

# Young people about cyberflashing & possession of nude images without consent

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Report commissioned by the Institute for the Equality of Women and Men and the Belgian Secretary of State for Gender Equality, Equal Opportunities and Diversity on young people's attitudes towards the non-consensual sending and possession of sexually explicit images without consent

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## Summary of the research

Online sexual violence is a rising phenomenon among young people. This study focuses on two forms of online sexual violence among young people between the ages of 15 and 25, namely sending sexually explicit content without consent (e.g. dick pics) and possessing sexually explicit content (e.g. nude images) without the consent of the person depicted on them.

The study finds that a large proportion of young people have already received sexually explicit content. **One in two girls have already received a photo of male genitalia ('dick pics')**, most of which occurred without being asked. In particular, younger respondents, female respondents and respondents of a non-heterosexual orientation reported having received an unsolicited dick pic before. More than half of the female respondents said they received these unsolicited images from strangers and outside the context of a romantic or sexual relationship.

Senders report sending these images primarily to arouse the other party, to flirt, in hopes of getting an image back themselves or for their own sexual arousal. A significant group also report sending these images to bully or intimidate the recipient. Recipients of unwanted images mainly feel feelings of shame, anger and rage.

Compared to sending, far fewer young people report being aware that their nude images are in someone else's possession. **12% of respondents indicated that others have their sexually explicit images in their possession without their consent.** Moreover, 12% of respondents also indicated that they did not know anyone else was in possession of their sexually explicit images. In doing so, slightly more boys relative to girls reported that their images were in someone else's possession.

From comparison with other studies, the research deduces that young people have limited idea or desire to report on the possession of their nude images by others, which may be explained by stigma. Non-consensual possession is mainly due to a refusal to remove images obtained with consent (e.g. at the end of a relationship) and by screenshots and downloads of images without consent.

**Young people find both non-consensual sending and possession of sexually explicit content harmful, and the vast majority believe it should be punishable.** More young people say they think possession without consent should be punishable than sending sexually explicit content without consent. They cannot properly assess which situations of possession and sending are already punishable today.

Young people believe these forms of online sexual violence should primarily be addressed through a mandatory online sexual violence course, mediation and compensation. Only a limited group believes that non-consensual possession and sending should be punishable by imprisonment.

The study arrives at a number of recommendations:

- 1) Develop rules of conduct for online sexual interaction and invest in communication campaigns creating awareness
- 2) Enhance young people's digital media literacy, whereby consent is the starting point for online sexual interaction
- 3) Develop a course for perpetrators of online sexual violence addressing online sexual interaction, setting appropriate boundaries and recognising those boundaries
- 4) Provide a comprehensive legal framework for addressing non-consensual sending and possession of sexually explicit content
- 5) Encourage further research on online sexual violence to better understand its prevalence, impact and underlying reasons

## **An introduction to online sexual violence**

**Online sexual violence is a rising phenomenon.** Whether it is the distribution of child sexual abuse material and online grooming of minors, the distribution of nude images without consent or online extortion to gain sexual images or acts in return, research shows that there is a persistent upward trend in these types of phenomena. International research shows that online sexual violence occurs among all age groups. This means it is not only young people who become victims of online sexual violence. However, it is mainly the younger groups that are most affected (Gamez-Gaudix et al., 2015). In addition, women and LGBTQIA+ are particularly vulnerable to this form of online violence.

Online sexual violence among young people is a harmful by-product of the rise of social media and smartphone use. This led to a visual culture among minors. Every moment is captured in images and shared online, including those of sexual activity. This digitalisation plays a role in young people's sexual development. Online experimentation and communication with sexual images is today perceived as a full part of overall sexual development and discovery. The Covid-19 epidemic accelerated this evolution. This was because the Internet and especially social media were often the only way to contact and discover the outside world.

When someone forwards such a photo to someone else, we call it sexting. This can fit perfectly within healthy sexual development, discovery or an intimate relationship (Van Ouytsel et al., 2022). While social media and other digital applications often play a harmless role in sexual development and relationships, they are also associated with abuse. Sexual content is regularly stored, forwarded and shared without the consent of the person depicted. Moreover, young people also regularly receive sexually explicit imagery they have not asked for, such as dick pics. Due to the remoteness and anonymity of the Internet, young people underestimate the risk of online behaviour and its impact.

This report focuses on two forms of online sexual image abuse among young people between the ages of 15 and 25, namely **the non-consensual sending of sexually explicit content** (cyberflashing) and **the non-consensual possession of sexually explicit content**.

This report examines how common these forms of sexual violence are among 15-to-25-year-olds in Belgium, how youngsters perceive it and whether they think it should be punishable. These findings are framed within existing international research on online sexual violence and the legal framework. For this purpose, 1,819 Belgian young people were surveyed.

# 1. The research

## 1.1. Assignment and objectives

At the request of the Secretary of State for Gender Equality, Equal Opportunities and Diversity, Ms. Sarah Schlitz, the Institute for the Equality of Women and Men funded a research brief into young people's attitudes regarding the non-consensual possession of sexually explicit content and the non-consensual sending of sexually explicit content (IGVM/LS/KVD/CONV.2022-25).

The aim of the study is to fill a gap in literature and research on the non-consensual sending and non-consensual possession of sexually explicit content, with figures and analysis on these phenomena among young people in Belgium. The results are broken down by gender and sexual orientation of the respondents and are also represented by gender and sexual orientation distribution. The research was built upon previously conducted and ongoing research on online sexual violence.

- The **4 objectives** of this assignment are listed below:



Gain insight into how often young people receive unwanted images with sexual content and how often there is possession of explicitly sexual content without consent amongst young people



Explore the role of age, gender and sexual orientation on perpetration and victimisation



Supplement & analyse the figures against the background of existing literature



Identify young people's perspectives on criminalisation and punishment of online sexual violence, supplemented by the national, foreign and European framework

The research is being conducted by the University of Antwerp, specifically by the research team led by Prof. Dr. Catherine Van de Heyning (faculty of law, research group Government & Law) and Prof. Dr. Michel Walrave (faculty of social sciences, department of communication studies, research group MIOS), with Amber Van de Maele, doctoral researcher Aurélie Gilen and Dr. Mona Giacometti. This research builds upon a broader study of online violence, namely the @ntidote research, within the framework of the Brain 2.0 projects funded by the Belgian Science Policy Office. The research team collaborated with the research agency Profacts for the online survey of young people.

An interim report containing the literature review and legal analysis was delivered in December 2022. The completed final report was delivered on 31 January 2023, and after revision on 3 February 2023.

## 1.2. Implementation of the study

The study relied primarily on the existing scientific literature on non-consensual sending and possession of sexually explicit images. On this basis, a survey was prepared in which young people between the ages of 15 and 25 were asked about their experience with non-consensual sending

and/or non-consensual possession of sexually explicit images. In particular, the survey looked at possible differences based on three indicators, namely gender (including gender identity), age and sexual orientation. Significant differences were sought at a 95% confidence interval. Additionally, their online/offline romantic and sexual interactions were also examined. The results from the survey were always framed within the existing research.

In addition, scenarios were developed to gauge how young people react to situations. Working with fictional stories where sexually explicit content was sent or possessed without consent, this part of the study digs deeper into young people's assessment of these situations. In these scenarios, one factor was modified each time in order to check the importance of certain factors. The different scenarios were reacted to by equally representative groups (N= 165).

In preparation for the survey, the language young people use and the situations they encounter were investigated. This ensured that the survey scenarios and questions were sufficiently close to their lifestyles. This was put in place based on an analysis of incoming inquiries about the non-consensual sending and possession of sexually explicit content at youth helpline Awel and a survey from Child Focus. This use of language was explained in the survey through a brief definition.

Finally, the current legal framework was also analysed to see how the phenomena could already be punished today and compared with young people's perception of this. This was complemented by some alternative examples of approaches abroad.

### 1.3. The population

The survey had a total sample of **1,819 respondents** between the ages of 15 and 25. The sample's representation was similar and representative based on age, with representation from both minors and adults.

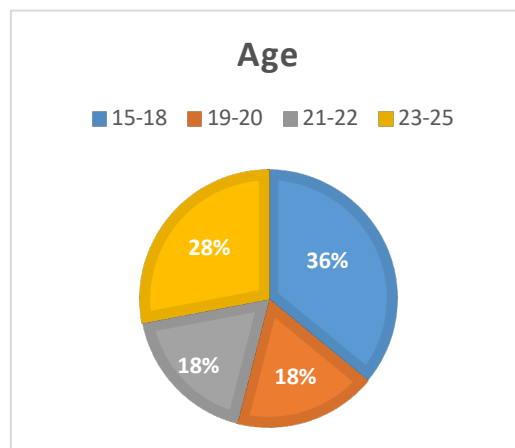


Chart 1: age distribution of respondents

Because the views of Belgian young people were being probed, a good distribution between the different language groups was also sought, with the survey being conducted in both Dutch and French along with consistency checks. This led to a distribution of respondents across Flanders, Brussels and Wallonia.

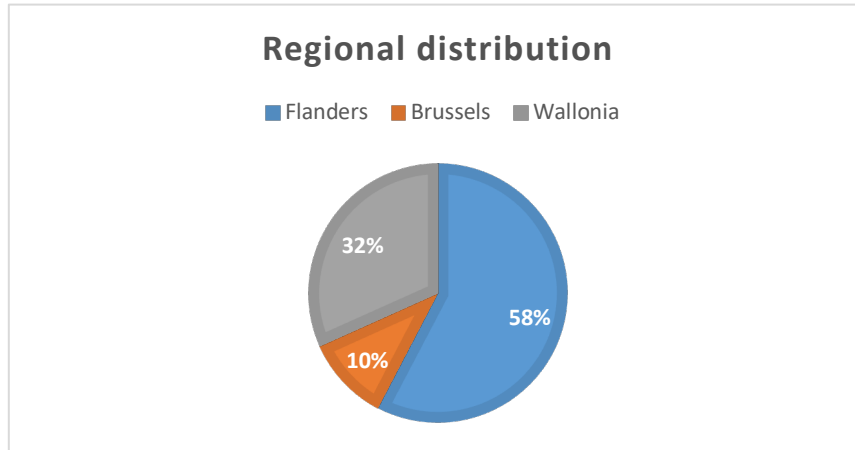


Chart 2: Age distribution of respondents

The distribution of respondents according to gender, age and sexual orientation was representative of the Belgian population. This means an equal distribution for male and female respondents with a more limited representation of other gender identities.

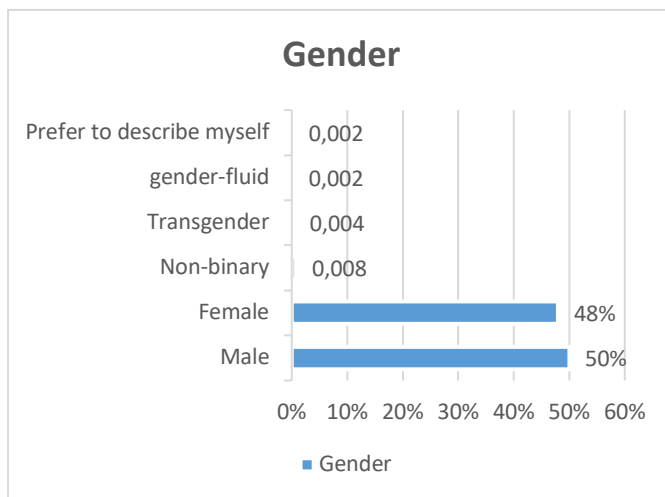


Chart 3: Gender distribution of respondent

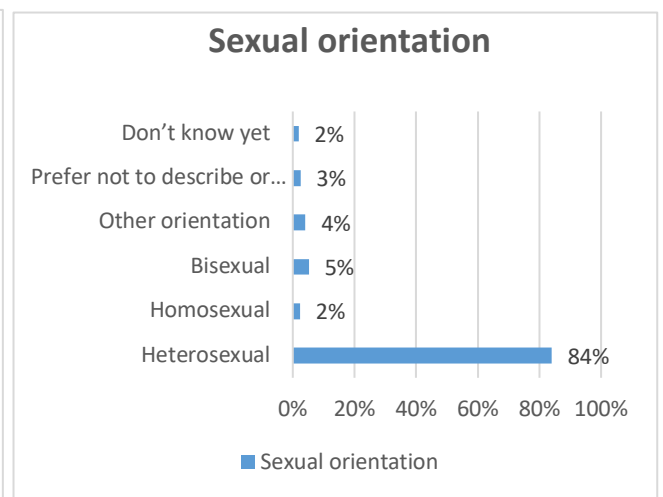


Chart 4: Sexual orientation distribution of respondents



## 2. The non-consensual sending of sexually explicit content

### 2.1. Definition of the problem

In the first instance, this report discusses the **non-consensual sending of sexually explicit content**. This is the sending of self-created explicit sexual images or audio recordings via digital technologies (e.g. via text messages, instant social media, AirDrop or Bluetooth) to unsuspecting or non-consenting recipients (Harper et al., 2019). The non-consensual sending of sexually explicit content is a form of sexting, albeit without the recipient's consent. Therefore, unlike consensual sexting, it is considered a form of sexual harassment (Ringrose et al., 2021b). At the Council of Europe level, the non-consensual sending of sexually explicit images had already been included as a form of gender-related violence.<sup>1</sup> The first recommendation in the Istanbul Convention explicitly mentioned the non-consensual sending of sexually explicit images as a form of cyberbullying.

*Example: A well-known Flemish sexologist, Lotte Vanwezemael, filed a complaint with the police against 50 men for sending photos of male genitalia via social media. She reported receiving a steady stream of both such photos and sexual comments through her social media. She described her feelings upon filing the complaint as "despondency that this problem will unfortunately continue as long as no action is taken here."<sup>2</sup>*

This is usually referred to in the media as 'dick pics' because images of male genitalia are sent in most cases (Freeman, 2020). In turn, the academic literature mainly refers to cyberflashing (McGlynn & Johnson, 2021), which is not limited to the sending of male genitalia. According to McGlynn and Johnson (2021), the phenomenon is usually described as 'unwanted dick pics' because the word dick pic has a lighter connotation, making it sound funny and innocent. This vocabulary is therefore not accurate, cyberflashing being a better name, given the connection between the technological nature of the phenomenon (cyber) and the sexual exposure (flashing). This term also has its limitations, however, because the word 'flashing' minimises the nature and harm of the sexual exposure and is inconsistent with victims' experiences. It suggests that this is only a momentary experience – merely a flash – whereas in contrast, many victims actually testify about prolonged personal confrontations. In addition, precisely because the perpetrator has captured the image digitally, cyberflashing is more fixated and tangible (McGlynn & Johnson, 2021).

For the purpose of the survey among youngsters, the terminology of 'dick pic' was adopted, notwithstanding the valid concerns for using this terminology. However, preliminary research showed that the vast majority of non-consensually received images depicted male genitalia and youngsters predominantly used this terminology when addressing the non-consensual sending of sexually explicit content.

Why are young people encountering this? The literature identifies several causes. The non-consensual sending of sexually explicit images is often socially normalised with the assumption that boys just do

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<sup>1</sup> GREVIO General recommendation no. 1 on the digital dimension of violence against women, adopted on 20 October 2021, available at: [www.coe.int/en/web/istanbul-convention/-/grevio-publishes-its-general-recommendation-no-1](http://www.coe.int/en/web/istanbul-convention/-/grevio-publishes-its-general-recommendation-no-1).

<sup>2</sup> "Investigation into case of Lotte Vanwezemael's dick pics still ongoing, prosecutor says," GVA 23 March 2022, [https://www.gva.be/cnt/dmf20220323\\_96487962](https://www.gva.be/cnt/dmf20220323_96487962).

this, or it is justified because boys 'just mess around' (Hunehäll Berndtsson et al., 2021). Dick pics also become normalised as signs of desirability and popularity for girls (Ringrose et al., 2021b). Canadian research by Ricciardelli and Adorjan (2018) found that it was so common for girls to receive unwanted dick pics that they joked about it. This is another form of normalisation of the non-consensual sending of sexually explicit images.

These observations frame a broader issue of sexual double standards in sexting, resulting in different 'rules' being accepted for boys and girls. For boys, sharing and appraising images they have received from girls can give them status in the male peer group (Hunehäll Berndtsson et al., 2021). In contrast, because of sexual double standards, girls are unable to use dick pics for status in the same way that boys can use nude photos of girls. This is because girls may feel humiliated if they receive dick pics (Ringrose et al., 2021b). Girls are also more at risk than boys of being stigmatised for their sexting behaviour and are often subjected to *slut-shaming* and moral judgements. In contrast, when boys engage in sexting, they are often admired by other boys and this is construed as a normalised form of masculinity (Hunehäll Berndtsson et al., 2021).

A disturbing variant of the non-consensual sending of sexually explicit images uses Bluetooth or Apple AirDrop technology to harass women in crowded public places with anonymously sent sexually explicit images (Freeman, 2020). Victims' testimonies show that women often experience the non-consensual sending of sexually explicit images in physical public places; in supermarkets, libraries, restaurants, museums, university campuses, airports and on public transport. This form of non-consensual sending of sexually explicit images is therefore very similar to physical 'flashing' or exhibitionism, where an unknown man bares his genitals in public and displays them to others nearby (McGlynn & Johnson, 2021).

Here, for example, the perpetrator might send a dick pic to all phones in range but may also send a more targeted dick pic to a specific victim nearby. In such circumstance, the other bystanders also play a role, whereby a victim may be surrounded by a great many people and thus cannot identify the perpetrator, which could make the victim feel very intimidated (McGlynn & Johnson, 2021).

When men send unsolicited dick pics, there is inherently no consent for receiving them, nor do the recipients have any control over whether or when they receive them. In essence, this form of sexual harassment indicates to women a lack of a right to privacy or control over their own exposure to nude images, because they have no control over the sending and receiving of these images. Regardless of the intent of the sender, sending unsolicited dick pics is undoubtedly an exercise of power (Marcotte et al., 2020).

The question arises as to why the non-consensual sending of sexually explicit images is not taken as seriously as exhibitionism and sexual stalking in the offline world, given that the latter generally is punishable (Ringrose et al., 2021b). This indicates a digital empathy gap, whereby young people (but often adults as well) do not regard abuse of digital images in the same way as physical abuse. Moreover, it also appears that not all victims view the unwanted images as equally harmful. Reoffending certainly plays an important role. Some victims who receive not one but multiple unwanted images may perceive this as a bigger problem, while others 'just get used to it' as a result (Ringrose et al., 2021b).

## 2.2. How – who – where? Prevalence of the sending and receiving of sexually explicit images

### ➤ Who receives sexually explicit images and how often?

The survey shows that young people receive sexually explicit content online very regularly. These are mostly dick pics, namely images of a penis. The survey revealed that 37% of the total respondents (N=1,819) had received a dick pic before. **This rate is significantly (BI 95%) higher among women.** More than half, 51% of women (N= 955), reported having received a dick pic before. In addition, 34% of the respondents who received a dick pic were between the ages of 15 and 20 (N= 887).

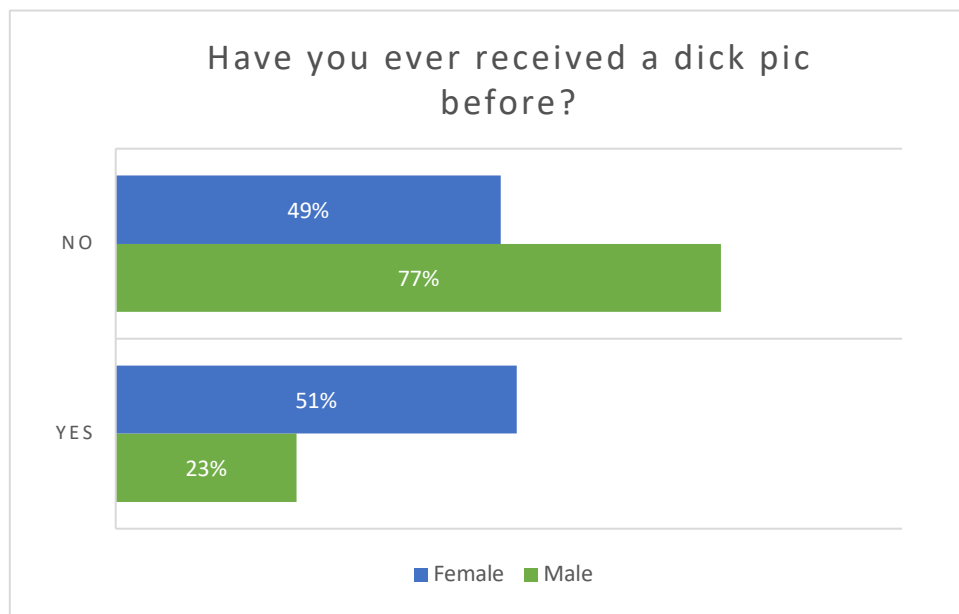


Chart 6: responses to having received dick pics before

It is **mainly the younger category of respondents** who regularly receive a dick pic. Across the population as a whole, 14% said they had received a dick pic often and 8% very often. The 15-20 category reported significantly (BI 95%) higher on 'often receiving dick pics' at 17% (n=313), compared to the 21-25 category at 11% (n= 384). Not only age and gender, but **also sexual orientation is a determining factor**. Respondents who identify by sexual orientation as bisexual, gay or lesbian and pansexual are significantly (BI 95%) more likely to have received dick pics than heterosexuals.

In a second step, they were enquired as to the undesirability of these images of sexually explicit content. More than half (N = 730) indicated that they had never asked for a dick pic before. Only a small group of respondents reported asking for such images regularly or often. Again, there is a significant (BI 95%) difference here based on gender and age.

Male respondents were more likely than females to indicate that they had requested such an image before. Younger respondents were also less likely to indicate that they had asked for dick pics before.

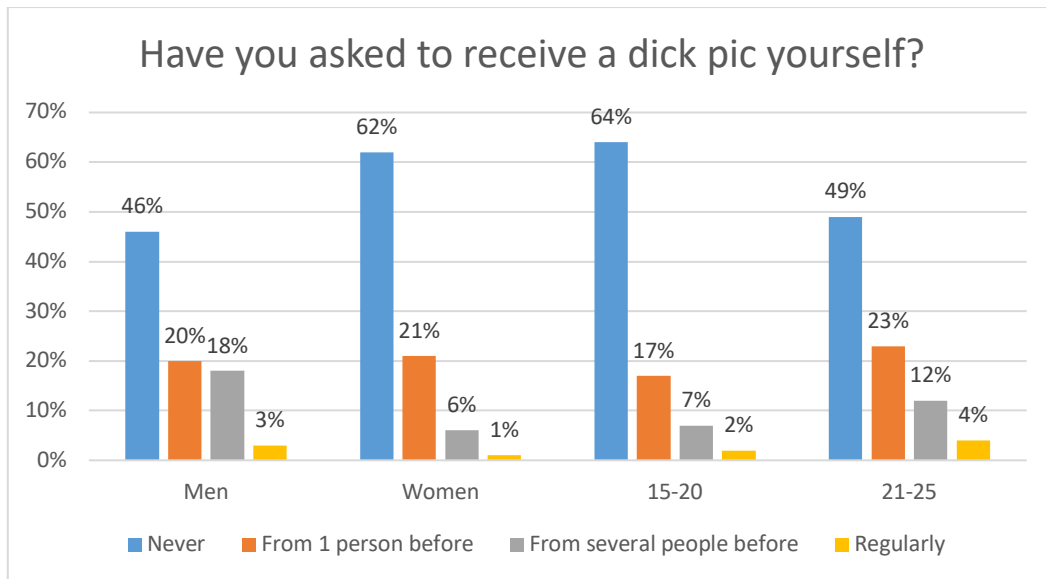


Chart 7: responses to asking to receive dick pics before

The combination of receiving such images on the one hand and requesting those images tells us that the vast majority of the photos received were not requested and were thus without prior consent. 37% of the total number of respondents said they received a dick pic before, but only 17% of the total number of respondents said they had ever asked for one. This therefore means that **as many as 20% of our respondents had received an unsolicited dick pic**. These survey results thereby show that **young women are noticeably more likely to receive unsolicited dick pics**.

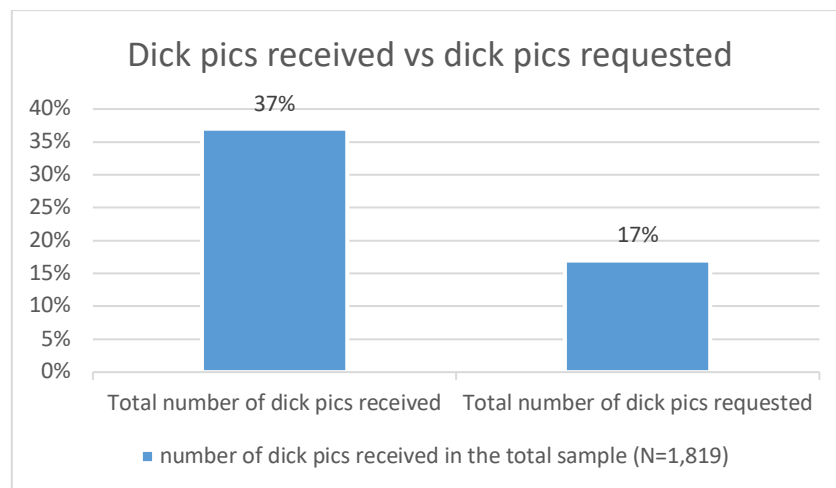


Chart 8: comparison of number of dick pics received and requested

In addition to women, LGBTQIA+ populations regularly face the non-consensual sending of sexually explicit images.

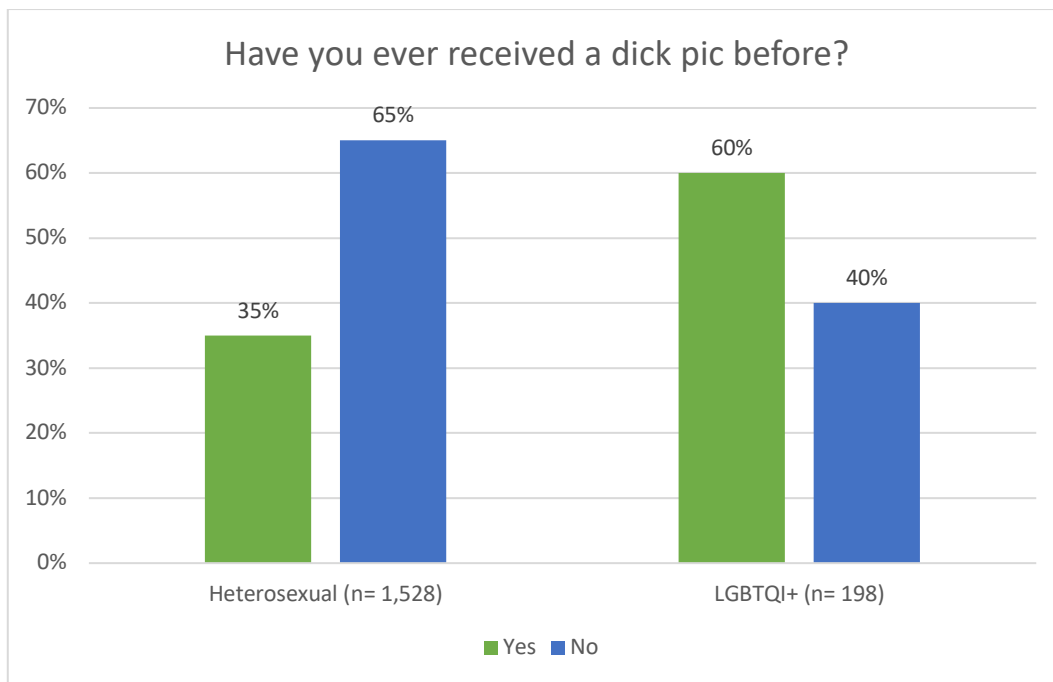


Chart 9: distribution of responses to receiving dick pics based on sexual orientation

The figures show that young people very often receive images with sexual content and that these are predominantly unwanted. Younger and female respondents are particularly affected. Thus, gender is an important component in this phenomenon. The non-consensual sending of sexually explicit images is therefore a highly gender-related form of online violence.

These figures are consistent with international research. A literature review by McGlynn & Johnson (2021) found that about half of women had received an unwanted dick pic before. These studies also found that younger respondents and women were more likely to receive these types of images without requesting them. This shows that the non-consensual sending of sexually explicit images is a common online problem, with women – and young women in particular – being disproportionately victimised and reporting the most negative consequences.

Moreover, the study shows that LGBTQIA+ respondents are also more likely to face receiving unsolicited sexual images. Again, this is consistent with results in previous studies. In a study by Marcotte et al. (2020), non-heterosexual men were the non-consensual recipients of sexually explicit images about as often as women.

#### ➤ **The impact of receiving unwelcome sexually explicit content**

The respondents who indicated that they had received an unsolicited dick pic were then surveyed about its impact. The Cybervictimisation Emotional Impact Scale (CVEIS) was used for this purpose, based on similar research by Durán & Rodríguez-Domínguez (2022), who also used this scale to assess the emotional impact on women of receiving an unsolicited dick pic. They used two sub-scales of the CVEIS to measure consequences such as depressed feelings, as well as the level of annoyance. Respondents could answer this impact scale using a Likert scale (5 point scale ranging from 1=not at all, 2=a little, 3=moderately, 4=a lot and 5=very much).

This shows that respondents most often indicated 'embarrassed', 'angry' and 'furious' as their response to receiving unwelcome sexual content. For each of these scales, more than 30% (n= 729) of the respondents indicated the score 'a lot' or 'very much.' 'Nervous', 'scared', 'helpless' and 'irritable' also followed shortly after. The scales 'lonely' and 'guilty' were scored highly by far fewer respondents.

When the socio-demographic aspects of the respondents are analysed along with this, it appears that male victims nevertheless experience a different impact than female victims. Indeed, the 'guilty' and 'lonely' scales were scored significantly higher by male respondents. Male victims thus feel more guilty and lonely after receiving an unsolicited dick pic than female victims. In contrast, female respondents scored significantly higher on the 'angry' and 'furious' scales. It therefore seems that the non-consensual sending of sexually explicit images is **especially vexing** for victims, especially female victims.

➤ **Who sends sexually explicit images?**

In addition to prevalence, the study also addressed who sends sexually explicit images. This involved two pathways. First, recipients of these images were asked from whom they had received them. This also looked at differences in gender and age. A high number of both female and male respondents report having received **these dick pics from people they did not know**.

Almost half of the young people who had received a dick pic before (n= 730) indicated that they had already received such an image from a stranger. In addition, for both men and women, these images regularly came from individuals they knew from social media, but not in the physical world. Therefore, in the majority of cases, the sender of an unsolicited dick pic is someone young people do not know or at least do not physically know.

**In addition, female respondents receive these images significantly more often from people they do not know** than male respondents. Meanwhile, male respondents are more likely to identify the sender in the physical world, including a teacher, a trainer at the sports club, a family member, a boss and a colleague at work. Moreover, female respondents are more likely than male respondents to receive such images from their partner or from someone they have met through social media, but not physically.

In addition, 10% of the total number of respondents indicated that the sender of the unwelcome dick pic was (more than) 3 years older than themselves. Notably, this is far more common among women, with 15% of female respondents (n=955) indicating that they had received a dick pic from someone (more than) 3 years older, while only 5% of male respondents (n=833) indicated this.

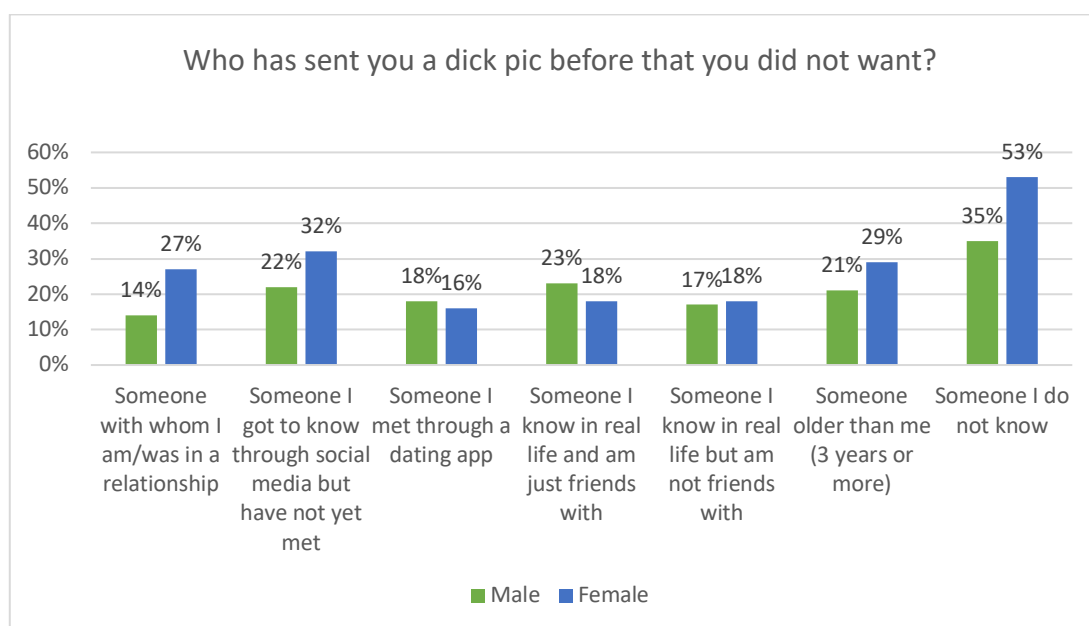


Chart 10: Responses about who sent dick pics

Secondly, male respondents were asked **whether they themselves had sent a dick pic before**. To this, 27% (n= 608) responded positively, of which the vast majority of senders were adults. Yet 11% of the male respondents who had sent a dick pic before were underage. Nearly **14% of respondents reported having sent a dick pic without talking to the recipient about it beforehand**. This was mainly in the context of a relationship or online (dating) contacts. Some 23% of those who had sent a dick pic before reported having sent it to strangers.

➤ **Why do young people send sexually explicit images?**

The survey also polled senders of dick pics (n= 180) about why they sent such images. This was built upon the motivations for sending, already recorded in previous literature based on qualitative research. These various motives were tested among respondents. This shows that these cited reasons are also echoed by survey respondents. Sexual interaction and arousal appear to be common reasons.

Thus, the main reasons for sending these images are to arouse the recipient and to be a way of flirting. In addition, the images are often sent for their own sexual arousal or in the hope of getting nude photos back. Nearly 15% of respondents (n= 180) sent these images because they thought it was funny. A significant (BI= 95%) proportion of respondents had a malicious intent for sending the images: 23% reported having sent such images before with the motivation of bullying or intimidating the recipient.

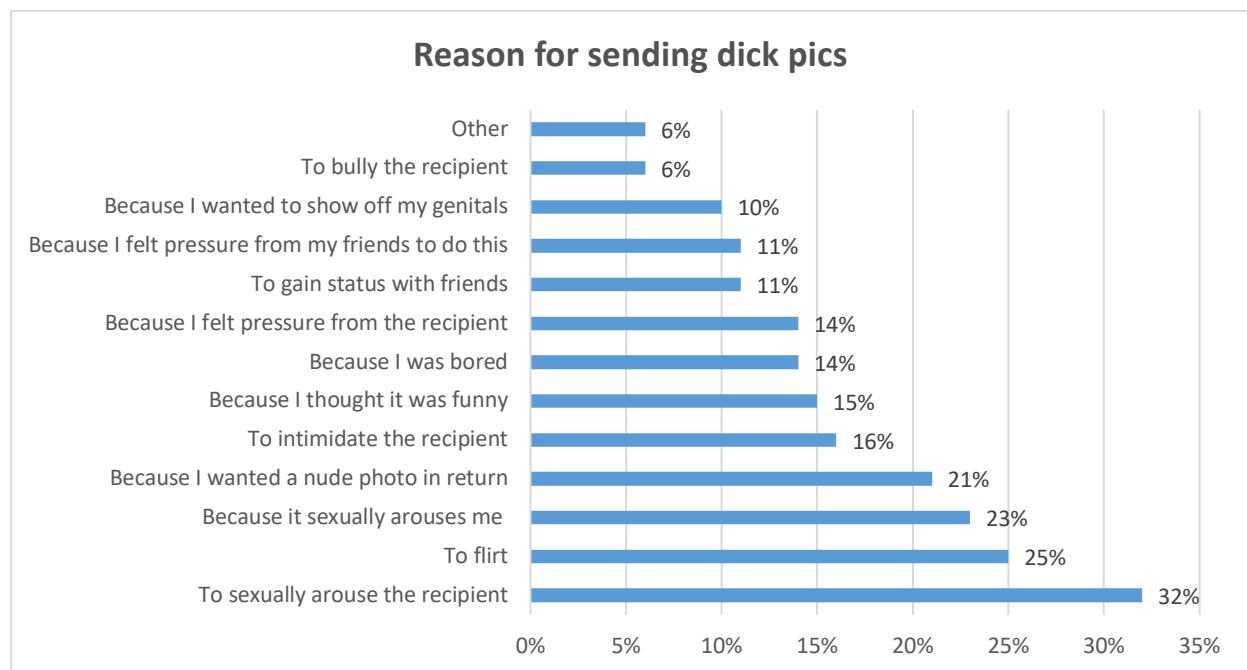


Chart 11: why dick pics are sent

These determinations resonate with previous research where sexually explicit images are sent for a multitude of motives. In these studies, the most common reasons for sending were hoping to get nude images back, sexually arousing the recipient, showing off the genitals, complimenting and flirting. However, misogyny, power and control also frequently recurred as motives for sending dick pics (Ringrose et al., 2021b). Humour was also indicated as a motive, with men sending pictures of their own genitals to their friends (both male and female) as a joke (Burket, 2015).

## 2.3. Punishing the non-consensual sending of nude images

### ➤ Current legal framework: punishable or not?

There is debate about the current legal framework applicable to the non-consensual sending of sexually explicit images. Specifically, three provisions qualify under the Belgian Criminal Code for application to the behaviour of non-consensual sending of sexually explicit images, depending on the practical context and the victim.

**To the extent that the victim is a minor**, forwarding images of genitalia to minors constitutes the crime of *inciting juvenile lewdness*. Article 417/25 of the Belgian Penal Code provides for the crime of juvenile corruption inasmuch as it involves approaching a minor for the purpose of inducing, favouring or facilitating juvenile lewdness. This will be met by sending photos of genitalia to a minor. Unlike the previous wording of the crime, it is no longer a requirement that the minor was approached to satisfy sexual urges, so sending dick pics to a minor to shock them or for humour will also fall under this incrimination.

**Insofar as the victim is of age**, forwarding images of genitalia without the victim's request or consent may constitute the crime of stalking, pursuant to Article 442bis of the Penal Code, or the crime of cyber-stalking, pursuant to Article 145 § 3bis of the Electronic Communications Act. The following requirements apply to these applications:

#### - *Stalking*

In this case, there must be a serious disturbance of the victim's peace of mind, which can easily be demonstrated if images of genitalia are sent without the recipient's request or consent. In its current form, the article will only apply sporadically in that it must also be a repeated stalking action, which is required to be the case. The recipient's 'peace of mind' can be seriously disturbed by receiving a single photo or by receiving many photos by different people. In that case, however, the current definition of the crime of stalking brings no relief.

#### - *Electronic stalking*

Electronic stalking occurs when a means of telecommunication is misused to cause damage or harm to a correspondent. Here too, the incrimination will not cover all cases of non-consensual sending of sexually explicit images, since research shows that, in many cases, these images are sent for other reasons such as sexual gratification, to flirt, hoping for other images in response, or even humour.

In summary, whereas the non-consensual sending of sexually explicit images is in most cases punishable when the victim is a minor, the specific motives of the perpetrator determines the criminal liability when the victim is an adult. To the extent that the sender sends a single image and indicates that there were reasons for sending images other than to harm or prejudice, the act is not viewed as criminal.

### ➤ Young people's views on the non-consensual sending of sexually explicit content

To gauge how adolescents rated situations of non-consensual sending of sexually explicit content, they were presented with some short stories (scenarios). These included a variation based on whether the recipient knew the person who sent the images. In the study, the respondents were presented with the following scenarios:



- **Scenario 1:** Non-consensual sending where perpetrator and victim knew each other beforehand

A boy of 15 and a girl of 15 attend the same high school. They follow each other on Instagram and often like each other's posts, and have already flirted with each other a bit at school. After the girl posts a new photo of herself on Instagram, she receives a photo from the boy in her DMs. Because she knows the boy, she immediately opens the photo and is shown a dick pic. The girl was not expecting this photo at all and had not asked for it.

- **Scenario 2:** Non-consensual sending where perpetrator and victim do not know each other at all

A girl of 16 has an Instagram account with 800 followers. She often posts sexy photos when she has bought some new clothes. Suddenly, she gets a message from Michael, someone who follows her but whom she does not know. She opens the message and it is a dick pic.

The respondents were asked about their attitudes towards the criminalisation of the above behaviours after getting these scenarios. First, they were asked **whether they thought the behaviour in the scenario was currently punishable** under Belgian criminal law. In both scenarios, the majority were convinced that the behaviour was punishable. The respondents were most convinced of this when a stranger sent an image as in scenario 2. In particular, respondents between the ages of 21 and 25 thought that sending the images was punishable in both scenarios. In scenario 2, no significant (BI 95%) differences between the categories were found.

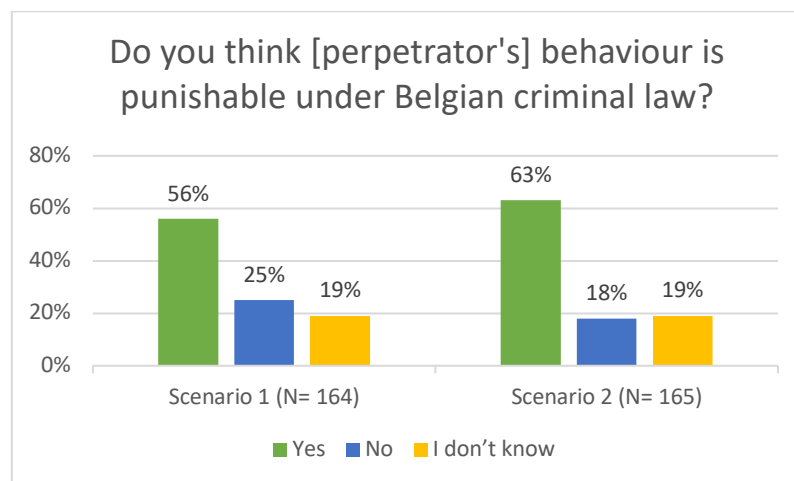


Chart 12: response to current punishability of behaviours in scenarios 1 and 2

The question was then asked as to whether they also **thought it should be punishable** under Belgian criminal law. The majority of respondents believed this should be punishable in both scenarios. In the second scenario where the perpetrator is a stranger, more respondents answered that this should be punishable (79%) than in the first scenario where the recipient knows the sender in the physical world (68%). It is notable that there were more respondents who thought it should not be punishable than respondents who thought it was not punishable today. That is, in the event of non-consensual sending

of sexually explicit images, some proportion believed that it should not be punishable, even if they thought it was. This was most pronounced in scenario 1 where receiver and sender know each other in real life. Here, 25% answered that they thought it was not punishable, while 32% answered that they thought it should not be punishable.

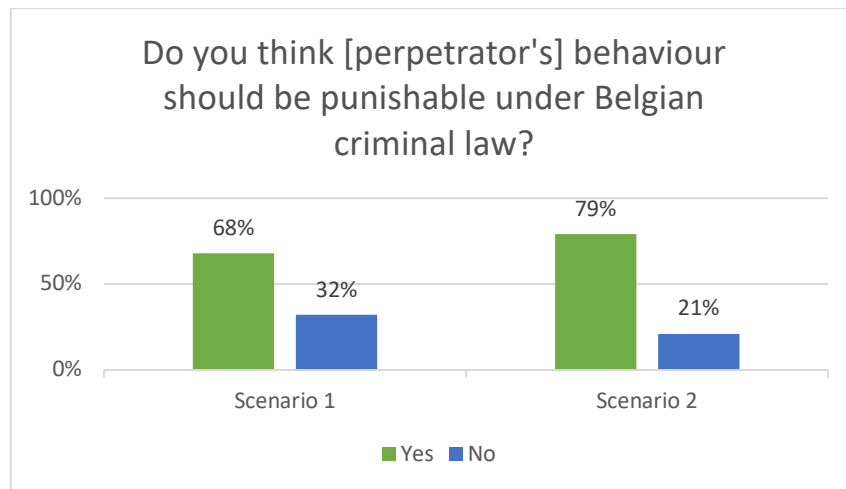


Chart 13: Responses by desirable punishability for scenarios 1 and 2

Finally, each scenario asked for opinions around **the type of punishment** for the behaviour in the different scenarios. Only those respondents who had answered 'yes' to the previous question were shown this question. Scenario 1 had a smaller number of respondents indicating 'yes' to the previous question. The respondents were given the option of choosing between a fine, a prison sentence, taking a course on online violence, community service, mediation between offender and victim, paying compensation to the victim or an open category of other options. This involved explaining to the young people what these possibilities entailed to ensure they had a good understanding of the options.

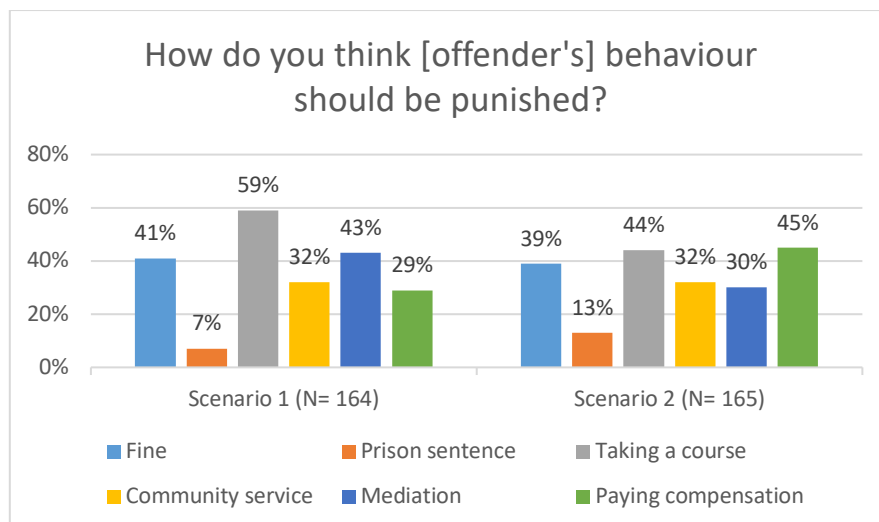


Chart 14: Responses by desirable punishment for scenarios 1 and 2

For both scenarios, a prison sentence scores very low as the best option for punishment. More respondents are inclined to still choose a prison sentence as punishment in the scenario where a stranger sends a dick pic, but again it remains a limited group. Young people are thus more convinced that alternative punishments are more appropriate. Moreover, the choice of punishment differs among the scenarios. That is, young people view the appropriate punishment contextually, namely depending on whether or not the victim knew the person who sent the images. Where the victim and

perpetrator knew each other, respondents were mostly in favour of a mandatory online violence course and mediation. Among the respondents who were shown this scenario, more than half were convinced that this would be the appropriate punishment. Fines, community service and paying compensation were the next things they thought of. Where the perpetrator does not know the victim, paying compensation scores significantly higher and taking a course or mediation scores significantly lower.

Such an approach, where a course on online violence and mediation come first, aligns well with findings in research on how to address the issue. Several studies found that consent is often forgotten when it comes to sending digital images. Whereas young people see consent as a crucial precondition for sexual relations in the physical world, this often seems to be forgotten once online.

The fact that sexual consent revolves around far more than just what happens in the bedroom is a lesson that many have yet to learn (Ringrose, 2020). It is therefore recommended in research to raise young people's awareness around online sexual violence at school. In this study, this translates among respondents to punishing offenders through alternatives such as training and mediation.

#### ➤ **Approach to non-consensual sending of sexually explicit content**

The study found that the non-consensual sending of sexually explicit images is a common online phenomenon that particularly affects women and people of a non-heterosexual orientation. Moreover, it is significantly (BI 95%) more common in the younger group aged between 15 and 18. The majority of respondents indicated that they find this behaviour harmful and say should be punished. However, the older the young person, the less inclined they are to opt for criminalisation.

As explained above, while the non-consensual sending of nude images is always punishable if sent to a minor, it is not always punishable if sent to an adult. The Belgian government has already announced that the 'stalking' provision would be rewritten so that a one-time serious disturbance of peace of mind would also be punishable, making the entire phenomenon of the non-consensual sending of sexually explicit content also punishable.<sup>3</sup> Belgium is thus following the Dutch example, where Article 240 of the Dutch Penal Code punishes sending "an image or object offensive to decency" without the recipient's request.

While Belgium takes a criminal approach to the non-consensual sending of nude images, there are some countries that take a different route. The American state of California provided a possibility of civil action in addition to a criminal approach. Regardless of any criminal prosecution, a victim can receive damages of \$1,500 to \$30,000 where a person 18 years of age or older knowingly sends an image electronically that the person knows or reasonably should know depicts unsolicited obscene material.<sup>4</sup> The definition of such obscene material includes images of genitalia or the anus.

Such a civil claim may be particularly interesting insofar as the identity of the perpetrator is known. In the American system, the court can force the Internet service used for sending to release the identity insofar as it is not known. This makes such a civil action useful under Californian law, even in the case of an as yet unidentified perpetrator.

Criminalising the non-consensual sending of nude images alone is only part of the solution. In fact, the study shows that the majority of young people already think it is harmful and punishable. In addition

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<sup>3</sup> L. De Bode, "Unwanted dick pic becomes punishable: 'Victims have nothing to be ashamed of anymore'", Nieuwsblad 24 November 2022.

<sup>4</sup> Cal. Civ. Code § 1708.88.

to a criminal justice approach, it remains important to focus on initiatives in education and broad awareness campaigns regarding the unwanted sending and receiving of sexual imagery.

Therefore, while young people in previous research did indicate that consent is important in sexual relationships, it seems they do not necessarily ensure that there is consent from the other party when sending sexually explicit content. For this reason, it is therefore important to foster a culture of consent in online sexual interaction in sexual development and media literacy classes (Kernsmith et al., 2018).

## Conclusions & Recommendations

### ➤ Conclusions

<b>Victims</b>	Young people regularly face the non-consensual receipt of sexually explicit images, particularly among women, younger groups aged between 15 and 18 and LGBTQIA+ populations
<b>Senders</b>	Young people, especially women, get these images mostly from people they do not know
<b>Motive</b>	Young people indicate that they mainly send these images when they were hoping to get nude images back, to sexually arouse the recipient, to show off the genitals, compliment and flirt. One group also reports doing this to bully and intimidate
<b>Impact</b>	Victims, especially women, feel especially ashamed, angry or even furious
<b>Punishability</b>	Adolescents may not properly appreciate the criminality of non-consensual sending. A majority believes this should be punishable
<b>Punishment</b>	Young people especially think that an online sexual violence course, mediation and compensation are the right ways to provide a consequence for the non-consensual sending of nude images. Only a small group sees any added value in a prison sentence

### ➤ Recommendations

→ **Recommendation 1:** Enhance the debate with the various social media and dating apps for protection mechanisms for victims and responses to perpetrators so that sexual content cannot be sent to someone else without consent

→ **Recommendation 2:** Commit to media literacy around consent and the impact of non-consensual sending of sexually explicit images; awareness of gender stereotypical norms among young people online is also essential to ensure change

→ **Recommendation 3:** Expand existing provisions in the penal code so that the various forms of non-consensual sending of sexually explicit images are captured and punishable based on the lack of request/consent and not on the motives of the sender

→ **Recommendation 4:** Develop an online sexual violence course for perpetrators of non-consensual sending of sexually explicit content and focus on mediation

→ **Recommendation 5:** Also consider some civil law options after the American model to both enhance victims' ability to take action and obtain compensation

### 3. Non-consensual possession of sexually explicit images

#### 3.1. Definition of the problem

Secondly, this report discusses the **non-consensual possession of intimate images**. This occurs when a person possesses sexually explicit images of someone else without that other person's consent or where the consent for possession has been withdrawn.

*Example: An underage girl asked for help about nude photos in the possession of her former boyfriend who threatened to distribute them through the Dutch children's phone chat: "For a week now, he's been sending me threatening messages saying he's going to put nude photos of me online if I don't take new ones or meet his sexual needs. It's silly that I made them at all but it was under pressure. Is it possible to go to the police to prevent these being posted online? Or in some other way?"<sup>5</sup>*

In many cases, someone will own nude images because the person depicted forwarded them by themselves with consent. Such consent may lapse when the person depicted expressly requests that the images be deleted, such as upon the termination of a relationship. But non-consensual possession can also arise in other ways (Huber, 2022; Jameson, 2020; Mandau, 2021), such as screenshot-taking, hacking or downloading after distribution. There is also a difference between consent to view an image and consent to store an image. Consent, then, is something that exists on a complicated continuum.

#### How does non-consensual possession arise?



Sender asks receiver to remove sexting imagery and receiver refuses



Participant in sexting takes a screenshot or downloads without consent or knowledge of the other(s)



Someone forwards, without consent, a nude image to a third party that they received with consent



Hacking of device or account



Download from a website on which the image was posted without the consent of the person depicted



Creating an image using artificial intelligence (deepnude) or hidden camera (voyeurism)

<sup>5</sup> <https://forum.kindertelefoon.nl/rechten-en-de-wet-41/hoe-bescherm-ik-de-naaktfotos-van-mij-die-in-handen-zijn-van-mijn-ex-5717>

Although at first glance the mere possession of an image may seem harmless, nothing could be further from the truth. Having images in one's possession means the ever-present risk of distribution without the consent of the victim depicted. Subsequent attempts to remove nude images from the Internet are made more difficult because these images can always be put back online by individuals who downloaded the image after a digital 'clean-up' operation.

This ability to restore and download images at any time, making them difficult to permanently delete, is also known as 'digital memory'. The fear of this is experienced very explicitly by victims. The lack of ability to erase the images possessed by people who downloaded them after they were distributed causes the fear that they will resurface in the future. One victim's testimony indicates that she felt violated, belittled and vulnerable (Dodge, 2019). Moreover, they can be used for blackmail and extortion ('sextortion') or revenge (Walker et al., 2013).

Non-consensual possession should not be confused with **the non-consensual distribution or dissemination of nude images (NCII)**. A person may obtain an image of another person through sexting and save that image with the other person's consent, for example saving it on their smartphone as part of a relationship, but further distribute it without that person's consent. Only the dissemination is problematic in that situation. Whereas research into both the non-consensual distribution of sexually explicit content and forced sending of sexually explicit content ('pressured sexting') has already taken place in several countries, only one study was found on non-consensual possession. As a result, there is a clear gap in the figures and understanding of this form of online sexual violence.

### 3.2. How – who – where? Prevalence of the sending and receiving of sexually explicit images

#### ➤ Victims: possession of sexually explicit content by another person

The study asked young people whether their sexually explicit images were already in the possession of others without their consent. In the survey, 12% of the total number of respondents (N= 1,819) indicated that someone else, without consent, was in possession of his/her nude photos. Unexpectedly, the majority of these victims turned out to be male, and there was even a significant difference between male and female respondents. Of the respondents who answered positively, the majority were aged between 21 and 25, again with a significant (BI 95%) difference from the 15-20 category. It therefore seems that this issue occurs mainly among young people over 20 or that this group is more aware of it. In addition, 12% of all respondents indicated that they did not know whether someone else was in possession of their nude images without their consent. The figures are therefore by all accounts an underestimate of the true prevalence. Again, it emerged here that victims of non-consensual possession are more likely to be non-heterosexual.

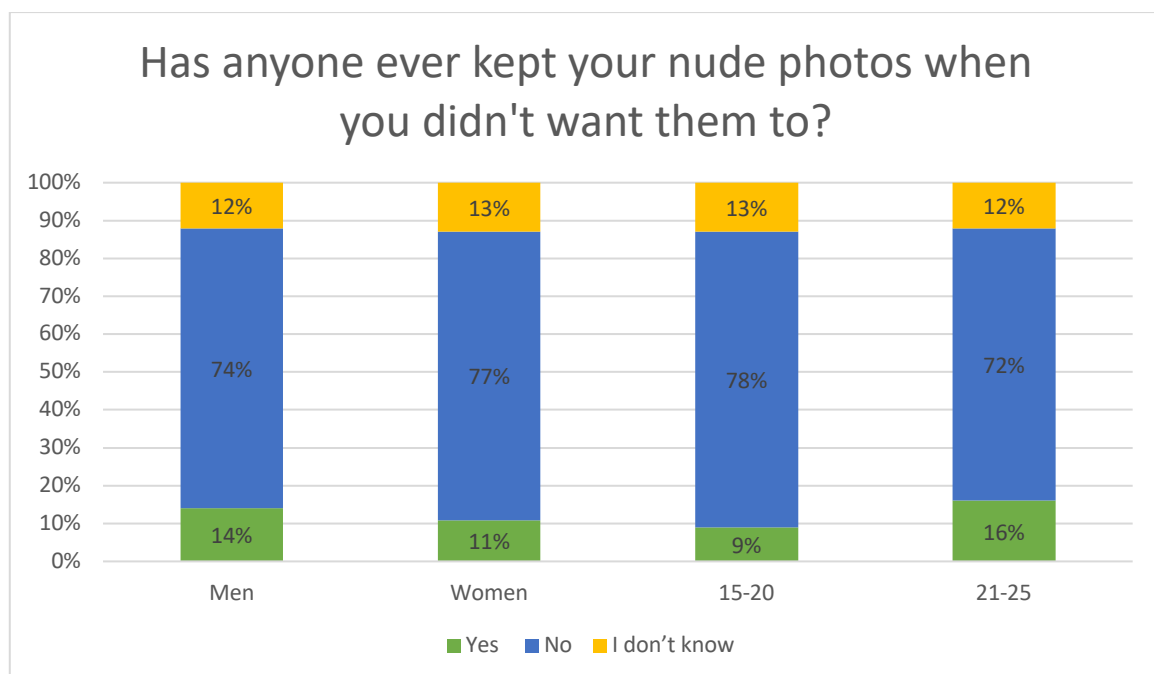


Chart 15: Responses from respondents on possession of their own nude photos

The number of young people who report that someone else is in possession of their photos is very limited. This contrasts with research on sexting where more respondents indicated that they have engaged in sexting on occasion. It is important to recognise that self-reported rates of non-consensual possession are most likely an underestimate of the true prevalence since only those who are aware of it can report victimisation. A survey study by Eaton et al. (2018) found that nearly half of perpetrators who distributed nude photos did so by sending a message (e.g. via a social medium app like WhatsApp). Therefore, when distribution takes place through private communication, many victims will never find out that their nude photos are in the possession of people to whom they did not give consent. Also, it is impossible for victims of the distribution of their nude images to know how many people and who gained possession of the photos. In addition, not everyone will admit to perpetration either, so self-reported figures must also be critically examined.



Moreover, the figures are remarkable because the majority of the international research shows that women are significantly more victimised by the non-consensual sending of nude images, which assumes possession of these images. After all, if images are sent without consent, whoever receives them will be in possession of the images without the victim's consent. One explanation may be that the female respondents are less aware of the possession of these images by others because the recipients or possessors do not confront them with the images. Another explanation may be a socially desirable response here in that there is a greater social stigma attached to girls engaging in sexting than boys. A third explanation may be that this phenomenon does indeed occur equally among young people. For comparison, another Australian study has already noted results among young people where girls and boys were equally likely to be victims of the non-consensual sending of nude images (Powell, 2020). The figures therefore deserve further investigation before any conclusions can be drawn.

➤ **Perpetration: possession of sexually explicit content from another person**

After questioning on victimisation, respondents were also questioned about their own ownership of others' nude images. About half of the respondents (48%, N= 1,268) had already received a nude image from someone else at one time or another, while the other half never had. The majority of these respondents were female. Again, the 21-25 category scored significantly (BI 95%) higher than the 15-20 category. There were no significant differences between male and female respondents.

When then asked about how often respondents keep these nude photos in their possession, **the vast majority (61%, n= 623) indicated that they never do**. However, it was mainly female respondents who said they never kept nude photos. Male respondents scored significantly higher than female respondents in the rarely, sometimes and very often categories. Indeed, just about all the respondents who indicated they did this very often were male. It was also mostly the older respondents who said they did this often.

The respondents were then asked whether they currently had any nude photos of someone else in their possession. Again, the vast majority indicated that this was not the case (79%, N= 1,268). Yet **15% indicated that they did currently have nude photos of someone else in their possession**, while another 6% said they did not know. The vast majority of these respondents were male; more specifically of that 15%, male respondents scored significantly (BI 95%) higher than the female respondents. In addition, the majority of respondents were in the 21-25 category.

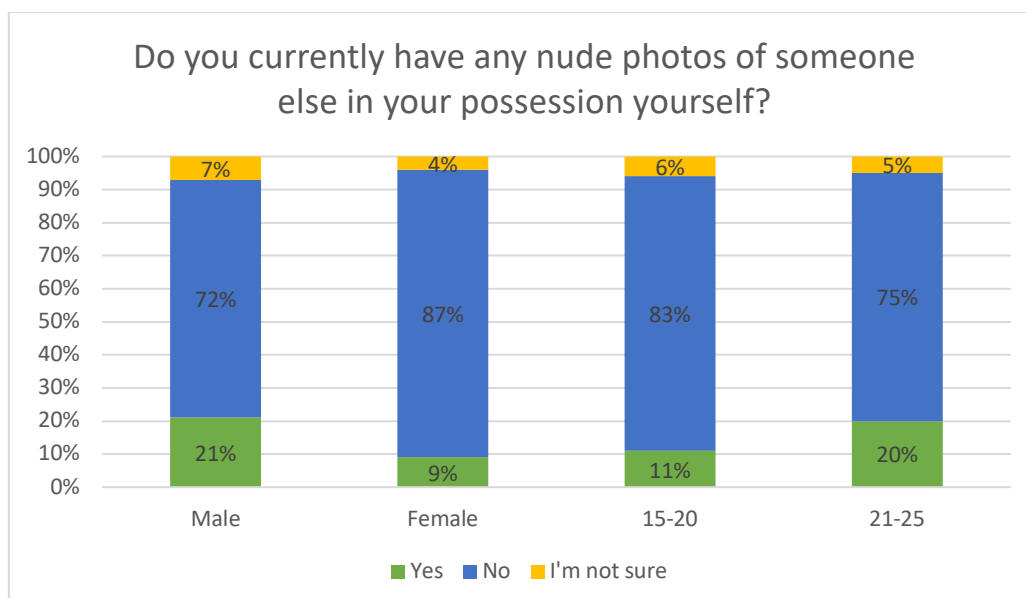


Chart 16: Responses from respondents on possession of other people's nude photos

Following questions about the possession of nude images, questions were asked about perpetrators of non-consensual possession of nude images. The respondents who indicated that they were in possession of nude images were asked whether the person depicted knew about the possession. To this, 20% (n= 201) indicated that this was not the case. 7% responded that only some of those pictured were aware of possession. There were no significant differences between male and female respondents here. As to the possession of several photos, the younger age group aged between 15 and 20 more often indicated that only some of the people depicted were unaware of this possession. Namely, 13% of the 15-20 group (n= 66) indicated that some people knew about the possession, while this was only 3% among the 21-25 group (n= 135).

They were then asked whether there was any actual consent for the possession, besides the knowledge of it. This showed that the depicted person's knowledge of possession was largely consistent with consent for possession by the depicted person. 22% indicated no consent for possession and 7% indicated that they had only given consent to some people. Again, the younger group of respondents were more likely than the older group to indicate that the person depicted had not given consent or had only given consent to some people. This would mean that although this **younger group of 15-20 has fewer nude photos in their possession** than the older group of 21-25, it is **more often without consent**.

➤ **How does a person come into possession of images of others without consent?**

Both respondents who indicated that another person had possession of his or her nude images and those who indicated that they were in possession of these images were questioned about how these images had come into their possession and were kept. Here, 30% (n= 179) of the respondents whose images were kept by another person answered that a screenshot was taken from a temporary snap. This appeared to be the most common way that another person came into possession without the consent of the person depicted. Next, withdrawing consent to possess a photo where there had been consent at first (29%) and taking a photo/screenshot during a video call (23%) were the largest categories.

There is a clear difference in the responses from male and female respondents. More than double the number of female respondents reported that consent for possession of nude images was withdrawn and that this was not then respected. Furthermore, respondents came into possession of these images through the darkweb and/or these were purchased from a third party. Each of these categories occurred in 13% of respondents, with results for male respondents significantly different from those for female respondents.

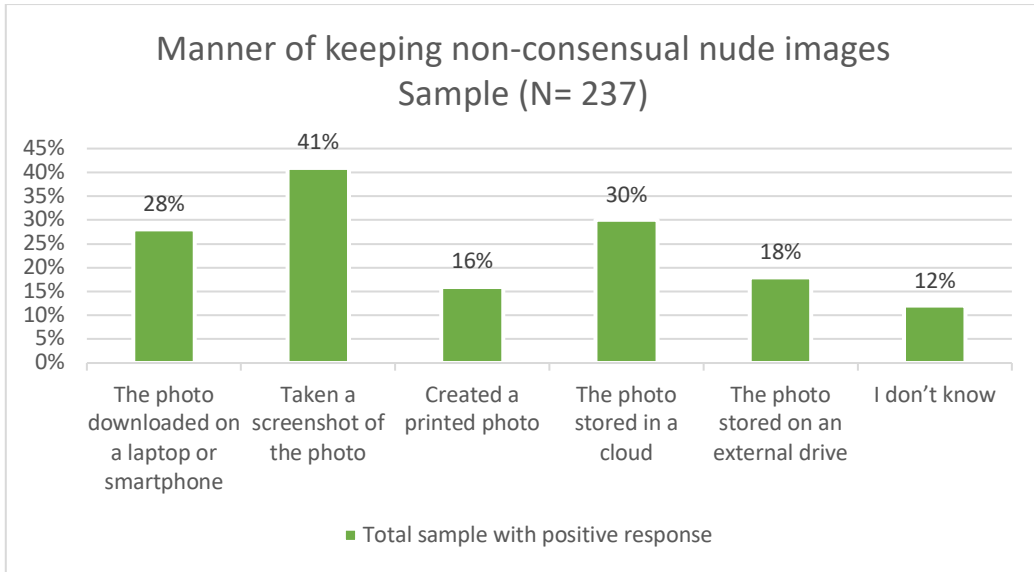


Chart 17: possession of nude photos by respondents whose photos were kept without consent

When asked about the method of storage, keeping a screenshot again emerged as the largest category. In addition, downloading the photo onto the laptop or smartphone or storing it in a cloud (such as iCloud, OneDrive, Google Photos, Messenger, in WhatsApp) were the most common ways of keeping possession of nude images without consent.

Respondents who reported having sexually explicit images in their possession without consent were also questioned about the acquisition and retention of the images. Here, it appears that they obtained the images mostly because a third party had forwarded the images. In addition, taking a screenshot of a temporary photo and the withdrawal of consent by the person depicted after consensual forwarding (sexting) were the most common ways for someone to be in possession of images without consent.

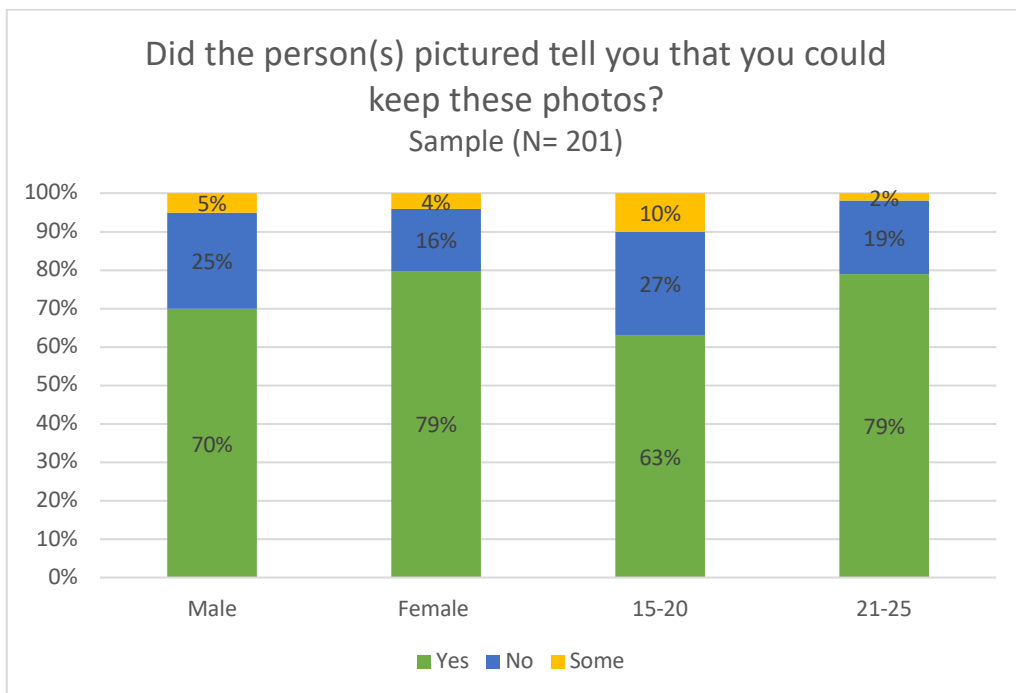


Chart 18: consent when retaining nude photos

The study shows that only a limited group of young people report being in possession of sexually explicit images of another person, with only a very small group acknowledging having such images without the knowledge and/or consent of the victim. These results are difficult to compare in the absence of extensive research on the subject. The only other known study on this topic was conducted in the United States among 1,058 respondents aged between 18 and 73 (Jameson, 2020). In this, as many as 23% of male respondents reported having been in possession of nude images without consent. This study also found that taking a screenshot during sexting is the most common way to gain possession of sexually explicit images without consent.

### 3.3. Punishing non-consensual possession of nude images

#### ➤ Current criminal justice framework and adjustments

The non-consensual possession of nude images or images of sexual activity can today be punished in part depending on the context of the victim and context of the possession.

Firstly, **the possession of nude – or sexual – images of minors** without their consent is punishable under Article 417/46 of the Belgian Penal Code. Article 417/44 of the Penal Code provides a broad definition of child abuse material, including fictional images:

- Any material involving the visual representation in any manner of a minor participating in real or simulated sexually explicit conduct, or involving the representation of a minor's sexual organs for primarily sexual purposes
- Any material involving the visual representation in any manner of a person who appears to be a minor participating in real or simulated sexually explicit conduct, or involving the representation of this person's sexual organs for primarily sexual purposes
- Realistic images involving the depiction of a non-existent minor participating in explicit sexual conduct, or involving the depiction of the sexual organs of this minor for primarily sexual purposes

The possession of images of a minor over the age of sixteen is not punishable if the recipient obtained them directly from the minor on a consensual basis (sexting), the recipient is not a blood relative or a relative by marriage or is of a similar position as described in Article 417/49 of the Penal Code, or this was made possible by a position of authority, trust or influence over the minor. It is notable here that, under these exceptions, non-consensual possession was not provided for per se, but only non-consensual acquisition.

Secondly, **the possession of nude – or sexual – images of those overaged** without their consent is not punishable per se. However, these photos may be the object of the crime, for example, if they were obtained through the non-consensual dissemination of these images. This may be the case if:

- These images were obtained consensually (for example, in consensual sexting), but were subsequently disseminated non-consensually and are in the possession of the disseminator or recipient;
- If these images were obtained non-consensually because the person depicted did not consent to their dissemination, for example in the case of hacking, by downloading them from the Internet following non-consensual dissemination, by taking screenshots or making recordings (voyeurism).

Likewise, non-consensual possession combined with threats to disseminate these images (sextortion) will constitute evidence of an incrimination in certain cases, namely extortion, an assault on sexual integrity or rape, or beginning to carrying out the non-consensual dissemination of nude images:

- If there is *a threat to distribute the images unless a money or other economically valuable benefit* is provided, there may be a case for the crime of extortion. The possession of the images combined with the threat proves that there is a case for incrimination in such an event.
- If there is *a threat to distribute the images unless certain sexual acts are provided*, there may be an assault on sexual integrity or rape, depending on the specific acts, since consent to those acts is affected by the threat. The possession of the images combined with the threat prove

in such a case that consent has been violated. This also includes making the threat that someone must disrobe under threat of dissemination.

- If there is *a threat to disseminate the images unless other images are made / sent or other non-economically valuable benefits are provided* such as, for example, not leaving a relationship, the possession of the images may be an element to prove the beginning of carrying out non-consensual distribution of nude images in accordance with Article 419/9 – 10 of the Penal Code. Beginning to carry this out is satisfied only if material actions beyond mere intention have already been taken. Obtaining the images, albeit consensually, and non-consensually retaining them could constitute such material elements. However, there is debate about this. In a recent verdict before the Antwerp correctional court, this was not considered to be a sufficient element to rule that there was the beginning of carrying out non-consensual distribution<sup>6</sup>.

Specifically, this means that only limited parts of non-consensual possession as identified in the literature are criminalised insofar as the possession of images of adults is concerned. The most extensive criminalisation applies to possession in the context of extortion, but even there, not all forms of extortion are criminalised. Merely threatening is insufficient for criminalisation, since Article 327 of the Penal Code criminalises threats only insofar as an assault on persons or property is threatened, which is too strict a libelling to share an 'assault' on sexual integrity through the possession of nude images.

#### ➤ **Young people's views on the non-consensual possession of sexually explicit content**

Survey respondents were presented with two scenarios on the non-consensual possession of sexually explicit content. In the scenarios on non-consensual possession, the variable 'prior consent given' was manipulated.

- **Scenario 3:** Non-consensual possession where consent previously given had at first been withdrawn

Camille, a 17-year-old girl, exchanged a number of nude photos during her relationship with the 17-year-old boy Gabriel. Gabriel saved these photos on his smartphone. After several arguments and discussions, Camille and Gabriel decide to part ways and end the relationship. Camille suspects that Gabriel still has the nude photos she once sent to him on his smartphone. She expressly asks him to delete the photos. Yet Gabriel does not listen to this and does not delete the photos.

- **Scenario 4:** Non-consensual possession where there was never any consent

Noor, a 20-year-old girl, meets Louis, a 21-year-old boy, online. They soon add each other on Snapchat and continue the conversation on this app. After several spicy messages, Noor sends a nude photo of herself to Louis. He takes a screenshot of the photo and saves it on his smartphone. Noor immediately comments that she received notification of the screenshot and is not okay with this. She asks for the photo to be deleted, but Louis blocks her on Snapchat and does not delete the photo from his smartphone. Noor has no idea what will happen next with her nude photo.

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<sup>6</sup> Court of First Instance, Antwerp Division, 25 October 2022.

Respondents were first asked whether they thought the behaviour of the person possessing the images without consent was **harmful**. For scenario 3, possession where consent was withdrawn, we see among the total sample that 73% (n=165) agree or strongly agree that this behaviour is harmful. There was a significant difference between female and male respondents here. Women, at 51%, scored almost twice as high in the 'completely agree' category than male respondents. This suggests that women find this behaviour more harmful than men.

If we then compare this to scenario 4, non-consensual possession where there was never any consent, a similar percentage of 74% (n= 165) feel that this behaviour is harmful. Again, significantly more women than men indicated 'completely agree', this being 62%. This percentage is also very much higher than in the previous scenario. The final scenario, without ever giving prior consent, was thus said to be the most harmful.

The respondents were asked **whether they thought these behaviours were punishable** in Belgium. The majority of respondents believed the behaviour was punishable in both scenarios. In scenario 4, more respondents were convinced that the behaviour was punishable than in scenario 3, where there was originally consent for possession. However, the difference is limited.

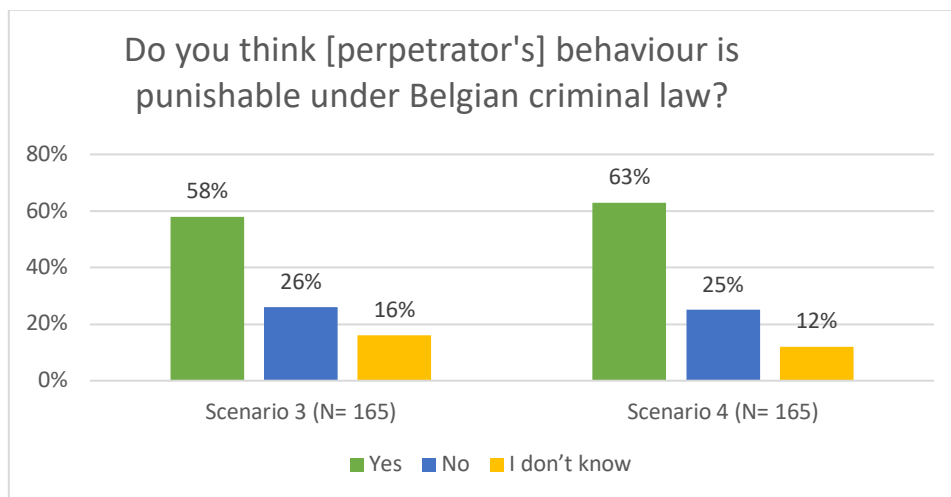


Chart 19: responses to current criminalisation of non-consensual possession

For scenario 3 where consent was withdrawn, when comparing responses between the different categories of respondents, it became clear that there was no significant difference between both male and female respondents or between the two age groups. Then again, in scenario 4 where there was never any consent for possession, a significant difference was noted between male and female respondents, with females more likely than males to think it was punishable. Again, however, the difference between the two groups is small.

When asked about **whether these actions should be punishable**, a large majority of respondents still answered that they believed non-consensual possession should be punishable in both scenarios. There is, however, a slight difference between respondents who thought it was non-criminal and those who believed it should be non-criminal. Again, we find that particularly in the situation where there was no consent for possession (scenario 4) female respondents indicated significantly more that this should be punishable than male respondents.

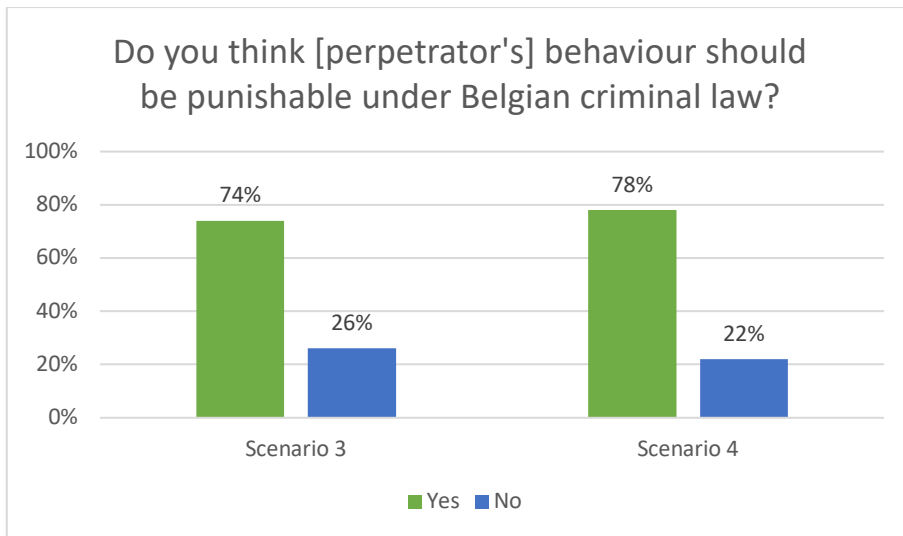


Chart 20: Responses to desirable criminalisation of non-consensual possession

Finally, respondents were asked for opinions around **the appropriate punishment** for the behaviour in the different scenarios. The respondents were given the option of choosing between a fine, a prison sentence, taking a course on online violence, community service, mediation, paying compensation to the victim or an open category where respondents could indicate their own option.

Under scenarios 3 and 4, most respondents believed that mediation and compensation was the most appropriate course of action. In particular, where there had never been any consensual possession as in scenario 4, mediation scored highly as the most appropriate consequence (n= 123). Paying a fine or a mandatory online sexual assault course also scored highly. Respondents were less won over for imprisonment, which scored the lowest in both scenarios as an appropriate punishment. In contrast, community service was considered an appropriate punishment, particularly in the scenario where there had never been any consensual possession. Only in scenario 4, non-consensual possession without any prior consent, does one notice a significant difference among one of the socio-demographic characteristics, namely among the age groups. The younger group scored significantly higher than the older group in response category 'fine'. The older group, meanwhile, scored significantly higher in the 'mediation' category.

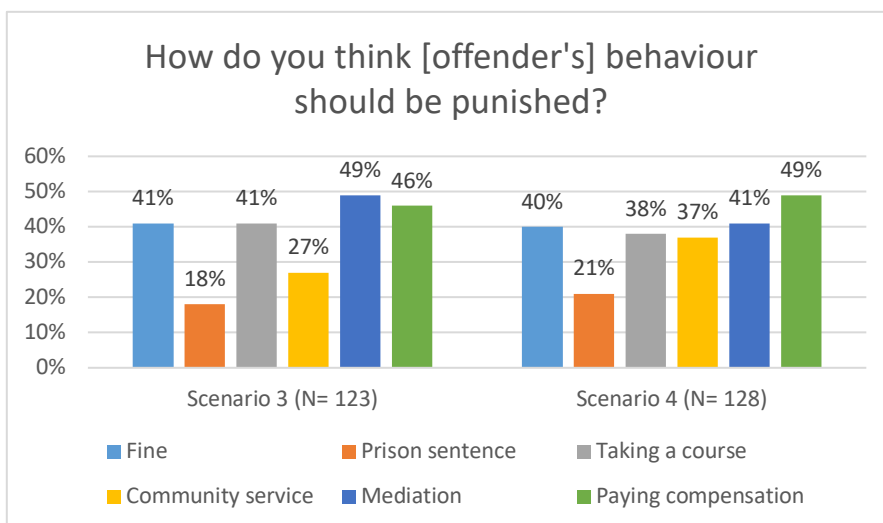


Chart 21: Responses to desirable punishment of non-consensual possession



Punishment for non-consensual possession also differs from non-consensual sending. Significantly more respondents indicated that prison was an appropriate punishment for non-consensual possession in scenarios 3 and 4 than did in scenarios 1 and 2 on non-consensual sending. This could mean that young people believe non-consensual possession behaviour amounts to a more serious crime than non-consensual sending.

➤ **Approach to the non-consensual possession of sexually explicit content**

There is currently no published proposal to criminalise the non-consensual possession of sexually explicit content by adults in Belgium. The Sexual Crimes Act<sup>7</sup> of 2022 wrote into law a definition of consent in Article 417/5 of the Penal Code. This definition provides that consent cannot be inferred from the 'mere absence of resistance from the victim' and that consent can be withdrawn 'at any time before or during the sexual act'. This description of consent has not as yet been extended to the possession of nude images. After all, this would mean that even if there is possession with consent, it could be revoked at a later date, requiring the images to be deleted.

Unlike in the case of the non-consensual sending of sexually explicit images, there are no foreign initiatives or European regulations that criminalise non-consensual possession of sexually explicit images per se. Again, this issue is viewed from other criminal provisions, such as distributing nude images without consent or extortion using nude images. For example, the draft Directive on Combating Violence Against Women also provides for incriminations for the non-consensual distribution of nude images or the creation of nude images through technological means (deepnudes).

Criminalising the possession of nude images was discussed in the United Kingdom, though, with extensive reporting by the Law Commission on online sexual violence (Law Commission, 2022). The report identified three situations of non-consensual possession:

- (a) There was consent for indefinite possession that was subsequently revoked, such as in the context of a relationship that ended
- (b) There was consent only for specific and temporary possession, e.g. receipt of a time-limited image via Snapchat or only possession for a specific purpose (e.g. photo of genitals in the context of medical research)
- (c) No consent was ever given for the possession of images, such as when downloading images distributed by someone else in a WhatsApp group or on a website, or after hacking

The Law Commission recognises that such possession can cause great harm to a victim, especially if this is accompanied by the fear of dissemination. Nonetheless, the report recommends that such possession should not be criminalised per se, regardless of how it fits among other incriminations. The Law Commission believed that such incrimination would be disproportionate, unfeasible and counterproductive.

However, there are some examples of civil remedies to stop the possession of sexually explicit images. In Germany, the Federal Constitutional Court<sup>8</sup> has already ruled that a court can order a person to delete sexually explicit images of another person, even if that person obtained the images with consent, such as in the context of a relationship.

It is notable with this phenomenon that the vast majority of young people think it is punishable, whereas possession is not in fact punishable unless it involves child abuse material. Yet this does not

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<sup>7</sup> Act of 21 March 2022 amending the Penal Code with regard to sexual crimes, *Belgian Official Gazette* 30 March 2022, 25785.

<sup>8</sup> Federal Constitutional Court 13 October 2015, VI ZR 271/14.

stop young people from keeping images without the knowledge and/or consent of someone else. Again, this indicates a culture where the consent of the other party in sexual relationships is not sufficiently taken into account. There is therefore a need for broader campaigns and public debate around consent in online relationships. Moreover, consent in online relationships should become a regular part of sex education and media literacy.

## Conclusions & recommendations

### ➤ Conclusions

- Knowledge** Little research exists on the non-consensual possession of sexually explicit images and its impact on victims. Despite young people stating that they find this very harmful behaviour, there is little awareness or research
- Possession** There is a significant group of young people (12%) who report that their images have been possessed by others without their consent. An equally large group indicated that they do not know whether anyone possesses them.
- Gender** Non-consensual possession occurs in similar amounts among boys and girls
- Authorisation** Possession usually follows a situation of sexting where either consent is subsequently withdrawn or an image is made via screenshot or download without consent. Possession also regularly results from a third party forwarding images or downloading from sites.
- Punishability** Young people are unable to properly assess whether situations of non-consensual possession are punishable or not. A large majority believe it should be criminalised
- Punishment** Young people feel that the consequences for non-consensual possession should involve mediation and/or compensation. They also think a mandatory online sexual violence course, paying a fine or community service are more appropriate than a prison sentence.

### ➤ Recommendations

- **Recommendation 1:** Commit to raising awareness among researchers, policy, education, youth sector and young people about the harmfulness of the behaviour
- **Recommendation 2:** Develop guidelines and a campaign on the importance of consent in online sexual behaviour towards young people. Counter the normalisation of the possession and collection culture
- **Recommendation 3:** Work with social media and dating apps for technical solutions and a cultural shift for the possession, particularly the ability to screenshot and download, of sexually explicit images when there is no knowledge or consent of the person depicted
- **Recommendation 4:** Enhance young people's media literacy so they know how images can come into the possession of someone else, especially in applications with 'snap' features
- **Recommendation 5:** Provide consequential enforcement of non-consensual possession of sexually explicit content, with both a criminal and civil component
- **Recommendation 6:** Develop an online sexual violence course for perpetrators of criminal non-consensual possession
- **Recommendation 7:** Inform young people about the organisations that victims can turn to if their sexually explicit images are in someone else's possession without their consent

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