

# Drafting An Effective “Revenge Porn” Law: A Guide for Legislators

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## I. Defining the Problem

The disclosure of sexually explicit images without consent and for no legitimate purpose – popularly but misleadingly referred to as “revenge porn” – causes immediate, devastating, and in many cases irreversible harm. A vengeful ex-partner, opportunistic hacker, or rapist can upload an explicit image of a victim to a website where thousands of people can view it and hundreds of other websites can share it. In a matter of days, that image can dominate the first several pages of search engine results for the victim’s name, as well as being emailed or otherwise exhibited to the victim’s family, employers, co-workers, and peers. Victims are frequently threatened with sexual assault, stalked, harassed, fired from jobs,<sup>2</sup> and forced to change schools.<sup>3</sup> Some victims have committed suicide.<sup>4</sup>

Nonconsensual pornography is not a new phenomenon, but its prevalence, reach, and impact have increased in recent years. The Internet has greatly facilitated the rise of nonconsensual pornography, as dedicated “revenge porn” sites and other forums openly solicit private intimate images and expose them to millions of viewers, while allowing the posters themselves to hide in the shadows.<sup>5</sup> As many as 3000 websites feature “revenge porn,”<sup>6</sup> and intimate material is also widely distributed without consent through social media, blogs, emails, and texts. The Cyber Civil Rights Initiative (CCRI) is contacted by an average of 20-30 victims each month. Technology and social media make it possible for abusers to “crowd-source” their harassment as well as making it possible for unscrupulous individuals to profit from it.

The term “revenge porn” is misleading in two respects. First, perpetrators are not always be motivated by vengeance. Many act out of a desire for profit, notoriety, or entertainment, including hackers, purveyors of hidden or “upskirt” camera recordings, and people who distribute stolen cellphone photos. The term “revenge porn” is also misleading in that it implies that taking a picture of oneself naked or engaged in a sexual act (or allowing someone else to take such a picture) is pornographic. But creating explicit images in the expectation within the context of a private, intimate relationship - an increasingly common practice<sup>7</sup> - is not equivalent to creating pornography. The act of disclosing a private, sexually explicit image to someone other than the intended audience, however, can accurately be described as pornographic, as it transforms a private image into public sexual entertainment. Many victim advocates accordingly use the term “nonconsensual pornography.”

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<sup>2</sup> See Ariel Ronneburger, *Sex, Privacy, and Webpages: Creating a Legal Remedy for Victims of Porn 2.0*, 21 Syracuse Sci. & Tech. L. Rep. 1 (2009), 10.

<sup>3</sup> See Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 Wake Forest L. Rev. 345 (2014).

<sup>4</sup> Emily Bazelon, [Another Sexting Tragedy](#), Slate, April 12, 2013.

<sup>5</sup> Dylan Love, [It Will Be Hard to Stop the Rise of Revenge Porn](#), Business Insider, Feb. 8, 2013.

<sup>6</sup> The Economist, [Revenge Porn: Misery Merchants](#), July 5, 2014.

<sup>7</sup> In a recent survey of 1100 New Yorkers, nearly half (45%) reported that they had recorded themselves having sex. New York Post, [New Yorkers Reveal What Their Sex Lives Are Really Like](#), Sept. 3, 2014.

Nonconsensual pornography refers to sexually explicit images disclosed without consent and for no legitimate purpose. The term encompasses material obtained by hidden cameras, consensually exchanged within a confidential relationship, stolen photos, and recordings of sexual assaults. Nonconsensual pornography often plays a role in intimate partner violence, with abusers using the threat of disclosure to keep their partners from leaving or reporting their abuse to law enforcement.<sup>8</sup> Traffickers and pimps also use nonconsensual pornography to trap unwilling individuals in the sex trade.<sup>9</sup> Rapists are increasingly recording their attacks not only to further humiliate their victims but also to discourage victims from reporting sexual assaults.<sup>10</sup>

The rise in this destructive conduct is due in part to the fact that malicious individuals do not fear the consequences of their actions. Before 2013, there were few laws in the United States explicitly addressing this invasion of sexual privacy, even as concerns over almost every other form of privacy (financial, medical, data) have captured legal and social imagination. While some existing voyeurism, surveillance, and computer hacking laws prohibit the nonconsensual observation and recording of individuals in states of undress or engaged in sexual activity, the nonconsensual *disclosure* of intimate images has been largely unregulated by the law. This is beginning to change.

## **II. Legislative Efforts**

### **a. Non-U.S.**

In 2009, the Philippines became the first country to criminalize nonconsensual pornography, with a penalty of up to 7 years' imprisonment.<sup>11</sup> The Australian state of Victoria outlawed non-consensual pornography in 2013.<sup>12</sup> In 2014, Israel became the first country to classify non-consensual pornography as sexual assault, punishable by up to 5 years imprisonment;<sup>13</sup> Canada criminalized the conduct the same year.<sup>14</sup> England and Wales criminalized the conduct in February 2015; New Zealand followed in July 2015.<sup>15</sup> Brazil and Japan are considering

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<sup>8</sup> See Jack Simpson, [Revenge Porn: What is it and how widespread is the problem?](#), The Independent, July 2, 2014; Annmarie Chiariini, “[I was a victim of revenge porn.](#)” The Guardian, Nov. 19, 2013.

<sup>9</sup> See Ann Bartow, *Pornography, Coercion, and Copyright Law 2.0*, 10 Vand. J. Ent. & Tech. L. 799, 818; Marion Brooks, [The World of Human Trafficking: One Woman's Story](#), NBC Chicago, Feb. 22, 2013.

<sup>10</sup> Tara Culp-Ressler, [16 Year-Old's Rape Goes Viral on Twitter](#), Think Progress, July 10, 2014.

<sup>11</sup> World Intellectual Property Organization, *Anti-Photo and Video Voyeurism Act of 2009* (Republic Act No. 9995), <http://www.wipo.int/edocs/lexdocs/laws/en/ph/ph137en.pdf>

<sup>12</sup> Daily Mail, ['Revenge porn' outlawed: Israel and Australia ban spurned lovers from posting compromising photos of their exes](#), Jan. 8, 2014.

<sup>13</sup> Yifa Yaakov, [Israeli law makes revenge porn a sex crime](#), Times of Israel, Jan. 6, 2014.

<sup>14</sup> House of Commons of Canada, [Bill C-13](#).

<sup>15</sup> Scoop, [Act Closes 'Revenge Porn' Loophole](#), July 6, 2015.

legislation on the issue.<sup>16</sup> In 2014, a German court ruled that an ex-partner must delete intimate images of his former partner upon request.<sup>17</sup>

### b. U.S.

Before 2013, only three U.S. states – New Jersey, Alaska, and Texas<sup>18</sup> – had criminal laws directly applicable to nonconsensual pornography. Between 2013 and 2015, 23 states passed criminal legislation to address this conduct: **Arkansas, Arizona<sup>19</sup>, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Louisiana, Maine, Maryland, Nevada, New Mexico, North Dakota, Oregon, Pennsylvania, Texas (to supplement previous law), Utah, Vermont, Virginia, Washington, and Wisconsin. Washington, D.C.** has also criminalized the practice. The Cyber Civil Rights Initiative directly advised 17 of these 23 states and Washington D.C., though it is important to note that the final versions of many of these laws may not reflect CCRI's recommendations. The conduct carries felony penalties in six states (Arizona,<sup>20</sup> Hawaii, Idaho, Illinois, Nevada, New Jersey) and is a misdemeanor offense in the others, with several states classifying the crime as a felony if committed for certain motives or for repeat offenses.<sup>21</sup>

Legislation has been introduced or is pending in several other states and Puerto Rico. As of July 2015, the Cyber Civil Rights Initiative has advised or is advising legislative efforts in the following states: **Alabama, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, New York, North Carolina, Oklahoma, Tennessee, and Virginia (to revise current law).** Updated information about enacted and pending legislation can be found on attorney and CCRI Board Member Carrie Goldberg's [blog](#).

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<sup>16</sup> Alex Cochrane, [Legislating on Revenge Porn: An International Perspective](#), Society for Computers and Law, July 24, 2014.

<sup>17</sup> Philip Oltermann, '[Revenge porn' victims receive boost from German court ruling](#)', The Guardian, May 22, 2014.

<sup>18</sup> A portion of Texas's improper photography law has recently been held unconstitutional. See [Ex parte Thompson](#) (2014).

<sup>19</sup> A few months after it passed, Arizona's law was challenged by a lawsuit brought by the ACLU and several bookstores. A judge issued a stay of the law while legislators worked to address constitutional concerns. Jamie Ross, Courthouse News Service, [AZ Revenge Porn Law Put on Hold by Judge](#), Dec. 1, 2014. In July 2015, the Arizona Attorney General and the ACLU mutually agreed to permanently block the law after the Arizona legislature failed to vote on the revised provisions. The bill's sponsor, Rep. J. D. Mesnard, has stated that he will introduce a revised version of the bill in January 2016. AP News, [Arizona 'revenge porn' law to be permanently blocked](#), July 9, 2015.

<sup>20</sup> But see note above.

<sup>21</sup> For example, in Delaware, the offense is a felony if certain aggravating factors are present, e.g. when the perpetrator publishes the images for profit or with the intent to harass the victim. See [Section 1335, Title 11 Delaware Code](#).

CCRI is also working with the offices of U.S. Representatives Jackie Speier (D-CA) and Gregory Meeks (D-NY) on a federal criminal bill, the Intimate Privacy Protection Act, to be introduced in 2015.<sup>22</sup>

### **III. Elements of an Effective Law**

Unfortunately, many laws that have been passed or are pending regarding nonconsensual pornography suffer from overly burdensome requirements, narrow applicability, and/or constitutional infirmities. A strong law must be clear, specific, and narrowly drawn to protect both the right to privacy and the right to freedom of expression. The following is a list of features an effective law should have, as well as features that should be avoided.

1. The law **SHOULD** clearly set out the elements of the offense: the knowing disclosure of sexually explicit photographs and videos of an identifiable person when the discloser knows or should have known that the depicted person has not consented to such disclosure.<sup>23</sup> This is necessary to ensure that individuals who make inadvertent disclosures, or individuals who had no way of knowing that the person depicted did not consent to the disclosure, are not punished.
2. The law **SHOULD** contain exceptions for sexually explicit images voluntarily exposed in public or commercial settings and narrow exceptions for disclosures made in the public interest. Otherwise, individuals could be prosecuted for forwarding or linking to commercial pornography, or prosecuted for recording and reporting unlawful activity, such as flashing.<sup>24</sup>
3. The law **SHOULD** include a severability clause, so that in the event that any particular provision is declared invalid, the rest of the provision will remain effective.
4. The law **SHOULD NOT** confuse mens rea (also called mental state or intent) with motive. While the requisite mens rea for each element of a criminal law should be clearly stated, criminal laws are not required to include – and indeed the majority do not include - motive requirements.

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<sup>22</sup> The Hill, [What Hulk Hogan can teach us about the need for revenge porn laws](#), June 30, 2015.

<sup>23</sup> See [Illinois S.B. 1009](#) (signed into law December 2014): “A person commits non-consensual dissemination of private sexual images when he or she... intentionally disseminates an image of another person... who is identifiable from the image itself or from information displayed in connection with the image; and who is engaged in a sexual act or whose intimate parts are exposed... and obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and knows or should have known that the person in the image has not consented to the dissemination.”

<sup>24</sup> See [Illinois S.B. 1009](#), which exempts the intentional dissemination of an image of another identifiable person who is engaged in a sexual act or whose intimate parts are exposed “when the dissemination is made for the purpose of a criminal investigation that is otherwise lawful”; “for the purpose of, or in connection with, the reporting of unlawful conduct”; when the images involve voluntary exposure in public or commercial settings”; or “when the dissemination serves a lawful public purpose.”

“Intent to cause emotional distress” or “intent to harass” requirements<sup>25</sup> arbitrarily distinguish between perpetrators motivated by personal desire to harm and those motivated by other reasons.<sup>26</sup> Motive requirements ignore the reality that many perpetrators are motivated not by an intent to distress but by a desire to entertain, to make money, or achieve notoriety.<sup>27</sup> The 2014 distribution of over a hundred celebrities’ private, intimate photos on various websites makes this point abundantly clear: the disclosers in that case were hoping for Bitcoin (online currency) donations, and likely had no personal relationship to their victims at all.<sup>28</sup> A California Highway Patrol officer accused of accessing and forwarding a female DUI suspect’s intimate cellphone pictures claimed that obtaining and exchanging such photos was a common “game” among officers.<sup>29</sup> After it was discovered that members of the Penn State chapter of the Kappa Delta Rho fraternity had uploaded photos of unconscious, naked women to a members-only Facebook page, a fellow fraternity brother defended them by explaining that the conduct “wasn’t malicious whatsoever. It wasn’t intended to hurt anyone. It wasn’t intended to demean anyone. It was an entirely satirical group and it was funny to some extent.”<sup>30</sup> These kinds of disclosures are clearly not intended to harass or distress the victim - indeed, perpetrators are incentivized to avoid the victim’s discovery of such conduct altogether.<sup>31</sup>

Existing laws on voyeurism, theft, and sexual abuse make clear that whether a perpetrator intends to distress a victim is beside the point: the relevant question is whether he or she intentionally engaged in nonconsensual conduct.

The term “revenge porn” may be partly to blame for these misguided intent requirements, as it implies that this conduct is always motivated by personal animus.<sup>32</sup> The insistence that nonconsensual pornography laws must include a motive requirement seems to originate with the

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<sup>25</sup> See [Utah H.B. 71](#) (signed into law March 2014): “An actor commits the offense of distribution of intimate images if the actor, with the intent to cause emotional distress or harm, knowingly or intentionally distributes to any third party any intimate image of an individual who is 18 years of age or older...”

<sup>26</sup> See Mary Anne Franks, [How to Defeat Revenge Porn: First, Recognize It’s About Privacy, Not Revenge](#), Huffington Post, June 22, 2015.

<sup>27</sup> As the proprietor of a once-popular revenge porn site described his motivations, “I call it entertainment... We don’t want anyone shamed or hurt we just want the pictures there for entertainment purposes and business.” CBS Denver, [‘Revenge Porn’ Website has Colorado Women Outraged](#), Feb. 3, 2014.

<sup>28</sup> See Rob Price, [Bitcoin Beggars Try to Profit Off Leaked Celebrity Nudes](#), Daily Dot, Sept. 1, 2014.

<sup>29</sup> See Matthias Gafni & Malaika Fraley, [Warrant: CHP officer says stealing nude photos from female arrestees ‘game’ for cops](#), Contra Costa Times, Oct. 24, 2014.

<sup>30</sup> Holly Otterbein, [Member of Penn State’s Kappa Delta Rho Defends Fraternity](#), Philadelphia Magazine, March 18, 2015.

<sup>31</sup> Pennsylvania’s current law only applies in cases where an individual distributes the material with the “intent to harass, annoy or alarm a current or former sexual or intimate partner.” Partly in light of the Penn State case, the sponsor of the legislation has indicated that she is seeking to revise the law. John Kopp, Philly Voice, [Lawmakers seek wider net for Pennsylvania’s ‘revenge porn’ law](#), August 17, 2015.

<sup>32</sup> See Franks, [How to Defeat Revenge Porn](#), *supra* note 24.

ACLU,<sup>33</sup> but constitutional doctrine does not support this claim. There are at least three reasons why this is the case.

First, while any statute that regulates expression must avoid constitutional overbreadth, such overbreadth concerns “must not only be real, but substantial as well, judged in relation to the statute’s plainly legitimate sweep.”<sup>34</sup> That is, the mere possibility that a statute could be applied too broadly is not in itself sufficient grounds to invalidate it.

Second, the ACLU’s recommendation is strange considering that the ACLU itself, in objecting to federal stalking provisions of the Violence Against Women Act, characterized “intent to cause substantial emotional distress” elements, as well as intent to “harass” or “intimidate” elements, as “unconstitutionally overbroad.”<sup>35</sup> That is, the ACLU maintains that such language is *unconstitutional* in the context of stalking laws while insisting that such language is necessary to ensure the constitutionality of nonconsensual pornography laws.

Third, intent to cause harm or distress language potentially *weakens* the constitutionality of nonconsensual pornography laws. Prohibiting only disclosures of sexually explicit images when they are intended to cause distress while allowing disclosures that are not renders a law vulnerable to objections of constitutional under-inclusiveness and viewpoint discrimination.<sup>36</sup>

If legislators are compelled by political pressures to include some reference to harm or distress, an alternative approach would be to employ an objective standard, e.g. “when a reasonable person would know that such disclosure would cause harm or distress.”

5. The law **SHOULD NOT** be so broadly drafted as to include drawings<sup>37</sup> or unusually expansive definitions of nudity (e.g. buttocks or female nipples visible through gauzy or wet fabric)<sup>38</sup> in its scope. Too-broad definitions could also lead to “baby in the bath” problems,

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<sup>33</sup> The ACLU Foundation of Arizona makes this claim in its recent lawsuit against Arizona’s non-consensual pornography law, [Antigone Books et al v. Horne](#) (2014). The ACLU of Maryland made this claim in its [Testimony](#) for the Maryland House Judiciary Committee on HB 43 (Jan. 28, 2014). See Mary Anne Franks, [The ACLU’s Frat House Take on ‘Revenge Porn.’](#) Huffington Post, April 1, 2015.

<sup>34</sup> Broadrick v. Oklahoma, 413 U.S. 601, 615 (1973).

<sup>35</sup> ACLU, [New Expansion of Stalking Law Poses First Amendment Concerns](#), March 12, 2013.

<sup>36</sup> For example, a Texas court recently held that ruled that the state’s improper photography statute could not be rescued from constitutional overbreadth because it only criminalized photographs taken with the intent to arouse or gratify a person’s sexual desires. In fact, the court found that such an intent requirement was an “attempt to regulate thought.” [Ex parte Thompson](#) (2014), 11-12.

<sup>37</sup> Michigan’s proposed [S.B. 0294](#) states “A person shall not … post on the Internet any sexually explicit photograph, drawing, or other visual image of another person with the intent to frighten, intimidate, or harass any person.”

<sup>38</sup> See [Georgia H.B. 838](#), defining “nudity” as “(A) The showing of the human male or female genitals, pubic area, or buttocks without any covering or with less than a full opaque covering; (B) The showing of the female breasts without any covering or with less than a full opaque covering; or (C) The depiction of covered male genitals in a discernibly turgid state.”

criminalizing parents who share innocent pictures of their infants.<sup>39</sup> On the other hand, the law SHOULD NOT be so narrowly drafted as to apply only to images featuring nudity, as an image can be sexually explicit without containing nudity.<sup>40</sup>

6. The law SHOULD NOT be so narrowly drafted as to only apply to disclosures made online or through social media,<sup>41</sup> as nonconsensual pornography can also take “low-tech” forms such as printed photographs and DVDs.<sup>42</sup>

7. The law SHOULD NOT be limited to conduct perpetrated by a current or former intimate partner.<sup>43</sup> While such laws usefully highlight the fact that nonconsensual pornography is often a form of intimate partner violence, they allow friends, co-workers, and strangers to engage in this destructive conduct with no consequence.

8. The law SHOULD NOT broaden immunity for online entities beyond what is provided by the Section 230 of the Communications Decency Act. Section 230 protects online entities from liability only to the extent that they function solely as intermediaries for third-party content. To the extent that online entities act as co-developers or co-creators of content, they can and should be prosecuted under state criminal law.

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<sup>39</sup> See Riya Bhattacharje, [Florida pushes bill to criminalize 'revenge porn'](#), MSN News, April 3, 2013: “University of Miami law professor Mary Anne Franks said it was ‘a very good sign’ that legislators were working toward criminalizing revenge porn, but the proposed bill was too broad in some aspects and too narrow in others. ‘It’s criminalizing the creation of an image that depicts nudity, but it doesn’t define nudity,’ Franks said. ‘It needs to make clear what it means by nudity and that nudity isn’t the only thing we care about. So it is unclear whether it refers to genitalia, buttocks, breasts, etc. or all of the above. That vagueness might mean that a mother who uploads a photo of her baby in the bath to Facebook could face criminal prosecution.’”

<sup>40</sup> See Carrie Goldberg, [Seven Reasons Illinois is Leading the Fight Against Revenge Porn](#), Cyber Civil Rights Initiative, Dec. 31, 2014.

<sup>41</sup> See [Georgia H.B. 838](#), limiting application to a person who “(1) Electronically transmits or posts, in one or more transmissions or posts, a photograph or video … when the transmission or post is harassment or causes financial loss to the depicted person and serves no legitimate purpose to the depicted person; or (2) Causes the electronic transmission or posting, in one or more transmissions or posts, of a photograph or video …when the transmission or post is harassment or causes financial loss to the depicted person and serves no legitimate purpose to the depicted person.”

<sup>42</sup> See, e.g., the case of David Feltmeyer, who allegedly distributed sexually explicit DVDs of his ex-girlfriend on the windshields of cars in her neighborhood after she declined to continue a relationship with him. [Police: Man Left DVDS of ex Girlfriend Performing Sex Acts on Car Windshields](#), AP News, March 3, 2007. See also the case of Jovica Petrovic, who sent 8.5 x11 glossy photos of his ex-wife performing sex acts in FedEx envelopes to her boss as well as to her home address, where they were opened by her seven-year-old son. Nicholas Phillips, [Sext Fiend](#), Riverfront Times, April 18, 2013.

<sup>43</sup> See [Pennsylvania H.B. 2107](#): “a person commits the offense of unlawful dissemination of intimate image if, with intent to harass, annoy or alarm a current or former sexual or intimate partner, the person disseminates a visual depiction of the current or former sexual or intimate partner in a state of nudity or engaged in sexual conduct.”

## **IV. Model State Law**

An actor may not knowingly distribute an image of another person who is identifiable from the image itself or information displayed in connection with the image and whose intimate parts are exposed or who is engaged in a sexual act, when the actor knows that or consciously disregarded a substantial and unjustified risk that the depicted person has not consented to such disclosure [and under circumstances in which the actor knew or consciously disregarded a substantial and unjustified risk that the depicted person reasonably expected that the image would remain private. A person who has consented to the creation or distribution of an image described in this section within the context of a confidential relationship retains a reasonable expectation of privacy beyond that relationship. A person who did not consent to the creation, distribution, or access to an image described in this section has reasonable expectation of privacy in that image.]<sup>44</sup>

### A. Definitions. For the purposes of this section,

- (1) “Distribute” includes transferring, publishing, or reproducing;
- (2) “Image” includes a photograph, film, videotape, recording, digital, or other reproduction;
- (3) “Intimate parts” means the naked genitals, pubic area, anus, or female post-pubescent nipple of the person;
- (4) “Sexual act” includes but is not limited to masturbation; genital, anal, or oral sex; sexual penetration with objects; or the transfer or transmission of semen upon any part of the depicted person’s body.

### B. Exceptions. This section does not apply to

- (1) Images involving voluntary exposure in public or commercial settings; or
- (2) Disclosures made in the public interest, including but not limited to the reporting of unlawful conduct, or the lawful and common practices of law enforcement, criminal reporting, legal proceedings, or medical treatment.

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<sup>44</sup> The “reasonable expectation of privacy” language is bracketed because of the benefits and drawbacks of including it. The benefit of including such language is to emphasize that the statute does not apply to images voluntarily created in commercial or public settings. This point is already addressed in B(1) of the exceptions, but including it in the elements might helpfully underscore this aspect. The drawback of this approach is twofold: 1. The term “reasonable expectation of privacy” might create more ambiguity than it resolves, especially considering the doctrinal baggage of the term from Fourth Amendment jurisprudence and 2. The term is an awkward fit for cases involving sexual assaults in public or semi-public settings, as well as for hacking scenarios. If privacy is included as an element, it would be prudent to address these issues explicitly.

C. Severability.

- (1) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application

**V. Supplemental Resources: Revenge Porn Statistics**

From a Cyber Civil Rights Initiative survey with 1606 total respondents, 361 victims:

- 61% of respondents said they had taken a nude photos/videos of themselves and shared it with someone else
- 23% of respondents were victims of revenge porn.

Statistics on Revenge Porn Victims:

- 83% of revenge porn victims said they had taken nude photos/videos of themselves and shared it with someone else
- 90% of revenge porn victims were women
- 68% were 18-30 years old, 27% were 18-22
- 57% of victims said their material was posted by an ex-boyfriend, 6% said it was posted by an ex-girlfriend, 23% said it was posted by an ex-friend, 7% said it was posted by a friend, 7% said it was posted by a family member
- Information that was posted with the material:
  - Full name: 59%
  - Email Address: 26%
  - Social network info/screenshot of social network profile: 49%
  - Physical home address: 16%
  - Phone number: 20%
  - Work Address: 14%
  - Social Security Number: 2%
- 93% of victims said they have suffered significant emotional distress due to being a victim
- 82% said they suffered significant impairment in social, occupational, or other important areas of functioning due to being a victim
- 42% sought out psychological services due to being a victim
- 34% said that being a victim has jeopardized their relationships with family
- 38% said it has jeopardized their relationships with friends
- 13% said they have lost a significant other/partner due to being a victim
- 37% said they have been teased by others due to being a victim
- 49% said they have been harassed or stalked online by users that have seen their material
- 30% said they have been harassed or stalked outside of the Internet (in person, over the phone) by users that have seen the material online

- 40% fear the loss of a current or future partner once he or she becomes aware that this is in their past
- 54% fear the discovery of the material by their current and/or future children
- 25% have had to close down an email address and create a new one due to receiving harassing, abusive, and/or obscene messages
- 26% have had to create a new identity (or identities) for themselves online
- 9% have had to shut down their blog
- 26% have had to close their Facebook account
- 11% have had to close their Twitter account
- 8% have had to close their LinkedIn account
- 26% have had to avoid certain sites in order to keep from being harassed
- 54% have had difficulty focusing on work or at school due to being a victim
- 26% have had to take time off from work or take less credits in/a semester off from school due to being a victim
- 8% quit their job or dropped out of school
- 6% were fired from their job or kicked out of school
- 13% have had difficulty getting a job or getting into school
- 55% fear that the professional reputation they have built up could be tarnished even decades into the future
- 57% occasionally or often have fears about how this will affect their professional advancement
- 52% feel as though they are living with something to hide that they cannot acknowledge to a potential employer (such as through an interview).
- 39% say that this has affected their professional advancement with regard to networking and putting their name out there
- 3% have legally changed their name due to being a victim
- 42% haven't changed their name, but have thought of it
- 42% have had to explain the situation to professional or academic supervisors, coworkers, or colleagues
- 51% have had suicidal thoughts due to being a victim
- 3% of victims have posted revenge porn of someone else

## **VI. Supplemental Resources: Illustrative Case Studies**

The following cases provide a sense of the scope and severity of this conduct.

### **1. HOLLY JACOBS**

Holly Jacobs is not the name she was born with. A few years ago, the Miami, Florida resident was working on completing her doctorate in Industrial/Organizational Psychology at FIU and

had moved on from what she thought had been an amicable breakup with a longtime, long-distance boyfriend.

She was happy in a new relationship, so much so that she posted a picture of herself with her new boyfriend to Facebook to announce their relationship.

Soon after, she received an email that would change her life.

***"It's 8:15 where you are. You have until 8:37 to reply. Then I start the distribution."***

Holly quickly realized what the sender of the email was threatening to distribute, which also made the sender's identity clear. She and her ex-boyfriend had exchanged intimate photos throughout their three-year relationship, but she had never thought that he would use them to destroy her life.

Three days after Holly received the email, her pictures were on over 200 websites and she had been inundated with unwelcome sexual propositions from men who had seen them. The pictures had also been sent to her boss and a co-worker. Holly spent the next few months trying to explain the situation to her employer, her family, her friends, and colleagues, and to plead with porn sites and search engines to remove her material. After a solid month writing her dissertation by day and sending takedown notices at night, the material was gone. But not for long. Within two weeks, her material was up on 300 websites.

At that point, Holly gave up trying to change her search results, and started the process to change her name. She couldn't see any other way to escape the material that was following her everywhere, jeopardizing her career, her psychological health, and her relationship.

But that wasn't the biggest change Holly wanted to make. After being repeatedly told by lawyers and police officers that what her ex was doing wasn't against the law, she decided that this should change too. She started the End Revenge Porn Campaign and teamed up with activist Charlotte Laws and law professors Mary Anne Franks and Danielle Citron to form a nonprofit organization, the Cyber Civil Rights Initiative. One of the organization's primary goals is to get nonconsensual pornography criminalized in every state and at the federal level. Less than two years later, the formerly obscure issue of revenge porn has been pushed into the public consciousness and more than half of U.S. states have enacted or are considering criminal legislation against the conduct. Read more about Holly [here](#).

## **2. ALECIA ANDREWS-CRAIN**

Alecia Andrews-Crain, a Missouri mother of two, thought she could finally breathe a sigh of relief after the full order of protection against her abusive ex-husband had been granted in February 2014. But one morning only a few days later, as Alecia went about her work as an independent insurance agent, she was greeted by a startling message in her inbox.

***Subject: Someone did something nasty to you on [redacted].com***

Once she clicked on the link, she saw a photograph of herself taken seven years ago as she stepped out of the shower. She was still married to her husband then, and she had no time to react to his unexpected presence in the bathroom with a camera – just one example of his casually abusive behavior. This seven-year-old picture was now posted to one of the most notorious – and most popular - revenge porn websites. The photo showed up connected to her LinkedIn and Facebook profiles, causing her personal and professional humiliation.

Like Holly, Alecia went to the police, certain that her ex's malicious behavior had to be against the law. In fact, Missouri does not have a law prohibiting the nonconsensual distribution of intimate images, and the act was not considered a violation of her order of protection. Alecia was left without recourse. Alecia is now advocating for Missouri to reform its criminal laws to address this issue. Read more about Alecia [here](#).

**3. ADAM KUHN**

Adam Kuhn, chief of staff to Rep. Steve Stivers (R-OH), resigned in June 2014 after an ex-girlfriend tweeted an intimate picture of Kuhn to Rep. Stivers' account. Jennifer Roubenes Albaugh, who is married, has stated that she was upset with Kuhn for ending their relationship. Albaugh told a Politico reporter that she "just wanted to teach the pompous a—— a lesson." Kuhn is unmarried, and his romantic relationship with Albaugh has no apparent bearing on his public duties. This makes Kuhn's situation different from that of disgraced mayoral candidate Anthony Weiner, whose persistent, surreptitious, extramarital sexting arguably affected his fitness for public office. Kuhn's career and reputation have been unjustly and irreparably harmed by a woman motivated purely by personal antagonism. Read more about Adam Kuhn [here](#).

**4. “SARAH”**

In 2013, Alex Campbell was sentenced to life in prison for human trafficking. According to the four witnesses who testified against him, Campbell used violence and intimidation to force women into prostitution. One of the women, "Sarah" (not her real name) was forced to perform sexual acts with another woman while Campbell filmed it. Campbell threatened to send this video to Sarah's family if she ever attempted to escape. Sarah's story offers a glimpse of how nonconsensual pornography is used by sex traffickers to keep women in servitude. Read more about Sarah's story [here](#).

**5. AUDRIE POTT**

In September 2012, 15-year-old Audrie Pott went to a party. Alcohol flowed freely, and soon Audrie was so intoxicated she could barely recognize her friends. Three boys and a girl helped her to an upstairs bedroom. The girl left when the boys starting undressing Audrie and drawing

on her breasts and buttocks with markers. The boys then took pictures of themselves sexually assaulting Audrie. When Audrie woke up the next morning, she didn't know where she was or what had happened to her. Seeing the marks on her body led her to ask her friends how they got there. Through Facebook conversations, Audrie learned what the boys had done to her. She also learned that there were pictures, and that those pictures were circulating around the school.

A week later, Audrie called her mother from school at midday and asked to be taken home. She retreated to her room when the two arrived at home; her mother decided to check on her after not hearing anything for 20 minutes. The bathroom door was locked and there was no answer from inside. Audrie's mother forced open the door to find her only child hanging from a belt attached to the showerhead. Paramedics arrived soon after Audrie's mother called 911, but their efforts to save Audrie were unsuccessful. Read more about Audrie's story [here](#).