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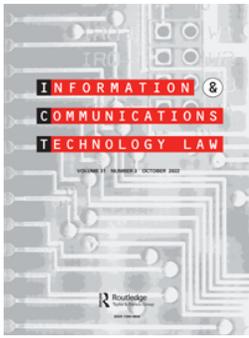
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Online safety and identity: navigating same-sex male social “dating” apps and networks

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ABSTRACT

For gay, queer and bisexual men, and men who have sex with men (MSM), the presence of apps such as Grindr, Scruff, Tinder, Recon, and others have long represented a complex online ecosystem in which identities are formed and constructed in a space intensely governed by social, contractual, and – increasingly – criminal law backed regulation and norms. The publication of the UK Government’s Online Safety Bill in late 2020 and revised Bill in March 2022 marked a further legal and policy intervention in regulating online harms to improve safety. It follows other interventions, notably the Criminal Justice and Court Act 2015, which criminalises intimate image sharing in cases where it is done without consent and intends to cause distress. This article draws on original focus group data to examine the navigation of these “Dating” Apps and Networks by their users from a novel perspective arguing that the current legal approach risks both over and under-legislating what is a complex and subtle online ecosystem. It focuses on the construction of identities – the characteristic proxies deployed, management of location-aware features, visibility, and images (re)shared. We seek to provide an essential counterpoint to existing and dominant narratives relating to online safety and identity regulation.

KEYWORDS

Dating apps; online safety; LGBTQ; MSM; identity; criminal law

Introduction

For many men who have sex with men, mobile dating apps are an entrenched part of their (digital) lives.¹ These services, including popular apps such as Grindr, Scruff, Tinder, Recon, and others, act as spaces that are frequently filled with (often sensitive) personal data provided by service users, including sexual preferences, health information, and sexually explicit images and text.² This can create significant anxieties among

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¹Shangwei Wu and Janelle Ward, ‘The Mediation of Gay Men’s Lives: A Review on Gay Dating App Studies’ (2018) 12 *Sociology Compass* e12560.

²David Gudelunas, ‘There’s an App for That: The Uses and Gratifications of Online Social Networks for Gay Men’ (2012) 16 *Sexuality and Culture* 347; Jody Ahlm, ‘Respectable Promiscuity: Digital Cruising in an Era of Queer Liberalism’ (2017) 20 *Sexualities* 364; Cameron Giles, ‘Digital Disclosure: HIV Status, Mobile Dating Application Design and Legal Responsibility’ (2021) 30 *Information & Communications Technology Law* 35.

users,³ especially around privacy concerns.⁴ The design of these apps produces liminal spaces, which are simultaneously private due to sign-up and sign-in requirements, and public, due to the ease with which users may enter and exit these spaces.⁵ Through their mobile nature, apps also challenge the online/offline binary⁶ by not '[forcing] people to choose between interacting with other MSM online and interacting in social contexts face-to-face.'⁷ These factors and the emphasis on visuals within apps,⁸ both through the design of a user's profile and on-app image sharing, contribute to a particularly precarious privacy environment that users must seek to navigate.⁹

This paper explores how app users in the UK express and address these concerns before discussing recent legislative proposals related to online safety by the Government at Westminster. In their *Online Harms White Paper*, the UK Government emphasised 'that companies themselves have a crucial role to play in tackling the proliferation of online harms [and that] [t]he design of an online product or service can give rise to harm or help protect against it.'¹⁰ There is also an acknowledgement within the White Paper that the regulatory framework to prevent online harms envisaged by the government will need to take account of user expectations, particularly surrounding privacy:

The regulatory framework will apply to public communication channels, and services where users expect a greater degree of privacy, such as online instant messaging services and closed groups. The regulator will set out how companies can fulfil their duty of care in codes of practice, including what measures are likely to be appropriate in the context of private communications.¹¹

Existing research suggests that dating app users' privacy concerns are typically focused on privacy and policy at an 'institutional' rather than a 'social' level, with users more concerned about how service providers – rather than other service users – use their data.¹² Nevertheless, some international research has begun to question how the design of these services may compound privacy issues, with Waldman arguing that 'geosocial dating apps create powerful norms of disclosure that make sharing personal information all but required', resulting in an environment where the non-consensual distribution and re-distribution of images occur with ease.¹³ In recent years, there has been an increase in attention given to the non-consensual sharing of private sexualised images of this kind.

³Christoph Lutz and Giulia Ranzini, 'Where Dating Meets Data: Investigating Social and Institutional Privacy Concerns on Tinder' (2017) 3(1) *Social Media + Society* 2056305117697735.

⁴Mark Davis and others, 'Location, Safety and (Non) Strangers in Gay Men's Narratives on "Hook-up" Apps' (2016) 19 *Sexualities* 836.

⁵Ahlm (n 5).

⁶Sam Miles, 'Sex in the Digital City: Location-Based Dating Apps and Queer Urban Life' (2017) 24(11) *Gender, Place & Culture* 1595.

⁷Courtney Blackwell, Jeremy Birnholtz and Charles Abbott, 'Seeing and Being Seen: Co-Situation and Impression Formation Using Grindr, a Location-Aware Gay Dating App' (2015) 17 *New Media & Society* 1117, 1121.

⁸Carl Bonner-Thompson, "'The Meat Market': Production and Regulation of Masculinities on the Grindr Grid in Newcastle-upon-Tyne, UK' (2017) 24 *Gender, Place & Culture* 1611.

⁹Julie Kvedar, 'Back To the Grind: Rethinking Grindr's Accountability for User Content' (2020) 29 *Southern California Interdisciplinary Law Journal* 541.

¹⁰Department for Digital Culture Media and Sport and Home Department, *Online Harms White Paper: Full Government Response to the Consultation* (Cmd 354 2020) 33.

¹¹Department for Digital Culture Media and Sport and Home Department (n 13) 15.

¹²Lutz and Ranzini (n 6) 2, emphasis added.

¹³Ari Ezra Waldman, 'Law, Privacy, and Online Dating: Revenge Porn in Gay Online Communities' (2019) 44 *Law and Social Inquiry* 987, 987; and, also, Ari Ezra Waldman, 'Privacy as Trust: Sharing Personal Information in a Networked World' (2015) 69 *University of Miami Law Review* 559.

This has addressed the increased affordances provided by technology in image production and distribution and how to mitigate associated risks of harm.¹⁴ However, whilst there has been some exploration of this in the North American context,¹⁵ little research looks at intimate image theft and online privacy issues experienced by men who have sex with men in the UK.¹⁶

Drawing upon focus group data, we highlight how the app ecosystem and choice of apps influence and is influenced by visibility, reputation management and concerns surrounding privacy. The UK Government's response to online harms such as intimate image theft,¹⁷ specifically in the Criminal Justice and Courts Act 2015,¹⁸ has been criticised.¹⁹ We demonstrate how the expectations and attitudes towards intimate images of app users create a setting that further complexifies criminal liability issues. We conclude by stressing that future legal reform, including the government's current Online Safety Bill, must not oversimplify or underestimate the challenges that effective regulation and legislation of online spaces necessitates.

Methods

The data presented in this paper is taken from a broader exploratory project looking at online identity formation and protection carried out by the second and third authors.²⁰ Data was collected via two focus groups conducted in Manchester and Newcastle with an opportunistic sample of mobile dating app users. All participants were men aged 18 or above recruited through online calls via social media, community embedded LGBT social groups, and snowball sampling. The project also planned a third focus group based in London, but recruitment of sufficient participants proved difficult and ultimately did not proceed.²¹ Ethical approval was granted by Northumbria University and Queen's University Belfast.

The focus groups were divided into two parts. The first asked a series of open questions designed to chart the landscape in which our participants were using these apps and how they were expressing and experiencing identity and privacy. The second part comprised a series of pre-prepared vignettes. These present cross-cutting themes as scenarios or dilemmas to engage the participants. These vignettes explore attitudes towards privacy, HIV disclosure and identity theft.

¹⁴Nicola Henry and Anastasia Powell, 'Sexual Violence in the Digital Age: The Scope and Limits of Criminal Law' (2016) 25 *Social and Legal Studies* 397.

¹⁵Alexa Dodge, 'Trading Nudes Like Hockey Cards: Exploring the Diversity of "Revenge Porn" Cases Responded to in Law' (2021) 30(3) *Social & Legal Studies* 448; Waldman, 'Law, Privacy, and Online Dating: Revenge Porn in Gay Online Communities' (n 16); Waldman, 'Privacy as Trust: Sharing Personal Information in a Networked World' (n 16).

¹⁶Jeff Hearn and Matthew Hall, 'This Is My Cheating Ex': Gender and Sexuality in Revenge Porn' (2019) 22 *Sexualities* 860.

¹⁷Alisdair Gillespie, 'Trust Me, It's Only for Me': "revenge Porn" and the Criminal Law' (2015) 2015 *Criminal Law Review* 866.

¹⁸Criminal Justice and Courts Act 2015, s 33.

¹⁹Rosalind Setterfield, 'The Regulation Of "Revenge Porn" in England And Wales: Are Existing Legal Solutions Effective?' (PhD Thesis, University of Surrey 2019) 251–255; Rikke Amundsen, 'Cruel Intentions and Social Conventions: Locating the Shame in Revenge Porn' in Debbie Ging and Eugenia Siapera (eds), *Gender Hate Online: Understanding the New Anti-Feminism* (Palgrave Macmillan 2019) 134.

²⁰Funding was provided by BILETA for the project 'Same-Sex Male Social 'Dating' Networks: Identity Formation and Protection: A Preliminary Examination', PI Chris Ashford, with Kevin Brown which supported the empirical work and transcription. Further support was provided by Northumbria University for the research assistance of the lead author in undertaking the analysis.

²¹This arguably reflect survey fatigue among these target populations.

The dominance of the Grindr app is clear – as reflected in the focus of academic literature on same-sex male app use – but it was not the only app discussed. The long-lens provided in looking back at this previously unpublished data is to understand how these men experience online safety in a longer-term cultural and scholarly context rather than the often moral-panic inspired focus of some research and policy interventions in this area. Moreover, it is interesting to note how some of the themes in participants' discussions have developed. In particular, where participants discuss features and components of app use that were still under development or only recently released at the time.

Over three hours of discussion were recorded and transcribed across the two focus groups. Both sessions followed a similar structure which began with a general discussion on app choice. Subsequently, the conversation focused on issues including information sharing and identity management.

Identity, desire and choice of app

In this section, we analyse some of the initial discussions concerning which apps participants used and what factors influenced the decision to use one app over another or to use more than one. Existing literature has suggested that different apps carry different expectations around use and user types.²² We aimed to discover if our participants distinguished between apps based on the purpose for which they were used and how this impacted how users navigate online safety issues. Given the suggestions made elsewhere that some apps maintain distinct userbases,²³ we were also interested to see if factors such as the expected make up of an app's userbase affected app choice among our sample.

Discussion amongst participants highlighted the variation in motivations behind app use, supporting the hypothesis that whilst connecting users interested in sexual encounters remains a core component of dating app use, it was not the only reason for app use.²⁴ Participants also acknowledged that this purpose was less dominant than was the case when apps first launched, one participant stating:

I would say now, it's become so mainstream and it isn't viewed as seedy anymore, so more people use it for things like dating, meeting friends, networking (Newcastle Participant).

Even if this attitude is not universal, these experiences differ from research that has suggested the ostracisation of app users who are not sex-seeking.²⁵ Apps retain a visual focus where written profile information takes on a secondary role. This is one reason why Ahlm suggests that although app use has developed alternative purposes, these purposes remain secondary to sexual encounters because users still

²²Freddy MacKee, 'Social Media in Gay London: Tinder as an Alternative to Hook-Up Apps' (2016) 2 *Social Media and Society*; Rusi Jaspal, 'Gay Men's Construction and Management of Identity on Grindr' (2017) 21 *Sexuality and Culture* 187.

²³Yoel Roth, 'Locating the "Scruff Guy": Theorizing Body and Space in Gay Geosocial Media' (2014) 8 *International Journal of Communication* 2113.

²⁴Chad Van De Wiele and Stephanie Tom Tong, 'Breaking Boundaries : The Uses & Gratifications of Grindr' [2014] 2014 *ACM International Joint Conference on Pervasive and Ubiquitous Computing* 619.

²⁵Jaspal (n 26).

only interact with others they '[find] attractive and would potentially like to have sex with'.²⁶

Nevertheless, participants report that 'there's still this prevailing notation that you still can date' via apps, and this has influenced the choice of app: 'with Tinder, it's gone back to being sex, predominantly' (Newcastle Participant). Intriguingly, participants distinguished between Tinder and Grindr in this way, considering that research elsewhere, notably by MacKee,²⁷ has found opposite expectations, where Tinder carries a greater expectation of users being 'nice guys' who are at least amenable to the prospect of a relationship. Whilst MacKee goes on to note that 'the men of Tinder are perfectly capable of hooking up and detaching their feelings in search of sex'²⁸ the participants' responses are still surprising.

As well as distinctions based on use, participants also noted distinctions between apps based on users. Participants felt that 'some apps obviously cater to very distinct audience[s], even though there's going to be crossover' (Manchester Participant). The extent of the crossover that this participant mentioned appears to vary between apps, with some userbases appearing to be more closed off than others. Participants did not arrive at a uniform set of expectations about the userbases of different apps: Grindr, for instance, was seen as predominantly students and young people, but also generalist, which may be a result of the participants' self-categorisation. Apps with a crossover between users of differing categorisations have a role as a "bridge" between the userbases of other apps (Manchester Participant).

There also appeared to be a relationship between the userbase and the different uses that apps can have as well – for instance, Grindr was described as 'more generic in their options' (Newcastle Participant). This likely factors into its role as a bridge between userbases of multiple other apps. Given its longevity in a now crowded marketplace, Grindr's continued large market share may result from this bridging function, even where it is not the user's primary app of choice.²⁹

Casual encounters and dating were among our participants most commonly mentioned aims of app use. Whilst it is perhaps unsurprising that many users consider them to be opposite ends of a single spectrum of potential behaviour, other uses appear to be common that do not easily fit onto this spectrum of behaviour. These include non-sexualised socialising and procrastination. Whilst it supported an inter-relationship between these differing motivations and choice of one app over another, it nevertheless called into question the position suggested in other works that these apps are geared overwhelmingly towards facilitating sexual encounters.³⁰

One participant also described app use as 'habitual' (Manchester Participant). This is perhaps mirrored by how interactions on such apps may follow a stereotypical script.³¹

²⁶Ahlm (n 5) 372.

²⁷MacKee (n 26).

²⁸MacKee (n 26) 8.

²⁹JD Shandel, 'Grindr was the first big dating app for gay men. Now it's falling out favor', (*The Washington Post*, 6 December 2018) <<https://www.washingtonpost.com/lifestyle/2018/12/06/grindr-was-first-big-dating-app-gay-men-now-its-falling-out-favor/>> accessed 22 April 2022.

³⁰Christian Licoppe, Carole Anne Rivière and Julien Morel, 'Grindr Casual Hook-Ups as Interactional Achievements' (2016) 18 *New Media & Society* 2540.

³¹Licoppe, Rivière and Morel (n 33) 2556.

Whilst not all of these expectations and social norms are sexualised in nature, they do appear to contribute to the focus on casual sexual encounters described by many users:

Social norms of – I know I keep coming back to Grindr – social norms of Grindr are very different to other parts of my life, so there is an expectation that you're here to shag, you're here to share pics, and it's out of the ordinary if you don't. (Manchester Participant).

The habitual nature of apps also affects the purposes for which participants used the app. Even when users are not using apps for socialising or relationship and encounter seeking, participants reflected on their role as a form of "Gay GPS" (Manchester Participant). The ease with which participants reported they could open up an app and orientate themselves in the nearby locality of other app users meant that they would browse the app regularly.

This is interesting as app users typically prefer connecting with those immediately nearby. However, this situation appears less straightforward when in a rural setting where there may be fewer users who are perceived as nearby.³² In urban areas, there were concerns about privacy due to the location features of the apps: 'I don't tend to send them my location if I'm home unless I perceive that they are trustworthy' (Newcastle Participant). Although some participants downplayed such concerns because 'It doesn't pinpoint your exact location [...] so they can be on my screen, but I don't have an exact idea ... like houses' (Newcastle Participant).

Although apps and other online platforms offer a pluripotent site for identity creation and presentation, the apps we discussed with participants can also be understood as restricting users in these regards. The formatting and limits in functionality adopted by app developers provide 'limited opportunities for expression and self-presentation',³³ a theme that emerged in focus groups when participants discussed consistently using the same identifiers when constructing profiles:

Stuff like your age, height, weight, status – that's it, isn't it? (Manchester Participant).

I just put my very general information – age and height and weight and I don't disclose any further information because I prefer to see what kind of people interact with me before I disclose [further] information to them (Newcastle Participant).

By utilising categories such as age, height and weight typically presented to users as closed lists, app developers enable users to filter those nearby narrowly. However, this gives users only a small character-limited section of their profile to express any elements of personal identity that they cannot, or do not wish to, include in these categories. Licoppe et al. note that communication between app users often follows typical scripts in which users objectify themselves using these characteristics.³⁴ Apps contribute to this by not requiring any categories (save, in some cases, age) from being filled in. Where categories are freeform, as they are for the username and 'about me' categories,

³²Davis and others (n 7).

³³Jeremy Birnholtz and others, 'Identity, Identification and Identifiability', *Proceedings of the 16th international conference on Human-computer interaction with mobile devices & services* (2014).

³⁴Licoppe, Rivière and Morel (n 33).

participants reflected on situations where little information was conveyed here, one participant saying:

For me, you could be chatting for about three or four minutes or even longer and then they kind of, 'Actually, what's your name?' and sometimes, I've shared photos with somebody and I don't even know their real name which is bonkers when you think about it. I'm not saying penis pictures, but, you know, I've shared information, chatted and then halfway down, I'll kind of think, 'Actually, what's his name?' and it's Kitty Cat [laughter] (Manchester Participant).

Managing identity and trust

Although disclosing identifiable information is critical to establishing trust between users, there are also risks associated with publicly providing information on dating apps.³⁵ How a balance is struck between these two pressures was one area we were particularly interested in exploring. Following the preceding questions on information sharing in profiles, we asked participants how they went about establishing connections with other users and if and how participants felt the need to verify the information that other users provided. Although there has been, and to some extent remains, a cultural doubt over the authenticity of online identity, these doubts have often been overstated and less widely believed by those who use online sites of identity.³⁶

In keeping with these findings, participants in this research did not make extensive reference to outright doubts over the authenticity of other users. Some participants reflected on the relative ease of telling white lies or maintaining 'plausible deniability' (Newcastle Participant), particularly where information might be difficult to verify:

I lie about my weight. I say I'm five pounds lighter than I actually am because I always think, 'I'll be that weight soon (Newcastle Participant).

Where there was misleading information, some participants acknowledged the difficulties that other users may have over information sharing, but they still voiced frustration over being misled, particularly where they believed the other user was blatantly misrepresenting themselves:

I've met a lot of sixth formers who use it, and I think a lot of 16-year-olds lie and say they're 18, from my experience, and say, 'Oh yeah, I'm 18.' It's like, 'No, you're not 18' (Newcastle Participant).

However, much of the discussion among participants mentioned wanting to gain further information beyond that found in another's profile. This additional information was sought to reassure participants' concerns about other users' identities. Missing information and information open to misinterpretation of this kind seemed to be of more significant concern than misleading information.

Although older apps and dating websites have occasionally used external forms of identity protection, such as requiring a credit card associated with the account, these approaches have had limited success. Newer apps have opted not to use such forms of identity verification, which participants reported made it 'easy to lie' (Newcastle

³⁵Van De Wiele and Tong (n 27).

³⁶Nancy K Baym, *Personal Connections in the Digital Age* (2nd edn, Polity 2015).

Participant) and leave identity protection and verification to app users. Although participants reported apps make it easier to lie, the immanency of physical encounters on apps perhaps reduced the 'licence to lie' seen on these older sites.³⁷ There have always been different expectations of identity disclosure between various sites of identity. The discussion amongst our participants suggests that there is a focus on establishing trust rather than explicitly catching out lies on dating apps.

Participants described conflicting attitudes and approaches towards establishing trust and verifying the identity of the users they were communicating with. On the one hand, several reported using other apps or forms of communication, such as text messaging, to increase their confidence in the truth of other users' statements and identities. Instagram was a source of particular reassurance to some users in the sample here. This finding is consistent with the work of Albury and Byron, who considered the issue in the context of online youth safety.³⁸

On the other hand, some participants expressed a reluctance to share details of their accounts on other services or share phone numbers, indicating that they preferred to limit their online exposure to whichever dating app they used:

I had a rule where I wouldn't give people my phone number unless I was meeting them and even then, I felt awkward about telling them. I was like, 'Well, can't we just arrange where to meet and then meet there?' and I might only give my number after I'd met them if I thought they were alright, but it's difficult because people assume that you will, and you're being secretive if you're not giving your phone number out. I seem to remember, I got a second number once that I thought I could use maybe to give that out and put that on if I wanted to talk to people, but I didn't take it up because it was too difficult, so I gave up with that. [Laughter] That actually did make me sound weird (Manchester Participant).

The participant here expresses a hesitancy to share his mobile phone number with other users, even when asked for it, but worries that this will affect the impression that others form of him. Other participants made a similar suggestion that 'texting feels a lot more personal [than Grindr]' (Manchester Participant), and this appears to be a recurring issue when using dating apps in conjunction with other forms of communication. The balance between these two conflicting attitudes can sometimes lead to alternate forms of identity confirmation, for instance, sharing particular photos.

Given the primacy of location on these apps, it is unsurprising that the app's location-based tools are also used as a measure of authenticity by some participants. This was either through locations shared by the participants through the app's location-sharing tool, through the information listed in profiles, or through the distance between users. However, this raises additional privacy concerns, notwithstanding subsequent changes that allow users to disable the distance indicator on their profile.³⁹

Participants shared a range of different attitudes to location features. On the one hand, many participants reflected on the necessity of sharing locations if meeting another user: 'I think if you're meeting up with someone [yeah] for whatever purpose, they need to

³⁷Baym (n 39) 129, quoting Nicole B Ellison, Jeffrey T Hancock, and Catalina L Toma, 'Profile as promise: a framework for conceptualizing veracity in online dating self-presentations' (2012) 14(1) *New Media & Society* 45.

³⁸Kath Albury and Paul Byron, 'Safe on My Phone? Same-Sex Attracted Young People's Negotiations of Intimacy, Visibility, and Risk on Digital Hook-Up Apps' (2016) 2(4) *Social Media and Society*. More recently, users are able to link their online social profiles to their Dating App profiles.

³⁹As app developers have noted, it is still possible to extrapolate that another user can estimate this distance by finding the next nearest and next furthest away user who does allow their distance to be seen.

know where you live' (Newcastle Participant). On the other hand, some participants were uncomfortable sharing a location unless they were out in public, stating that a higher level of trust was required before sharing the location of their house. These differences may, to some extent, be explained by participants utilising apps for different purposes. However, participants who still wished to use the app to meet others in the physical world reported privacy concerns around location. Other participants noted that the locations provided by many apps were vague and only located users within a general area. Furthermore, newer features give greater control over location indicators. Despite this, privacy concerns related to location features are likely to remain.

Photographs are another method by which participants reported developing trust and verifying the identity of other users. Photos arose as an element of trust-building in two distinct but related ways. Firstly, like Albury and Byron, we noted that participants expect photos to be shared.⁴⁰ Several participants expressed a specific expectation that users will have a face picture as their main profile picture:

It sets off, in my head, that person has something to hide. I'm really sympathetic to the idea that somebody might not be out or married or bi or a teacher, so the reasons people have given – there must be so many blooming teachers on Grindr, for example, and I understand that somebody would choose not to disclose personal information, but it would make me very suspicious (Manchester Participant).

Whilst the participant recognises that there are situations in which another user might have a good reason not to include a headshot in their profile, in this case, employment, he also suggests that users across the app employ this justification as a catch-all excuse. Employment has arisen as a potential justification for hiding one's identity in prior app focused research,⁴¹ it is therefore unsurprising that participants report it being a common justification they hear from other app users. In both cases, the relative professional nature of the employment was construed as a barrier to visibility on the app. As apps and app use become increasingly public acts,⁴² these justifications are unlikely to go away, despite the seeming 'respectability' some dating apps now attract.⁴³

Secondly, even where other users accept justifications for not providing information, this does not eliminate the need for additional trust-building mechanisms, including privately sharing photographs. Some participants suggested that where a profile did not include a image that included the face, there was an expectation that such an image should be sent, particularly if the user behind that profile initiated the conversation.

Throughout, participants described attitudes of reciprocity, with the general principle being that app users should be willing to share details to the extent to which they receive them from others:

If they want to talk to you, especially if they've sent a message to you and you are disclosing your information, you should get that back without asking for it (Manchester Participant).

However, these expectations, whilst common, were not universal:

⁴⁰Albury and Byron (n 41).

⁴¹Blackwell, Birnholtz and Abbott (n 10).

⁴²Ahlm (n 5).

⁴³Ahlm (n 5) 364.

You don't know where they're coming from or what they're up to or they could be coming out. I'd go and talk to them for a while and then see why they haven't got one and go from there really (Manchester Participant).

I don't have a face picture up but, I mean, I'll send it to somebody if I feel that, you know, we're getting somewhere, and I think a lot of older guys are the same, partly because so many of them are married because there's a lot of people on there, of my generation who, because of the situation when they were young, couldn't come out (Newcastle Participant).

As these participants demonstrate, where app users express a willingness to interact with those without profile information or images, this was often on the expectation that users engage with them socially via chat.

Intimate image sharing

As well as face pictures, the sharing of nude or semi-nude photographs is common on most of the apps discussed here. The terms and conditions of most apps mean that this variety of photo is prohibited as a profile picture.⁴⁴ Therefore, unlike profiles pictures, sharing these intimate images is not just a component of identity construction but also of interaction between users. However, other research highlights that such image sharing is not always solicited.⁴⁵ We were particularly interested in how users came to share these images and the reasons behind their decision to do so.

Intimate image sharing was most closely associated with planning a casual sexual encounter. Several participants reflected on the distinctions between picture sharing in this context and using the app to seek a longer-term relationship. In one session, a discussion of the purposes behind photo sharing bounced around several participants:

M2: 'For a bit of attention, a bit of admiration.

M1: Or a shag.

M3: A kind of exhibitionist thing' (Manchester Participants).

March and Wagstaff note that intimate image sharing might indicate a willingness to engage in riskier sexual behaviour, which increases the sender's desirability to those seeking a short-term sexual encounter.⁴⁶ The escalation from attention-seeking to seeking a physical encounter to potentially gaining sexual excitement from the sharing of images seen here might similarly reflect a loosening of participant reticence over the purposes for which images are sent.

The sharing of intimate images was commonly seen as a precursor to short-term sexual encounters by several participants. Some discussed this from the position of sending such images, whilst others discussed how they acted as the receiver. However, it was commonly recognised that individuals might take on both roles in quick succession. In

⁴⁴See, for example, Grindr LLC, 'Grindr Terms and Conditions of Service' <<https://www.grindr.com/terms-of-service/>> accessed 22 April 2022, which prohibit 'pornographic materials' being included in user profiles. See, also, Giles (n 5) 46–48

⁴⁵Albury and Byron (n 41).

⁴⁶Evita March and Danielle L Wagstaff, 'Sending Nudes: Sex, Self-Rated Mate Value, and Trait Machiavellianism Predict Sending Unsolicited Explicit Images' (2017) 8 *Frontiers in Psychology*. The authors do not provide a definitive definition of this term, but the overall discussion takes place in the context of short-term sexual encounters, it does not appear limited to the alternative use of the term in the context of sexually transmitted infections.

both circumstances, images were seen as a potential necessity when deciding whether to arrange a casual encounter or not: 'Maybe it's the deal clincher; you really want to meet them, and you want to persuade them that you're worth meeting, yeah' (Manchester Participant).

The use of images here to secure a sexual encounter can be contrasted to a participant who discussed their role as a recipient of images, where photos were seen as a way of screening potential encounters:

If I'm going to have sex with them, I want to see the goods upfront. I also like to see what their bodies look like as well because of the number of times I've met people and said, 'Ahh! I'm sort of average' and they've put their face and their face is really nice and you get there, and it's ginormous or ... I met a guy who said, 'Oh, I'm just your average looking guy' and sent me a Facebook invite, but he failed to mention he had a massive, jagged scar all the way across his abdomen, which I know is obviously very upsetting for him but it's not something that I find especially pleasing, so it's something I would probably – well, actually I would definitely like to have known before he came to my house (Newcastle Participant).

Intimate images also carry a risk of reputational damage. They might also make a potential romantic partner less desirable:

M3: 'I use Grindr for fun and dating. I wouldn't send them a dick pic if I was dating someone. If I was meeting someone to have sex with them, I would send them. I think again, it depends on the reason. Why you send a picture depends on the reason you're using the app at the time.'

Facilitator: Why would you not send it if you're thinking of dating them?

M3: Because if I'm thinking of dating them, I think about more than just sleeping with them. I think about actually, potentially having a relationship with them.'
(Newcastle Participant).

M2: 'For me, if I want to have a relationship, if someone sent me a dick picture, my impression of him would be, 'This guy is very easy and he could sleep with anyone else'. That's my idea.'

M3: And that's a negative? [Yeah]. That's a bad thing.

M2: Yeah, it just leaves me a negative image.

M3: Yeah, that's interesting because just like you said, in terms of identity, it's just what you choose to portray because, I mean, if he wanted to either sleep with you or be in a relationship with you, he could go about it two different ways and you'd have a completely different impression of him.

M2: Yeah, definitely' (Newcastle Participants).

'It would be a turn-off in some instances, in terms of a prospective partner, to have a ream of dirty pictures within half an hour of talking to someone. That would just be it; okay for a shag perhaps but not anything else' (Manchester Participant).

Whilst reputational damage is the most apparent form of potential online harm raised by participants here, the re-circulation of images and identity theft may constitute a specific form of online harm in which the criminal law has – since 2015 – specifically intervened. The term "revenge pornography" or "revenge porn" as a moniker for non-

consensual image sharing has become prominent since the latter half of the 2000s, increasingly so since 2010.⁴⁷ Although there has been significant academic commentary on the suitability of the term, including the risks that it limits discussion to ‘the paradigmatic case of the vengeful ex-partner’,⁴⁸ it has nevertheless played a significant role in shaping the public and academic debate on the issue.⁴⁹ As highlighted above, both the UK Government’s *Online Harms* consultation response and the work of the Law Commission in this area⁵⁰ have made extensive use of the term.

As McGlynn and Rackley note, legislative and other legal responses such as this have demonstrated a tendency to over-simplify the ‘porn’ element whilst also excluding motivations beyond revenge.⁵¹ Consequently, the arisen offences have been limited to the non-consensual sharing of specific images distributed in specific ways.⁵² Whilst non-consensual image sharing may occur for various reasons and through various technologies, few of these will be subject to the criminal sanctions discussed above.⁵³ Instead, cyber-flashing⁵⁴ and other forms of image and technology-based violence and harassment may be overlooked.⁵⁵

Many of these behaviours share in common a sense of invasion of the privacy of the prospective complainant, whether it be through the non-consensual sharing of their images or – in the case of cyber-flashing- through the intrusion into their personal (online) space. Consequently, those such as Wang and Baker have advocated for the creation of ‘[a] broader privacy offence (necessarily carefully constructed and limited) could catch harmful content that may be difficult to categorise as sexual, abusive or offensive.’⁵⁶ Whilst there is potential merit in moving beyond a purely distress based approach to non-consensual image sharing, which, as those such as Dodge have highlighted, may exacerbate sex-negative attitudes and beliefs,⁵⁷ it is difficult to conceive of an offence that would achieve this without risking overcriminalisation. In particular, a privacy-based offence would need to take into account factors such as whether there was an expectation of privacy in the space(s) where the image was taken or taken from.⁵⁸ We would

⁴⁷Matthew Hall and Jeff Hearn, *Revenge Pornography: Gender, Sexualities and Motivations* (Routledge 2018) ch 1; Nicola Henry, Asher Flynn and Anastasia Powell, ‘Technology-Facilitated Domestic and Sexual Violence: A Review’ (2020) 26 *Violence Against Women* 1828.

⁴⁸Clare McGlynn, Erika Rackley and Ruth Houghton, ‘Beyond “Revenge Porn”: The Continuum of Image-Based Sexual Abuse’ (2017) 25 *Feminist Legal Studies* 25, 26.

⁴⁹Clare McGlynn and Erika Rackley, ‘Image-Based Sexual Abuse’ (2017) 37 *Oxford Journal of Legal Studies* 534; Clare McGlynn and Erika Rackley, ‘Not “Revenge Porn”, but Abuse: Let’s Call It Image-Based Sexual Abuse’ (*Inherently Human*, 15 February 2016) <<https://inherentlyhuman.wordpress.com/2016/02/15/not-revenge-porn-but-abuse-lets-call-it-image-based-sexual-abuse/>> accessed 22 April 2022.

⁵⁰The Law Commission, ‘Intimate Image Abuse - A Consultation Paper’ (Consultation Paper 254 2021).

⁵¹McGlynn and Rackley, ‘Image-Based Sexual Abuse’ (n 52); McGlynn and Rackley, ‘Not “Revenge Porn”, but Abuse: Let’s Call It Image-Based Sexual Abuse’ (n 52).

⁵²Gillespie (n 20).

⁵³Nicola Henry, Asher Flynn and Anastasia Powell, ‘Image-Based Sexual Abuse: Victims and Perpetrators’ [2019] *Trends and Issues in Crime and Criminal Justice*; Amundsen (n 23).

⁵⁴Clare McGlynn and Kelly Johnson, ‘Criminalising Cyberflashing : Options for Law Reform’ (2021) 85(3) *Journal of Criminal Law* 171.

⁵⁵Nicola Henry and Asher Flynn, ‘Image-Based Sexual Abuse: A Feminist Criminological Approach’ in Thomas J Holt and Adam M Bossler (eds), *The Palgrave Handbook of International Cybercrime and Cyberdeviance* (Palgrave Macmillan 2020); Henry, Flynn and Powell (n 53); McGlynn, Rackley and Houghton (n 54).

⁵⁶Xiaoxiao Wang and Dennis J Baker, ‘Criminalising Privacy in the Digital Age: The Reasonable Expectation of Not Being Digitally Monitored’ [2021] *The Journal of Criminal Law*, 2.

⁵⁷Alexa Dodge, ‘“Try Not to Be Embarrassed”: A Sex Positive Analysis of Nonconsensual Pornography Case Law’ (2021) 29 *Feminist Legal Studies* 23.

⁵⁸The Law Commission (n 53) para 11.82.

suggest that this is particularly problematic in online-only spaces with fewer clearly defined shared expectations on the privacy afforded to other users.

This is not to suggest that there are no situations where those in online spaces would expect privacy, including the dating app ecosystem. However, it should be recognised that these ecosystems may be particularly prone to differing understandings by different user groups, which may also differ from reasonable expectations in a criminal context.⁵⁹ Whilst many online services may have community user agreements or moderation policies, these alone are unlikely to reflect the disparate social attitudes of the service users.⁶⁰ Instead, developer policies may reflect a top-down approach to regulating these spaces, driven by legislative and policy directions and developments, such as the Online Safety Bill. Consequently, it is notable that the *Online Harms White Paper* and the subsequent Online Safety Bill focus on increased regulation at a service delivery level. Whilst the White Paper suggests a need for consolidation and reform of the criminal law on non-consensual intimate image sharing, this has not been advanced in the Bill.⁶¹ Instead, this is envisaged as a future reform following the Law Commission's findings.⁶²

Reputational damage

During both sessions, participants reflected on the risk of reputational damage that came with sharing intimate photos. One participant commented on the disinhibition which he experienced when using apps in contrast to the rest of his life, stating:

No way, on God's earth, in any other context I would ever think about flashing somebody a cock pic, you know, or flashing it around and yet, if I consider my behaviour if I'm being totally honest – but I think I'm not that bad. I think I'm fairly modest, or it takes some time (Manchester Participant).

Noting that his behaviour might not be considered abnormal amongst other app users, the participant did go on to discuss how he limited himself to sharing such photos in specific contexts. However, he also suggests that this would not eliminate the risk of reputational damage should the photos become public:

I have some kind of etiquette in my head or some kind of rules about when I would do it, but I understand the quip about, 'I'll never be Prime Minister' because there would be loads of pics of my cock around [the city] (Manchester Participant).

The quip the participant refers to echoes this sentiment, the participant expressing a desire to limit how often he share's such photos because of potential long term reputational consequences:

At the moment, I'm trying not to flash too many penis shots; it's kind of my mantra because someday, I would like to be Prime Minister [laughter] and this is ruining my chances (Manchester Participant).

⁵⁹The Law Commission (n 53) para 11.82.

⁶⁰Guido Noto La Diega, 'Grinding Privacy in the Internet of Bodies' in Ronald Leenes and others (eds), *Data Protection and Privacy* (Hart Publishing 2019).

⁶¹See, Department for Digital Culture Media and Sport and Home Department (n 13) 31, Department for Digital and Culture, Draft Online Safety Bill 2021 CP 405.

⁶²HC Deb, 15 April 2021, Vol 692, Col 516.

These accounts reflect concerns over the risks that sharing intimate photographs presents in the context of long-term damage to reputation outside of the app ecosystem. Whether the political aspirations of the latter participant are an exaggeration or not, the concern these participants seem to be expressing removed the images from the context in which the first participant feels able to more readily overcome the modesty he feels in other areas of life.

Identity theft

Participants in both focus groups raised concerns over the possibility of identity theft from their app use, with some participants reporting actual instances of identity theft having occurred to them. These cases typically involved the theft of images showing the subjects' face. Participants also recounted instances of receiving photographs that they suspected had been stolen from other profiles, with the presence of an app watermark raising the suspicions of most participants.

Although one participant discussed a 'screenshot of somebody using [his] face' as 'flattering' (Newcastle Participant), he also stated that he was unhappy with the incident. Generally, participants reported frustration, both with being the victims of photo theft and receiving such pictures. The use of photos of celebrities and other famous figures (including 'Spiderman', Manchester Participant) was treated more humorously than photos of other app users. Although both were treated with a certain degree of derision, the users who create such profiles were described as 'weirdos' (Newcastle Participant).

Although no participants reported using images of others, there was some discussion about the motivations. Some users suggested that false profiles were used by individuals who are seeking attention: 'simply enjoy being chased after' (Newcastle Participant). Other motivations included using the images to persuade another user to meet for a sexual encounter in the hope that they would overlook the deception at the point of meeting. One participant recounted a situation where, upon meeting a user who had provided misleading pictures, he continued with the encounter.

Whilst identity theft was a concern for participants, it was less so than worries over reputational damage. Although privacy concerns, generally, were a worry to participants, they were particularly concerned with keeping app usage contained within communities of other app users. Lutz and Ranzini found similar trends with users of the dating app Tinder, where users' privacy concerns centred around unauthorised data use by the app developer rather than by other users.⁶³ Lutz and Ranzini also found that individuals who used Tinder for casual sexual encounters were less likely to have privacy concerns than users who excluded this purpose.⁶⁴ We did not note similar shifts in concern with the participants who participated in the two focus groups. There may be distinctions between Tinder and dating apps that specifically cater for men who have sex with men discussed here. Future research may wish to consider how attitudes of this kind are contiguous across different apps and where and how distinctions can be drawn, expanding on research on specific dating apps and other instances of social media use.⁶⁵

⁶³Lutz and Ranzini (n 6).

⁶⁴Lutz and Ranzini (n 6) 6.

⁶⁵Fred Stutzman, Robert Capra and Jamila Thompson, 'Factors Mediating Disclosure in Social Network Sites' (2011) 27 *Computers in Human Behavior* 590.

Data management

As well as reputational damage brought about by other users sharing and disclosing personal information, participants seemed acutely aware of the presence of app developers when it came to managing their online identities. Although several apps were mentioned in the initial stages of the discussion group, Grindr had become the focus of discussion by this stage of both sessions. Again, highlighting its predominance in the app market at this time.

Several participants seemed unconcerned that a large multinational organisation held the exact information they were concerned about sharing with other individuals. These participants felt that the scale of the organisation meant that their details were unimportant: 'So with Grindr, you're basically just a number though. You're not an actual person; it's just your information, and it's more like a demographic more than anything. They won't actually go after you as one person' (Manchester Participant); 'I just assumed a multinational company isn't going to start posting my dick pics all over the internet' (Newcastle Participant).

Others reported a sense of trust in the app provider that they did not feel with individual users and that, therefore, even though they were identifiable at an individual level, their information was secure: 'I trust Grindr more with that kind of information than I would the kind of random people who would use it or I would send messages to who I don't know' (Newcastle). One participant reflected on the security that arose from the app developer holding the personal information of app users: 'I think if someone murdered you [after you met them on Grindr ...], Grindr have all the information, which is quite good, so they're looking out for people' (Newcastle Participant). As noted above, these patterns of institutional trust do not mirror research conducted into Tinder, at about the same time, conducted by Lutz and Ranzini.⁶⁶

A few participants in these focus groups reflected on their agreement to provide the data to Grindr in the first place: 'If you don't want [your data] to be given to Grindr, then don't give it to Grindr. You've kind of chosen to' (Manchester).

Some did feel that the terms and conditions were overly complicated and lengthy for the average user:

Obviously, these apps terms and conditions are pages long and nobody ever reads and just click 'Agree' and literally say, 'Sell Your Soul', and nobody notices because nobody reads them (Manchester Participant).

Participants likely continue to feel overwhelmed by the length of the terms and conditions of most dating apps, and there does not appear to be an industry shift away from their current form. Given that the controversial data-sharing arrangements occurred under such terms, it would be interesting to see if app users pay more attention to them now and in the future.

Health & wellbeing

As mentioned in the introduction, existing research has addressed the impact of dating app usage on sexual health,⁶⁷ with some suggesting a role for apps in promoting safer

⁶⁶Lutz and Ranzini (n 6).

⁶⁷Matthew R Beymer and others, 'Sex on Demand: Geosocial Networking Phone Apps and Risk of Sexually Transmitted Infections among a Cross-Sectional Sample of Men Who Have Sex with Men in Los Angeles County.' (2014) 90 Sexually

sexual practice.⁶⁸ One area of interest that shaped this project was how participants' expectations towards identity construction interacted with issues such as HIV status disclosure. One of the vignettes that participants were asked to respond to directly addressed the issue of app users concealing their HIV status in a situation where there was minimal risk of transmission occurring.

An observation from the focus groups was the divisive and exclusionary nature of the language used by many users to label their own and others' sexual health. Spieldenner notes the persistence of the binary terminology of clean/dirty to signify HIV status.⁶⁹ Participants acknowledged the potentially stigmatising nature of this language.⁷⁰ Some participants considered language such as "clean" to refer only to HIV status, whilst others thought these terms had a much broader implication, extending to other sexual health issues. Other participants suggested that these terms could be read as relating to physical appearance (as in "clean-cut") rather than being solely a health-related term.

Participants commented that discussion of sexual health often prioritised HIV status over other elements of sexual health.⁷¹ Given that debate on the association between app use and sexual health is not limited to HIV but extends to other sexually transmitted infections,⁷² future work on these apps should avoid limiting health focuses to HIV.

As apps continue to develop, app developers sometimes invite users to present ideas for change.⁷³ One participant suggested that apps should play a more significant role in promoting sexual health services, including regular testing reminders, a feature since introduced:

Thinking about it now, I would like Grindr, and other apps, to have a six-monthly reminder 'Have you been tested yet?' We should use them for a public health function actually ... if I was in charge of Grindr, I would be socially responsible, and I would, every six months, send every user just, you know, 'Have you ... ?' I'd limited it to sexual health; I wouldn't get into a wider public health remit, but I would take my responsibility quite seriously and think, 'Well, this is something socially work good and corporately good that we can do (Manchester Participant).

This participant felt that introducing such a feature should be the responsibility of app developers because of 'how they influence behaviours negatively' and as a form of corporate social responsibility (Manchester Participant). Given the shifts in perception of apps discussed above, with app use viewed as less 'seedy' and more 'mainstream' (Newcastle Participants) than in the past, the continued concern over the responsibility

transmitted infections 567; Dean G Cruess and others, 'Online Partner Seeking and Sexual Risk Among HIV+ Gay and Bisexual Men: A Dialectical Perspective' (2017) 46 Archives of Sexual Behavior 1079.

⁶⁸Mark McCormack, 'The Role of Smartphones and Technology in Sexual and Romantic Lives' (Durham University 2015); Mark McCormack, 'Young People's Attitudes Toward and Discussion of Safe Sex and Condom Use' (Durham University, 2015).

⁶⁹Andrew Spieldenner, 'PrEP Whores and HIV Prevention: The Queer Communication of HIV Pre-Exposure Prophylaxis (PrEP)' (2016) 63 Journal of Homosexuality 1685.

⁷⁰Several apps, including Grindr, have run campaigns on HIV prevention and the reduction of HIV-related stigma in recent years.

⁷¹Grindr, and other apps, now often include features which allow users to disclose HIV status within their profiles.

⁷²Justin J Lehmler and Michael Joerger, 'Social Networking Smartphone Applications and Sexual Health Outcomes among Men Who Have Sex with Men' (2014) 9(1) PLoS ONE e86603; Matheus Almeida, Jo Gibbs and Claudia Estcourt, 'Are Geosocial Networking (GSN) Apps Associated with Increased Risk of STIs & HIV: A Systematic Review' (2016) 92 Sexually Transmitted Infections A19.

⁷³Several app developers, including Grindr, have sought proposals for new features from their users.

of corporations to govern behaviour on apps is arguably a complex phenomenon. Although participants did not explicitly discuss the distribution of individual and corporate responsibility in HIV disclosure and sexual health management, it is interesting to note that participants focus on introducing such systems of monitoring and disclosure at a corporate level. In contrast to forms of individual or community/collective responsibility.

Given the discussion above around participants' willingness to share information with corporate bodies but not directly to other users, it is perhaps not surprising that health responsibility was formulated in this way. However, the distribution of responsibility for managing sexual health requires further investigation as these features develop. It was noted that one app had begun to send out messages signposting users to a sexual health service provider- 'No, on the free one – it pops up like ... 'Have you been and got tested? Go to Thomas Higgins[sic]' (Manchester Participant)–features such as these were newly introduced at the time of data collection.

These earlier iterations of sexual health reminders were not user specific or tied to when a user was last tested but instead part of general marketing campaigns, something participants specifically addressed:

You get messages from Hornet occasionally saying, 'Have you considered this?' and a message about health or maybe even just gay issues in general (Manchester Participant).

As these features have developed, they have become more personalised and more intergraded into general app use. There needs to be careful management by app developers as they develop techniques to better protect users' online safety, both in terms of data/identity protection and physical health and safety,

Conclusion

The non-consensual distribution of sexual images significantly predates the development of digital communications technology.⁷⁴ Nevertheless, the emergence of the digital age has had a profound effect on the issue, significantly extending the means and opportunity for behaviour of this kind. The challenge of the behaviours described in this paper is not evenly distributed among all online activities. Online mobile dating apps such as those explored here present specific challenges due to the extent to which publicly accessible profiles and a culture of 'user anonymity and confidentiality' co-exist within their user communities.⁷⁵ In responding to these challenges, there is the need not to inadvertently engage in victim-blaming when highlighting the risks to those using dating apps.⁷⁶

In contrast to earlier research,⁷⁷ the data here suggests that some app users are less concerned with institutional privacy and more concerned with social privacy, including their visibility to others outside the app user community. Whilst the data discussed

⁷⁴Sophie Maddocks, 'From Non-Consensual Pornography to Image-Based Sexual Abuse: Charting the Course of a Problem with Many Names' (2018) 33 *Australian Feminist Studies* 345.

⁷⁵Kvedar (n 12) 541.

⁷⁶For discussion of victim-blaming in a revenge pornography context, see, Jolien Beyens and Eva Lievens, 'A Legal Perspective on the Non-Consensual Dissemination of Sexual Images: Identifying Strengths and Weaknesses of Legislation in the US, UK and Belgium' (2016) 47 *International Journal of Law, Crime and Justice* 31.

⁷⁷Lutz and Ranzini (n 6).

here predates the recent controversies relating to data sharing by many dating apps, it, nevertheless, concurs with findings elsewhere which demonstrate the concern that app users can have for maintaining the privacy of their app usage.⁷⁸

Future legal reform, including the UK Government's current Online Safety Bill, must be responsive to the challenges that effective regulation and legislation of different online spaces necessitates. Our research has shown that social and contractual expectations and obligations interact in a complex sexualised environment when it comes to dating apps used by men who have sex with men. When discussing the possibility of photographs and personal information being disseminated without their consent, participants in our study tended not to use the language of distress, associated with 'revenge pornography' legislation, but rather expressions of anger and frustration and concern for reputational harm, which potentially fall outside the current and arguably the proposed statutory framework for protecting people from online harms. Participants accept that their intimate images are, to varying degrees of permanence, in the public domain; but have high expectations as to the role of commercial operators in limiting what happens to those images and aspects of their identity. Therefore, there is arguably a more significant role for the commercial operators to continue developing tools that limit image sharing and continue to boost educational efforts, for example, concerning PrEP and HIV status. Aspects of the Online Safety Bill seek to entrench these obligations on service providers in law and, we would suggest, this should be welcomed. However, we also caution against any reforms that would inadvertently lead to the overcriminalisation of users of 'dating' apps and networks used by men who have sex with men.

Disclosure statement

No potential conflict of interest was reported by the author(s).

⁷⁸Ahlm (n 5).