

Regulating online harassment: IBSA



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A close-up profile photograph of a man with dark hair and glasses, looking towards the right. He is positioned in front of a large, complex digital interface that appears to be projected or overlaid on his face. The interface consists of numerous small, glowing blue and white screens displaying various data visualizations such as world maps, line graphs, bar charts, and circular progress indicators. Some text labels are visible, including "ROBOT", "SMARTMASTER", and several long alphanumeric codes like "00100010000000000000000000000000". The overall theme is advanced technology and data analysis.

UCD Centre for Digital Policy

Building digital policy capability amongst the public
and private sector in Ireland and across the wider
European Union.

Today's lecture

- The hopes and ideals of online spaces vs the risks and harms
- Introducing image-based sexual abuse
- Journalist Dara Quigley's experience and subsequent legal reform

This class is dedicated to Dara Quigley, her mother Aileen Malone, and those who seeks to revolutionise safe spaces for everyone.

Dara Quigley wrote

'Our economy and society is modeled on the behaviour of pigeons, survival of the fittest, everybody out for themselves.

The reality is more complex and beautiful than this regime can possibly imagine.

In reality, we are more like a flock of starlings, producing intricate, amazing patterns all arising from one fundamental rule: no one bird is allowed to get lost.'

- Dara Quigley, 2016

Diamonds Are Forever

#naturaldiamond



Source: <https://www.broadsheet.ie/2016/09/19/diamonds-are-forever/>

23 March 2016 — Opinion

Every Addict Has the Right to a Better Life

Dara Quigley

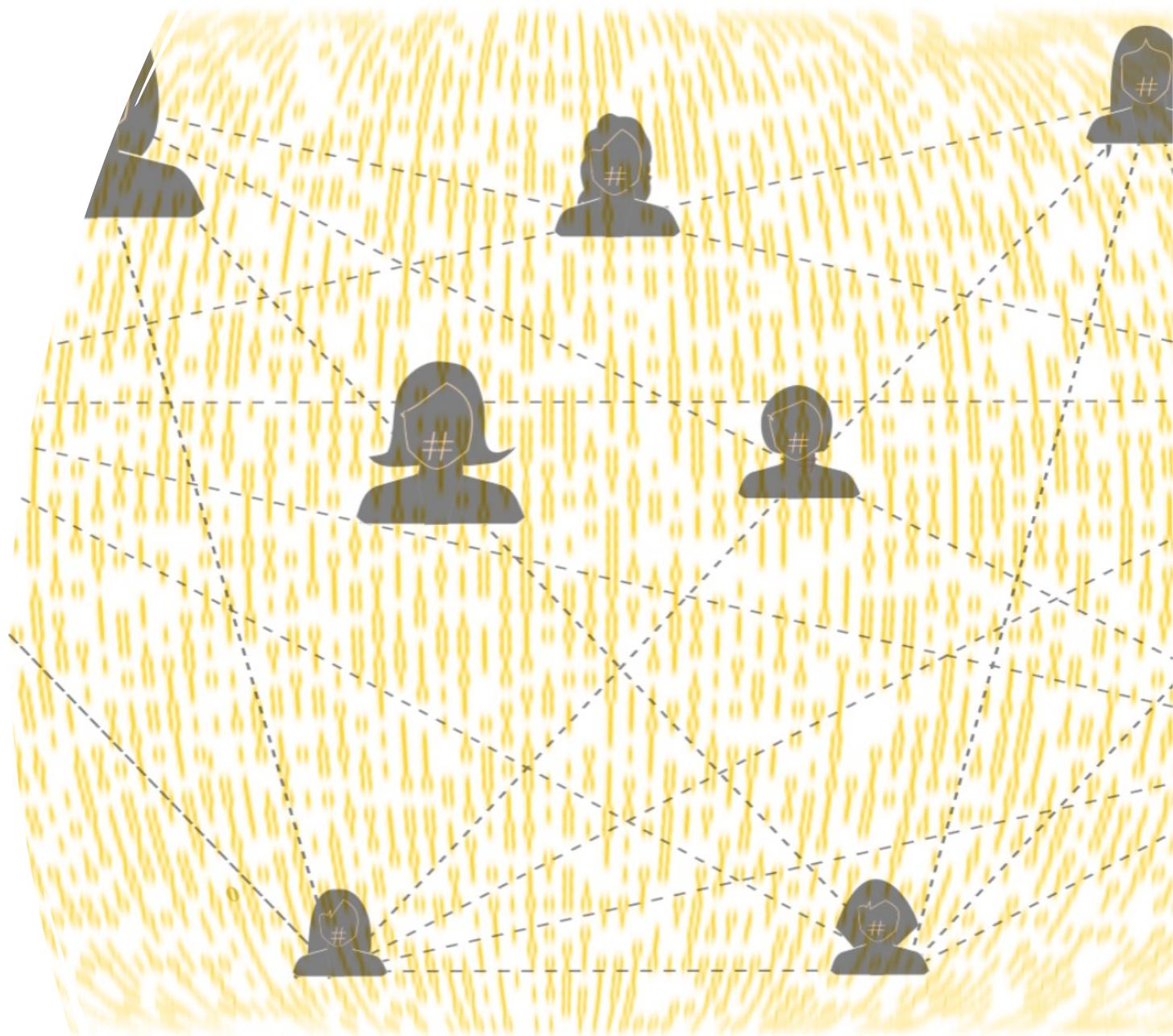
Dara Quigley was a writer and activist. She died in 2017.

[Facebook](#) / [Twitter](#) / [Respond](#)

ICT: Revolutionary spaces for gender equality?

Donna Haraway (Manifesto, 1991)

- New Information Communication Technologies (ICT) could create spaces for equality
- Possibilities for coalitions based on affinities, not identities
- Opportunities for uniquely safe spaces online



Shared visions by tech gender optimists

Haraway (1991): There will be uniquely safe spaces online for women to congregate and share information and ideas without being reduced to or defined by their gender identity

Light (1995): Predicted that the internet specifically offered women a greater opportunity for self-expression

Plant (1996): Computer-mediated communications might create potential new liberatory spaces and opportune forums, which would blur the traditional distinctions between genders and remove associated constraints.

Lived realities

Mary Anne Franks (2015)

- Harassment online undermines the progressive social potential of spaces online
- The internet amplifies abuse





Online harassment *types*...share *non personal* examples in chat
I'll start with doxing (aka doxxing)

Terminology is important...

Is it 'cyberbullying' or 'cybermisogyny'?

Cybermisogyny...encapsulates the diverse forms of gendered hatred, harassment, and abusive behaviour directed towards women and girls online.

It offers a more nuanced way of describing behaviours often lumped into the catch-all term 'cyberbullying' in mainstream discourse, a term which tends to erase the sexist, racist, homophobic, transphobic, and otherwise discriminatory nature of the behaviour and ignores the context of power and marginalization in which it occurs.

Westcoast Leaf (2014)



Terminology is important...

Is it image-based sexual abuse or revenge porn?

- It's not porn it's abuse
 - Motivations unrelated to revenge
 - Clear intent is to violate a person's personal autonomy, dignity, and privacy in a sexualized way

McGlynn and Rackley (2017)



Image-based sexual abuse

An established problem with gendered harms

- Historically, the majority of victims are women and perpetrators are men
- However, intersectional factors increase the likelihood of experiencing online harassment like image-based sexual abuse
- The LGBT+ community is at increased risk. One's race, religion, ethnicity, mental health and ability are all risk factors.

Farries and Sturm (2019)

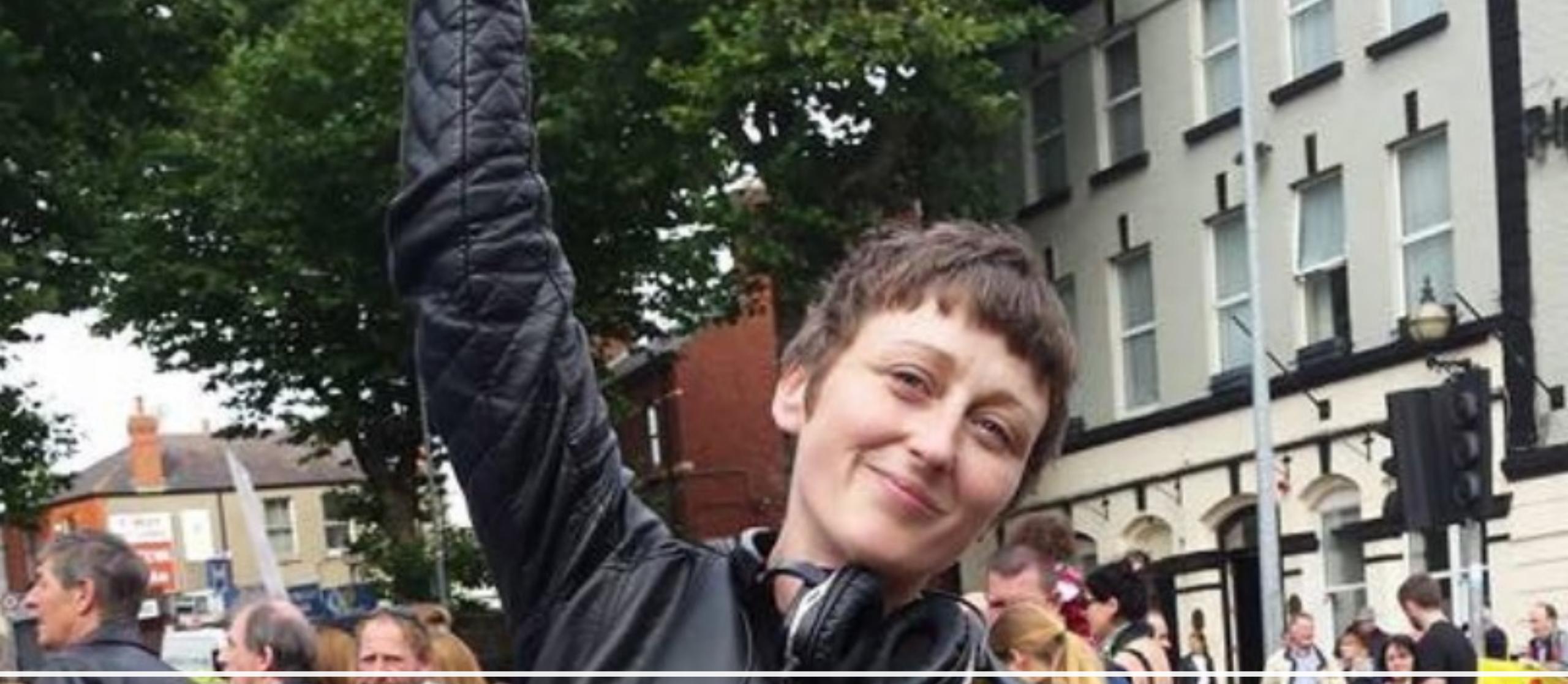
Devastating Harms

Mary Anne Franks (2011)

- Images dominate search engines
- Materials sent to victim's communities
- Threats, further harassment, employment termination, suicide

'Unwilling Avatars'





Unwilling Embodiment

Platform Regulation?

Introduction

- > I. [Violence and criminal behaviour](#)
- > II. [Safety](#)
- > III. [Objectionable content](#)
- 12. [Hate speech](#)
- 13. [Violent and graphic content](#)

14. Adult nudity and sexual activity

Policy rationale

We restrict the display of nudity or sexual activity because some people in our community may be sensitive to this type of content. Additionally, we default to removing sexual imagery to prevent the sharing of non-consensual or underage content. Restrictions on the display of sexual activity also apply to digitally created content unless it is posted for educational, humorous or satirical purposes.

Our Nudity Policies have become more nuanced over time. We

Facebook warned it faces legal action from 'revenge porn' victims

Settlement with teenager over naked images of her posted online on networking site has 'moved goalposts', say lawyers



Henry McDonald *Ireland correspondent*

Fri 12 Jan 2018 16.59 GMT



Human Content Moderation problems: 'bodies in seats' (Verge, 2019)



Source: <https://www.theverge.com/2019/6/19/18681845/facebook-moderator-interviews-video-trauma-ptsd-cognizant-tampa>

Platforms shouldn't be the *de facto* regulators

- **Privatising legal duties.** Content and speech are traditionally government and judicial mechanisms
- **Lack of transparency.** Not entirely clear how social media companies regulate content despite their public facing policies
- **Rights concerns.** 2016 report, UN Special Rapporteur freedom of expression: Private companies ‘are typically ill-equipped to make determinations of content illegality’ (A/HRC/32/38)
- Council of Europe Commissioner for Human Rights: ‘States should stop relying on private companies that control the Internet to impose restrictions that violate States’ human rights obligations’ (2014)

Remedies for IBSA

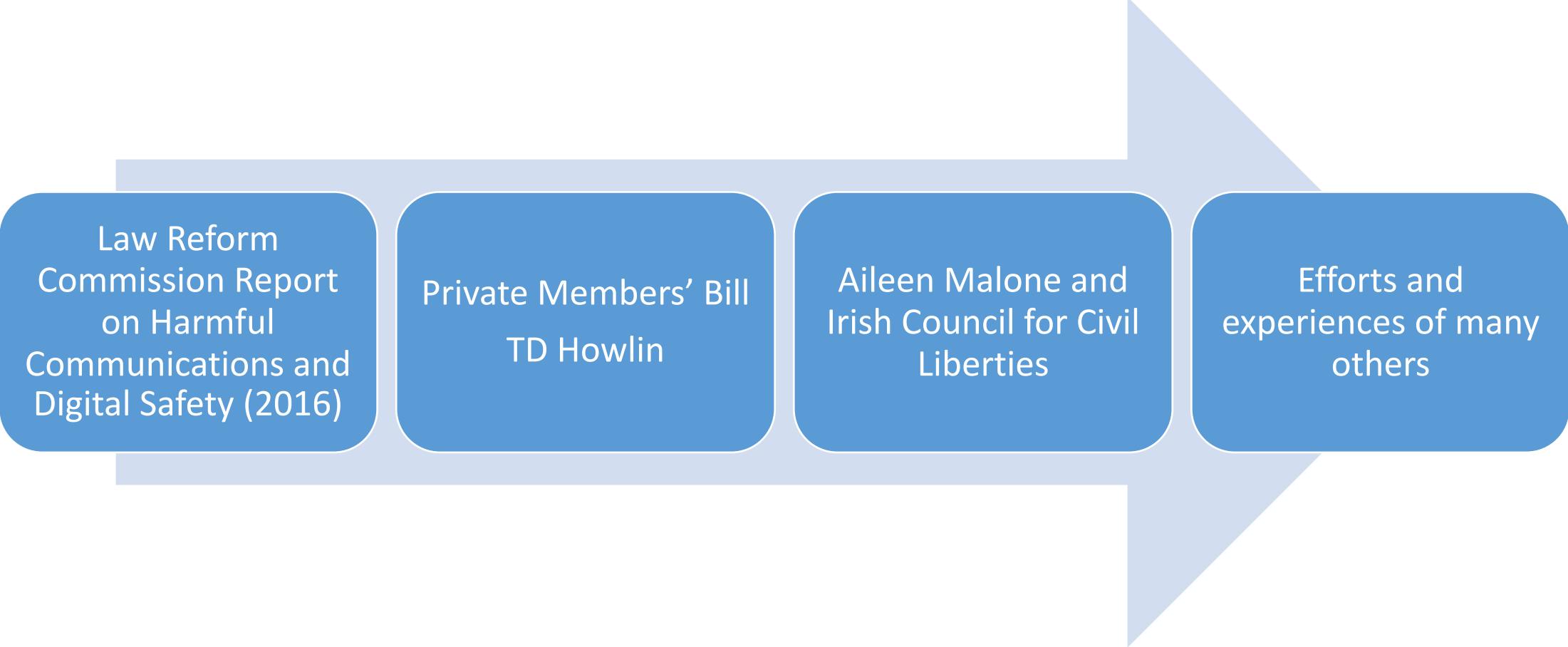
Four broad remedies emerging
(O'Connell, 2020)

1. Criminal Law
2. Privacy law
3. Copyright law
4. Image-rights

Remedies in Ireland - *before* 2021

- Right to have one's data erased
 - Art 17 GDPR
- Criminal Law (Sexual Offences) Act 2017
 - S12 – 18 and other
- Data Protection Commissioner
 - Complaints to www.dataprotection.ie
 - GDPR, Data Protection Acts

Need for a new criminal framework: Research, lobbying and recommendations



Law Reform
Commission Report
on Harmful
Communications and
Digital Safety (2016)

Private Members' Bill
TD Howlin

Aileen Malone and
Irish Council for Civil
Liberties

Efforts and
experiences of many
others

Mother of journalist Dara Quigley calls for stronger laws on online harassment



Dara Quigley's mother Aileen Malone said legislation was urgently needed "to protect all vulnerable people"

Times, 2019 <https://www.thetimes.co.uk/article/mother-of-journalist-dara-quigley-calls-for-stronger-laws-on-online-harassment-wfbcwssc6>

'Dara's case illustrates the inadequacy of the current law regulating disclosure of intimate images without consent,'

Aileen Malone to
Oireachtas, 6 Oct 2019
(<https://www.rte.ie/news/politics/2019/1023/1085170-quigley-oireachtas/>)

Harassment, Harmful Communications and Related Offences Act, 2020

- Entered into force in February 2021
- Criminalises image-based sexual abuse
- Makes it an offence under section 3 for a person to record, distribute or publish an intimate image of another person without that other person's consent

A strict liability offence (intention not a factor)

Recording, distributing or publishing intimate image without consent

3. (1) Subject to *subsection (2)*, a person is guilty of an offence where—

(a) he or she records, distributes or publishes an intimate image of another person without that other person's consent, and

(b) that recording, distribution or publication, as the case may be, seriously interferes with that other person's peace and privacy or causes alarm, distress or harm to that other person.

(2) *Subsection (1)* shall not apply to a person who distributes or publishes an intimate image for the purpose of the prevention, investigation or prosecution of an offence under this section.

(3) A person who is guilty of an offence under this section is liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or both.

Enforcement: Online Safety and Media Regulation Bill

- Provides for the appointment of an Online Safety Commissioner as part of a wider Media Commission to oversee a new regulatory framework in Ireland.
- Gives the Media Commission powers to govern online platforms and internet services.
- **Compliance powers**, to ask for information from online service providers, lead investigations, audit complaints or issues handling mechanisms operated by online services.
- **Sanction powers**, subject to court oversight, to give administrative financial sanctions (fines), the power to compel compliance and the power to block online services if they do not comply.
- Parallel regulatory activity at the EU level which Ireland is subject to.

Minister launches new campaign to combat sharing of intimate images without consent (2021)



Hotline available:
hotline.ie/report

Hotline to help people with images posted online without consent

Move forms part of new awareness campaign by Department of Justice

Thu, Sep 2, 2021, 00:01

Mark Hilliard



Abusers can often use the threat of sharing intimate images as an element of coercive control in relationships, Minister of State for Civil and Criminal Justice Hildegarde Naughton said launching the campaign. Photograph: Nick Bradshaw

Unanswered regulatory questions

CCTV

- Policy measures must be in place to ensure that CCTV recordings are safe, secure and necessary

Policing

- Policy measures to ground policing in principles of human rights that include online and gendered considerations

Unanswered regulatory questions: Policing

- The Director of Public Prosecutions (DPP) did *not* recommend prosecution of the garda who accessed Dara Quigley's footage
- That Garda also resigned from the force before a disciplinary process was complete
- However, following the activism around Dara's death, Garda Commissioner Drew Harris has apologised for the 'unacceptable breach of trust' committed in Dara's case

Irish Times, 2021 <https://www.irishtimes.com/news/social-affairs/harris-apologises-for-unacceptable-breach-of-trust-in-dara-quigley-case-1.4692032>

Policing, Security and Community Safety Bill

Seeks to

- significantly advance in the reform of Ireland's national policing and security infrastructure
- strengthen and consolidate independent, external oversight of An Garda Síochána
- strengthen the objectives of An Garda Síochána in relation to protecting and vindicating the human rights of individuals

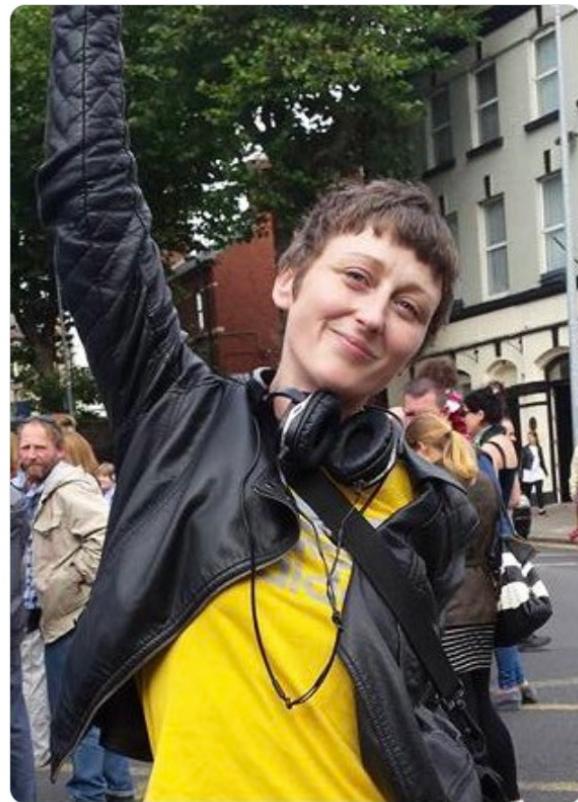
<https://www.gov.ie/en/press-release/74eb0-minister-mcentee-publishes-general-scheme-of-landmark-policing-security-and-community-safety-bill/>



ailleen
@aileendub

...

#DaraQuigley image and apology we won for her on front of Irish Times and on the Six One news last week! This news and images of her overwrote and eclipsed reports of Garda sharing THAT clip of CCTV and closed the circle. It restored Dara's dignity and humanity - our intention ❤️



7:23 PM · Oct 10, 2021 · Twitter for iPhone

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