



Revenge Porn - A Cyber War against Gender Neutral

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"We have been able to set a legal precedent that should serve as a severe warning to those who seek to extort and harm with revenge porn: you cannot do this with impunity, and you will be held accountable for your actions. For anyone who has been living in fear of revenge porn used against you, there has never been a better time to come forward."
– Chrissy Chambers¹

INTRODUCTION

With the advent of the internet and social media, a new form of sexual violence against women - "revenge porn" - has been made possible. Sexually explicit images or videos that are publicly distributed online without the consent of the person portrayed are referred to as the phenomenon.²

"Revenge porn," is defined by Urban Dictionary as "a nude photograph or video which is publicly shared online (most frequently by an ex-lover of the subject's) for the purpose of unpleasant humiliation." In the era of smartphones and social media, it's become a growing issue that affects a lot more individuals than you may imagine. The practise of publishing private sexual photos online without the subject's consent is referred to as "image-based sexual abuse" (IBSA), sometimes infamously known as "revenge porn." According to Citron, a professor at the Carey School of Law at the University of Maryland, "Consent is contextual." "A loved one's agreement to sharing is not consented to sharing with the public."³

Any abusive behaviour that occurs online is referred to as online abuse. It is not a legal phrase and can refer to a wide range of actions. Whether abuse occurs over the phone, in person, on the internet, or through any other form of communication, the law ought to shield you from it. Someone may have committed a crime if they are abusing you online. You can report a number of criminal offences that can be committed online to the police. By requesting an injunction from the court, you can also seek protection from additional abuse. A court order known as an injunction can prevent your abuser from contacting you, threatening you, or posting things online. The practise of publishing or disseminating sexually graphic or personal pictures or films of one's ex-partners without permission is known as "revenge porn." In Nonconsensual pornography, the person may or may not have known that the material was created by a partner in an intimate relationship with their

¹ Chrissy Chambers. She became the first person to seek damages and the criminal prosecution in England of a former partner for posting revenge pornography on the internet.

² Amanda Levendowski, "Using Copyright to Combat Revenge Porn" (2014) 3: 4222 NYU Journal of Intellectual Property & Entertainment Law 422 at 425 [Levendowski].

³ "Revenge porn" law in California a good first step, but flawed, experts say. BY JULIA DAHL. "Revenge porn" law in California a good first step, but flawed, experts say - CBS News



knowledge and consent at the time.⁴ In other situations, a person might hack into his ex's computer or phone to get these pictures or videos. These photos and videos may be shared with the intention of humiliating, abusing, torturing, extorting, or controlling others. Such information spreads like wildfire and is impossible to control since the cyber world has no physical borders. The individual may have been the victim of sexual assault while the tape was being made; in certain situations, this may have been made possible by drugs like date rape, which also have amnesic, dissociative, and diminished pain perception and involvement in the sexual act effects.

Anything uploaded on social networking sites like Facebook, Text or messaging apps like WhatsApp, Email-shared photos and videos, Photos and videos published on a website, and physical copies, such as pictures, discs, or tapes, to be distributed comes under revenge porn are applicable to the unintentional dissemination of sexual or nude images and videos (often known as "revenge porn") in the wake of the recent cyber sexual terrorist attack on celebrities ("Hackarazzi").

I

The ownership of the material may be utilised by the offenders to intimidate the subjects into engaging in additional sex

acts, to force them to stay in a relationship or punish them for terminating one, to intimidate them into silence, to harm their reputation, and or for financial benefit. Legislation to outlaw the practise has been passed in a number of nations and jurisdictions, though methods have varied, as a result of civil lawsuits and the rise in reported incidents. In addition to being a form of sexual abuse, the practice has also been called a form of psychological abuse and domestic violence.⁵

But if someone releases a sexually explicit or private image or video of you in an effort to stop, or investigate a crime, that is not revenge porn. In order to assist the authorities in their investigation of a crime, someone might, for instance, need to show them a sexually explicit photo or video of you.

Is Anyone Up?^{6 7} began in the latter part of 2010. Hunter Moore, the site's creator, claimed that a woman he kept pestering to send him provocative photos gave him the idea for the website. He later started a blog that posted and hosted anyone's nude photos and videos their address⁸, which eventually became isanyoneup.com. The victims featured on revenge porn websites frequently receive social media solicitations, lose their jobs, or live in fear of friends, lovers, or employers discovering the images.⁹ The online pornographic

⁴ Nonconsensual pornography is also sometimes referred to as "revenge porn," "cyber rape," or "involuntary porn."

⁵ Wayback Machine (archive.org). Bates, Samantha (4 August 2015). "Stripped": An analysis of revenge porn victims' lives after victimization

⁶ file:///C:/Users/USER/Downloads/SSRN-id2374119.pdf

⁷ Danny Gold, The Man Who Makes Money Publishing Your Nude Pics, THE AWL (Nov. 10, 2011), <http://www.theawl.com/2011/11/the-man-who-makes-money-publishing-your-nude-pics> [hereinafter Gold]

Kashmir Hill, Revenge Porn with a Facebook Twist, FORBES (Jul. 6, 2011), <http://www.forbes.com/sites/kashmirhill/2011/07/06/revenge-porn-with-a-facebook-twist>

⁸ Camille Doder, Hunter Moore Makes a Living Screwing You, THE VILLAGE VOICE (Apr. 4, 2012), available at <http://www.villagevoice.com/2012-04-04/news/revenge-porn-huntermoore-is-anyone-up/full>.

⁹ Lorelei Laird, Victims Are Taking On 'Revenge Porn' Websites For Posting Pictures They Didn't Consent To, A.B.A. J. (Nov. 1, 2013, 4:30 AM CDT), http://www.abajournal.com/magazine/article/victims_are_taking_on_revenge_porn_websites_for



platform Is Anyone Up? was shut down in 2012 and used photographs that were either stolen or hacked.¹⁰ Users were able to post films and photos anonymously, mostly naked, erotic, and sexually explicit pictures. The website was intimately linked to the metalcore and post-hardcore music scenes and included and displayed a large number of naked pictures of these musicians.

Is anyone up? was the topic of intense controversy due to the popularity of revenge porn submissions to the service, many of which were made with malevolent intent and without the agreement of former romantic partners. Numerous email account hacks were used to collect many of the uploaded revenge porn photographs. Is anyone Up? generated a great deal of debate. For posting their naked photographs on the website, many people have sued Moore or those connected to the Is Anyone Up? domain. Others were "revenge porn," which has been defined as "pornographic souvenirs from romances gone sour," while some

photographs were self-submitted. James McGibney, the creator of Bullyville, announced a class action lawsuit and invited participants in it in an open letter to Hunter Moore that was published on the home page of the is anyone up website on August 21, 2012. According to a May 16, 2012 article in The Village Voice¹¹, the FBI was looking into Moore and Is Anyone Up? because it was thought that "Gary Jones," a hacker, had illegally stolen many of the images that were once published on the website. According to ABC Nightline, Charlotte Laws¹² initiated the FBI inquiry after discovering a topless picture of her daughter online. On April 19, 2012, the website was taken down.¹³

Copyright law¹⁴ However, all of these remedies are already provided by copyright law. Copyright creates a standardised method for retaliation porn victims to remove their images, target websites that refuse to comply with takedown notices, and, in some cases, receive monetary damages. According to a survey of 864 revenge porn victims, more

_posting_photos_they_didnt_c. According to a Cyber Civil Rights Initiative study, the vast majority of revenge porn victims are female. Danielle K. Citron, Revenge Porn: A Pernicious Form of Cyber Gender Harassment, THE BALTIMORE SUN (Dec. 15, 2013), available at http://articles.baltimoresun.com/2013-12-15/news/bs-ed-cyber-gender-harassment20131214_1_cyber-civil-rights-initiative-nude-images-harassment.

¹⁰ As per the rough estimation 40% images and videos of non-consensual pornography were hacked. Id. These victims may be able to use the Computer Fraud and Abuse Act. See 18 U.S.C. § 1030(a)(2) (2012).

¹¹ Camille Doder, Bullyville Has Taken Over Hunter Moore's IsAnyoneUp: Open Letter from Hunter Moore, THE VILLAGE VOICE (Apr. 19, 2012), available at http://blogs.villagevoice.com/runninscared/2012/04/bullyville_isanyoneup.php; Gold

¹² She is a former Los Angeles politician, novelist, talk show host, animal rights activist, and actor from the United States (under the stage name Missy

Laws). Laws, a former contributor to BBC News, provided weekly commentary from 2009 to 2013 on KNBC-The TV's Filter with Fred Roggin. She co-presented Every Way Woman on the Internet from 2008 to 2013, and she hosted Uncommon Sense on local television from October 2007 to September 2010. See Charlotte Laws, I've Been Called the Erin Brockovitch of Revenge Porn, and For the First Time Ever, Here Is My Entire Uncensored Story of Death Threats, Anonymous and the FBI, JANEXO (Nov. 21, 2013), <http://www.xojane.com/it-happened-to-me/charlotte-laws-huntermoore-erin-brockovitch-revenge-porn>.

¹³ "IsAnyoneUp Is Now Permanently Down". *Forbes*. IsAnyoneUp Is Now Permanently Down (forbes.com)

¹⁴ Jacquilynne Schlesier, "Breaking-up Bad: Is Copyright the Best Tool to Fight Revenge Porn?" (June 2, 2015), Student IP ICentre (blog), online: <<http://www.iposgoode.ca/2015/06/breaking-up-bad-is-copyright-the-best-tool-to-fight-revenge-porn/>>.



than 80% of revenge porn images are "selfies," which means that the author and the subject are the same person. Copyright law can be used to combat revenge porn for this group of victims. While not a perfect solution, copyright necessitates no changes to Section 230¹⁵, no reinterpretation of established doctrine, no restrictions on free speech, and no new criminal laws. As a result, it is the most effective and predictable method of protecting victims of revenge porn.

II

The Supreme Court of Western Australia's ruling in *Wilson v. Ferguson*¹⁶, handed down on January 16, 2015, is a concrete precedent that demonstrates the illegality of the non-consensual broadcast of sexual photos or films online under the Civil Law. In that case, a defendant posted on social media explicit pictures and videos of the plaintiff. The Court determined that there had been a breach of an equitable duty of confidence when "explicit photos of a former partner that had been confidentially shared between the sexual partners during their relationship" were published. The plaintiff was given fair compensation, and the court ordered an injunction¹⁷ barring further publication. The defendant was held accountable for costs and a damage award of A\$48,404. This case was successfully argued on the grounds that *Giller v. Procopets*,¹⁸ which was argued on the equity of breach of confidence and tort grounds, had already been established.

¹⁵ THE COMMUNICATIONS DECENCY ACT SECTION 230

¹⁶ <https://law.justia.com/cases/oklahoma/supreme-court/1921/35619.html>

¹⁷ [2008] VSCA 236; 24 VR 1; 40 Fam LR 378; 79 IPR 489

¹⁸ <https://www.lawteacher.net/free-law-essays/contract-law/case-of-giller-versus-procopets->

Only recently have victims of revenge porn come forward to discuss the severe losses they have endured, such as stalking, lost opportunities for employment and higher education, and psychological suffering. The risk of further injury increases for victims of revenge porn, just like in the case of domestic violence and sexual assault.¹⁹ Now that brave, outspoken victims have created a platform for other people to share their experiences, we are just starting to get a sense of how widespread the problem of revenge porn really is. The public, law enforcement, and the judiciary can have a hard time comprehending the workings of the behaviour and the destruction it may wreak because non-consensual porn uses the Internet and social media so frequently.

Prior to Cassidy Wolf, Miss Teen USA, experiencing this harassment in 2013, it was essentially unheard of. More than a hundred additional women, including Wolf, had their webcams hacked and private exchanges recorded. The perpetrator was a 19-year-old computer science student who compelled the women to send additional naked images or perform for him on camera. If the women didn't comply, he threatened to post the pictures.

III

The emergence of laws prohibiting revenge porn has been sluggish. Contributing factors include a lack of awareness of the severity of the situation, worries about free speech, the

[tries-to-look-into-the-australian-law-contract-law-essay.php](https://www.lawteacher.net/free-law-essays/contract-law/case-of-giller-versus-procopets-tries-to-look-into-the-australian-law-contract-law-essay.php)

¹⁹ *Danielle Keats Citron University of Maryland Francis King Carey School of Law, dicitron@law.umaryland.edu. Criminalizing Revenge Porn (umaryland.edu)*



idea that current law offers sufficient protection, a historical disregard for women's issues, and "misunderstandings of First Amendment doctrine".²⁰ If legislation is excessively broad, the American Civil Liberties Union and the Electronic Frontier Foundation have called attention to the ramifications for free expression.²¹

Revenge porn laws raise the possibility that they may not be crafted narrowly enough to pass the stringent scrutiny that applies to speech limitations based on content. According to the *Miller v. California*²² ruling, it may not be lawful to outlaw revenge porn if it does not categorically appeal to the prurient interest, is not inherently offensive, or has literary or political significance.²³

The law specifies that sharing a photo or video for journalistic purposes does not qualify as revenge porn. For instance, if the individual who provided the photo had a good faith belief that it was in the public interest, a private photo of you might be printed in a newspaper as part of a news report.

The legislation further provides that sharing a photo or video of you if the person has reasonable grounds to believe that it has previously been shared or published with your permission and that

you have been compensated is not illegal. For instance, if someone sees a photo of you on a pornographic website, they might presume you gave your approval to the photo's posting and were compensated for it. Then they might give it to someone else. This is not a crime. However, if the individual who first published the image did so without your permission, they might have committed a crime.²⁴

By chance, Dr. Charlotte Laws ended up being known as the "Erin Brockovich"²⁵ of revenge porn.²⁶ Her 25-year-old daughter discovered in January 2012 that her computer had been hacked and that a topless picture of herself that she had shot had been placed on the website IsAnyoneUp.com and was becoming viral on social media.²⁷

The "victim-blaming" mentality that many individuals have when it comes to intimate images exchanged via electronic media, according to Franks, is demonstrated by this error. Author Danielle Citron, who is working on "Hate 3.0: A Civil Rights Agenda to Combat Discriminatory Online Harassment," concurs. Because the law does not specifically recognise revenge porn as a crime, statistics regarding these cases are not available in India. However, according to data from the National Crime Records

²⁰ Citron, Danielle Keats; Franks, Mary Anne (2014). "Criminalizing Revenge Porn". *Wake Forest Law Review*. 49 (2): 345–392

²¹ Greenfield, Rebecca (27 August 2013). "Why Isn't Revenge Porn Illegal Everywhere?". *The Wire (The Atlantic)*. Archived from the original on 30 June 2015. Retrieved 27 June 2015. Citron, Danielle. "Debunking the First Amendment Myths Surrounding Revenge Porn Laws". *Forbes*. "Revenge Porn' Bill Needs Changes". *acluct.org*. American Civil Liberties Union. 21 June 2017. Franks, Mary Anne (1 April 2015). "The ACLU's Frat House Take on 'Revenge Porn'". *huffingtonpost.com*. *Huffington Post*. Mullin, Joe (2015). "Arizona makes deal with ACLU, won't enforce bad law on 'revenge porn'". *arstechnica.com*. *Ars Technica*.

²²

<https://www.lexisnexis.com/community/casebrief/p/casebrief-miller-v-california>

²³ Driscoll, Sarah E. (Winter 2016). "Revenge porn: chivalry prevails as legislation protects damsels in distress over freedom of speech". *Roger Williams University Law Review*. 21 (1): 75–117.

²⁴ Revenge porn, online abuse and the law - Rights of Women/Rights of Women

²⁵ <https://jezebel.com/one-womans-dangerous-war-against-the-most-hated-man-on-1469240835>

²⁶

https://www.reddit.com/r/IAMa/comments/20humj/i_am_dr_charlotte_laws_the_erin_brockovich_of/

²⁷ "Revenge porn" law in California a good first step, but flawed, experts say - CBS News



Bureau, the amount of offensive content published online increased by 104% between 2012 and 2014 alone. Only 35% of women report being victimised online, according to a 2010 research on cybercrime. Additionally, it says that 18.3% of women weren't even aware that they had been victimised.²⁸

Recently, lawyers at the US-based law firm K&L Gates launched a pro bono initiative to combat "revenge porn" by using copyright laws to demand that victims' prejudicial materials be removed. Nonetheless, jurisdictions such as Canada have already enacted criminal legislation to combat revenge porn, such as the Protecting Canadians from Online Crime Act. Victims have also been successful in filing civil claims and obtaining damages and injunctive relief against perpetrators for public disclosure of private facts and intentional infliction of emotional distress. As a result, we must consider whether copyright law is a useful or even appropriate channel for victims of revenge porn to seek redress. Nonetheless, copyright law may provide victims with a useful tool for dealing with the nature of revenge porn.

According to Jacquilyne Schlesier, neither a criminal conviction nor a successful tort suit guarantees the victims' primary goal - the "timely removal" of their images. While these injunctions may prohibit initial wrongdoers from posting or retaining offending materials, the real issue is repeated postings of such materials on the Internet. Once an intimate image is published on the web, the author quickly loses control of it, "its digital footprint is embedded in binary

cement". Furthermore, while tort liability for those who publish revenge porn materials is relatively easy to establish, tort liability for internet forums and websites that host the content unknowingly or wilfully is not. In fact, in the United States, websites that host revenge porn materials are shielded from civil liability,²⁹ which limits Internet Service Providers' liability for content generated by third parties.

Nonetheless, copyright law may provide a tool for victims to quickly remove their sexually explicit images from the internet. In the United States, an Internet service provider is not liable for infringement of copyright if it responds "expeditiously to remove, or disable access to" the material that is claimed to be infringing upon notification of a claimed infringement, according to Section 512 of the Digital Millennium Copyright Act (DMCA). Although the DMCA appears to provide "safe harbour" protection for websites that host infringing materials, Section 512 actually provides a quick and effective tool for the removal of such materials, known as the DMCA takedown notice.³⁰ They are an empowering tool for women and other victims of cybercrime. In fact, takedown notices do not require victims to register their copyright, nor do they require a lawyer to file such a notice; the content of the notice must simply comply with the requirements outlined in Section 17 U.S.C. 512(c)(3) (A).

IV

The Copyright Act of 1957, which has been discussed as a potential source of relief, is not a solution for situations of vengeance porn. Any original dramatic, literary,

²⁸ Pornography law: Revenge porn: How it destroys lives -- and how to deal with the menace (timesnownews.com)

²⁹ Section 230 of the Communications Decency Act

³⁰ In fact, you may have noticed its mechanism in action at the bottom of Google search pages: "In response to multiple complaints that we received under the US Digital Millennium Copyright Act, we have removed certain results from this page".



musical, or creative work, cinematograph films, and sound recordings are all essentially protected by the Copyright Act. The IT Act provisions, which are known to have been used in several instances of abuse of a person through obscene pictures taken knowingly or unknowingly, are known to have been used in several instances of revenge porn abuse. Although it might seem like a good option, the Copyright Act insofar as revenge porn is concerned does not provide any solid remedy to the victim, and any case instituted on the basis of the Copyright Act may not stand as well in court as the use of the IT Act provisions.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, now include a clause that makes it possible to identify the source of information in messaging programmes. This might be useful in locating the offenders and others who helped the data become "viral" online. The "right to be forgotten" is a legal right to request that personally identifiable information that is publicly accessible be deleted from databases, websites, search engines, and other public platforms once it is no longer required or relevant.

In 2014, the Right to Be Forgotten was first reportedly exercised. A guy in Spain wanted Google to take down references to an old newspaper article that discussed his prior bankruptcy. There was little use in the story being online because all of his debts had been settled.

Due to this, the European Court of Justice ruled against Google and stated that a European Union citizen could, in some situations, request that his personal information be deleted from the public database. It goes without saying that this

decision is not applicable outside of the EU.

In contrast to the right to privacy, the right to be forgotten. The right to privacy concerns information that is not in the public domain, whereas the right to be forgotten concerns material that is in the public domain but that is blocked from being accessed by outside parties. A jurisdiction's limitations on application include its inability to demand the deletion of data kept by businesses outside of it. Currently, only nations that are a part of the European Union are able to use their right to be forgotten.

The Personal Data Protection Bill 2019 recognises the Right to Be Forgotten, despite the fact that there are no laws in India that provide for it. The Right to Privacy and the Right to Be Forgotten are both Fundamental Rights guaranteed to all Indian Citizens.

There have been certain instances where the Right to be Forgotten has been partially exercised:

The court in compared "information" in cyberspace to "toothpaste," saying that once it enters the public domain of the internet, it would remain there forever, much as how toothpaste taken out of the tube cannot be put back in. The court emphasised the need for the recognition of a "right to be forgotten" in India in a bail application in a case involving forcible sexual intercourse and uploading the recording of the same on a fake Facebook profile. He also noted that the victim may seek appropriate orders to have the said content removed in light of her individual right to privacy.³¹

The petitioner and the informant were both in love with each other, and they were also classmates and members of the

³¹ *Subhranshu Rout vs. State of Odisha [BLAPL No.4592 of 2020, decided on November 23, 2020]*



same village, according to the case's factual matrix. Once, the petitioner took advantage of the informant being home alone by going to her house, raping her, and recording the terrible act on his phone. The petitioner then threatened the informant with death and threatened to make all of the petitioner's images and videos viral on social media if the informant tried to alert her parents. Utilizing the informant's predicament, the petitioner continued their sexual relationship. When the informant told her parents about the petitioner's heinous deeds, the petitioner built a phoney account for the victim and uploaded all the images and videos with the intention of traumatising the victim. When the FIR was filed, the police were unable to respond to the complaint in a suitable manner, which led to a portrayal of the system's flaws.

Since the accused and victim are both adults, the learned attorney representing the petitioner argued that they are the best individuals to determine what is right or wrong. He claims that the petitioner has an ITI diploma, is looking for work, and that being imprisoned will hurt his professional prospects. He further stated that the petitioner is genuinely interested in marrying the victim girl.

The learned attorney who was representing the informant argued that the petitioner had not only coercively participated in sexual activity with the victim girl but had also deceitfully recorded the intimate session and posted it to a false Facebook account he created in the victim girl's name. The accusation is very serious because the accused/petitioner is specifically charged with engaging in forced sexual conduct against the victim's will. He further claims that the investigation into the issue is still underway. According to all of the charges

in the FIR, the declaration made under Section 161 of the Cr.P.C.1, and other records-found papers, the petitioner committed serious offences. Finally, he claimed that the accused's strategies had caused the victim severe emotional suffering.

CONCLUSION

There are no laws specifically addressing revenge porn in India. The Information Technology Act and the Indian Penal Code, which have more expansive laws, are often used to judge cases. Women are very reluctant to go to the police station and submit a First Information Report since "victim-shaming" is so common in the criminal justice system and in society at large. In some instances, revenge porn users have admitted that they did not do so because they couldn't stand to expose the offending material to a room full of male police officers. Additionally, there is no law requiring the police to assign a female officer to such cases. Because Indian law doesn't define "revenge porn," victims frequently believe that seeking justice would be perilous as well as ineffective.

In addressing harms that target women and girls as their primary targets, our society has a dismal track record. Despite significant advancements in the direction of gender equality, men still hold a majority of the social, legal, and political authority. There has been a long and uphill battle to get people to acknowledge sexual assault, domestic abuse, and harassment as significant problems, and there is still a propensity to put up with, downplay, or ignore these damages. Since this age is all about equality, I believe that there should be laws that also support or deal with the crime against men. Men are occasionally victims of these types of crimes, but because of gender-biased



provisions in our statutes, no one has spoken out against this.

Although Section 67A of the IT Act addresses punishment for the transmission of "material comprising sexually explicit acts, etc. in electronic form," it also has the potential to involve the victim directly who may have voluntarily created the content but exclusively for private use. As a result, there is a chance that victims themselves could face legal consequences. Its propagation via messaging networks is notoriously challenging to find and stop. In the Indian context, there is no strong legal framework for cases of image-based sexual assault, hence assigning responsibility to service providers with regard to the removal of such content is also still lacking.