



Criminalization of the
Dissemination of
Nonconsensual Deepfake
Pornography in the
European Union. A
Comparative Legal
Analysis.

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Presentation in a nutshell

Outline

1. Definitions
2. Serious Harms of Nonconsensual Deepfake Pornography
3. Criminalization as a Last Resort (Do We Really Need to Criminalize It?)
4. Comparative Legal Analysis: The Criminalization of the Dissemination of Nonconsensual Deepfake Pornography in the Selected European Union Member States

Research Question

To what extent do criminal laws of selected fourteen European Union Members criminalize dissemination of nonconsensual deepfake pornography?

Definitions

Deepfake

Synthetic but hyperrealistic audiovisual media (audio, photo, and video) that is entirely created or partially edited by an AI system.

Nonconsensual deepfake pornography

A deepfake produced without the consent of the subject and depicts them in an intimate or sexual setting.

Image-based sexual abuse as a catalyzer of deepfake technology



Serious Harms of Nonconsensual Deepfake Pornography

- Gender-based violence
- Data protection violation
- Attack on reputation and honor
- Undermining psychological integrity
- Victim blaming
- Sextortion
- Silencing effect
- Violation of pornography performers' rights (copyright and performers' moral rights)

Criminalization as a Last Resort

- Can we tackle nonconsensual sexual deepfakes with less restrictive measures than criminal law?
- **Potential less restrictive measures**
- Counter-speech (creates Streisand effect)
- Technical measures: perceptual hashing, labeling, deepfake detection (useful in the context of deepfake-powered dis- and misinformation)
- Civil law measures: intellectual property rights, defamation (difficult to build a civil law case)
- Internet law measures: blocking access, notice and take down (difficult to take down harmful content)

The criminalization is preferable but will not solve the issue by itself

- Due to its serious harms and the difficulties of tackling the issue with less restrictive measures, criminalization is preferable and more legitimate than not doing so.
- Criminal law cannot tackle a complex gendered, societal, and technological issue by itself.
- A multifaceted response that includes different branches of law, educational initiatives, policy interventions, and technical measures is required to tackle nonconsensual deepfake pornography.

Comparative analysis of criminal laws of fourteen European Union Members

- Austria, Belgium, Croatia, Denmark, France, Germany, Italy, Malta, the Netherlands, Portugal, Romania, Slovenia, Spain, and Sweden.
- **Categorization of criminal laws**
 - 1) The criminal code specifically and clearly criminalizes
 - 2) The interpretation of the criminal code criminalizes
 - 3) The criminal code or its interpretation do not criminalize dissemination of nonconsensual deepfake pornography.

Comparative Legal Analysis of Selected Countries' Criminal Law Responses to the Dissemination of Nonconsensual Deepfake Pornography

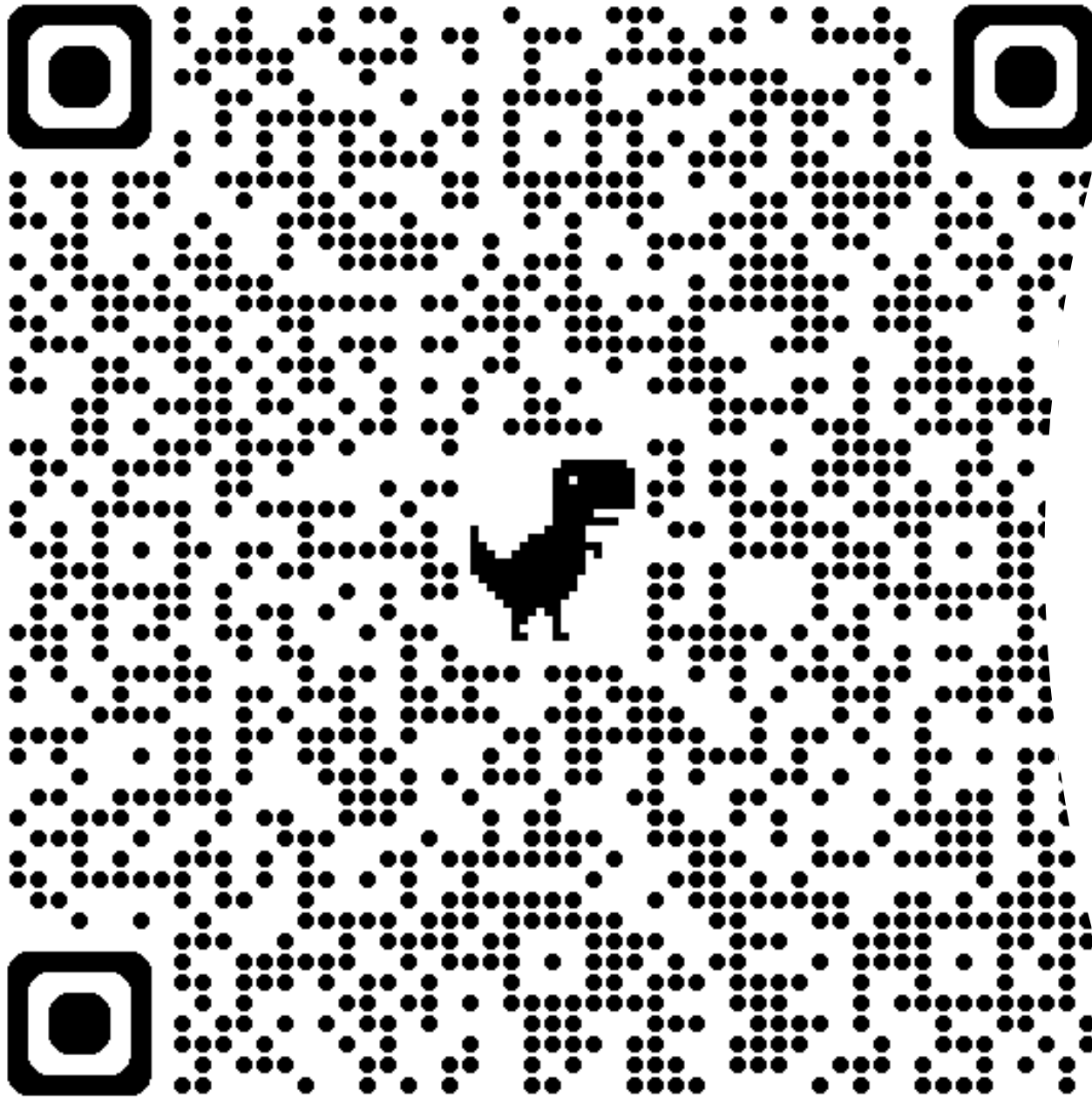
Country	Criminal code specifically criminalizes nonconsensual sexual deepfake	Interpretation of criminal code criminalizes nonconsensual sexual deepfake	Criminal code does not criminalize nonconsensual sexual deepfake	Crime Category	Punishment
Austria			(x)	N/A	N/A
Belgium		(x)		Image-based sexual abuse	Fine and six months to five years imprisonment
Croatia			(x)	N/A	N/A
Denmark		(x)		Defamation	Fine or imprisonment up to two years
France			(x)	N/A	N/A
Germany		(x)		Violation of intimate privacy and personality rights	Fine or imprisonment up to two years
Italy			(x)	Image-based sexual abuse	Fine and imprisonment up to six years
Malta			(x)	Image-based sexual abuse	Fine and/or imprisonment up to five years
The Netherlands	(x)			Image-based sexual abuse	fine or imprisonment up to a year
Portugal			(x)	Image-based sexual abuse	Imprisonment up to five years
Romania			(x)	Image-based sexual abuse	Fine or imprisonment from six months to three years
Slovenia		(x)		Unlawful or nonconsensual sharing of sensitive personal data	Imprisonment up to two years
Spain			(x)	N/A	N/A
Sweden		(x)		Defamation	Fine or imprisonment up to two years

Efforts at the European Union Level

- The recently adopted European Union Directive on Combating Violence Against Women and Domestic Violence (2024/1385) expressly criminalizes the dissemination of nonconsensual deepfake pornography (Article 5).
- Member States have three years (after entry into force) to transpose the Directive into national legislation.
- The Directive excludes strip naked deepfake (Article 5/1[b]) and sharing nonconsensual sexual deepfake with fewer than three persons.

Conclusion

- Dissemination of nonconsensual deepfake pornography can inflict serious harm.
- It is challenging to tackle nonconsensual deepfake pornography without criminal law. Criminalizing the dissemination of such deepfakes is preferable and more legitimate than not doing so.
- Eight out of fourteen (selected) EU members do not effectively criminalize the dissemination of nonconsensual deepfake pornography.
- The recently adopted EU Directive should be welcomed; some caveats may hamper its effectiveness.



Thank you

- Use the QR code to download the paper, which is available on Researgate.
- Do not hesitate to reach out can.yavuz@ugent.be