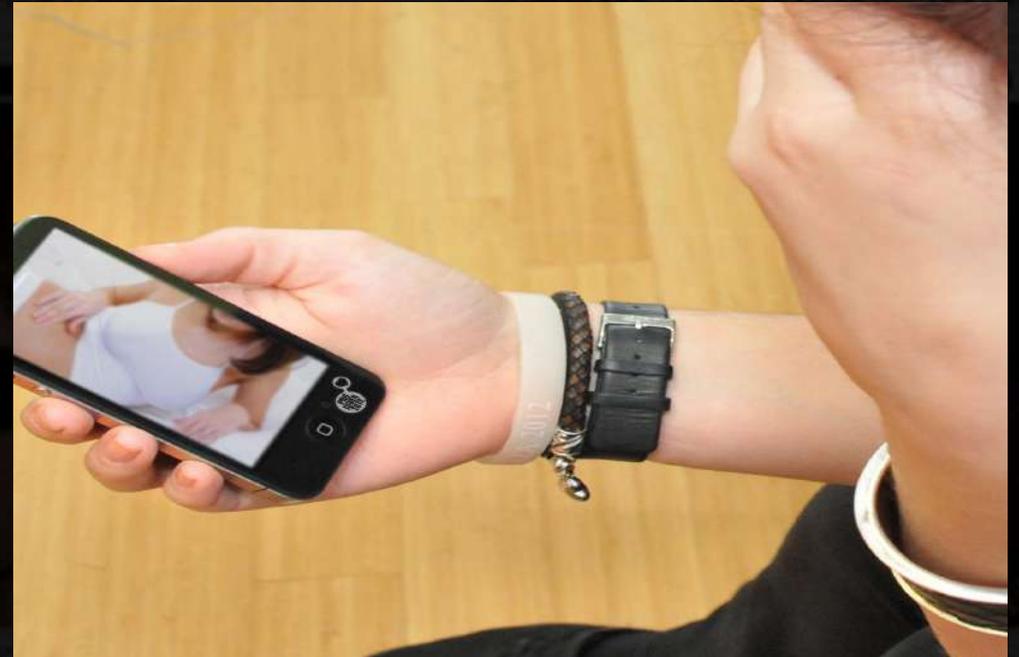


# Combating Revenge Porn

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# The “Business” of Revenge Porn

- ▶ I. What is Revenge Porn?
- ▶ II. Combatting Revenge Porn
- ▶ III. Future of Revenge Porn



# I. REVENGE PORN\*, WHAT IS IT?

- ▶ **Traditional View:** Taking photos without the person's knowledge and posting unconsented nude images of an individual online.
- ▶ **Modern View:** Photos may be taken with consent, but are not consensually distributed.



\* aka NON CONSENSUAL PORNOGRAPHY

# I. REVENGE PORN, WHAT IS IT?

- ▶ **Plaintiffs Profile:** 90% of victims are women
- ▶ **Defendants Profile:** Frequently a victim's ex, or a hacker to victims' files
- ▶ **Harms to Victims:** victims have “lost jobs, been forced to change schools, change their names, and have been subjected to real-life stalking and harassment.”

# II. COMBATTING REVENGE PORN

## ▶ Seeking Remedies

- ▶ 1) Removing the unconsented posts from the sources
  - ▶ Copyright violations
  - ▶ Contact the posting websites directly
  - ▶ Request de-linking/ [take down](#) from [Google](#) or Social Media Platforms
- ▶ 2) Prosecuting the defendant criminally or pursuing the civilly (holding the individual uploading the unconsented materials liable)

## ▶ Bringing A Case

- ▶ 1) Traditional state causes of action
- ▶ 2) [Federal Trade Commission \(FTC\) action](#)
- ▶ 3) Revenge Porn laws
  - ▶ Some states are creating civil and criminal penalties

# OPTION ONE: Assert Copyrights - but you have to copyright your breasts



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# OPTION TWO: CONTACT THE WEBSITE OPERATOR ...and get extorted

## ▶ Extortion Case—*People v. Bollaert*

- ▶ Kevin Bollaert, 28, operated YouGotPosted.com, a revenge porn website
  - ▶ More than 10,000 images were posted between December 2012 and September 2013
  - ▶ Charged victims to remove nude images and personal information through second website, ChangeMyReputation.com
  - ▶ Charged with 21 counts of identity theft and 6 counts of extortion
- ▶ Sentenced to 18 years in prison for operating a revenge porn website



# OPTION TWO: CONTACT THE WEBSITE OPERATOR ...and get extorted

- ▶ FTC Case: IsAnybodyDown?
  - ▶ Craig Brittain operated the website, IsAnybodyDown?, to display nude photos of the victims, and he actively sought out such photos and victims' contact information
  - ▶ He also operated another website to extort victims to remove those photos
- ▶ Claim under Section 5(a) of the FTC Act:
  - ▶ Unfair or deceptive acts or practice in or affecting commerce
- ▶ Settlement with the FTC:
  - ▶ Destroy all nude images he obtained, and similar nude images in the future



# OPTION 2: CONTACT THE WEBSITE...and get ignored.

- ▶ Communications Decency Act grants immunity to internet website owners from liability of the information or materials provided by a third party



# COMMUNICATIONS DECENCY ACT (CONT.)

- ▶ The immunity is granted only if the website operator “merely publish[ed]” content from a third party
  - ▶ but not “actually created the content” —the website operator must be a neutral platform provider
- ▶ Therefore, the plaintiffs might argue that the website operator is not merely a neutral platform provide, but actually an information provider because (*F.T.C. v. Accusearch Inc.*)
  - ▶ 1) the defendant authored the content, or
  - ▶ 2) the defendant “specifically encourage[d]” or “invites” the creation of the illegal content.



# OPTION 3: SUE THE POSTER

- ▶ The individuals who actually submitted images to revenge porn sites are not immune under this Act
- ▶ **Problem:** identifying the poster
  - ▶ With the myriad of porn websites, it is difficult to prove who is responsible for the anonymous posts



# OPTION 3: SUE

- ▶ Identify facts to show who had access to uploaded photos or videos
  - ▶ But, people who had the access might not necessarily be the person who uploaded—could be a friend, or even a random person who hacked the ex's files
- ▶ Subpoena website operators for basic information to the initial upload
  - ▶ Information includes IP address and any account information (if lucky)
  - ▶ Illinois provides this through the Rule 224 pre-litigation discovery

# ILLINOIS RULE 224 PRE-LITIGATION DISCOVERY

- ▶ “A person or entity who wishes to engage in discovery for the sole purpose of ascertaining the identity of one who may be responsible in damages may file an independent action for such discovery.”
- ▶ “The action for discovery shall be initiated by the filing of a verified petition in the circuit court of the county in which the action or proceeding might be brought or in which one or more of the persons or entities from whom discovery is sought resides. The petition shall set forth: (A) the reason the proposed discovery is necessary and (B) the nature of the discovery sought and shall ask for an order authorizing the petitioner to obtain such discovery. The order allowing the petition will limit discovery to the identification of responsible persons.”



# BRINGING A CASE: COMMON LAW GROUNDS

- ▶ **Public Disclosure of Private Facts** (Restatement of Torts 2<sup>nd</sup> §652D)
  - ▶ “One who gives publicity to a matter concerning the private life of another is subject to liability to the other for the invasion of his privacy, if the matter publicized is of a kind that
    - ▶ would be highly offensive to a reasonable person, and
    - ▶ is not of legitimate concern to the public.”

# BRINGING A CASE: COMMON LAW GROUNDS

## ▶ Appropriation

- ▶ Plaintiffs have a property right to matters connected to himself, matters he might display and charge admission for
- ▶ For someone who broadcasts or publishes those matters without “buying” them from the plaintiff, those persons are liable

# BRINGING A CASE: COMMON LAW GROUNDS

- ▶ **Intentional Infliction of Emotional Distress**
  - ▶ An **Intentional or Reckless** conduct that is **Extreme or Outrageous** causes **Severe Emotional Distress**
  - ▶ **Extreme**: a conduct that is regarded as atrocious and utterly intolerable in a civilized community
  - ▶ **Outrageous**: a conduct that would lead an average member of the community to exclaim “that’s outrageous!”
  - ▶ Court rulings show that the vulnerability of victims must be taken into the account

# BRINGING A CASE: COMMON LAW GROUNDS

## ▶ Intrusion

- ▶ A well-accepted tort claim for *inappropriate* information gathering, e.g. wire tapping, eavesdropping and telephoto lenses
- ▶ But, the problem is that the selfies in revenge porn cases are often taken with consent

# BRINGING A CASE: COMMON LAW GROUNDS

## ▶ Defamation

- ▶ A unprivileged false statement that sufficiently identifies the victim, and tends to harm the victim's reputation.
- ▶ But, the problem is that the photos or videos in revenge porn cases are often not "false"
  - ▶ truth is a defense against defamation

# 35 STATES + DC HAVE REVENGE PORN LAWS

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# REVENGE PORN LEGISLATION

- **Intimate Privacy Protection Act**

- proposed amendment to Title 18 of the United States Code
- introduced by Representative Jackie Speier in 2016
- would make it a crime to “knowingly distribute a private, visual depiction of a person’s intimate parts or of a person engaging in sexually explicit conduct, with reckless disregard for the person's lack of consent to the distribution.”

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