively impacts women's relationships and communities. It can have profound effects on the relationships and social life of the survivor, impacting friendships as well as intimate partner and family relationships.⁷⁷ Non-perpetrator family members, partners, friends and children of survivors are also affected by sexual assault and its aftermath.⁷⁸ When this violence is inflicted through technology, it leads to similar harms. In some circumstances, it can actually exacerbate the harm. Unlike a single act of sexual assault, which, though horrific, ultimately ends, the violation of having one's sexual images distributed online can last forever. This can make it impossible for women to recover from the violation.

The harm caused by TFGBV to women and girls' mental health violates the victim-survivors' "mental and physical integrity".⁷⁹ There are significant and lasting impacts on women, girls and gender diverse people. The harm of violence, harassment and discrimination often culminate into depression, sometimes leading to panic attacks, impacts on education and emotional development and suicides.⁸⁰ TFGBV harms one's personal dignity "by its deliberate infringement of their self-worth and failure to treat them with respect".⁸¹ It also has the effect of impacting the collective dignity of women and women living at the intersections of discrimination, sending a message to them that they are not safe nor are they equal.⁸² Canadian researcher Samantha Bates notes three sub-themes of mental health impacts associated with the non-consensual distribution of intimate images, which are "(a) trust issues after revenge porn; (b) PTSD, anxiety, and depression; and (c) self-esteem, confidence, and loss

⁷⁷ Zoe Morrison, Antonia Quadara & Cameron Boyd, "'Ripple effects' of sexual assault" (2007) 7 Issues: Australian Centre for the Study of Sexual Assault 1 at 6.

⁷⁸ DM Daane, "The ripple effects: Secondary sexual assault survivors", in F Reddington & B Kreisel (Eds.), *Sexual assault: The victims, the perpetrators and the criminal justice system* (Durham: Carolina Academic Press, 2005) at 113-131.

⁷⁹ McGlynn and Rackley at 545-546

⁸⁰ *Ibid.*

⁸¹ *Ibid.*

⁸² *Ibid.*

of control.”⁸³ The negative impact on mental health to survivors of TFGBV is comparable to the experiences of physical and sexual violence.⁸⁴

Studies into the mental health impact of sexual harassment have shown that “sexual rumors being spread about oneself was the most distressing form of sexual harassment for women”.⁸⁵ Online sexual harassment often takes the form of spreading degrading rumours about women and girls, their name, images and reputation vandalized and sexualized. Severe mental health impacts including anxiety, PTSD, and depression are directly linked to the experience of this online sexual violence.⁸⁶ When the images are distributed online, it is impossible to recover from something that is ongoing. Without an end to the violation, these women are trapped in perpetual assault.

A particularly tragic impact of TFGBV is death by suicide.⁸⁷ As explored above, collective perpetration involves many individuals repeatedly sharing images, thereby effecting ongoing abuse towards the victim-survivor. With the added isolation, humiliation and loss of dignity, it is possible for women and girls to feel there is no way out and turn to suicide. In a US study that considered young people’s experience of online victimization, 25% reported they had experienced stress symptoms including “staying away from the internet, feeling jumpy or irritable, not being able to stop thinking about the harassment and losing interest in things.”⁸⁸ There are incidents in Canada, including [Amanda Todd](#), a 15 year old who died by suicide at her BC home in 2012 following a man’s sexual exploitation of her in an online video chat room and the misogyny and harassment that ensued from peers at her school.⁸⁹ The consequences of TFGBV are severe and life threatening.

⁸³ Samantha Bates, ‘Revenge Porn and Mental Health: A Qualitative Analysis of the Mental Health Effects of Revenge Porn on Female Survivors’, (2017) 12 Fem Leg Stud 22-42 at 30. [Bates]

⁸⁴ *Ibid.*

⁸⁵ Bates at 26.

⁸⁶ *Ibid* at 38.

⁸⁷ It is acknowledged that there may be many compounding factors, which ultimately contribute to one’s death by suicide, however studies have pointed to the particularly dire impact of TFGBV and its irreversible impact on one’s dignity and life.

⁸⁸ Jac sm Kee at 24.

⁸⁹ Baker, Todd Article

Censorship, Self-Censoring and Isolation

Women are often silenced online as a result of the onslaught of harassment, threats and violence that is directed towards them. This form of censorship impacts women's right to free expression and participation, often resulting in women leaving public forums and communities, such as [Twitter](#). In an Amnesty International study, 32% of women who experienced online abuse reported self-censoring themselves, not posting on certain issues and limiting the expression of their own opinions.⁹⁰ This can result in their withdrawal from the online world, leading to isolation. Online gender-based harassment and abuse that leads to the silencing of women may also send the message to younger generations that women's voices are not valid.⁹¹ Unsurprisingly, removing women from the online world promotes patriarchal conceptions of men as all powerful and the only worthy voice.

By going offline, women may become separated from loved ones, since social media is now interwoven with our communities and has become a natural way to stay in touch with family and friends.⁹² The internet is also a place to promote oneself professionally and learn about employment and economic opportunities. Women are more likely to "police themselves by restricting their activities in public because of the anxiety about potential violence and by using, in public and in private, more safety precautions than do men".⁹³

As noted above, collective perpetration describes the rapid spread of sexual images of women and girls by a large group of people, usually men, who come together to attack as a group.⁹⁴ This 'mob mentality' can force women offline, depriving "us all of a richer, more varied and diverse public online discourse".⁹⁵ #TheFappening is an example of this collective perpetration. The rapid speed at which online trolls can share an image or video and attack a woman or girl, repeatedly harassing her and pushing her into isolation can last for years, creating a significant and ongoing harm. Online harassment has also been known to be used to silence women's organizations by limiting their access

⁹⁰ Toxic Twitter, Ch 5.

⁹¹ *Ibid.*

⁹² Bates at 23.

⁹³ Stanko at 51.

⁹⁴ McGlynn and Rackley at 551.

⁹⁵ *Ibid.*

to the internet. For example, 15% of women's groups in Latin America have experienced some kind of harassment including entrapment and targeted viruses.⁹⁶ This limits the activism and support that women can offer to each other, silencing them and their efforts to build community and promote women's equality.

Perpetual Harms

The non-consensual distribution of intimate recordings and images creates an added layer of harm and abuse; one that repeats and creates a never ending cycle of re-victimization. Where the victims-survivors of TFGBV have also experienced rape, intimate partner violence, and other violent and traumatic assaults, the impact can manifest into re-traumatization. Studies have shown that “those who experience dual victimization (i.e. in person and cyber) were at greatest risk for negative outcomes”.⁹⁷ Feminist academics have recognized the dual layers of harm stemming from both the sexual assault and the filming of it.”⁹⁸ When images are shared and publicly distributed (whether through a recording or live video stream), women suffer additional trauma, creating layers of harm that can continue to abuse through re-distribution. The very uncertainty of who has seen the images and who continues to see them can be re-traumatizing. This can permeate women's day-to-day lives as images are made public to their family, friends and employers, which often results in the undue shaming and blaming of the women rather than the perpetrators.

4 | Take Back the Tech⁹⁹ – Possible Responses to TFGBV and its harms

This section provides a high level overview of the suggested main responses to TFGBV found in the literature. While not an exhaustive list, it focuses on the harms that TFGBV inflicts on women and the need to recognize the gendered nature of these harms.

Terminology is an important consideration when strategizing how to address TFGBV. Framing online harassment by the specific harms it causes and the gendered nature of the harms is crucial. Gender

⁹⁶ Jac sm Kee at 25. Note that Latin America is not defined in the source.

⁹⁷ Marganski and Melander at 1075. The authors are discussing the ways that women may experience violence and threats in the ‘physical’ world and then also experience TFVAWG, causing dual harms.

⁹⁸ McGlynn et al at 34–35.

⁹⁹ This title is borrowed from Jac SM Kee, ‘[Cultivating violence through technology?](https://www.takebackthetech.net/)’, Association for Progressive Communications, 2005 at 35 as well as the feminist campaign on Twitter to stop online harassment against women. See <<https://www.takebackthetech.net/>>.

trolling, for example, properly represents the issue at hand and helps to focus the legal response. It shifts the discourse from how women can better protect themselves to the more appropriate focus on how to stop men from engaging in the harmful behaviour.¹⁰⁰

In cases involving image-based sexual abuse, consent — not just for the image being captured but for the distribution of that image — is a critical component of the analysis. It is important to have a robust understanding of consent and privacy, where women's mere presence in public spaces does not equate to their consent to being sexualized by others.¹⁰¹ McGlynn and Rackley conceptualize privacy within public spheres by considering the privacy owed to an image itself and the scope of the consent that is given. The privacy within public spaces provides that the sexual images captured in public maintain their status as private, provided the subject has not relinquished their privacy status in some way (for example, by streaking or having consensual sex in a public park).¹⁰²

Systemic Societal Response

The UN has suggested a three-pronged approach to the prevention of TFGBV: 1) sensitization through a change in societal values and norms. 2) safeguards that provide oversight and monitoring of online activity in order to minimize risks to women and girls, and 3) provide for the ability to adapt and apply laws and regulations, “to define and enforce compliance and effective punitive consequences for perpetrators”.¹⁰³

The feminist movement against TFGBV has taken flight, particularly in the UK where online sites such as [EverydaySexism.com](https://www.everydaysexism.com) create a place to report online violence and sexism. Amnesty International has started the ‘[Troll Patrol](#)’ and is using data to detect trolls and TFGBV on Twitter, using AI to detect and block any gender trolling.

¹⁰⁰ Mantilla at 569.

¹⁰¹ In *R v Jarvis* 2019 SCC 10, the SCC recognized that women and girls do not abandon their privacy interests – and specifically, their right to be free from unauthorized intrusions into their sexual integrity – when they enter public spaces where they know they can be observed by others. The court instead endorsed a nuanced definition of privacy that reflects the “typical or ordinary understanding” that “a person may be in circumstances where she can expect to be the subject of certain types of observation or recording but not to be the subject of other types.” At para 38.

¹⁰² McGlynn and Rackley at 543-544.

¹⁰³ Nidhi Tandon, Shannon Pritchard et al ‘[Cyber Violence Against Women and Girls: A World-Wide Wake-Up Call](#)’, (2015), [The United Nations Broadband Commission for Digital Development](#). [Broadband Report]

In Canada, the [eQuality Project](#) is monitoring the emerging case law that concerns TFGBV. LEAF's Technology-Facilitated Violence Committee brings together feminist lawyers and academics to conduct research and prepare a report imagining legal responses to technology-facilitated violence against women that are informed by equality principles. In addition, [Cynthia Khoo](#) is working with LEAF as the TFV Researcher to support and inform LEAF's law reform efforts and potential upcoming interventions concerning TFVGBV. Khoo's research will result in a research report that will be publicly available in the winter of 2021.

Although the government of Canada has created a [Digital Charter](#), it does not apply a gendered lens nor does it give mention to women and the extreme abuse and harassment that they experience online in its ten principles. The ten principles aim to promote better digital regulation and safety. Beyond these, there is a clear need to develop a concerted strategy to address TFGBV, which properly identifies its harms, uses clear, gendered terminology and provides a robust regulatory framework to combat the vast ways that technology can be harnessed to harm and coerce women.

The Role and Responsibility of Technology Companies

Technology has become so ingrained in everyday life that the two are now often inseparable "in nearly all aspects of private and public life".¹⁰⁴ The development of technology has mirrored societal norms and inequalities. Though developers do not typically design technologies for harmful use, the technology they create exists in a context of patriarchy and systemic discrimination against women, and this context shapes how technology is used and developed. The decisions of technology companies "are always informed by the socio-cultural conditions of their users and, consequently, routinely have the effect of reproducing historical power structures".¹⁰⁵ The role of technology companies is crucial, therefore, in addressing the inequalities in society.

Though technology companies often may not always intentionally design to "harm" in the sense that they aren't set up to facilitate TFGBV, they structure their products to incentivize disclosure of data that often then exposes equality-seeking community members to conflict. In addition, their processes for making complaints or removing private data and images are often inaccessible and unhelpful. As has been discussed throughout this paper, too often the remedial focus of policy makers turns to

¹⁰⁴ Christopher Parsons, Adam Molnar, Jakub Dalek, Jeffrey Knockel, Miles Kenyon, Bennett Haselton, Cynthia Khoo, Ron Deibert. "[The Predator in Your Pocket: A Multidisciplinary Assessment of the Stalkerware Application Industry](#)," (2019) 119 Citizen Lab Research Report, University of Toronto at 22. [Parsons et al]

¹⁰⁵ Parsons et al at 104.

blaming rhetoric - i.e. what can girls and women do differently so they don't attract this attention? As Valerie Steeves notes, technology companies should be finding ways to help girls and women "better manage the fluid movement of cultural capital between the private sphere of creativity and identity play and the public sphere of performativity and resistance".¹⁰⁶ Technology companies can be doing much more to tackle the problems that women and girls face and policy makers should direct their attention to their roles and responsibilities rather than engage in survivor-victim blaming..

There are, of course, the less mainstream social platforms that end up attracting the alt-right and white supremacist groups, as has been the case in very [recent](#) American politics. The dilemma to consider in the context of TFGBV is, what happens when the more mainstream tech moderates and manages behaviour and speech? Twitter will often delete accounts that incite violence and these users are then relegated to the subset platforms, which have fewer rules and far more hate and misogyny. Parler is the main example of this, along with other apps such as 4chan, Telegram, Gab, MeWe, Bit Chute and Rumble. [Apple has deleted apps](#) such as Parler from its iTunes Store, which is another way that mainstream technology companies can play a role in addressing hate and violence online. However, the effectiveness of this is yet to be seen. As new platforms continue to pop up, it becomes more challenging to stop these hate-infused forums from flourishing.

In the context of stalkerware, one [report](#) suggests that companies should be required to have frequent consent dialogue boxes pop up on the user's phone to allow the user to consent or decline the monitoring, which could reduce the ability of an abusive partner using the technology in secret.¹⁰⁷ The requirement for consent reduces the effectiveness of tracking apps as stalkerware in the first place, which may have the result of perpetrators not using it at all. It may also allow the woman to put safety precautions in place, such as only taking her phone to locations that she is comfortable with her abuser knowing about and avoiding sending messages that may jeopardize her safety.¹⁰⁸

¹⁰⁶ Steeves, V, "Pretty and Just a Little Bit Sexy I Guess": Publicity, Privacy and the Pressure to Perform "Appropriate" Femininity on Social Media. In Jane Bailey and Valerie Steeves, eds. *eGirls, eCitizens*, (2015)Ottawa: University of Ottawa Press, 153-174.

¹⁰⁷ Parsons et al. The authors provide a very detailed overview of stalkerware technology as well as helpful recommendations of what tech companies can do to improve ethical use of tools they create.

¹⁰⁸ These solutions don't address the substantial risks that women face. For women in violent relationships, however, these added safeguards do help with safety planning in advance of them being able/ready to leave.

Applying and Maintaining an Intersectional Feminist Lens

The voices and experiences of women living at the intersections of discrimination should be prioritized in developing responses to TFGBV. It is important to consider the layers upon layers of harm experienced by Indigenous women because of intergenerational trauma, marginalized women due to poverty, BIPOC women who encounter targeted racism, and trans women and gender diverse individuals who are faced with transphobia. The harms experienced by “traditionally subjugated groups” are usually impacted disproportionately, resulting in compounding harms and experiences of abuse.¹⁰⁹ The perspectives and expertise of a diverse group of women and girls, including those with lived experiences of TFGBV, are critical to shaping a holistic and adequate action plan that protects them.¹¹⁰ When developing technology that will address online violence and harassment, developers and legislators must ensure they are gender-sensitive and inclusive.¹¹¹

There is a need to focus efforts on addressing online racism and hate, through a gendered lens. One way to achieve this is to consider the ways technology can be harnessed to collect better data on racism and homophobia that transpire in online forums like Twitter. There are obvious limitations to research of this scale being done by a small amount of researchers and there is a call for larger companies to begin this inquiry, as more data is needed in order to promote and advocate for law reform.¹¹²

Law Reform

With the rise of tech and the internet, there has been an increase in the power that technology companies play in society. Private companies have more influence and control over people than ever before, but they remain largely unregulated by rights-based legislation or the Charter of Rights and Freedoms. The ever-changing technological world requires that laws be interpreted and developed broadly, to account for the new ways technology can be used to perpetuate sexual violence. Rather

¹⁰⁹ Citron at 67.

¹¹⁰ For a discussion on the vulnerability of ethnic minority women in the context of sexual violence, see Thema Bryant-Davis, Heewoon Chung and Shaquita Tillman, ‘From the Margins to the Center: Ethnic Minority Women and the Mental Health Effects of Sexual Assault’, (2009) 10:4, Trauma, Violence, & Abuse 330-357. See also LaDonna Long and Sarah E Ullman, ‘The Impact of Multiple Traumatic Victimization on Disclosure and Coping Mechanisms for Black Women’, (2013) 8:4 Feminist Criminology, 295-319.

¹¹¹ Inter-Agency Coordination Group Against Trafficking in Persons, “[Human Trafficking and Technology: Trends, Challenger and Opportunities](#)”, (2018) 07 UN Issue Brief.

¹¹² Irfan Chaudhry, “#Hastagging hate: Using Twitter to track racism online”, (2015) 20:2, First Monday.

than addressing TFGBV in a preventative and holistic way, governments often respond in a reactive way when there is a public outcry because of a social crisis where online hate transgresses into real life suffering,¹¹³ and the legislation may be rushed and inadequate as a result. This severely hinders the “long-term effectiveness of new laws and policies.”¹¹⁴ It is crucial that legislators understand TFGBV, its impact on women, girls and all vulnerable and targeted populations, and the various ways in which it affects those who experience multiple layers of discrimination.

With technology evolving rapidly, the response and regulation of its use as a form of gender-based violence must adapt to reflect the changing technological landscape. To be sure, there are laws in place to address regulation. The [eSafety Commissioner in Australia](#) helps those who have been targeted online to remove content quickly, empowering women to take control of their content and lives online. These initiatives are great examples of a government’s potential role in addressing TFGBV and working with victim-survivors to support them.

Canada has developed and amended laws addressing intimate partner violence and sexual violence in Canada to better respond to these crimes against women and girls. Notwithstanding the barriers and flaws of the regime, there is an urgent need for a similar response and recourse for the online violence and harassment against women.¹¹⁵ This requires a focus on creating a “gender-just online” space, where equality rights are prioritized and enforced.¹¹⁶

Criminal law has begun to respond to TFGBV, mostly in the context of the non-consensual distribution of intimate images and voyeurism offences through ss. 162.1 and 162 (1), respectively, of the Criminal

¹¹³ For example, in 2014, the government of Canada responded to growing concerns of cyberbullying by passing Bill C-13, *Protecting Canadians from Online Crime Act*, 2014, which amended the *Criminal Code*, introducing s 162.1. In particular, this new offence was enacted in response to concerns arising out of the high profile cases of Rehtaeh Parsons and Amanda Todd, both of whom were subjected to extreme bullying following the filming and distribution of their sexual assaults/sexual images. Sadly, both teens committed suicide.

¹¹⁴ McGlynn and Rackley at 544.

¹¹⁵ Elizabeth Farries, "Review of: Danielle Keats Citron, *Hate crimes in cyberspace*" (2017) 27:4 *Feminism & Psychology* 571 at 573.

¹¹⁶ West at 28.

Code of Canada.¹¹⁷ These laws are still relatively new and also rely heavily on effective law enforcement. In addition to the development of more robust and all-encompassing criminal laws to address the harms of TFGBV, many suggest a civil remedies as another response to TFGBV. While not a stand-alone solution, civil remedies would be able to place accountability on secondary distributors of non-consensual intimate images as well as on the hosting sites, thereby focussing “on the defendant’s violation of the claimant’s statutory right and/or harm suffered, rather than on their motivation, or the victim-survivor’s reaction to it”.¹¹⁸ The threshold for criminal liability is very high, making it an inaccessible solution for many of the scenarios explored in this paper. Civil remedies would also provide an alternative option for women who do not wish to report incidents to police.¹¹⁹ This could be especially helpful for women experiencing intersectional discrimination who often distrust law enforcement. Civil remedies, however, would not be meaningful without addressing access to justice for women in order to ensure economically vulnerable women have the same access to these potential solutions.

In response to issues of safety and security in the context of technology, governments often hold policy discussions focusing on communication management and lose sight of the women who are experiencing the abuse. The policy decisions that result are predominantly made by men and may lead to a “re-sexualization of the violation for heterosexual male consumption”.¹²⁰ This is often seen in how media reports on sexual violence with images of women being displayed, using their bodies to tell a story rather than focusing on the perpetrator. The security and privacy of women are critical components when developing legislation in this area and should be distinguished from the discussions that governments have concerning freedom of expression and censorship. As Jac SM Kee notes, this risks women’s experiences being “appropriated to further narrow the spaces for civil

¹¹⁷ Other potential provisions in the Criminal Code that could apply usually require the presence of additional conduct (such as surreptitious recording, stalking, publicizing images in media, using the images as a way to get money or force the victim-survivor to do something, etc.) which may not be present in most cases involving the non-consensual distribution of intimate images. In certain circumstances, section 162 (voyeurism), section 163 (obscene publication), section 264 (criminal harassment), section 346 (extortion), and sections 298-300 (defamatory libel) may apply.

¹¹⁸ McGlynn and Rackley at 560.

¹¹⁹ *Ibid.*

¹²⁰ Jac sm Kee at 21.

liberties under the paternalistic rhetoric of protection.”¹²¹ Women should be fully involved in the development of responses to TFGBV and participate in all stages of planning strategies.

5 | Conclusion

The tech world is an extension of the physical world. The good and the bad transpire online just as they do in ‘reality’. The difference lies in the fact that technology is evolving at a rapid pace. Lawmakers have not kept up with this speed of development thus the tech world still remains largely unregulated. This results in very little recourse for victim-survivors and a lack of accountability for perpetrators.

It is alarming and disheartening to see that misogyny, the innate prejudice against women, still exists in this world to the degree that it does. The harms caused to women, girls and gender-diverse individuals through the use of technology run deep. The social response to these harms yet again perpetuates male hegemonic values and unduly shames women and girls. This is, sadly, not at all new. Women have always been silenced in an effort to maintain patriarchal values. Women with marginalized social identities of race, class, sexual orientation and disability were and are shamed and isolated even more. For example, the [Scold's Bridle](#) of the 16th and 17th centuries, an iron mask, was used to silence and punish female prisoners who questioned authority. Although shocking to look at images of this tool of torture, it is a new form of silencing and torture that we now see play out in the cyber world.¹²²

Collaboration is necessary to address the issue of TFGBV. Victim-survivors, technology companies, governments, gender equality and women's rights organizations and law enforcement must work together to develop innovative and adaptive responses. Those with lived experiences of TFGBV and the organizations that serve them should be leading the efforts of law reform, as they are the experts. While this is an ideal to continue to push forward, the challenges in achieving this cannot be understated. Tech companies have significantly more resources and the profit and progress agenda of the internet propels this inequality forward even more. Additional resources, therefore, need to be allocated to non-corporate groups in order to attempt to level the playing field where collaborative discussions, and research, are taking place.

¹²¹ Jac sm Kee at 22.

¹²² James Hoare, “The Scold's Bridle – A Cruel Punishment to Keep Women Quiet” (2019), online: Vintage News <<https://www.thevintagenews.com/2019/01/15/scolds-bridle-16th-century/>>.

The hope lies in the fact that women's strength always shines through in times of despair. The uprising of Black Lives Matter and Miski Noor's efforts to call attention to internet providers' responsibilities,¹²³ the #metoo movement and women like Gina Martin in the UK, Christine Blasey Ford, and so many others, are inspirational reminders of the strength of women and the power in mobilizing together. Technology, then, can also be harnessed to help women's causes and the advancement of their rights.

¹²³ Miski Noor, "Miski Noor: Violence Against Women Online" (2018), online: Amnesty International <<https://www.amnesty.org/en/latest/research/2018/03/miski-noor-online-violence-against-women/>>.

Appendix A - Terminology Used

Term	Reasoning and Explanation
Cyber-aggression	The use of newer forms of technology used by an individual or group to repeatedly harass someone with the intention of causing harm to others.
Manhood Acts/Men	Male dominance and aggressive behaviour towards women and the ways in which women are targeted and attacked online reveal these attacks as gender driven violence. These acts are referred to as “virtual manhood acts”, which are used to dominate and suppress women. Those who perpetrate such acts are performing male-centred acts, regardless of their cis gender. For this reason, the perpetrators are referred to as men within this paper.
Technology and Cyber World	These terms cover the internet, communication technologies including phones and their applications, cameras, and smart technology in the home such as thermostats and automatic locks.
Technology-Facilitated Gender-Based Violence (TFGBV)	TFGBV encompasses all forms of violence including sex crimes. The focus must be on the experience of the victims and survivors who experience this gendered abuse. Terms used to describe technological violence against women vary among authors. For the purposes of this paper, the term Technology Facilitated Gender-Violence (TFGBV) will be used. Most feminist scholars agree that the terms used to describe the forms of violence in online spaces are limiting in scope and often minimizing of the severity of those violations.
Trolls	A person who posts aggressive or inflammatory comments in an online community in an effort to start fights, inflict harm and create havoc, detracting from the actual content. It encompasses people who harass online.
Victim-Survivor	This term represents the varying ways in which those who experience harassment and abuse may choose to identify, acknowledging that there may be other terms they prefer to these.
Women, Girls and gender diverse individuals	For the purposes and scope of this paper, the terms used to describe those impacted are ‘women’ and ‘girls’. This includes all those who identify as women or girls. Gender diverse individuals are also included in the discussion as they are heavily targeted online with abuse and threats.