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***7 Developments in the Law Governing Online Activity: The Criminalisation of Catfishing and Civil Relief in Cases of Image-Based Sexual Abuse**

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ABSTRACT This article considers the practice of catfishing and makes the case for it becoming a criminal offence. It draws on the Non-Fatal Offences against the Person (Amendment) Bill 2024 which proposed the creation of such an offence. Although the Bill collapsed upon the 2024 general election being called, the article urges that the Bill or at least the issue that the Bill seeks to address, namely catfishing, be reconsidered in the new Oireachtas. The article argues that a legislative response to this issue is necessary considering the extensive harm that catfishing can cause and the multiple individuals that it affects. It is further argued that catfishing ought to be a standalone offence notwithstanding assertions that the practice is punishable under pre-existing offences like harassment. The article proceeds to discuss some recent developments in the law governing online activity that the aforementioned Bill will join provided it becomes law. In particular, the developments discussed here raise the prospect that there are now *civil* as well as criminal law remedies in cases of image-based sexual abuse.

INTRODUCTION

One of the last pieces of legislation to be debated in the 26th Seanad before the Oireachtas was dissolved upon the 2024 general election being called was a private member's Bill introduced by former Senator Lisa Chambers which sought to make "catfishing" a criminal offence.

The Bill, entitled the Non-Fatal Offences against the Person (Amendment) Bill 2024, makes it an offence to:

"operate, or cause to be operated, a computer, phone or similar device, and [to] purport to be another person by using or imitating that other person's name, voice, signature, photograph or likeness, without that other person's consent, and in so doing, intentionally or recklessly causes alarm, distress or harm to that other person or another person".¹

Hence, the practice of catfishing involves, through electronic means, the misappropriation of an individual's identity with a view to deceiving another individual with whom the perpetrator engages. It is clear from how the Bill defines catfishing that it can occur on-and-offline, but it tends to occur mostly online wherein an individual purports to be another either by surreptitiously operating that other person's social media accounts without their consent or by creating and operating a fictitious social media account using that other person's name, image or likeness.²

The Bill completed its second stage in the Seanad on the 22 October 2024. The second stage of the legislative process involves a debate about the principles informing the proposed legislation. In this context, Senator Chambers spoke about the psychological and emotional harm that catfishing can cause to victims and to individuals whose identity, including their name, image, and voice are being misused by perpetrators.³ Senator Chambers made express reference to the extensive coverage of the issue on the well-known "The 2 Johnnies" podcast which she said prompted her to draft this Bill and referred to Ellen Coyne's writing on the issue in the *Irish Independent* newspaper which also inspired the Bill.⁴ The issue also informed a long-running storyline on RTE's "Fair City".⁵

If the Bill is reintroduced in the 27th Seanad or the 34th Dáil and becomes law, the practice of catfishing will become a criminal offence in and of itself and will carry a sentence of up to five years' imprisonment for convictions on indictment.⁶ Where the accused is tried summarily, the maximum penalty is 12 months' imprisonment.⁷ In either case, the proposed sanctions are significant. They are strong enough to discourage the practice and demonstrate the seriousness with which the drafters of this Bill view the issue of catfishing.

This article is divided into three sections. Section one considers whether the amended offence of harassment in s.10 of the Non-Fatal Offences against the Person Act 1997 and the so-called grooming offences in the Criminal Law (Sexual Offences) Act 2017 (the “2017 Act”) are sufficient to deal with the issue of catfishing or whether a stand-alone offence is necessary. Section two provides an overview of some recent significant legislative reforms and *8 developments in relation to behaviour and safety on the internet which this Bill, if enacted, will add to. Section three concludes and considers some next steps in the passage of this law.

I. SECTION ONE

a) The Non-Fatal Offences against the Person Act 1997 as amended by the Criminal Justice (Miscellaneous Provisions) Act 2023

In its response to the Bill, the former Government argued that recently enacted legislation called the Criminal Justice (Miscellaneous Provisions) Act 2023 (the “2023 Act”) already covers the issue of catfishing.⁸ This legislation amended s.10 of the Non-Fatal Offences against the Person Act 1997 which deals with harassment. Prior to the amendments brought about by the 2023 Act, harassment was understood to mean “following, watching, besetting, pestering or communicating” with an individual with the intention of seriously interfering with their peace and privacy or causing them alarm, distress or harm.⁹ Harassment is now defined much more broadly and includes doing any of the following with intent to seriously interfere with another’s peace and privacy or to cause them alarm, distress or harm:

- Impersonating another person;
- Purporting to act or communicate on behalf of another person; and
- Disclosing to others private information in respect of another person.¹⁰

It should be noted that an individual may be guilty of the updated offence of harassment even if they did not intend to cause harm to the victim but were reckless as to whether harm would be caused by their actions.¹¹ Therefore, the *mens rea* element of this offence may be triggered in two ways: (1) by intention or (2) by recklessness on the part of the accused.

Based on the foregoing, it would appear that the amended offence of harassment brought about by the 2023 Act provides recourse for the person whose identity has been misappropriated by the perpetrator given that the provision lists “impersonating a person”, “purporting to act or communicate on behalf of a person” and “disclosing to other persons private information in respect of a person” as instances of harassment. However, it is less clear whether the other victim of catfishing, namely the individual who has been deceived by the perpetrator into engaging with them on the basis of who they claimed to be, is sufficiently covered by the harassment provision. From the perspective of the victim who has been deceived, if they were to read the harassment provision, they may conclude that no crime was committed against them because their experience of catfishing is not included in the albeit non-exhaustive list of “acts”¹² deemed to constitute harassment provided for in subs. 3.

It was to avoid uncertainty, such as that canvassed above, that Senator Chambers argued for a stand-alone offence of catfishing irrespective of whether the practice is in fact covered by the pre-existing harassment provision.¹³ The merits of legal certainty particularly in matters concerning criminal law will be discussed further below. For now, however, we can see at least one point of uncertainty caused by attempts to pigeonhole a relatively new legal issue, like catfishing into a pre-existing offence like harassment. That uncertainty is whether all victims of catfishing can be sufficiently protected by an offence that was not designed with that practice in mind.

b) Criminal Law (Sexual Offences) Act 2017

It is also possible that the 2017 Act would apply where catfishing took place in the context of online grooming. Sections 7 and 8 of that Act concern what are commonly called grooming offences. Section 8 applies to online grooming under which it is an offence to use technology to communicate with any person (including a child) to facilitate the sexual exploitation of the child, whether by the person who makes the communication or somebody else. It is in the context of online grooming that we have witnessed catfishing being an issue¹⁴ where the perpetrator, purporting to be someone else, communicates with the victim who, in turn, engages with the perpetrator believing them to be who they purport to be. While in that context the law criminalises the act of grooming rather than the catfishing, it is nevertheless an example of an existing piece of legislation that can at least respond to the consequences of catfishing even if it does not target

catfishing itself. Furthermore, in addition to the criminal law on grooming, there is also a tort of grooming in civil law which provides, in a scenario similar to that just illustrated, another pre-existing route in law for addressing the harm caused by catfishing.¹⁵

c) *Legal Certainty*

Although the amended offence of harassment and the offence of online grooming could address the practice of catfishing, Senator Chambers, during the Seanad debate at the second stage of the Bill, warned against trying to make a new legal issue fit imperfectly within existing legislation and said that “when you have a standalone offence and call it what it is, and where it is very clear, you increase awareness of the crime”.¹⁶ She added that awareness of the crime leads to greater reporting of the crime and, in turn, leads to more prosecutions.¹⁷

The need for the criminal law and indeed the law in general to be clear, intelligible, and certain was also expressed by O'Malley in the following terms:

“There is a maxim, though it has never been more than that, that ignorance of the law is no excuse. If this maxim is to be enforced—and as a matter of practicality it must be—the Government should, as a quid pro quo, feel obliged to promulgate criminal legislation effectively. This means that it should be as clear, coherent and accessible as possible”.¹⁸

O'Malley made those remarks in the context of the 2017 Act, which he criticised, not so much in substance but in form, on account of it being largely an amending piece of legislation—amending existing legislation in the area rather than consolidating or codifying the law governing sexual offences as has been done in other common law jurisdictions¹⁹; and also in respect of other areas of law like company law.²⁰ The effect of this is that the law pertaining to sexual offences in this country spans more than 12 statutes,²¹ meaning that for definitional purposes practitioners, researchers and society at large must refer to a large back catalogue of legislation, some of which may not be criminal legislation, in order to make sense of the legislation at hand. O'Malley maintains that such an outcome necessarily makes it more difficult to know what the law is in a given area and thus undermines the maxim quoted above that ignorance of the law is no excuse.

Senator Barry Ward (as he was),²² in a Seanad debate about the Criminal Justice (Miscellaneous Provisions) Act 2023, similarly criticised amending legislation particularly where provisions of an amending Bill are expressed in such terms as “Section X of the Y Act is amended by the removal of A and the insertion of B”.²³ Senator Ward rightly pointed out that where legislation is expressed in such a way it means that only legal professionals or legal researchers can realistically understand its meaning and effect.²⁴

What these critiques come down to is a matter of legal certainty and of making the law accessible to all which is fundamental to the rule of law.²⁵ Legal certainty is also the reason why, as Senator Chambers argued, catfishing ought to be a standalone offence rather than being subsumed into another pre-existing offence, like the offence of harassment. If the practice of catfishing is not provided for in law as an offence in and of itself, irrespective of whether the practice is punishable as part of the offence of harassment, then it risks being unrecognised as an offence by the general public whom the law seeks to protect and regulate.

What follows in Section two is a discussion of some recent and forthcoming developments in the law concerning online activity which the proposed law on catfishing will join if it is enacted over the course of this new Oireachtas.

II. SECTION TWO

a) *AI Liability Directive*

If catfishing becomes a criminal offence, it will join a growing body of law regulating online activity. One such law which was awaiting enactment is an EU Directive known as the AI Liability Directive.²⁶ This Directive had proposed²⁷ to create a framework for accessing compensation for harm caused by AI systems. Under this framework, claimants could initiate civil claims for damages against:

- the provider of the AI system (i.e. a natural/legal person who develops or has developed an AI system and makes it available on the market);
- the distributor of the AI system or some other intermediary; or
- the end user of the AI system.²⁸

The compensable harm under the Directive would be determined by each Member State²⁹ which, in the context of online safety, means that Ireland could, had the Directive not been withdrawn, choose to allow individuals depicted in AI-generated deepfakes—particularly where the faked or altered material was subsequently distributed or published—to claim compensation for the resulting harm against the provider or intermediary responsible for developing or distributing the AI system used to generate the deepfake material or against the end user of the AI system. “Deepfakes” refer to the manipulation of an individual’s image for the purposes of creating “hyper-realistic pornographic”³⁰ visual material without the knowledge or consent of the person depicted in them.

Although it is not definite that harm caused by AI-generated deepfakes would be compensable given that it is entirely at Member State’s discretion (a point that has given rise to criticism³¹), it is arguable that to do so would be in keeping with the spirit of the now withdrawn Directive, the AI policy of the former Commission which drafted that law, and the 2019-2024 political guidelines of the Commission President which prevailed at the time when this Directive was drafted. In the first instance, this Directive proposed to work in concert with the AI Act³² with much of the terminology and definitions coming from the latter.³³ It is anticipated therefore that harm caused by the prohibited AI practices delineated in art.5 of the AI Act would be compensable under the Directive with one of those prohibited practices being commensurate in effect with deepfakes namely to use “an AI system that ... materially distorts the behaviour of [a] person ... in a manner that causes or is reasonably likely to cause that person significant harm”.³⁴ Furthermore, the Commission’s 2020 White Paper on AI³⁵ and the Commission President’s political guidelines for her 2019-2024³⁶ mandate spoke of harnessing the good of AI while protecting privacy, human dignity, safety and ethical standards.³⁷ All of these goals—the protection of privacy, human dignity, etc.—are necessarily compromised through harmful AI-generated deepfakes and it would therefore be apposite that such harm should have been compensable under the Directive.

It follows that while Member States could decide which AI-related harms to compensate had transposition of the Directive into their domestic law been required, it is arguably the case, having regard to the context within which this Directive was drafted, that harm caused by deepfake material is included in the kinds of harm addressed by this Directive. It is hoped therefore that, should this Directive be resurrected, that Member States will take account of the spirit and the wider context of the Directive when it comes to deciding on the compensable harms. In this regard, it is noteworthy that in Ireland there are already criminal sanctions available under the Harassment, Harmful Communications and Related Offences Act 2020 (the “2020 Act”) for harm caused by AI-generated deepfakes, particularly in the context of image-based sexual abuse. For context, the 2020 Act made it an offence to record, distribute or threaten to distribute intimate material of another person without their consent. The Act defined intimate material broadly enough to encompass faked or altered material.³⁸ Ireland was **13* said to be *#ahead of the curve#*³⁹ by including deepfake material within the ambit of the legislation and in doing so recognised that the harm caused by the sharing of falsified images can be as distressing as that caused by the sharing of true images.⁴⁰ It therefore appears incontrovertible that Ireland would include harm caused by AI-generated deepfakes among the compensable harms when it comes to transposing the Directive into Irish law, should future agreement on the Directive be reached, considering that it already acknowledges the serious harm that deepfakes can cause. If this comes about, Irish law will provide criminal as well as civil relief for victims of image-based sexual abuse, a point that will be elucidated further below.

b) Representative Actions

Another development in the law regarding online activity is the availability of multi-party actions, specifically representative actions as a way of seeking relief for online harm. Representative actions tend to involve actions for damage brought by one party on behalf of one or more injured parties.

The first example of this is under the aforementioned AI Liability Directive which would have permitted representative actions for damages in the context of harm caused by AI systems.⁴¹ Having regard to our conclusion above that harm caused by AI-generated deepfakes would most likely be compensable under that Directive, as originally contemplated, this means that individuals depicted in AI-generated deepfakes need not go through the difficult process of seeking relief alone but may do so as part of a representative action. As the Explanatory Memorandum to the Directive provided,

“[t]his gives more possibilities to persons injured by an AI system to have their claims assessed by a court, even in cases where individual actions may seem too costly or too cumbersome to bring, or where joint actions may entail a benefit of scale”.⁴²

The case of *Digital Rights Ireland v Discord Inc.*⁴³ provides another example of where a representative action may be taken for the purposes of accessing relief for online harm. In this case, *Digital Rights Ireland*

, a not-for-profit voluntary organisation that campaigns in areas of online safety, data protection and digital rights, initiated a representative action on behalf of six Irish victims of image-based sexual abuse. It did so on the basis of s.117(7) of the Data Protection Act 2018 (the “2018 Act”) which permits not-for-profit organisations to bring, as representative plaintiffs, civil actions for damages for unlawful processing of personal data. *Digital Rights Ireland* alleged that the personal data of the six victims was unlawfully processed when intimate images depicting them were posted to Discord, a social media platform, without their consent.⁴⁴

At the time of writing, the *Digital Rights Ireland* case has not concluded with the only reported aspect of the case being an interlocutory application for a Norwich Pharmacal Order against *Discord Inc.* The purpose of such an Order which was granted by O'Moore J. in the High Court was to oblige *Discord Inc.* to disclose to *Digital Rights Ireland* information that would identify the anonymous users of the Discord platform who unlawfully uploaded the intimate material so that *Digital Rights Ireland* could initiate civil proceedings against them as described above.

c) The Availability of Civil and Criminal Remedies for Image-Based Sexual Abuse

What we can learn from *Digital Rights Ireland v Discord Inc.* and from the proposed AI Liability Directive about developments in the law generally concerning online activity, and in particular concerning the practice of image-based sexual abuse, is that there are now civil as well as criminal law remedies.

The criminal law response to this practice is found in the aforementioned 2020 Act which has been extensively analysed by O'Connell in a previous volume of this journal.⁴⁵ The 2020 Act created three offences. The first offence which is contained in s.2 of the Act deals with sharing or threatening to share intimate images of another person without their consent and with intent to cause harm or with reckless disregard as to whether harm is caused. The second offence, provided for in s.3 of the Act, also deals with sharing intimate images but also covers the non-consensual recording of such images regardless of whether those images are subsequently shared. It therefore covers the practice of voyeurism.⁴⁶ Proof of intention to cause harm or recklessness on the part of the wrongdoer is unnecessary for the second offence thus making it a strict liability offence.⁴⁷ The third offence which is found in s.4 of the 2020 Act deals, inter alia, with the practice of cyberbullying insofar as it punishes the distribution or publication of “threatening or grossly offensive communications”.⁴⁸

As we saw above, there are civil law remedies for image-based sexual abuse available through the 2018 Act and, potentially through a future iteration of any AI Liability Directive. Importantly, neither of these options apply exclusively to the issue of image-based sexual abuse nor were they enacted with this issue in mind but, in the context of the *Digital Rights Ireland* case, it shows how the 2018 Act can be used to seek civil relief for victims of this type of wrongdoing. It will be recalled that *Digital Rights Ireland* contends that the intimate material depicting six Irish women constitutes their personal data which was unlawfully processed when that material was posted to the Discord platform without their consent. *Digital Rights Ireland* therefore seeks damages under s.117 of the 2018 Act against the persons who posted the material.

Likewise, in the case of the AI Liability Directive, it can potentially be invoked as a means of providing civil redress to victims of image-based sexual abuse, particularly in cases where the intimate material at issue are AI-generated deepfakes. As stated previously, this is contingent on AI-generated deepfakes being included among the compensable harms when this Directive comes to be transposed into domestic law because the types of harm to be compensated under the Directive are at the discretion of each Member State.

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The availability of civil law remedies in this context is significant. For one thing, it is at the discretion of the complainant whether to progress civil claims to trial, whereas this decision rests with the State in criminal proceedings thus giving complainants more autonomy over their civil action.⁴⁹ It is easier to prove one's case in civil proceedings than in criminal proceedings due to the lower standard of proof and any damages awarded in civil proceedings becomes the property of the complainant whereas any fine issued in criminal proceedings becomes the property of the State.⁵⁰ But perhaps the most significant advantage of the civil law remedies discussed above compared to their criminal counterpart is that they can be accessed by way of a representative action thus alleviating the anxiety and burden for victims of having to initiate and argue a case on their own.

III. SECTION THREE - CONCLUSION

a) Next Steps in the Passage of the Non-Fatal Offences Against the Person (Amendment)

Bill 2024

This article has attempted to provide some details about the proposed offence of catfishing in the Non-Fatal Offences Against the Person (Amendment) Bill 2024. As with all legislation that has not completed all stages in the Oireachtas before a general election is called, this Bill has collapsed and will need to be reintroduced in the Oireachtas if it is to become law. Moreover, not only will this Bill require reintroduction, but it will also require a new sponsor following former Senator Lisa Chambers's decision to withdraw from national politics.⁵¹ However, in spite of these hurdles, it is arguable that this Bill or, at the very least, the issue that this Bill seeks to address, would receive wide support in the Oireachtas if it were reintroduced⁵² having regard to the growing awareness among the public of catfishing and of the harm that it can do.⁵³

b) The Harm Caused by Catfishing

Senator Chambers spoke about the emotional harm that this practice can cause particularly to the victim who has been deceived into engaging with the perpetrator on the basis of who they purport to be. This kind of harm is serious enough to warrant a legislative response to the issue and indeed we have seen through such laws as the 2020 Act, where “harm” for the purposes of that Act refers to psychological and emotional harm⁵⁴ that the legislature is willing to respond to actions that specifically give rise to emotional harm. But there is further harm caused by catfishing that Senator Chambers⁵⁵ and others⁵⁶ drew attention to, and which does not feature extensively in the public discourse on this issue. That is the harm caused to the individual whose identity has been misappropriated and whose privacy more broadly has been invaded by the perpetrator.

c) The Importance of a Standalone Offence of Catfishing

In light of the widespread harm that catfishing can cause and the multiple individuals that it affects, there is, in the first instance, a strong case to be made that this issue be legislated for and, in the second, that it be made a standalone offence. As this analysis has argued, while the amended offence of harassment in s.10 of the Non-Fatal Offences Against the Person Act 1997 would appear to address in part the issue of catfishing in so far as it ostensibly protects the victim whose identity has been misappropriated; it arguably fails to provide recourse to the victim who has been deceived. Nevertheless, assuming that the practice of catfishing is already by implication a criminal offence under s.10 (as the former government maintained⁵⁷) and that all victims are sufficiently covered by the provision, it is still not clear to victims of catfishing that the offence of harassment provides them with recourse. As discussed earlier in this article, legal certainty is a pillar of the rule of law and is particularly important in the context of criminal law having regard to the widespread harm that can be caused to victims of crime and the significant consequences for perpetrators of crime. It is therefore essential that acts designated as crimes are clearly expressed as such in legislation, that they are not subsumed into pre-existing offences, and that they can be clearly identified as crimes by the public. The benefit of this from the perspective of the victim was expressed by Senator Chambers as follows: “It is much easier to explain yourself to the Garda if you can point to a very clear offence for what is exactly happening to you”.⁵⁸

d) Developments in the Law Governing Online Activity

i. Civil Relief in Cases of Image-Based Sexual Abuse

This article has also attempted to show that if catfishing becomes a criminal offence in and of itself, it will join several other recent and forthcoming legal interventions governing online activity. Perhaps most notable would have been the proposed AI Liability Directive and the Data Protection Act 2018. In the context of the latter, the case of *Digital Rights Ireland v Discard Inc.* demonstrates how the 2018 Act can be used to seek civil relief in cases of image-based sexual abuse. Although the *Digital Rights Ireland* case is not yet concluded with the only decision in the case being one granting a Norwich Pharmacal Order, the case opens the door to the possibility that intimate material constitutes the personal data of the individuals depicted in it and that they are therefore entitled to civil relief in the form of damages where that material, (i.e. their personal data) is distributed without their consent.

The AI liability Directive offered an avenue to seek civil relief in cases of image-based sexual abuse provided the intimate material at issue is AI-generated. This is because the AI Liability Directive aimed to compensate individuals for harm caused by AI systems with the types of compensable harm left to Member States' discretion. It remains to be seen whether the Directive would have operated in the manner contemplated in this article - and ***12** in any event its withdrawal now makes that issue moot.

There is, however, a case to be made that harm caused by AI-generated intimate material would be compensable if and when any renewed AI Liability Directive comes to be transposed into Irish domestic law. First, to do so would arguably be in keeping with the spirit of the Directive as originally drafted and its wider context which is concerned with harnessing the benefits offered by AI, while maintaining safety and upholding human dignity. It would, therefore, be at variance with this wider context to exclude harm caused to individuals depicted in AI-generated intimate material from the ambit of the original contemplation of the Directive. The second argument in support of the proposition that harm caused by AI-generated deepfakes would be compensable under any transposed version of this law in Ireland, is that Ireland already recognises the harm that can be caused by deepfake material. It does so in its criminal law in this area, the 2020 Act, which applies to material that #purports to be# of the victim, meaning that victims depicted in intimate material that has been AI-generated or altered can have recourse to the 2020 Act.⁵⁹

ii. The Availability of Representative Actions in the Context of Image-Based Sexual Abuse Cases

It follows from this analysis that there are criminal and potentially civil law remedies for victims of image-based sexual abuse, the significance of which was discussed elsewhere in this article. But one important benefit of civil law remedies in this context that is worth repeating is that they can be accessed by way of a representative action. We saw in the context of *Digital Rights Ireland v Discard Inc.* how organisations like Digital Rights Ireland can bring representative actions pursuant to s.117(7) of the 2018 Act on behalf of individuals whose personal data was unlawfully processed. Specifically, we saw how this process was utilised in that case to seek relief for image-based sexual abuse. We also saw in the context of the proposed AI Liability Directive that it would have been possible, subject to the Directive becoming law, to seek civil relief as part of a representative action for harm caused by AI systems. Against this background and in light of the argument put forward in this article, that harm caused by the distribution of AI-generated or AI-altered intimate material would likely have been compensable under the Directive; relief for this type of harm can be accessed by way of a representative action provided that a future iteration of this Directive is enacted and subsequently transposed into Irish law.

The net effect of these developments in the law governing online activity, particularly in the context of image-based sexual abuse, (i.e. the availability of civil relief for image-based sexual abuse, on the one hand, and the option to pursue such relief by way of a representative action, on the other), is that victims of this practice who may feel anxious about engaging with the criminal justice system,⁶⁰ may be empowered to seek accountability albeit in the civil courts where, in addition to the many other benefits of civil litigation, they will have the benefit of doing so as part of a representative action where there is strength in numbers.

e) What's Next

As so much of what we do on a day-to-day basis involves the internet, there are more and more ways for us to fall victim to online harm. This requires policy and law makers to keep a watchful brief on online behavioural trends so that our law can ideally get ahead of these trends or, at the very least, respond to them quickly. Although there have been many legislative responses to harmful online practices in recent years,⁶¹ with more promised,⁶² legislation concerning the practice of catfishing remains unfinished business despite the efforts of former Senator Lisa Chambers. It is incumbent on current Oireachtas members to see that this Bill or an amended version of it is reintroduced to the Oireachtas and that catfishing is finally made a criminal offence.

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This journal may be cited as e.g. [2007] 17 (1) I.C.L.J. 1 [[year] (Volume number) I.C.L.J. (page number)]

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18. T. O'Malley, "The New Law on Sexual Offences" (2017) 27(3) I.C.L.J. 78 at 79.
19. T. O'Malley, "The New Law on Sexual Offences" (2017) 27(3) I.C.L.J. 78-79. (Scotland has consolidated all sexual offences legislation in the Sexual Offences (Scotland) Act 2009 with specific offences defined in that legislation thus avoiding the definitional deficit caused by amending pieces of legislation. Canada, meanwhile, has a criminal code and New Zealand has a general Crimes Act in which all criminal law is codified. O'Malley asserts that the benefit of such codification is that "[t]he substantive criminal law can be readily ascertained by consulting the general Act which is usually amended quite promptly following the introduction of new statutory measures").
20. B. Hutchinson, *Keane on Company Law* 6th edn, (Bloomsbury, 2024) 558 at 908 (In the context of company law, the Companies Act 2014 consolidated all companies legislation including the Companies Act 1963 which was the Principal Act in this area; the Companies Act 1990 which reformed the disqualification process and introduced another method of corporate enforcement called restriction; the Companies (Amendment) Act 1990 which introduced the examinership process; and the Company Law Enforcement Act 2001 which established the Office of the Director of Corporate Enforcement (as it was) and the Company Law Review Group).
21. T. O'Malley, "The New Law on Sexual Offences" (2017) 27(3) I.C.L.J. 78.
22. Senator Ward was elected a TD (member of the lower house of the Irish Parliament) for the constituency of Dún Laoghaire in the General Election of 2024.
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25. J. Raz, "The Rule of Law and its Virtue" in *The Authority of Law* (Clarendon Press, 1979) 214-219.
26. Proposal for a Directive of the European Parliament and of the Council on Adapting Non-Contractual Civil Liability Rules to Artificial Intelligence COM (2022) 496 final (Proposed AI Liability Directive) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0496> [accessed 6 January 2025].
27. The Directive has since been withdrawn see https://commission.europa.eu/publications/2025-commission-work-programme-and-annexes_en.
28. The Directive has since been withdrawn see https://commission.europa.eu/publications/2025-commission-work-programme-and-annexes_en, 11, 13-14.
29. The Directive has since been withdrawn see https://commission.europa.eu/publications/2025-commission-work-programme-and-annexes_en, 11.
30. A. O'Connell, "Coco's Law: Two Years On" (2023) 33(2) I.C.L.J. 26 at 28.
31. J.P. Byrne, "Getting the Intelligence into Artificial Intelligence Liability" (2023) 41(6) I.L.T. 6.
32. Regulation (EU) 2024/1689 of 13 June 2024 laying down harmonised rules on artificial intelligence and amending Regulations (EC) No.300/2008, (EU) No.167/2013, (EU) No.168/2013, (EU) 2018/858, (EU) 2018/1139 and (EU) 2019/2144 and Directives 2014/90/EU, (EU) 2016/797 and (EU) 2020/1828 [2024] OJ L1689/1 (AI Act) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32024R1689> [accessed 7 January 2025].
33. Proposed AI Liability Directive: Proposal for a Directive of the European Parliament and of the Council on Adapting Non-Contractual Civil Liability Rules to Artificial Intelligence COM (2022) 496 final (Proposed AI Liability Directive) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0496> [accessed 6 January 2025]. Article 2 (for instance, the definition applying to an "'AI system', 'provider' and 'person who is subject to the provider's obligations'" under the AI Act also applies under the Proposed AI Liability Directive).
34. J.P. Byrne, "Getting the Intelligence into Artificial Intelligence Liability" (2023) 41(6) I.L.T. 6. The AI Act Ch. II, art.5(1)(b); see also, AI Act Ch. IV, art.50 which sets out transparency rules for deepfakes requiring that deepfake material be clearly labelled as such.
35. Commission, "White Paper on Artificial Intelligence: A European approach to excellence and trust" COM (2020) 65 final, available at https://ec.europa.eu/info/sites/default/files/commission-white-paper-artificial-intelligence-feb2020_en.pdf [accessed 6 January 2025].
36. U. von der Leyen, *A Union that Strives for More: Political Guidelines for the Next European Commission 2019-2024* (Publications Office of the European Union 2020).
37. U. von der Leyen, *A Union that Strives for More: Political Guidelines for the Next European Commission 2019-2024* (Publications Office of the European Union 2020), 13.
38. Harassment, Harmful Communications and Related Offences Act 2020, s.1; see also, A. O'Connell, "Coco's Law: Two Years On" (2023) 33(2) I.C.L.J. 26 at 27-28. (O'Connell describes the definition of intimate image as technologically neutral in that it does not specify the method by which the image is to be made, captured or distributed meaning that the definition is robust enough to withstand technological advances in making, capturing and distributing visual material. O'Connell contrasts the broad and future-proofed Irish definition with that in neighbouring jurisdictions like England and Wales where an intimate image refers specifically to a photograph or film of a sexual nature. Moreover, the definition of intimate image under the 2020 Act includes images that "purport to be" of another person which would necessarily encompass AI-generated deepfakes); see further, M.J. Boland, "Deepfakes and the Law" (RTÉ Radio One, 13 February 2024) available at <https://www.rte.ie/radio/radio1/clips/2235270/> [accessed 13 February 2024].

39. A. O'Connell, "Coco's Law: Two Years On" (2023) 33(2) I.C.L.J. 28.
40. A. O'Connell, "Coco's Law: Two Years On" (2023) 33(2) I.C.L.J. 28.
41. Proposed AI Liability Directive: Proposal for a Directive of the European Parliament and of the Council on Adapting Non-Contractual Civil Liability Rules to Artificial Intelligence COM (2022) 496 final (Proposed AI Liability Directive) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0496> [accessed 6 January 2025], art.2(6)(c).
42. Proposed AI Liability Directive: Proposal for a Directive of the European Parliament and of the Council on Adapting Non-Contractual Civil Liability Rules to Artificial Intelligence COM (2022) 496 final (Proposed AI Liability Directive) available at <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52022PC0496> [accessed 6 January 2025], art.2(6)(c), 12.
43. [2023] IEHC 573.
44. [2023] IEHC 573, [11]-[12].
45. See generally, A. O'Connell, "Coco's Law: Two Years On" (2023) 33(2) I.C.L.J.
46. A. O'Connell, "Coco's Law: Two Years On" (2023) 33(2) I.C.L.J. 27.
47. M. Block, "Cyber Violence - The Law is Not Enough" (2022) 27(1) *The Bar Review* 18, 19-20; see also, M. O'Doherty, "The Harassment, Harmful Communications and Related Offences Act 2020: An Overview" (M. O'Doherty BL, 1 February 2021) available at <https://michaelodohertybl.com/the-harassment-harmful-communications-and-related-offences-act-2020-an-overview-update/> [accessed 16 February 2024].
48. Harassment, Harmful Communications and Related Offences Act 2020, s.4(1)(a).
49. See generally, Á. Keenan, *Essentials of Irish Business Law* 7th edn, (Boru Press, 2021) 15-17.
50. See generally, Á. Keenan, *Essentials of Irish Business Law* 7th edn, (Boru Press, 2021) 15-17.
51. T. Kelly, "Lisa Chambers confirms departure from frontline national politics" *Connaught Telegraph* (Castlebar) 7 January 2025) 3.
52. It is notable that two former senators who co-sponsored the Bill, Catherine Ardagh and Timmy Dooley, were re-elected to the Oireachtas as TDs in the 2024 general election and are thus well positioned to reintroduce the Bill.
53. S. Doherty, "How GAA Catfish podcast has highlighted legal issues around catfishing" *RTÉ Brainstorm*, 23 January 2025) available at <https://www.rte.ie/brainstorm/2025/0123/1492034-gaa-catfish-podcast-2-johnnies-legal-issues-victims/> [accessed 23 January 2025].
54. Harassment, Harmful Communications and Related Offences Act 2020, s.1 ("harm" is defined in this section as including psychological harm); see also, B. O'Donnell, "Catfishing Laws in Ireland: Is Catfishing Illegal?" (*Brigid O'Donnell Solicitors*, 13 January 2025) available at <https://www.brigidodonnellsolicitors.ie/catfishing-the-law-in-ireland/> [accessed 22 January 2025], (O'Donnell offers the offence of coercive control provided for in s.39 of the Domestic Violence Act 2018 as an example of where the legislature sought to specifically address emotional harm whereas previously the law relating to domestic violence only responded to physical harm).
55. *Seanad Debates*, 22 October 2024, Vol.303, No.9, p.587 at 589.
56. See generally, L. Ndyulo, "Protecting the Right to Identity Against Catfishing: What's The Catch?" (2023) 44 *Obiter Law Journal* 308.
57. *Seanad Debates*, 22 October 2024, Vol. 303, No.9, p.593.
58. *Seanad Debates*, 22 October 2024, Vol. 303, No. 9, p.588.
59. See, U. von der Leyen, *A Union that Strives for More: Political Guidelines for the Next European Commission 2019-2024* (Publications Office of the European Union 2020), 13.
60. Notwithstanding the anxiety that engagement with the criminal justice system can cause, there are important safeguards for complainants built into the Harassment, Harmful Communications and Related Offences Act 2020. These include the right to automatic anonymity provided for in s.5 of the Act which makes it an offence to publish or broadcast information, photographs, or anything that would identify the victim. However, s.5(2) allows the Judge, having taken into account the views of the victim, to waive the anonymity guarantee if to do so is in the interests of justice. In such a scenario, the Judge may permit very limited details about the victim to be reported, such as their geographical location and first name. This is in contrast to neighbouring jurisdictions of England and Wales where victim anonymity applies to the voyeurism offences, such as those relating to the recording of intimate material but not to offences concerning the non-consensual disclosure and publication of intimate material. See further, A. O'Connell, "Coco's Law: Two Years On" (2023) 33(2) I.C.L.J. 26 at 31.
61. In addition to the developments discussed in this article, we have seen several other recent developments in the law governing online activity. These include the establishment of Coimisiún na Meán under the Online Safety and Media Regulation Act 2022, the adoption by Coimisiún na Meán of its online safety code which sets binding rules for video sharing platforms, and the passage of the EU Digital Services Act which targets harmful content online including disinformation. There was also an unsuccessful attempt to update the law regarding hate speech and incitement to hatred both on-and-offline in the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022. See further, Coimisiún na Meán, *Online Safety Code* (2024) available at <https://www.cnam.ie/industry-and-professionals/online-safety-framework/online-safety-code/> [accessed 22 January 2025]; see also, Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L277/1.
62. See, *Securing Ireland's Future: Draft Programme for Government* (2025) available at <https://www.fine Gael.ie/programme-for-government-2025/> [accessed 22 January 2025]. (On p.21, an SMS scam filtration system is proposed similar to that which applies to email spam, and a commitment is made to tackle fake advertisements online. On pp.34 & 35, a commitment is made to harness the benefits of AI while protecting privacy and other fundamental rights and to resource and implement the new Online Safety Framework. Relatedly, on p.135, the Government pledges to tackle disinformation through a new National Counter Disinformation Strategy. On pp.117 and 119-120, there are commitments in relation to gathering electronic evidence for the purposes of investigating and prosecuting crime, including to legislate to give Gardaí authority to obtain passwords for electronic devices when executing search warrants. On p.122, the Government commits to revisiting the issue of hate speech and to amend and modernise the Incitement to Hatred Act 1989).