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A LEGAL EXAMINATION OF REVENGE PORNOGRAPHY AND CYBER-HARASSMENT

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ABSTRACT

This paper examines the current state of statutes in the United States as they relate to cyber-harassment in the context of “revenge porn”. Revenge porn refers to websites which cater to those wishing to exploit, harass, or otherwise antagonize their ex partners using pornographic images and videos which were obtained during their relationships. The paper provides examples and illustrations as well as a summary of current statutes in the United States. The paper additionally explores some of the various legal remedies available to victims of revenge pornography.

Keywords: cyber-harassment, cyber-bullying, revenge pornography, legal statutes, cyber-crime

1. INTRODUCTION

Currently, according the Center for Disease Control surveys, 48% of American marriages end in divorce [2]. This doesn’t include breakups, splits, departures, and other happenings which occur in non-formalized relationships among adults and minors throughout the course of one’s life. Almost every human at some point in their life will experience a relationship which fails. This may include an infatuation, love affair, or any other sort of involvement with another human being. When these separations occur, individuals on both sides may experience anger

and hostility which can even result in violence and other manifestations. Cyber-bullying and cyber-harassment may be defined as:

...acts of aggression through computers, cell phones, and other electronic devices [3].

Given that the CDC study [4] produced 20 persons per minute who were the victims of intimate partner violence, it seems to follow that cyber harassment is likely to exceed those levels of violent acts as the perceived harm from posting illicit images and video should not be as great.

This paper focuses on a specific example and as such has some limitation in attempting

to create a general model of legal response to such events. In addition, while some discussion in the paper is dedicated to handling of evidence and best practice, we would also like to refer the reader to additional resources such as the National Institute for Justice guides [32][33], and the United States Secret Service guide [34] which contain common best practice guidelines for the reader and attorney as they begin to consider such cases.

The objective of the paper is to introduce a specific scenario and some suggested terms in dealing with that scenario which may inspire future research and or thinking by the legal community on mechanisms with which to approach these sorts of cases as they increase in number across the world. The focus of this work is in the area of revenge pornography, which the paper defines, and subsequently provides some strategy for the reader in attempting to deal with the response to this in both forensic and legal terms. The reader is also introduced to various legal statutes and case law which may provide a starting point for response to a particular client experiencing this issue.

Cyber-harassment, cyber-bullying, and revenge pornography are constantly growing as threats to both adults and children. As both individuals and institutions attempt to find legal methods to respond to these horrifying scenarios, it will require flexibility and adept strategy to maneuver amongst the incredibly fluid nature of web design, internet behavior, and criminal creativity.

All of these behaviors, including trolling are continually rising with increasing use of the internet and the development of ever more sophisticated web presences [29]. Attorneys, private investigators, and forensic examiners, not to mention law enforcement will see a continual rise in cases requiring attention in this realm. This paper, while certainly not a complete primer on the matter, attempts to

simply introduce the reader to the area and provide an example which may be used as a starting point to develop guidelines.

2. WHAT IS REVENGE PORNOGRAPHY?

We define revenge pornography, which may also be called “involuntary” or “non-consensual| pornography, as:

The dissemination or posting sexually explicit media without the consent of the individual in the media, particularly where the intent is to shame, humiliate, and frighten the person or otherwise cause them harm.

According to the Cyber Civil Rights Initiative (CCRI), one in ten ex-partners have threatened to expose risqué photos of their ex on line. Sixty percent of those who threatened to expose photos actually followed through with their threats. Those people that post photos of their ex’s also post identifying information on revenge porn sites resulting in harassment for the victims in the photos [5].

3. THE CASE OF ‘LEE’

Lee is an educated, 24-year-old employed in the business sector. During the past year, Lee was in a relationship with an intimate partner, Ex. Lee recently ended the relationship with Ex but then found that Ex was less than amicable about the split.

While the relationship was still viable, Lee elected to send three provocative “selfie” photos which involved nudity to Ex. Yesterday at work, Lee received an e mail from an unknown sender. The sender referenced photos of Lee on “shameyourex.com”¹ and made degrading

¹ This is intended to represent a fictitious revenge pornography site and should not be assumed to represent any current or future site by this name. As of this writing, the name shameyourex.com was not an actual site.

and insulting remarks towards Lee. Shocked, Lee found a moment of privacy to find the website mentioned and confirmed the three photos Lee had sent to Ex during their relationship were now posted on the site with Lee's full name, work e-mail address, and a request that viewers contact and shame Lee.

That night other e-mails began to arrive from unknown senders with similar disturbing content referenced from the website. Most disturbing, however, was a phone call from one of Lee's co-workers. The co-worker told Lee that he had received a strange e-mail from an unknown sender that referred him to the website and advised him to review the photos of Lee carefully. The co-worker wanted Lee to know in case others at work were receiving similar e-mails.

At this point, Lee is distraught, embarrassed, angry and scared. In addition, Lee is worried others at work may be notified and that these events may impact Lee's status with the employer in a detrimental way. Lee then calls in sick to work the next day in hopes of finding some means to correct this problem before it causes irreparable harm.

1. This leads to several key questions:
2. How does Lee remove or have removed the photos from the web site?
3. What, if anything, should Lee do about Ex?
4. What are Lee's options under the legal system to address this matter?

This paper attempts to provide a starting point for individuals to answer these questions. It is essential that the reader understand this is NOT to be construed as legal advice and not intended to form an attorney-client relationship with any reader. Any reader in need of legal of advice in this matter should contact an attorney within their local jurisdiction to obtain legal advice.

4. THE FIRST STEPS IN LEE'S CASE

4.1 Physical Security

The first step is to determine if Lee is in danger from the posting on the site. Depending upon what identifying information is posted on the website, physical safety may be a real concern. Lee's work information was posted and the address can be found easily by looking up the business. Upon receipt of any threatening e-mail in this matter, Lee should contact the local police and specifically ask for the computer crimes unit if such an entity exists in that locale. Computer crimes officers typically have a greater knowledge of this issue and may be better able to advise on the best course of action to preserve Lee's safety and may have advice on dealing with the other issues involved. Likewise, due to the nature of the listing, building and organizational security (corporate security) should be advised in order to operate with increased vigilance. Much as in the case with domestic violence, Lee should take different routes to and from work, park in well lighted, well trafficked, areas and attempt to stay with groups of people rather than being alone. A buddy system has been used by many employees who work odd hours or late shifts, and obviously, victims of domestic violence, to escort each other to their vehicles. In this system, one person drives the other to their transportation and stays nearby until they are both safely on their way. This ensures there are always at least two persons present. Individuals should always take great care when approaching parked vehicles, especially if they are carrying objects which impede their ability to flee or fight back. There are numerous personal apps for smart phones (such as Circle 911) which may allow for rapid response in emergency which should also be explored.

A second measure may involve a restraining order. This type of request may be made at the local courthouse and will require concern about physical harm from Ex to be expressed to the court. Due to the relationship with Ex, Lee may qualify for a restraining order that would protect Lee from any contact with Ex. Different jurisdictions have different rules about restraining orders but in some states, Lee may be able to receive a restraining order for a year or more. If Lee does not feel in physical danger from Ex, it is still best to avoid contact with Ex prior to talking with a professional on this matter as contact with Ex will only encourage Ex and likely result in further complications or escalate the situation into one of physical danger.

State law determines the process by which a person can apply for and be granted a Temporary Restraining Orders (TRO) or Order of Protection. Individual state statutes express the legal requirements and threshold for obtaining the order, types or orders available, length of time an order may be in effect and how an order is enforced.

“A TRO or order of protection is a legal order issued under state law that requires a person to cease contact with another or be subject to legal penalty or consequence” as defined by womenslaw.org.

Womenslaw.org [31] indicates all states “permit the court to order the abuser to stop hurting or threatening” (another). The majority of state orders “also instruct the abuser to stay away from you, your home, your workplace or your school. (stay away provisions)”.

Many state statutes also include provisions for a court to order a “no contact order” against the abuser. Under a “no contact” provision courts typically define contact as ANY direct or indirect contact, whether positive or negative in nature as a direct

violation of the order. Violations may result in a new criminal charge.

In addition to prohibiting contact, a person with the protection of a restraining order or no contact order may also ask that the alleged abuser forfeit all firearms to the local police department. Under federal law, any person with an order of protection against them may not be in possession of a firearm or ammunition. Violation of 18 U.S.C. Section 922 (g) (8) [17] is punishable by up to ten years imprisonment. A person requesting an order of protection against someone known to have firearms should alert the judge in their application. A judge can then make the order to turn over firearms immediately.

4.2 Preservation of Evidence

One of the critical elements in Lee’s case is to ensure that there is evidence of the action before attempting to get it removed from the site. Lee should act to preserve this evidence from both the site and the emails related to the site. In order to best do this, several steps should be taken by Lee:

Print out a copy of every e-mail which is received and document the date and time this email was received. If possible, turn on the option to see the email headers and include those with the printed materials.

Print out the pictures from the website into pdf format and document the date and time. This may also be done with screenshots or even video of the website live using a separate camera.

An even better approach is to use a tool which will capture the entire website which would include html, php, cgi, and other data in its entirety. Tools such as Web Preserver [6] or Page Vault [7] and others can be used. Products like this can be expensive and searching through these professional level products may be beyond the ability of many

victims but professional legal consultation or private investigators may be able to assist with the preservation of this type of evidence. Note: This is not an endorsement or recommendation to use these tools but simply examples of tools which may be used.

In all cases, the entire page and as much information (metadata) about the page as can be reasonably obtained should be documented with date and time. All this information should be stored in a safe place, offline².

Forensic methodology also exists which can be utilized to preserve evidence in these cases. Tools such as Aspinwall's review of tools which provides extensive guidance on the material and metadata which may be obtained from this type of acquisition using common tools [1]. Tools such as Magnet [28] or even the use of a *manual scroll*³ can be effective in forensic acquisition. Manual scrolls can be effective and can be used to capture metadata for sites using the *view source* options on most web browsers. Even such options such as the Way Back Machine [29] can provide both archives of removed sites as well as API tools for the development of scripting tools which may be able to extract both website data and metadata for forensic examination.

As was indicated, the capture and preservation of the evidence in as forensically sound method as possible should be undertaken as soon as evidence becomes

² Offline storage preserves the evidence in case the computer being used is compromised or accessible by others who may wish to delete or modify this information. Burning the information to DVD or other long lasting media and storing it in a safety deposit box or at least at another site is a recommendation.

³ Manual scroll refers to the forensic technique of using a video camera and documenting a screen or collection of evidence by walking through it with explanations.

known. It is important that dates and times of the acquisition as well as any metadata dates and times which may be obtained are preserved and documented. If possible, private investigation services should be retained to capture this information forensically due to state statute requirements for private investigation licensing of forensic investigation in certain locales in the United States [26].

Obviously, a great deal of this depends on the viability of the website (viz. commercial vs. homemade) type web presences which can create difficult legal positions for the presentation of obscure, difficult to document items. In addition, the ability of users to create anonymous *handles* and other obfuscation techniques lead this to a rapidly developing complication in the law. So-called Section 127 cases in the United Kingdom are steadily rising [30] and as such readers may wish to refer to case law in this area which references methods to discover the identities of website posters in the trolling cases there.

Much like the preservation of mobile device data, the most important aspects here are the documentation of the website itself with the material present and the date and time of the observation which may imply that at the very least the manual scroll method may be advocated as the first approach and the use of sophisticated tools for the collection of both the visual page, the underlying source code, and subsequent metadata as a second approach. Regardless, in all these cases, time is of the essence in the preservation of evidence in the dynamic environment of the internet.

In the legal sense, the use of and authentication of evidence at trial presents some obstacles to overcome. There needs to be a showing that 1) The defendant made the actual threat of posting and or disseminating the compromising photos, (either verbally, through an electronic transmission, i.e. email, text); 2) If the photos where posted on a

particular site it has to be shown that it was the defendant who transmitted and posted the photos; 3) The posting was done without the victims consent; and 4) The act must be motivated by the intent to intimidate, humiliate, threaten or frighten the victim. In a civil law suit, proof of damages is required (i.e. a cause of action for Intentional Infliction of Emotional Distress). For example, proof that the threatening email originated from a particular IP address indicates the origin of the transmission but cannot be tied directly to the sender. Then there is the issue of how many parties had access to the posted photos making the “travel of the posting” difficult to follow and pinpoint the origin. In short, the issue authentication of the evidence at a trial (civil or criminal) may be problematic. Under the Federal Rules of Evidence in order to adequately authenticate the evidence, the proponent must make an evidentiary showing “sufficient to support a finding that the matter in question is what its proponent claims.” [18]. In authenticating electronic evidence such as emails, the proponent’s witness need not have special training but rather demonstrate sufficient knowledge that supports the evidence is what it purports it to be. However, expert testimony may add “weight” to the offered evidence. Even if the “authorship” cannot be directly proven, courts may consider circumstantial evidence as part of the authentication process as provided for in Federal Rules of Evidence 901(b)(4) [19] which allows for ... “Distinctive characteristics and the like. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances”. In this context. things such as comparison of other emails sent by the subject (defendant) comparing the style, use of unique information or terms known by or used by the subject, or other “markers” linking the transmission to the subject may suffice for authentication purposes. Challenges typically

come from the proper chain of custody and whether there was opportunity to “tamper” with the digital images and whether the images were modified even prior to its acquisition. Hashes, in the case of dynamic web sites, may be difficult to support and may lead to more questions than answers. As was discussed earlier, care should be taken to copiously document the method by which the evidence was acquired, stored and handled, especially in manual scrolls. In a criminal trial an even finer standard is applied to the preservation of evidence and spoliation of criminal evidence is a common claim when dealing with this sort of digital evidence, regardless of the level of care. Particular care should be taken if the digital evidence was provided by a civilian such that an agency relationship did not exist prior to the civilian providing the evidence to law enforcement and as we discussed, it may be necessary to ensure that a licensed private investigator was used for this acquisition dependent upon the locale [26]. Additionally, if the civilian is determined to be acting as an agent for law enforcement, the seizure could have Fourth Amendment implications in a criminal prosecution. In the end, the possibility of alteration of digital evidence is not enough to exclude digital evidence but rather goes to the weight of evidence at trial [31]. Subsequently, it is important to show the likelihood of alteration is unlikely as with common digital forensics procedure.

In the case of web-site authentication, it is important to note that they are not “self-authenticating”. Due to the diverse nature of web sites and their manner of operation, a court will typically require the testimony of someone with specific knowledge of the web-site such as the web master or such other person familiar with the sites appearance or image.

4.3 Removal of Media from the Website

In Lee's case, the photos taken were considered "selfies". The idea of a "selfie" is important because as the "taker" of the photos, Lee would also be considered the owner of the images under current copyright law. Current copyright law protects any original work of authorship including photos [8]. Thus, as the owner, Lee has the right to request the website remove Lee's photos as they were posted by Ex, without Lee's permission. In order to do this, Lee would use the Digital Millennium Copyright Act [DMCA] "Take-Down Notice" [9]. The notice will require:

- Lee as the owner of the copyright to state his or her name
- A statement that the postings were made without proper authorization
- Lee's signature and links to the improper postings.

Once www.shameyourex.com is notified that photos were posted on the site without the consent of the owner of the photos, the website is on notice to take the photos down or be in violation of federal copyright law [10]. Websites like www.shameyourex.com that are considered "Internet Service Providers" or ISP's that comply with DMCA Take Down notices are not liable for copyright violations [11]. To avoid legal liability, ISP's must provide a mechanism to copyright owners to notify of alleged copyright violations and the ISP must respond accordingly to notifications [10]. Here, that means removing the three pictures from the site. There are even sites that provide "badging" indicators that the site complies with the DMCA.

Unfortunately, even if Lee is successful at having the photos removed from the website, links to the photos may still come up through internet search engines. To combat this

problem, Lee may need to contact the individual search engines and request removal of the improper links [12].

4.4 Whack a Mole

An additional complication for Lee is the problem of "whack a mole". This is a children's arcade game where a small animal sticks its head out of a hole and is hit with a mallet. When it is struck, the head vanishes and reappears somewhere else which leads us to one of the more difficult components of the internet. Sites like www.shameyourex.com often allow for downloading of images which appeal to their viewers (or for other reasons). These images may be watermarked or not. Users of the site may be rewarded with "points" for uploading images and media to the site. Typically, points are given by the image or by the size of the media. These points may then be expended on downloads. In this light, users often create large collections of images which they can subsequently use to upload to other similar sites and earn credits there for their collection. As it is not uncommon for sites to verify files by hashes (to ensure they are not already uploaded), users may modify the images in some small way to change the hash and make the image appear unique. So, a user may see the same image of "Lee" listed on a different site as "Angel". This means that it may be exceedingly difficult, despite the DMCA, to address the issue as a popular image spreads across many sites. Despite current trends and statutes targeting revenge porn sites, many other sites are used in this way as well since they too grant download credits for uploading images. Amateur porn type sites are a common approach. Despite this no longer being "revenge" pornography per se, it may have a similar effect on the victim when an image thought removed resurfaces.

5. LEE'S NEXT STEPS

So, the first steps in this process are covered but the damage may not cease. In fact, Ex may proceed to upload the photos again as soon as they are removed and the process starts over.

What legal options are then available to Lee? The answer to that question depends in part on the state in which Lee resides. Lee should first find a competent attorney to begin to determine legal options. To find an attorney, Lee can contact the local state bar association. Because "revenge porn" is still a new area of the law, there may not be listings for lawyers under this listing. Lee can also ask for lawyers that handle domestic violence cases for victims or civil attorneys that handle tort cases.

Could Lee sue www.shameyourex.com for posting pictures of Lee without proper permission? While this area of the law is still new and evolving, the answer is likely no. If the website is considered an Internet Service Provider (ISP), the Communications Decency Act may be applicable. Section 230 of the CDA specifically says that websites cannot be held liable for certain claims that arise from content published, disseminated or made available by a third party [13]. In Lee's case, pictures were posted by Ex, a third party.

Can a copyright infringement violation for posting pictures without Lee's permission be filed? The act of violating the rights of a copyright owner is by definition copyright infringement [10]. That being said, if the website is considered an internet service provider [ISP], it will likely use the CDA section 230 as immunity from legal liability. If the website is not considered an ISP, or if the website does not comply with the DMCA take down notice, then it may not be immune from liability and a suit for copyright infringement may be viable [15]. If Lee can successfully

maintain a copyright infringement lawsuit, Lee can ask the court for damages as well as attorney fees [16].

Is it possible for Ex to be arrested for violation of any criminal laws? Maybe. Again, the answer to this question depends on the state in which Lee and EX reside. Ideally, Lee lives in a state with a law that criminalizes the act of posting Lee's photo without permission and ill intention, known as a "Revenge Porn law." As more people come forward reporting these kinds of acts, states are passing statutes to criminalize the behavior and hold offenders accountable. [see Table 1: State Statutes pp. 93].

Absent a revenge porn law in Lee's state of residence, other criminal laws may be applicable such as stalking, voyeurism, fraud, and criminal invasion of privacy, however, it is often difficult to get police department to charge these crimes absent a revenge porn law or officers well trained in computer crimes. Not all police entities have officers trained to investigate crimes which take place over the internet, making detectives in a computer crimes unit most equipped to understand Lee's case. If Lee's state does not have a computer crimes unit in the police department or a revenge porn law, Lee may consider speaking to the Department of Attorney General or District Attorney. Criminal Prosecutors are well versed in the language of their state laws and may be able to direct the police how to charge Ex with a crime. (see also, Sec. 6.0, pp. 87).

If Lee's current employment is impacted, can Lee bring suit against Ex? Lee may be able to bring a civil suit for defamation, invasion of privacy, intentional infliction of emotional distress or negligent infliction of emotional distress under Lee's state law. While these suits are not criminal, Lee could sue for money damages and in some cases also ask for attorney fees if successful. However,

like any lawsuit, it would be a costly venture for Lee to hire an attorney and bring a law suit without any security as to the outcome.

What if Ex lives in another State? If a case crosses state lines or if federal crimes are applicable, Lee's case may be best handled at the federal level. Copyright crimes are violations of federal law as are other crimes that cross state lines. To find out, Lee can contact the local federal authority in his or her jurisdiction or reach out to the Internet Crime Complaint Center.

6. OTHER APPROACHES

Depending upon how tightly the statute is drafted in any particular state, Lee may have approaches which may be used such as harassment, expectation of privacy, or dissemination of unlawfully captured images.

6.1 Harassment

Many states that have "revenge porn" statutes classify the offense under "Harassment" statutes making it a crime to disseminate compromising photos where the offender did so with the "with intent to harass or annoy another person" [20] [21], "with the purpose to harass, frighten, intimidate, threaten, or abuse another person," (Emphasis added). Statutes such as in Florida look to a result oriented outcome where the intent of the transmission and dissemination is to cause "emotional distress". [22]

In effect, if the offender does not do so with the requisite intent stated in the in the aforementioned harassment laws and asserts a defense that this was done rather as a "Joke", accident or some other non-harassment related motive, then these statutes will not likely help. The burden of proof becomes one of showing a pattern and intent to harass which may not be apparent if the act is a "one off" transmission without any indicia of intent to harass the victim. In many cases, however the ex-partner

usually manifests ill will under highly charged emotional conditions making it less likely there would be little to no circumstantial evidence of the intent of the offender.

6.2 Expectation of Privacy

Possibly, one of the more difficult things to show is that the victim had an expectation of privacy with the transmitted images under the statute. Under the expectation of privacy analysis standard in Fourth Amendment, the courts have looked at:

- Whether a person has exhibited an actual expectation of privacy
- Whether the expectation is one that society recognizes as "reasonable." [23].

The court indicates when a person claims an expectation of privacy and then shares the personal information with a third party, that person has a dramatically diminished, if any, privacy expectation as to the shared information. Of course, this analysis relates to government activity in usurping a citizen's individual privacy in the context of a search of an individual rather than two private parties. Notwithstanding this distinction, if a victim freely and voluntarily shares compromising photos with another person, the argument can be made that the sharing of the photos indicates a much lesser expectation of privacy. It is akin to sending a third party a highly personal and sensitive letter and asking that person not to share its contents with anyone. Aside from a moral obligation not to do so, there is no legal basis precluding the disclosure. Under the North Dakota statute (see Table 1, pp.101), the offense includes lack of consent or the image was created or provided "under circumstances in which the individual has a reasonable expectation of privacy;" and "actual emotional distress or harm" is caused as a result of the

dissemination. Under Texas law (see Table 1, pp. 103) the violation includes the following language “the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;” the statute further goes on to address the consent and privacy issue by the following text, “(e) It is not a defense to prosecution under this section that the depicted person: (1) created or consented to the creation of the visual material; or (2) voluntarily transmitted the visual material to the actor.” [24] Again such circumstances pointing to privacy expectations may be belied by the fact that the victim freely provided such images to a third party despite the qualifying clause (e) noted above.

Thus, in consideration of the Fourth Amendment, Lee may consider going to the local police department for assistance. This option presents many possibilities and challenges. First, while police officers are trained to help citizens in need, many officers lack the appropriate training and resources to investigate and prepare for prosecution, a case of revenge pornography. Here’s why. First, police may fail to see the case as criminal or as a violation of privacy. Often officers see the victim at fault for taking and sharing photos or allowing photos to be taken in the first place. In other words, victims of revenge pornography have no one but themselves to blame. Second, even where police are trained to see the act as a violation of law, they may lack the legal resources to bring a charge. Most state criminal harassment and stalking laws require proof of a “course of conduct.” In other words, the state must show a pattern of behavior to successfully prosecute. In a case where only one act exists, a victim may not be protected and an offender may be untouchable. In addition, some state statutes require the existence of threats communicated directly to

the victim. In the case of Lee, there was no direct communication of a threatening manner made to Lee. Again, a state statute for harassment or stalking may not provide any protection to Lee or provide offender accountability.

If Lee lived in a state with a criminal statute specifically criminalizing revenge pornography and a police department trained to handle a computer crime case- there are still challenges to consider. First, the existence of a criminal case will not slow down or stop the proliferation of the photos on the internet. Second, a criminal case is a public case, causing victims to be reluctant to follow through with charges because of the continued exploitation of the victim by attempting to hold the offender accountable. If a victim is willing to go forward, a criminal charge (unlike a civil case) has “teeth” which allow the government (police) to act and the offender risks a loss of liberty if found guilty of the crime. However, the state is constrained by the 4th amendment protection against unreasonable search and seizure. These protections seek to limit the ability of the police to conduct a search and/or a seizure of computer terminals, hard drives or other items. While the legal standard may frustrate an officer, it is imperative that officers be trained to properly investigate a computer offense in order to develop probable cause and ultimately bring a strong case to the court.

Probable cause is a level of evidence necessary on the part of the police, to support a valid search warrant. Probable cause is a “reasonable belief, based on the totality of the circumstances, that a crime has been committed and the evidence or instrumentality of that crime will be found at a specific location. A neutral and detached judge or magistrate who issues the search warrant (and therefore determines whether PC exists) bases his or her determination on the affidavit of law

enforcement supporting the search warrant request. Therefore, the affidavit should contain sufficient credible information supporting the probable cause finding of the judge or magistrate that the evidence will be found at a particular place or location (the warrant itself also requires specificity as to the evidence sought and its location).

This becomes problematic if the offender cannot be reasonably be determined. In the case of Lee, it may be deduced that since the images were sent to the ex then the images were posted by the ex, but this is likely not enough. However, if there was other compelling evidence such as emails or other documentation or evidence threatening the postings or other veiled threats of retribution by the ex, there may be enough to obtain a warrant. The question then becomes how “committed” would law enforcement be in devoting time and resources to chasing down an offender, especially where there are limited resources to do so.

Offenders commonly respond to revenge porn charges by showing others had access to a computer or saying they were “hacked” by an unknown source. In the end, only a judge or jury will decide if the state has provided enough factual evidence to show the offender’s culpability. The defense only need to show a reasonable doubt – which may require educating a Judge and or jury on the mechanics of a computer crime like revenge pornography.

Finally, a revenge pornography statute may be ripe for constitutional challenges if not properly drafted. A statute that is overbroad or vague is likely to be challenged as unconstitutional. To avoid such challenges, a statute should be very specific as to the kind of conduct prohibited while avoiding language that requires a series of incidents or “course of conduct” hurdle. Finally, a statute that has teeth will punish an offender by a minimum of

a year sentence (felony) rather than a misdemeanor sentence of under a year. From a public policy perspective, a misdemeanor classification sends the message to both the police as well as the victim that the crime is not as serious as a felony and may impact the amount of time and resources devoted to a successful prosecution.

6.3 Dissemination of Unlawfully Captured Images

Some states restrict the offense to those images captured without the consent of the person of whom the images were taken and where the person has a reasonable expectation of privacy. Thus, if the photos of the person were voluntarily transmitted to a third party there would be no violation [25].

7. CONCLUSION

This paper provides an example case which illustrates some key steps which can be taken when a person has been the victim of revenge pornography, asks some key legal questions about actions which may be taken, and provides a summary of State Statutes which exist (in Table 1, see pp. 93) in the United States as of this date. As is evident, victims of this type of action may find it difficult to eradicate all occurrences of this material as the material has a tendency to proliferate across sites and each subsequent site will require separate action to force removal. Whilst, seemingly an impossible task, as the courts, law enforcement, and general public become increasingly aware of these types of sites, it is likely better mechanisms in both Federal, State, and Local courts will be established to assist the victim in both the removal and prosecution of their case civilly and criminally.

The reader is encouraged to pursue this matter locally and make efforts to change State laws to provide better statutes which protect victims of this type of activity. As is

evident from Table 1, the current laws are often confusing and not reflective of modern ideas. The DMCA was written in 1996 and was based on the Telecommunications Act of 1934. Much has changed and will change since 1996. It is important that statutes reflect the current needs of the victims.

8. FUTURE RESEARCH

The development of “guidance language” to assist States in the development of statutes is a project which should be undertaken. Much as Lonardo et. al. learned in their efforts with Private Investigation Law [26], States seem to base statutes on those in other states regardless of the quality of the language or impact. Thus, it would seem prudent to develop some best practice guidance for both civil and criminal statutes regarding this matter.

In addition, it would be exciting to see a development of state and local statute review for easy reference. The authors believe this may be a State by State project which would result in localized guidelines which would be a starting point in each case. Each locale has various statutes relating to privacy, harassment, cyber bullying, cyber harassment, and variants of this behavior which need to be documented in a single place for use by practitioners in that locale.

As it is a massive area of the law, this paper develops many streams for further investigation. In the case of Lee, the attacker was known and as such, subject to a forward attack by the investigators and victims in this case. All too often, *trolls* and other anonymous attackers on the internet are unknown to the victim. Section 127 of the Communications act of 2003 in the United Kingdom is a good area for extension of this research into the prosecution of anonymous attackers. The tradeoff between privacy and libel is a complex matter which has generated

a great deal of legal action during the history of the internet but as these cases continue to result in both physical and fiduciary harm to the victims, more development is needed into the *how* to identify and develop evidence where many of the parties are anonymous and or in other jurisdictions.

Likewise, a review of material from the psychology and criminology research, which is extensive, would be a project which may result in the establishment of baseline criteria for these abhorrent behaviors. The development of such material would assist lawmakers and attorneys in the development of more effective statutes as well as assisting developers of examination tools in the understanding of when and where this behavior will occur.

Additional complexities develop around the copyright suggestion in Lee’s case. While this may be the case, but there are certainly situations where the converse may be true and the subject does not hold copyright to the images being displayed or at least, the ownership is in question. In these cases, it may again behoove the reader to refer to the Section 127 cases in the United Kingdom which deal specifically with trolls but this may be an area of copyright law which will need to be examined more thoroughly in the future.

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Table 1
State Statutes Relating to Revenge Pornography

State	Statute Number	Text	Penalty
AL	Bill Pending	<p>HB252 introduced 2/17/16 SB342 Introduced 3/10/16 13A-11-8</p> <p>(c)(1) HARASSMENT BY DISTRIBUTION OF A PRIVATE IMAGE. A person commits the crime of harassment by distribution of a private image, if with intent to degrade, harass, annoy, or alarm another person, he or she distributes, posts, emails, texts, or otherwise transmits a private image without the consent of the person depicted in the image.</p> <p>"(2) For purposes of this subsection, a private image is a photograph, digital image, video, film, or digital recording of a person, whether recognizable or not, engaged in any act of sadomasochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct. The term includes display of such private images by means of any photograph, digital image, video, film, or digital recording that has been manipulated.</p> <p>"(3) Harassment by distribution of a private image is a Class A misdemeanor."</p>	Class A Misdemeanor
AK	11.61.120	<p>(a) A person commits the crime of harassment in the second degree if, with intent to harass or annoy another person, that person...(6) except as provided in AS 11.61.116, publishes or distributes electronic or printed photographs, pictures, or films that show the genitals, anus, or female breast of the other person or show that person engaged in a sexual act;(b) Harassment in the second degree is a class B misdemeanor.</p>	Class B Misdemeanor
AZ	13-1425	<p>Unlawful distribution of images; state of nudity; classification; definitions</p> <p>A. It is unlawful to intentionally disclose, display, distribute, publish, advertise or offer a photograph, videotape, film or digital recording of another person in a state of nudity or engaged in specific sexual activities if the person knows or should have known that the depicted person has not consented to the disclosure.</p> <p>B. This section does not apply to any of the following:</p> <ol style="list-style-type: none"> 1. Lawful and common practices of law enforcement, reporting unlawful activity, or when permitted or required by law or rule in legal proceedings. 2. Lawful and common practices of medical treatment. 3. Images involving voluntary exposure in a public or commercial setting. 4. An interactive computer service, as defined in 47 United States Code section 230(f)(2), or an information service, as defined in 47 United States Code section 153, with regard to content provided by another person. <p>C. A violation of this section is a class 5 felony, except that a violation of this section is a class 4 felony if the depicted person is recognizable.</p> <p>D. For the purposes of this section, "state of nudity" and "specific sexual activities" have the same meanings prescribed in section 11-811.</p>	Class 4 or 5 Felony

AR	5-26-314	<p>Unlawful distribution of sexual images or recordings. (a) A person commits the offense of unlawful distribution of sexual images or recordings if, being eighteen (18) years of age or older, with the purpose to harass, frighten, intimidate, threaten, or abuse another person, the actor distributes an image, picture, video, or voice or audio recording of the other person to a third person by any means if the image, picture, video, or voice or audio recording:</p> <p>(1) Is of a sexual nature or depicts the other person in a state of nudity; and</p> <p>(2) The other person is a family or household member of the actor or another person with whom the actor is in a current or former dating relationship.</p> <p>(b) The fact that an image, picture, video, or voice or audio recording was created with the knowledge or consent of the other person or that the image, picture, video, or voice or audio recording is the property of a person charged under this section is not a defense to prosecution under this section.</p> <p>(c) Unlawful distribution of sexual images or recordings is a Class A misdemeanor.</p> <p>(d) (1) Upon the pretrial release of a person charged under this section, the court shall enter an order consistent with Rules 9.3 and 9.4 of the Arkansas Rules of Criminal Procedure and shall give notice to the person charged under this section of the penalties contained in Rule 9.5 of the Arkansas Rules of Criminal Procedure.</p> <p>(2) An order under subdivision (d)(1) of this section remains in effect during the pendency of any appeal of a conviction under this section.</p>	Class A Misdemeanor
CA	647(i)4	<p>Except as provided in subdivision (l), every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor:</p> <p>(j) (4) (A) Any person who intentionally distributes the image of the intimate body part or parts of another identifiable person, or an image of the person depicted engaged in an act of sexual intercourse, sodomy, oral copulation, sexual penetration, or an image of masturbation by the person depicted or in which the person depicted participates, under circumstances in which the persons agree or understand that the image shall remain private, 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.</p>	Misdemeanor
CO	18-7-107	<p>Posting a private image for harassment - definitions</p> <p>(1) (a) An actor who is eighteen years of age or older commits the offense of posting a private image for harassment if he or she posts or distributes through the use of social media or any web site any photograph, video, or other image displaying the private intimate parts of an identified or identifiable person eighteen years of age or older:</p> <p>(I) With the intent to harass the depicted person and inflict serious emotional distress upon the depicted person;</p> <p>(II) (A) Without the depicted person's consent; or</p> <p>(B) When the actor knew or should have known that the depicted person had a reasonable expectation that the image would remain private; and</p> <p>(III) The conduct results in serious emotional distress of the depicted person.</p>	Class 1 Misdemeanor

		<p>(b) Posting a private image for harassment is a class 1 misdemeanor.</p> <p>(c) Notwithstanding the provisions of section 18-1.3-501 (1) (a), in addition to any other sentence the court may impose, the court shall fine the defendant up to ten thousand dollars. The fines collected pursuant to this paragraph (c) shall be credited to the crime victim compensation fund created in section 24-4.1-117, C.R.S.</p> <p>(2) It shall not be an offense under this section if the photograph, video, or image is related to a newsworthy event.</p> <p>(3) Nothing in this section precludes punishment under any section of law providing for greater punishment.</p> <p>(4) (a) An individual whose private intimate parts have been posted in accordance with this section may bring a civil action against the person who caused the posting of the private images and is entitled to injunctive relief, the greater of ten thousand dollars or actual damages incurred as a result of the posting of the private images, exemplary damages, and reasonable attorney fees and costs.</p> <p>(b) An individual whose private intimate parts have been posted in accordance with this section shall retain a protectable right of authorship regarding the commercial use of the private image.</p> <p>(5) Nothing in this section shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. sec. 230 (f) (2), an information service, as defined in 47 U.S.C. sec. 153, or a telecommunications service, as defined in 47 U.S.C. sec. 153, for content provided by another person.</p> <p>(6) For purposes of this section, unless the context otherwise requires:</p> <p>(a) "Newsworthy event" means a matter of public interest, of public concern, or related to a public figure who is intimately involved in the resolution of important public questions or, by reason of his or her fame, shapes events in areas of concern to society.</p> <p>(b) "Private intimate parts" means external genitalia or the perineum or the anus or the pubes of any person or the breast of a female.</p> <p>(c) "Social media" means any electronic medium, including an interactive computer service, telephone network, or data network, that allows users to create, share, and view user-generated content, including but not limited to videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail, or internet web site profiles.</p> <p>HISTORY: Source: L. 2014: Entire section added, (HB 14-1378), ch. 283, p. 1160, § 1, effective July 1.</p>	
DE	11-1335	<p>§ 1335 Violation of privacy; class A misdemeanor; class G felony.</p> <p>(a) A person is guilty of violation of privacy when, except as authorized by law, the person:</p> <p>(9) Knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a visual depiction of a person who is nude, or who is engaging in sexual conduct, when the person knows or should have known that the reproduction, distribution, exhibition, publication, transmission, or other dissemination was without the consent of the person depicted and that the visual depiction was created or provided to the person under circumstances in which the person depicted has a reasonable expectation of privacy.</p> <p>Class G Felony</p> <p>c. For the purposes of this paragraph (a)(9), each of the following shall be an aggravating factor and shall be alleged in the charging</p>	Class G Felony

		<p>information or indictment and constitute an element of the offense:</p> <ol style="list-style-type: none"> 1. The actor knowingly obtains such visual depictions without the consent of the person depicted. <p>A. A violation of this paragraph (a)(9)c.1. occurs when a person commits a theft as provided for in § 841, § 842, § 843, or § 844 of this title or obtains such visual depictions by committing unauthorized access to a computer system as provided for in § 932 of this title or by unauthorized access to electronic mail or an electronic mail service provider as defined in § 931 of this title.</p> <p>B. A violation of this paragraph (a)(9)c.1. consistent with § 932 of this title is subject to the venue provision in § 940 of this title.</p> <ol style="list-style-type: none"> 2. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions for profit. 3. The actor knowingly maintains an Internet website, online service, online application, or mobile application for the purpose of reproducing, distributing, exhibiting, publishing, transmitting, or otherwise disseminating such visual depictions. 4. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions with the intent to harass, annoy, or alarm the person depicted and such conduct would cause a reasonable person to suffer significant mental anguish or distress. 5. The actor pairs such visual depiction with personally identifiable information of the person depicted. <p>d. For purposes of this paragraph (a)(9), the fact the actor committed this offense within 5 years of a prior conviction for a violation of this paragraph (a)(9) shall be an aggravating factor for sentencing purposes only and, therefore, this fact is not to be alleged in the charging information or indictment and does not constitute an element of the offense.</p>	
DC	§ 22-3052	<p>§ 22-3052. Unlawful disclosure.</p> <p>(a) It shall be unlawful in the District of Columbia for a person to knowingly disclose one or more sexual images of another identified or identifiable person when:</p> <ol style="list-style-type: none"> (1) The person depicted did not consent to the disclosure of the sexual image; (2) There was an agreement or understanding between the person depicted and the person disclosing that the sexual image would not be disclosed; and (3) The person disclosed the sexual image with the intent to harm the person depicted or to receive financial gain. <p>(b) A person who violates this section shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than the amount set forth in § 22-3571.01, imprisoned for not more than 180 days, or both.</p> <p>HISTORY: (May 7, 2015, D.C. Law 20-275, § 3, 62 DCR 16.)</p>	Misdemeanor
FL	XLVI-784.049	<p>Sexual cyber-harassment.—</p> <p>(1) The Legislature finds that:</p> <ol style="list-style-type: none"> (a) A person depicted in a sexually explicit image taken with the person’s consent has a reasonable expectation that the image will remain private. (b) It is becoming a common practice for persons to publish a sexually explicit image of another to Internet websites without the 	Misdemeanor 1 st Offense, Felony 3 rd Degree 2 nd Offense

		<p>depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.</p> <p>(c) When such images are published on Internet websites, they are able to be viewed indefinitely by persons worldwide and are able to be easily reproduced and shared.</p> <p>(d) The publication of such images on Internet websites creates a permanent record of the depicted person's private nudity or private sexually explicit conduct.</p> <p>(e) The existence of such images on Internet websites causes those depicted in such images significant psychological harm.</p> <p>(f) Safeguarding the psychological well-being of persons depicted in such images is compelling.</p> <p>(2) As used in this section, the term:</p> <p>(a) "Image" includes, but is not limited to, any photograph, picture, motion picture, film, video, or representation.</p> <p>(b) "Personal identification information" has the same meaning as provided in s. 817.568.</p> <p>(c) "Sexually cyberharass" means to publish a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.</p> <p>(d) "Sexually explicit image" means any image depicting nudity, as defined in s. 847.001, or depicting a person engaging in sexual conduct, as defined in s. 847.001.</p> <p>(3)(a) Except as provided in paragraph (b), a person who willfully and maliciously sexually cyber-harasses another person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.</p> <p>(b) A person who has one prior conviction for sexual cyber-harassment and who commits a second or subsequent sexual cyber-harassment commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p>	
GA	§ 16-11-90	<p>§ 16-11-90. Prohibition on nude or sexually explicit electronic transmissions</p> <p>(a) As used in this Code section, the term:</p> <p>(1) "Harassment" means engaging in conduct directed at a depicted person that is intended to cause substantial emotional harm to the depicted person.</p> <p>(2) "Nudity" means:</p> <p>(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;</p> <p>(B) The showing of the female breasts without any covering or with less than a full opaque covering; or</p> <p>(C) The depiction of covered male genitals in a discernibly turgid state.</p> <p>(3) "Sexually explicit conduct" shall have the same meaning as set forth in Code Section 16-12-100.</p> <p>(b) A person violates this Code section if he or she, knowing the content of a transmission or post, knowingly and without the consent of the depicted person:</p> <p>(1) Electronically transmits or posts, in one or more transmissions</p>	Misdemeanor 1 st Offense, Felony 2 nd Offense

		<p>or posts, a photograph or video which depicts nudity or sexually explicit conduct of an adult 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</p> <p>(2) Causes the electronic transmission or posting, in one or more transmissions or posts, of a photograph or video which depicts nudity or sexually explicit conduct of an adult when the transmission or post is harassment or causes financial loss to the depicted person and serves no legitimate purpose to the depicted person.</p> <p>(c) Any person who violates this Code section shall be guilty of a misdemeanor of a high and aggravated nature; provided, however, that upon a second or subsequent violation of this Code section, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment of not less than one nor more than five years, a fine of not more than \$100,000.00, or both.</p> <p>(d) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by this Code section which the person engages in while:</p> <p>(1) Either within or outside of this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides in this state; or</p> <p>(2) Within this state if, by such conduct, the person commits a violation of this Code section which involves an individual who resides within or outside this state.</p> <p>(e) The provisions of subsection (b) of this Code section shall not apply to:</p> <p>(1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses;</p> <p>(2) Legitimate medical, scientific, or educational activities;</p> <p>(3) Any person who transmits or posts a photograph or video depicting only himself or herself engaged in nudity or sexually explicit conduct;</p> <p>(4) The transmission or posting of a photograph or video that was originally made for commercial purposes;</p> <p>(5) Any person who transmits or posts a photograph or video depicting a person voluntarily engaged in nudity or sexually explicit conduct in a public setting; or</p> <p>(6) A transmission that is made pursuant to or in anticipation of a civil action.</p> <p>(f) There shall be a rebuttable presumption that an information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet, for content provided by another person, does not know the content of an electronic transmission or post.</p> <p>(g) Any violation of this Code section shall constitute a separate offense and shall not merge with any other crimes set forth in this title.</p> <p>HISTORY: Code 1981, § 16-11-90, enacted by Ga. L. 2014, p. 220, § 1/HB 838; Ga. L. 2015, p. 5, § 16/HB 90.</p>	
<p>HI</p>	<p>§711-1110.9</p>	<p>§711-1110.9 Violation of privacy in the first degree. (1) A person commits the offense of violation of privacy in the first degree</p>	<p>Class C Felony</p>

		<p>if, except in the execution of a public duty or as authorized by law:</p> <p>b) The person knowingly discloses an image or video of another identifiable person either in the nude, as defined in section 712-1210, or engaging in sexual conduct, as defined in section 712-1210, without the consent of the depicted person, with intent to harm substantially the depicted person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships; provided that: i) This paragraph shall not apply to images or videos of the depicted person made:</p> <p>(A) When the person was voluntarily nude in public or voluntarily engaging in sexual conduct in public; or</p> <p>(B) Pursuant to a voluntary commercial transaction; and</p> <p>(ii) Nothing in this paragraph shall be construed to impose liability on a provider of "electronic communication service" or "remote computing service" as those terms are defined in section 803-41, for an image or video disclosed through the electronic communication service or remote computing service by another person.</p> <p>(2) Violation of privacy in the first degree is a class C felony. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section. [L 1999, c 278, §1; am L 2003, c 48, §3; am L 2004, c 83, §2; am L 2014, c 116, §1]</p> <p>§711-1111 Violation of privacy in the second degree. (1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:(i) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9. "Public place" means an area generally open to the public, regardless of whether it is privately owned, and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants.</p> <p>(4) Violation of privacy in the second degree is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section. [L 1972, c 9, pt of §1; gen ch 1993; am L 1999, c 278, §2; am L 2003, c 48, §4; am L 2004, c 83, §3; am L 2006, c 230, §48; am L 2012, c 59, §1]</p>	
ID	18-6609	<p>Crime of video (b) "Disseminate" means to make available by any means to any person. (g) "Publish" means to:</p> <p>(i) Disseminate with the intent that such image or images be made available by any means to any person; or</p> <p>(ii) Disseminate with the intent that such images be sold by another person; or</p> <p>(iii) Post, present, display, exhibit, circulate, advertise or allow access by any means so as to make an image or images available to the public; or</p> <p>(iv) Disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means and to make such image or images available to the public. 2) A person is guilty of video voyeurism when: b) He either intentionally or with reckless disregard disseminates, publishes or sells or conspires to disseminate, publish or sell any image or images of the intimate areas of another person or persons without the</p>	Felony

		<p>consent of such other person or persons and he knows or reasonably should have known that one (1) or both parties agreed or understood that the images should remain private.</p> <p>(3) A violation of this section is a felony.</p>	
IL	(720 ILCS 5/11-23.5) Sec. 11-23.5	<p>Non-consensual dissemination of private sexual images.(b) A person commits non-consensual dissemination of private sexual images when he or she:</p> <p>(1) intentionally disseminates an image of another person</p> <p>(A) who is at least 18 years of age; and</p> <p>(B) who is identifiable from the image itself or information displayed in connection with the image; and</p> <p>(C) who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; and</p> <p>(2) obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and</p> <p>(3) knows or should have known that the person in the image has not consented to the dissemination.</p> <p>e) A person convicted under this Section is subject to the forfeiture provisions in Article 124B of the Code of Criminal Procedure of 1963.</p> <p>(f) Sentence. Non-consensual dissemination of private sexual images is a</p>	Class 4 Felony
LA	14: §283.2	<p>Nonconsensual disclosure of a private image A. A person commits the offense of nonconsensual disclosure of a private image when all of the following occur:</p> <p>(1) The person intentionally discloses an image of another person who is seventeen years of age or older, who is identifiable from the image or information displayed in connection with the image, and whose intimate parts are exposed in whole or in part.</p> <p>(2) The person who discloses the image obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private.</p> <p>(3) The person who discloses the image knew or should have known that the person in the image did not consent to the disclosure of the image.</p> <p>(4) The person who discloses the image has the intent to harass or cause emotional distress to the person in the image, and the person who commits the offense knew or should have known that the disclosure could harass or cause emotional distress to the person in the image.</p> <p>(2) "Disclosure" means to, electronically or otherwise, transfer, give, provide, distribute, mail, deliver, circulate, publish on the internet, or disseminate by any means.</p> <p>E. Whoever commits the offense of nonconsensual disclosure of a private image shall be fined not more than ten thousand dollars, imprisoned with or without hard labor for not more than two years, or both.</p>	Felony
ME	§511-A.	<p>Unauthorized dissemination of certain private images. A person is guilty of unauthorized dissemination of certain private images if the person, with the intent to harass, torment or threaten the depicted person or another person, knowingly disseminates, displays or publishes a photograph, videotape, film or digital recording of another person in a state of nudity or engaged in a</p>	Class D Crime

		<p>sexual act or engaged in sexual contact in a manner in which there is no public or newsworthy purpose when the person knows or should have known that the depicted person:</p> <p>A. Is 18 years of age or older; [2015, c. 339, §1 (NEW).]</p> <p>B. Is identifiable from the image itself or information displayed in connection with the image; and [2015, c. 339, §1 (NEW).]</p> <p>C. Has not consented to the dissemination, display or publication of the private image. [2015, c. 339, §1 (NEW).]</p> <p>[2015, c. 339, §1 (NEW) .] 4. Unauthorized dissemination of certain private images is a Class D crime.</p>	
MD	3-809	<p>Revenge porn.</p> <p>(a) Definitions. --</p> <p>(1) In this section the following words have the meanings indicated.</p> <p>(2) "Intimate parts" means the naked genitals, pubic area, buttocks, or female nipple.</p> <p>(3) "Sexual contact" means sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex.</p> <p>(b) Exceptions. --</p> <p>(1) This section does not apply to:</p> <p>(i) lawful and common practices of law enforcement, the reporting of unlawful conduct, or legal proceedings; or</p> <p>(ii) situations involving voluntary exposure in public or commercial settings.</p> <p>(2) An interactive computer service, as defined in 47 U.S.C. § 230(f)(2), is not liable under this section for content provided by another person.</p> <p>(c) In general. -- A person may not intentionally cause serious emotional distress to another by intentionally placing on the Internet a photograph, film, videotape, recording, or any other reproduction of the image of the other person that reveals the identity of the other person with his or her intimate parts exposed or while engaged in an act of sexual contact:</p> <p>(1) knowing that the other person did not consent to the placement of the image on the Internet; and</p> <p>(2) under circumstances in which the other person had a reasonable expectation that the image would be kept private.</p> <p>(d) Penalties. -- A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding \$ 5,000 or both.</p>	Misdemeanor and on conviction is subject to imprisonment not exceeding 2 years or a fine not exceeding \$5,000 or both
NC	Bill Pending	http://www.ncleg.net/Sessions/2015/Bills/House/PDF/H792v6.pdf	Class H Felony if 18 or Over or 2 nd Offense under 18 Class 1 Misdemeanor for 1 st Offense under 18
ND	12.1-17-07.2	<p>A person commits the offense of distribution of intimate images if the person knowingly or intentionally distributes to any third party any intimate image of an individual eighteen years of age or older, if:</p> <p>a. The person knows that the depicted individual has not given consent to the</p>	Class A Misdemeanor

		<p>person to distribute the intimate image;</p> <p>b. The intimate image was created by or provided to the person under circumstances in which the individual has a reasonable expectation of privacy;</p> <p>and</p> <p>c. Actual emotional distress or harm is caused to the individual as a result of the distribution under this section.</p>	
NV	NRS 200.604	<p>Capturing image of private area of another person; distributing, disclosing, displaying, transmitting or publishing image of private area of another person; penalties; exceptions; confidentiality of image.</p> <p>1. Except as otherwise provided in subsection 4, a person shall not knowingly and intentionally capture an image of the private area of another person:</p> <p>(a) Without the consent of the other person; and</p> <p>(b) Under circumstances in which the other person has a reasonable expectation of privacy.</p> <p>2. Except as otherwise provided in subsection 4, a person shall not distribute, disclose, display, transmit or publish an image that the person knows or has reason to know was made in violation of subsection 1.</p>	<p>For a first offense, is guilty of a gross misdemeanor.</p> <p>(b) For a second or subsequent offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.</p>
NH	Bill Pending	<p>Senate Bill SB 465.</p> <p>A person commits nonconsensual dissemination of private sexual images when he or she:</p> <p>(a) Purposely, and with the intent to harass, intimidate, threaten, or coerce the depicted person, disseminates an image of such person:</p> <p>(1) Who is identifiable from the image itself or information displayed in connection with the image; and</p> <p>(2) Who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; and</p> <p>(b) Obtains the image under circumstances in which a reasonable person would know or understand that the person in the image intended that the image was to remain private; and</p> <p>(c) Knows or should have known that the person in the image has not consented to the dissemination.</p>	Class B Felony
NJ	2C:14-9	<p>Invasion of privacy, degree of crime; defenses, privileges</p> <p>c. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he discloses any photograph, film, videotape, recording or any other reproduction of the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, unless that person has consented to such disclosure. For purposes of this subsection, "disclose" means sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, publish, distribute, circulate, disseminate, present, exhibit, advertise or offer. Notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, a fine not to exceed \$30,000 may be imposed for a violation of this subsection.</p>	<p>Crime of the 3rd Degree.</p> <p>No more than a \$30,000 fine</p>
NM	30-37A-1	<p>Unauthorized distribution of sensitive images; penalties.</p> <p>A. Unauthorized distribution of sensitive images consists of distributing, publishing or otherwise making available, by an electronic communications device or other means, sensitive images of</p>	<p>Misdemeanor for 1st Offense</p> <p>Class 4 Felony for 2nd Offense</p>

		<p>a person, with or without information identifying that person, without that person's consent:</p> <p>(1) with the intent to:</p> <p>(a) harass, humiliate or intimidate that person;</p> <p>(b) incite another to harass, humiliate or intimidate that person;</p> <p>(c) cause that person to reasonably fear for that person's own or family members' safety;</p> <p>(d) cause that person to suffer unwanted physical contact or injury;</p> <p>or</p> <p>(e) cause that person to suffer substantial emotional distress; and</p> <p>(2) where the conduct is such that it would cause a reasonable person to suffer substantial emotional distress.</p>	
OR	163.472	<p>Unlawful dissemination of an intimate image. (1) A person commits the crime of unlawful dissemination of an intimate image if:</p> <p>(a) The person, with the intent to harass, humiliate or injure another person, knowingly causes to be disclosed through an Internet website an identifiable image of the other person whose intimate parts are visible or who is engaged in sexual conduct;</p> <p>(b) The person knows or reasonably should have known that the other person does not consent to the disclosure;</p> <p>(c) The other person is harassed, humiliated or injured by the disclosure; and</p> <p>(d) A reasonable person would be harassed, humiliated or injured by the disclosure.</p>	<p>Class A Misdemeanor 1st Offense Class C Felony 2nd Offense</p>
PA	§ 3131	<p>Unlawful dissemination of intimate image.</p> <p>(a) Offense defined.--Except as provided in sections 5903 (relating to obscene and other sexual materials and performances), 6312 (relating to sexual abuse of children) and 6321 (relating to transmission of sexually explicit images by minor), 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.</p>	<p>1st Degree Misdemeanor if image depicts an underage person 2nd Degree Misdemeanor if image is not a minor</p>
TX	5-21-16	<p>(b) A person commits an offense if:</p> <p>(1) without the effective consent of the depicted person, the person intentionally discloses visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct;</p> <p>(2) the visual material was obtained by the person or created under circumstances in which the depicted person had a reasonable expectation that the visual material would remain private;</p> <p>(3) the disclosure of the visual material causes harm to the depicted person; and</p> <p>(4) the disclosure of the visual material reveals the identity of the depicted person in any manner, including through:</p> <p>(A) any accompanying or subsequent information or material related to the visual material; or</p> <p>(B) information or material provided by a third party in response to the disclosure of the visual material.</p> <p>(c) A person commits an offense if the person intentionally threatens</p>	<p>Class A Misdemeanor</p>

		<p>to disclose, without the consent of the depicted person, visual material depicting another person with the person's intimate parts exposed or engaged in sexual conduct and the actor makes the threat to obtain a benefit:</p> <p>(1) in return for not making the disclosure; or</p> <p>(2) in connection with the threatened disclosure.</p> <p>(d) A person commits an offense if, knowing the character and content of the visual material, the person promotes visual material described by Subsection (b) on an Internet website or other forum for publication that is owned or operated by the person.</p> <p>(e) It is not a defense to prosecution under this section that the depicted person:</p> <p>(1) created or consented to the creation of the visual material; or</p> <p>(2) voluntarily transmitted the visual material to the actor.</p>	
UT	76-5b-203	<p>Distribution of an intimate image</p> <p>2) 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, if:</p> <p>(a) the actor knows that the depicted individual has not given consent to the actor to distribute the intimate image;</p> <p>(b) the intimate image was created by or provided to the actor under circumstances in which the individual has a reasonable expectation of privacy; and</p> <p>(c) actual emotional distress or harm is caused to the person as a result of the distribution under this section.</p>	Class A misdemeanor 1 st offense 3 rd Degree Felony 2 nd Offense
VA	§ 18.2-386.2	<p>Unlawful dissemination or sale of images of another; penalty.</p> <p>A. Any person who, with the intent to coerce, harass, or intimidate, maliciously disseminates or sells any videographic or still image created by any means whatsoever that depicts another person who is totally nude, or in a state of undress so as to expose the genitals, pubic area, buttocks, or female breast, where such person knows or has reason to know that he is not licensed or authorized to disseminate or sell such videographic or still image is guilty of a Class 1 misdemeanor.</p>	Class 1 Misdemeanor
VT	§ 2606	<p>Disclosure of sexually explicit images without consent</p> <p>(b)(1) A person violates this section if he or she knowingly discloses a visual image of an identifiable person who is nude or who is engaged in sexual conduct, without his or her consent, with the intent to harm, harass, intimidate, threaten, or coerce the person depicted, and the disclosure would cause a reasonable person to suffer harm. A person may be identifiable from the image itself or information offered in connection with the image. Consent to recording of the visual image does not, by itself, constitute consent for disclosure of the image. A person who violates this subdivision (1) shall be imprisoned not more than two years or fined not more than \$2,000.00, or both.</p>	Prison and/or Fine
WA	RCW 9A.86.010	<p>Disclosing Intimate Images</p> <p>(1) A person commits the crime of disclosing intimate images when the person knowingly discloses an intimate image of another person and the person disclosing the image:</p> <p>(a) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private;</p>	Gross Misdemeanor 1 st Offense Class C Felony 2 nd Offense

		<p>(b) Knows or should have known that the depicted person has not consented to the disclosure; and</p> <p>(c) Knows or reasonably should know that disclosure would cause harm to the depicted person.</p> <p>(2) A person who is under the age of eighteen is not guilty of the crime of disclosing intimate images unless the person:</p> <p>(a) Intentionally and maliciously disclosed an intimate image of another person;</p> <p>(b) Obtained it under circumstances in which a reasonable person would know or understand that the image was to remain private; and</p> <p>(c) Knows or should have known that the depicted person has not consented to the disclosure.</p>	
WI	942.09 (3m)(a)	<p>Whoever does any of the following is guilty of a Class A misdemeanor:</p> <ol style="list-style-type: none"> 1. Posts, publishes, or causes to be posted or published, a private representation if the actor knows that the person depicted does not consent to the posting or publication of the private representation. 2. Posts, publishes, or causes to be posted or published, a depiction of a person that he or she knows is a private representation, without the consent of the person depicted. 	Class A Misdemeanor

