



# Why and How Congress Should Outlaw Revenge Porn

BY DANIEL CASTRO AND ALAN MCQUINN | JULY 2015

---

*Revenge porn can have dramatic consequences for victims—from harming their careers and reputations to intimidating them into silence or putting them directly in harm’s way.*

---

The distribution of sexually explicit images without the subject’s consent, commonly referred to as “revenge porn,” currently exists in a legal gray area throughout much of the United States, where victims have few options for recourse and perpetrators go unpunished. Revenge porn can have dramatic consequences for victims—from harming their careers and reputations to intimidating them into silence or putting them directly in harm’s way. While a number of states and private businesses have taken up the cause to reduce this form of online harassment, it is not enough. Congress should take action to address the nonconsensual distribution of sexually explicit images.

Revenge porn is a particularly pernicious form of online harassment in which a perpetrator distributes sexually graphic images of a person without his or her consent.<sup>1</sup> In some cases, a victim may have shared these images with a trusted partner who then violated that trust and disseminated the pictures online. For example, Holly Jacobs, the founder of the Cyber Civil Rights Initiative, describes how her ex-boyfriend posted explicit images of her online alongside identifying information, such as her name, email address, and job title, in an attempt to discredit, embarrass, and harass her.<sup>2</sup> In other cases, hackers steal images. For example, in 2014 a hacker stole a trove of nude images from over 600 online storage accounts linked to different female celebrities, uploading those images to the Internet without their owners’ consent.<sup>3</sup>

People who distribute these images often do so with the intent to harm the subject of the images and with the knowledge that the subject has not consented to their distribution. These photos or videos are placed on websites, including those devoted to nonconsensual images, exchanged on chat rooms, sent to loved-ones or employers in an attempt to shame the victim, or posted on fake online advertisements that list the victims’ contact

---

information and falsely solicit strangers for sex. Most online harassment, including nonconsensual pornography, is disproportionately targeted toward women.<sup>4</sup>

Despite the seriousness of the problem, victims have inadequate means available to fight back. Most victims cannot easily stop the spread of the images or take action against the perpetrator. Indeed, many of these images remain online forever. U.S. federal legislation is needed to reverse this trend and protect the victims of revenge porn. To that end, ITIF recommends that Congress:

- Pass legislation to criminalize the nonconsensual distribution of sexually explicit images.
- Create a special unit in the Federal Bureau of Investigations (FBI) to provide immediate assistance to victims of nonconsensual pornography.
- Direct the Department of Justice to work with the private sector on developing best practices for online services to quickly remove nonconsensual pornography.

### **THE HARMFUL EFFECTS OF NONCONSENSUAL PORNOGRAPHY**

Revenge porn has many negative effects, including damaged reputations, abusive communications from strangers, emotional damage, and the often all-too-real threat of violence.<sup>5</sup> Furthermore, these impacts can be accompanied by financial and social costs, such as loss of employment or educational opportunities. In one instance, the U.S. Department of Transportation actually fired a woman after one of her coworkers sent a nude photograph of her to several colleagues.<sup>6</sup> This is often the goal: Harassers know that by posting nude images of their victims next to their personal information, they will make it difficult for victims to find a job and put them at risk for assault.<sup>7</sup>

When a person is harassed online, the emotional toll can be devastating. One psychologist explains that victims of online harassment feel like their tormentors are haunting them both online and off.<sup>8</sup> For example, one victim said she did not feel safe leaving her home after a jilted ex-lover posted a nude image of her alongside her home address on a pornographic website.<sup>9</sup>

Revenge porn can also lead to feelings of powerlessness, as victims are often denied when they ask a website to take down compromising images. Even when a victim is able to convince a website to take an image down, another website may put it up. This harrowing game of whack-a-mole further leads to emotional distress and damage. Victims who own the image copyrights can ask websites to remove these images, but they may have to hire lawyers to enforce their requests. Other victims face “sextortion” websites running shakedown schemes that charge fees for image removal.<sup>10</sup> For example, when victims of the “U Got Posted” website would try to take down photos of themselves, they would be referred to the ChangeMyReputation.com website, where they would be charged \$299 to \$350 for photo removal.<sup>11</sup> This website profited from thousands of women before a California law criminalizing revenge porn helped state authorities jail its operator.<sup>12</sup>

---

## CURRENT EFFORTS TO REDUCE THE DISTRIBUTION OF NONCONSENSUAL PORNOGRAPHY

Efforts to curb revenge porn have taken hold in many states. There are 24 states with laws that criminalize revenge porn, with more states contemplating taking action.<sup>13</sup> Of these states, seven offer civil remedies to victims.<sup>14</sup> Some, such as California and Florida, have clauses that limit the law's applicability to situations where the perpetrator set out to harass the individual. Others have a knowledge standard, so the law only applies if the person should have known that the person did not consent to the disclosure of the images.<sup>15</sup> Some states also allow victims of this crime to seek civil remedies through tort law for intentional infliction of emotional distress or invasion of privacy.

Unfortunately, this leaves 26 states without specific revenge porn laws on the books. In states without these specific laws, victims have some other remedies, but these are insufficient or do not apply in all cases. First, victims can seek civil remedies under tort law—the body of law that allows a person who has been wrongfully harmed to seek compensation from the person or party who caused it. In this case, victims can sue their harassers for defamation, public disclosure of private fact, invasion of privacy, and intentional or reckless infliction of emotional distress.<sup>16</sup> For example, one woman successfully won a lawsuit against her former partner after he posted sexually explicit pictures of her with her contact information in an online advertisement soliciting sex. The woman received frightening calls that caused her anxiety, prompting a judge to award her redress from her ex-boyfriend under tort law.<sup>17</sup>

Second, victims can seek remedy using copyright law if they own the copyright to the image, such as if they took a photograph of themselves. However, before they can get the needed protections to seek the removal of those images, victims must first register these images with the U.S. Copyright Office. Naturally, many victims do not wish to share these images with the U.S. government. Many of these remedies require hiring lawyers, an option that is not affordable for many victims.

Finally, if victims cannot seek civil remedies, criminal law can fill in the gap in some cases. For example, U.S. law forbids hacking into someone's online storage account and stealing images, as occurred in the recent celebrity hacking incident. Some incidents of revenge porn could elicit criminal stalking and harassment charges if a perpetrator uses the Internet to solicit strangers to physically attack or stalk someone.<sup>18</sup> Many states also have video voyeurism laws that make it a crime to film someone without their consent. Indeed, while remedies exist throughout the United States for the victims of hacking, harassment, and voyeurism, overall the remedies are not adequate, and there is no federal law that specifically addresses revenge porn. Only Rep. Jackie Speier (D-CA) has announced intentions to introduce legislation that would criminalize this behavior.<sup>19</sup>

There have been some federal efforts to address revenge porn, but they have all been inadequate. Lawmakers have asked the FBI to pursue reports of revenge porn more aggressively when these cases run afoul of hacking or other laws, and the FBI has pursued the worst offenders.<sup>20</sup> For example, the FBI arrested and indicted Hunter Moore, the operator of the notorious revenge porn website IsAnyoneUp.com, for violating hacking and

---

*There have been some federal efforts to address revenge porn, but they have all been inadequate.*

---

---

identity theft laws.<sup>21</sup> Moore has pled guilty to charges of conspiring to hack into email accounts in order to steal nude photographs and post them online.<sup>22</sup> Moore, who some have described as “the most hated man on the Internet,” paid a hacker to illegally access hundreds of email accounts, stealing images and posting them to a website that received over 30 million page views a month.<sup>23</sup> And yet, for all these crimes, Moore faces a maximum sentence of only two to seven years in jail.

In addition, in 2015 the Federal Trade Commission settled a case against another well-known revenge porn site operator, Craig Brittain.<sup>24</sup> The FTC found that Brittain engaged in deceptive business practices when he tricked women into sending him sexually explicit images, which he then published online and charged the women for removing. While the FTC ordered Brittain to take down and destroy all the photos and videos he collected, and barred him from sharing nude images without the subject’s consent in the future, he faces no civil penalties or jail time for his misdeeds. While the FTC should be applauded for using the tools at its disposal to address this problem, this case demonstrates that the FTC is inadequately equipped to address this form of online abuse.

Other legal efforts have been launched to aid victims of revenge porn. For example, K&L Gates, a Pittsburgh-based law firm, launched its Cyber Civil Rights Legal Project, which connects volunteer lawyers with victims to help them seek restitution.<sup>25</sup> However, these volunteer services are not enough to help every victim.

The private sector has also joined the fight. Major companies such as Facebook and Twitter have begun to crack down on abuse on their sites.<sup>26</sup> In addition, Reddit—the self-styled “front page of the Internet”—recently updated its privacy policy to ban all forms of nonconsensual pornography in the wake of a large cache of nonconsensual nude celebrity photos leaking onto its forums (discussed above).<sup>27</sup> Google also recently announced plans to remove nude or explicit images shared without the subject’s consent from its search results.<sup>28</sup>

Unfortunately, several civil liberty organizations such as the American Civil Liberties Union (ACLU) and the Electronic Frontier Foundation (EFF) have opposed legislative efforts to address this problem, fearing that it could lead to infringement of free speech.<sup>29</sup> And while chilling free speech is a legitimate concern for any government looking to restrain offensive activities, this myopic approach does not take into account the speech of the victims of this crime, or those who are concerned about becoming victims, who—as one anti-cyber harassment advocate, Mary Anne Franks, has smartly pointed out—have their voices silenced because of cyber harassment.<sup>30</sup>

The efforts discussed in this section are a start, but additional resources and fresh techniques are needed to bolster the fight against revenge porn. The federal government should not only criminalize revenge porn and increase resources to victims, but it should also help the private sector do more to reduce the incidence of revenge porn.

## RECOMMENDATIONS

The nonconsensual distribution of sexually explicit images is not a new problem. Since the dawn of photography, people have taken and exchanged sexually explicit images, and some

---

of these have been shared without the subjects' consent. What has changed is the ease and scope by which these images can be spread on the Internet.

To address this problem, Congress should pass legislation to criminalize the nonconsensual distribution of sexually explicit images, create a special unit in the Federal Bureau of Investigations (FBI) to provide immediate assistance to victims of nonconsensual pornography, and direct the Department of Justice to work with the private sector on developing best practices for online services to quickly remove nonconsensual pornography.

### **Pass legislation to criminalize the nonconsensual distribution of sexually explicit images**

Federal legislation should criminalize the nonconsensual distribution of sexually explicit images. To be effective, both as a deterrent to online harassment and as an opportunity to provide justice to victims, federal legislation should provide criminal penalties for those who knowingly distribute sexually explicit material without the subject's consent. Congress should send a clear message to would-be perpetrators: Those who distribute revenge porn are going to jail.

---

*To ensure that federal legislation does not criminalize less malicious behavior or infringe on free speech, it should include an intent clause and a knowledge standard.*

---

To ensure that federal legislation does not criminalize less malicious behavior or infringe on free speech, it should include an intent clause and a knowledge standard. California's revenge porn law includes the language "...the person distributing the image knows or should know that distribution of the image will cause serious emotional distress, and the person depicted suffers that distress."<sup>31</sup> Similarly, Florida's revenge porn law includes language that bans the nonconsensual disclosure of these images with an "intent to harass" clause.<sup>32</sup> Some anti-revenge porn advocates believe that an intent clause limits the number of criminal cases that the government can pursue against offenders, such as those who only want to make money from the images. However, an intent clause can help address free speech advocates' fears about blanket removal of content. Furthermore, the intent clause can include a provision so those who are exploiting these images for financial reasons are also held responsible. In addition to the intent clause, the legislation should include a knowledge standard. For example, Oregon's law states that a person is guilty of unlawful dissemination of an intimate image if, "the person knows or reasonably should have known that the other person does not consent to the disclosure."<sup>33</sup>

Federal legislation should not, however, change Section 230 of Title 47 of the U.S. Code, which protects online intermediaries from being liable for the content posted by others. Section 230 provides strong protections that allow online providers to build services without fear that they will be held responsible for users' actions. Upholding this protection will allow law enforcement to focus on the perpetrators of this crime, rather than the platforms they use to distribute this content.<sup>34</sup>

Finally, Congress should provide a definition of the term "sexually explicit material" that allows it to evolve over time. For example, one area of U.S. code defines "sexually explicit material" as an audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium, the dominant theme of which depicts or describes nudity, including sexual or excretory activities or organs, in a lascivious way.<sup>35</sup> A definition like this gives courts some discretion to protect victims while not intruding on free speech.

---

### **Create a special unit in the FBI to provide immediate assistance to victims of nonconsensual pornography**

Congress should direct the FBI to create a special unit tasked with providing assistance to revenge porn victims and prosecuting those who commit this crime. For example, the FBI could provide a 24-hour hotline to respond to victims and help them take immediate steps to have these types of images removed. A dedicated FBI unit would provide federal prosecution for victims without the financial resources to hire their own lawyers to pursue cases in state court. While the FBI has pursued some of the worst offenders, more dedicated law enforcement efforts are needed to curtail the problem. To monitor the effectiveness of its special unit, the FBI should produce an annual report about its efforts to combat this problem and the scope of the problem.

### **Direct the Department of Justice to work with the private sector on developing best practices for online services to quickly remove nonconsensual pornography**

Congress should direct the Department of Justice (DOJ) to partner with the private sector to help spread best practices to address this problem. While many websites have taken steps to take down or reduce the incidence of revenge porn on their own, more effort is needed to develop a consensus on how and when websites should take down these images. For example, DOJ should hold regular workshops to bring together leading Internet companies to identify best practices for combatting revenge porn, and other forms of online harassment and abuse.

## **CONCLUSION**

It is time to reclaim the Internet as a safe space for the exchange of ideas, legal commerce, and innovation. Congress should move expediently to address legislation criminalizing revenge porn, using the guidance set forth in this report. Members of Congress should quickly take up debate about Rep. Jackie Speier's (D-CA) much-anticipated Intimate Privacy Protection Act. Without federal legislation, the distribution of nonconsensual sexually explicit images will continue unchecked and without remedy for victims in much of the country.

---

## ENDNOTES

1. Mary Anne Franks, “Combating Non-Consensual Pornography: A Working Paper,” (working paper, University of Miami Law School, Coral Gables, FL, September 18, 2013), [http://www.endrevengeporn.org/main\\_2013/wp-content/uploads/2013/10/Franks-NCP-Working-Paper-9.18.pdf](http://www.endrevengeporn.org/main_2013/wp-content/uploads/2013/10/Franks-NCP-Working-Paper-9.18.pdf).
2. Holly Jacobs, “A Message from Our Founder, Dr. Holly Jacobs,” *Cyber Civil Rights Initiative*, October 6, 2013, [http://www.cybercivilrights.org/a\\_message\\_from\\_our\\_founder\\_dr\\_holly\\_jacobs](http://www.cybercivilrights.org/a_message_from_our_founder_dr_holly_jacobs).
3. M. Alex Johnson, “Almost 600 Accounts Breached in ‘Celebgate’ Nude Photo Hack, FBI Says,” *NBC News*, June 10, 2015, <http://www.nbcnews.com/pop-culture/pop-culture-news/almost-600-accounts-breached-celebgate-nude-photo-hack-fbi-says-n372641>.
4. One group, Working to Halt Online Abuse (WHOA), has collected information from online harassment victims for over a decade. Of the 4,043 individuals who reported details to WHOA about their online harassment from 2000 to 2013, 70 percent were female. “WHOA Comparison Statistics 2000–2013,” *Working to Halt Online Abuse*, 2013, <http://www.haltabuse.org/resources/stats/Cumulative2000-2013.pdf>.
5. Danielle Keats Citron, *Hate Crimes in Cyberspace* (Massachusetts: Harvard University Press, 2014), 35–72.
6. *Lester v. Mineta*, No. C, 04-03074 SI. (N.D. Cal. February 24, 2006), <https://casetext.com/case/lester-v-mineta-3>.
7. Citron, *Hate Crimes in Cyberspace*, 17.
8. Danielle Keats Citron, “How Cyber Mobs and Trolls Have Ruined the Internet—and Destroyed Lives,” *Newsweek*, September 19, 2014, <http://www.newsweek.com/internet-and-golden-age-bully-271800>.
9. Caille Millner, “Public Humiliation over Private Photos,” *SFGate*, February 10, 2013, <http://www.sfgate.com/opinion/article/Public-humiliation-over-private-photos-4264155.php>.
10. Under federal law, copyright holders have the exclusive rights to reproduce, distribute, or display their work. Therefore, if a victim took the photos that are put online, he or she can request for the website to remove them. See, “The Digital Millennium Copyright Act of 1998 U.S. Copyright Office Summary,” *U.S. Copyright Office*, December 1998, <http://www.copyright.gov/legislation/dmca.pdf>.
11. Dennis Romero, “Kevin Bollaert Charged in Social Sextortion, Revenge Porn Case,” *LA Weekly*, December 10, 2013, <http://www.laweekly.com/news/kevin-bollaert-charged-in-social-sextortion-revenge-porn-case-4177129>.
12. Sarah Kaplan, “‘Revenge Porn’ Web Site Creator Convicted; He Victimized Thousands of Women,” *Washington Post*, February 3, 2015, <http://www.washingtonpost.com/news/morning-mix/wp/2015/02/03/revenge-porn-web-site-creator-convicted-victimized-thousands-of-women/>.
13. “24 States Have Revenge Porn Laws,” End Revenge Porn, accessed June 30, 2015, <http://www.endrevengeporn.org/revenge-porn-laws/>.
14. “States with Revenge Porn Criminal Laws,” C.A. Goldberg, last modified July 7, 2015, <http://www.cagoldberglaw.com/states-with-revenge-porn-laws/>.
15. California Penal Code §647(j)(4) (2014) [http://leginfo.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140SB1255](http://leginfo.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB1255); Florida Statute §784.049 (2015), <https://www.flsenate.gov/Session/Bill/2015/0538/BillText/er/PDF>.
16. Citron, *Hate Crimes in Cyberspace*, 121.
17. *Doe et al v. Hofstetter*, No. 1:2011cv02209, (D. Colo. June 13, 2012), <http://law.justia.com/cases/federal/district-courts/colorado/codce/1:2011cv02209/127963/20/>.
18. Citron, *Hate Crimes in Cyberspace*, 125.
19. Steven Nelson, “Federal ‘Revenge Porn’ Bill Will Seek to Shriveled Booming Internet Fad,” *U.S. News & World Report*, March 26, 2014, <http://www.usnews.com/news/articles/2014/03/26/federal-revenge-porn-bill-will-look-to-shriveled-booming-internet-fad>.
20. Dustin Volz, “Al Franken Urges FBI to Crack Down On Revenge Porn,” *Nextgov*, April 3, 2015, <http://www.nextgov.com/defense/2015/04/al-franken-urges-fbi-crack-down-revenge-porn/109285/>.
21. Amanda Holpuch, “FBI Arrest and Charge Revenge Porn Mogul Hunter Moore,” *The Guardian*, January 23, 2014, <http://www.theguardian.com/culture/2014/jan/23/fbi-arrest-and-charge-revenge-porn-mogul-hunter-moore>.
22. Department of Justice, “L.A. Man Who Hacked into Email Accounts and Obtained Nude Photos for ‘Revenge Porn’ Website Pleads Guilty in Hacking Scheme,” news release, July 2, 2015,

- <http://www.justice.gov/usao-cdca/pr/la-man-who-hacked-email-accounts-and-obtained-nude-photos-revenge-porn-website-pleads>.
23. Megan Geuss, "Revenge Porn Site Operator Hunter Moore Pleads Guilty to Hacking, ID Theft," *Arstechnica*, February 18, 2015, <http://arstechnica.com/tech-policy/2015/02/revenge-porn-site-operator-hunter-moore-pleads-guilty-to-hacking-id-theft/>.
  24. Kaveh Waddell, "FTC Orders Revenge-Porn Site Taken Down," *National Journal*, January 29, 2015, [http://www.nationaljournal.com/tech/ftc-orders-revenge-porn-site-taken-down-20150129?ref=tech\\_edge](http://www.nationaljournal.com/tech/ftc-orders-revenge-porn-site-taken-down-20150129?ref=tech_edge).
  25. "What is 'Revenge Porn?'" *Cyber Civil Rights Legal Project*, accessed April 29, 2015, <https://www.cyberrightsproject.com/>.
  26. Alex Hern, "Twitter Announces Crackdown on Abuse with New Filter and Tighter Rules," *The Guardian*, April 21, 2015, <http://www.theguardian.com/technology/2015/apr/21/twitter-filter-notifications-for-all-accounts-abuse>.
  27. Alex Hern and Helena Bengtsson, "Reddit: Can Anyone Clean Up the Mess Behind 'the Front Page of the Internet?'" *The Guardian*, March 12, 2015, <http://www.theguardian.com/technology/2015/mar/12/reddit-can-ceo-ellen-pao-clean-up-the-mess>.
  28. Amit Singhal, "'Revenge Porn' and Search," *Google*, June 19, 2015, <http://googlepublicpolicy.blogspot.com/2015/06/revenge-porn-and-search.html>.
  29. Daniel Castro, "California Law Would Criminalize 'Revenge Porn.' Guess Which Privacy Groups Oppose It?" *Innovation Files*, June 6, 2013, <http://www.innovationfiles.org/california-law-would-criminalize-revenge-porn-guess-which-privacy-groups-oppose-it/>.
  30. Mary Anne Franks, "Technology and Sexual Privacy," *C-SPAN* video, 18min 33sec, November 6, 2014, <http://www.c-span.org/video/?322592-1/discussion-legal-issues-mobile-devices>.
  31. California Penal Code §647(j)(4), <http://www.leginfo.ca.gov/cgi-bin/displaycode?section=pen&group=00001-01000&file=639-653>.
  32. Florida Statute §784.049, <https://www.flsenate.gov/Session/Bill/2015/0538/BillText/er/PDF>.
  33. Oregon, SB 188, Chapter 379 (2015), <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/SB188>.
  34. Section 230 of the federal Communications Decency Act grants Internet companies legal immunity if third-party content does not violate federal copyright or criminal law. See 47 U.S.C. § 230 (2012), <https://www.law.cornell.edu/uscode/text/47/230>.
  35. 10 U.S.C. §2495b (2004), <https://www.law.cornell.edu/uscode/text/10/2495b>.

## ERRATA

This report has been updated on page 5 to quote text from Section 647(j)(4) of the California Penal Code. An earlier version of the report quoted from a different section of California's law.



---

## **ACKNOWLEDGMENTS**

The authors wish to thank the following individuals for providing input to this report: Robert Atkinson and Randolph Court. Any errors or omissions are the authors' alone.

## **ABOUT THE AUTHOR**

Daniel Castro is the vice president of the Information Technology and Innovation Foundation. His research interests include health IT, data privacy, e-commerce, e-government, electronic voting, information security, and accessibility. Before joining ITIF, Castro worked as an IT analyst at the Government Accountability Office (GAO) where he audited IT security and management controls at various government agencies. He has a B.S. in Foreign Service from Georgetown University and an M.S. in Information Security Technology and Management from Carnegie Mellon University.

Alan McQuinn is a research assistant with the Information Technology and Innovation Foundation. His research areas include a variety of issues related to emerging technology and Internet policy, such as cybersecurity, privacy, virtual currencies, e-government, and commercial drones. Prior to joining ITIF, McQuinn was a telecommunications fellow for Congresswoman Anna Eshoo and an intern for the Federal Communications Commission in the Office of Legislative Affairs. He got his B.S. in Political Communications and Public Relations from the University of Texas at Austin.

## **ABOUT ITIF**

The Information Technology and Innovation Foundation (ITIF) is a Washington, D.C.-based think tank at the cutting edge of designing innovation strategies and technology policies to create economic opportunities and improve quality of life in the United States and around the world. Founded in 2006, ITIF is a 501(c)(3) nonprofit, nonpartisan organization that documents the beneficial role technology plays in our lives and provides pragmatic ideas for improving technology-driven productivity, boosting competitiveness, and meeting today's global challenges through innovation.

**FOR MORE INFORMATION, VISIT US AT [WWW.ITIF.ORG](http://WWW.ITIF.ORG).**