

# Revenge Pornography: Mental Health Implications and Related Legislation

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Revenge pornography, also known as nonconsensual pornography, is a subtype of cyberharassment/cyberstalking, and a serious problem facing society in the Internet age. Revenge pornography can result in lifelong mental health consequences for victims, damaged relationships, and social isolation. Recently, a growing number of states have recognized the importance of this phenomenon and have enacted legislation that criminalizes it. The technology industry has also taken steps to assist victims of revenge pornography by creating web forms to request removal of links leading to the explicit content. The Cyber Civil Rights Initiative (CCRI) has been instrumental in promoting public awareness of this often overlooked problem and in providing services for victims. Although important steps have been made, greater recognition of the gravity of this problem and the mental health implications of revenge pornography is needed to expand legislation criminalizing such acts. A federal criminal law, in particular, is much overdue. Mental health professionals must understand the dimensions of revenge pornography to be able to identify and address the consequences in both forensic and clinical settings.

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The Internet has become a common tool for criminal activity, as it enables individuals to access and widely disseminate virtually anything anonymously. There are many types of Internet-related crime, including cyberharassment, cyberbullying, cyberhacking, and cyberstalking.

Cyberharassment occurs when a perpetrator uses the Internet to annoy, embarrass, or emotionally distress another individual, but not necessarily in a threatening manner that would cause the victim to fear for his or her safety.<sup>1</sup> Various forms of online communication may be used to torment the victim. Unwanted contact can occur via text messages, instant messages, e-mails, or websites. The Internet can be used to widely disseminate false or private information instantly with the click of a button. Once the unwanted content has been released, it is nearly impossible to control its accessibility or further spread.

The term cyberbullying is often used interchangeably with cyberharassment, although it typically occurs among minors within a school context.<sup>1</sup> Victims of cyberbullying are more likely to have low self-esteem, be truant from school, receive poor grades, abuse drugs and alcohol, withdraw socially, and experience anxiety or depression.<sup>2</sup> According to data released by the National Center for Education Statistics, nine percent of students between the ages of 12 and 18 experienced some degree of cyberbullying in the 2010–2011 school year. The two most prevalent forms of cyberbullying included unwanted contact via text messaging (4.4%) and purposeful sharing of private information (3.6%).<sup>3</sup> The 2013 Youth Risk Behavior Survey found the rate of cyberbullying to be 15 percent among high school students: 21 percent for females and 8.5 percent for males.<sup>4</sup>

Although websites such as MySpace and Facebook are designed for users to connect with friends and family and share events of their daily lives, the advent of social networking websites in recent years has accelerated the incidence of cyberbullying. A well-known case of cyberharassment involved Lori Drew, the mother of 13-year-old Sarah Drew, who was a

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**Table 1** Computer Fraud and Abuse Act: Seven Types of Computer-Related Criminal Activities

Offense	Section
Obtaining national security information	(a)(1)
Accessing a computer and obtaining information	(a)(2)
Trespassing in a government computer	(a)(3)
Accessing a computer to defraud and obtain value	(a)(4)
Intentionally damaging by knowing transmission	(a)(5)(A)
Recklessly damaging by intentional access	(a)(5)(B)
Negligently causing damage and loss by intentional access	(a)(5)(C)
Trafficking in passwords	(a)(6)
Extortion involving computers	(a)(7)

neighbor of 13-year-old Megan Meier. In retribution for allegedly calling her daughter a lesbian, Ms. Drew conspired with her daughter and a coworker to humiliate Megan. She created a fake MySpace account under the pretense of being a 16-year-old boy named Josh Evans. She used this account to contact and flirt with Megan, but eventually the tone of the messages changed.<sup>2</sup> In October 2006, “Josh” told Megan, “I don’t know if I want to be friends with you anymore . . . You are a bad person and everybody hates you. Have a shitty rest of your life. The world would be a better place without you.” Megan responded, “You’re the kind of boy a girl would kill herself over.” Twenty minutes later, Megan was found hanging with a belt in her bedroom closet. She was pronounced dead the next day (Ref. 5, p 356).

Missouri prosecutors did not charge Ms. Drew in connection with Megan’s death, stating a lack of evidence. In May 2008, Ms. Drew was indicted on federal charges of conspiracy and violation of the Computer Fraud and Abuse Act (CFAA).<sup>2</sup> Ms. Drew was accused of exceeding authorized access in violation of §1030(a)(2)(C) by creating a false account in a conscious breach of MySpace’s Terms of Service.<sup>6</sup> Although a jury found Ms. Drew guilty on three misdemeanor counts of violating the CFAA, a U.S. District judge for the Central District of California overturned the guilty verdict and deemed the statute to be overbroad.<sup>7</sup> Congress enacted the CFAA in 1986 to specifically address computer-related crime. It amended the CFAA numerous times over the next two decades. The current version of CFAA addresses seven types of computer-related criminal activities (Table 1) (Ref. 6, p 3).

A highly publicized case of cyberbullying occurred on the campus of Rutgers University in September 2010. Dharun Ravi had secretly placed a webcam in his dorm to spy on his roommate Tyler Clementi

who had requested some privacy one night. When Mr. Ravi discovered Mr. Clementi making out with another male, he live streamed the encounter and encouraged others to watch via text message and Twitter. Two days later, Mr. Ravi tweeted about a second attempt to secretly live stream Mr. Clementi that evening.<sup>8</sup> The next day, Mr. Clementi committed suicide by jumping off the George Washington Bridge. In March 2012, Mr. Ravi was found guilty of invasion of privacy, bias intimidation, and tampering with evidence. He faced up to 10 years in prison, but he was ultimately sentenced to 30 days in jail and 3 years of probation.<sup>9</sup>

Cyberhacking is another form of Internet-related crime that refers to access of a private electronic device or network, which is unauthorized or exceeds authorization.<sup>10</sup> In fact, an offender may use cyberhacking for cyberharassment or cyberbullying. A new television series called *Mr. Robot* gives us a unique inside perspective on the dangers of cyberhacking. The main character is a professional hacker who has the ability to expose every secret there is to know about the people in his life. He demonstrates how easy it can be to violate the privacy of others. This is just one example of the increased awareness of cyberhacking in today’s media. These topics are gaining more and more visibility.

Unlike cyberharassment and cyberbullying, with cyberstalking, the victim perceives a real threat. Cyberstalking refers to a repeated course of threatening conduct via the Internet or other electronic form of communication that would cause a reasonable person to feel fear.<sup>11</sup> The 2006 Supplemental Victimization Survey found that 25 percent of victims of stalking experienced some form of cyberstalking, with e-mail being the most prevalent method (83%) followed by instant messaging (35%).<sup>12</sup> Examples of cyberstalking include: threatening e-mails or electronic communication, repeated contact that is unwarranted, distributing the victim’s personal information over the Internet, encouraging others to harass the victim, installing malware, and hacking.

Victims of cyberstalking may or may not know the perpetrator. An online victim advocacy group, Working to Halt Online Abuse, conducted a study in 2002 that revealed that 71 percent of victims are women and 59 percent of victims had some sort of previous relationship with the alleged stalker.<sup>13</sup> In contrast, a report by the United States Depart-

ment of Justice from 1999 revealed that complete strangers were victims in 50 percent of reported cyberstalking cases.<sup>14</sup> Compared with victims of traditional stalking, victims of cyberstalking are much more likely to be chosen at random. The Internet provides access to a vast amount of personal information regarding complete strangers. Behind the veil of anonymity, a cyberstalker has the ability to target virtually anyone.

### Revenge Pornography

Revenge pornography is a subtype of cyberharassment/cyberstalking that is becoming increasingly prevalent. It is described as the online release of explicit photographs or videos of an individual without permission for the purpose of humiliation.<sup>15</sup> The photographs and videos are often taken and voluntarily given to another individual in the context of an intimate relationship.<sup>16</sup> Although vengeful ex-intimates may engage in revenge pornography after a relationship has ended, that is not always the case. An anonymous stalker or hacker may unlawfully gain access to a victim's intimate photographs. Thus, some victims advocate the term "nonconsensual pornography." In addition, the term revenge pornography may be misleading, as not all perpetrators are motivated by vengeance. Some individuals participate in the distribution of explicit content to earn a profit. Others are motivated by notoriety or entertainment.<sup>16</sup>

A survey of 5000 adults conducted by Match.com in 2012 found that 57 percent of men and 45 percent of women had received an explicit photograph from their partners, and 38 percent of men and 35 percent of women admitted to sending their partners an explicit photograph of themselves.<sup>17</sup> Ninety-four percent of Americans believe that their intimate photographs are safe in the possession of their current partners.<sup>18</sup> As many as 10 percent of ex-partners have threatened to expose naked photographs of their ex-partners, and 60 percent of those who make such threats actually follow through.<sup>19</sup> Women are much more likely to be pressured to send nude photographs, and they are also much more likely to be victims of revenge pornography.<sup>18</sup> According to the Cyber Civil Rights Initiative, as many as 90 percent of victims are women.<sup>19</sup>

Especially troubling is the ease with which information can be instantaneously and widely disseminated online. Explicit intimate photographs and vid-

eos can be distributed through text messages, e-mails, blogs, and even through social media. The first websites completely dedicated to revenge pornography began surfacing in 2008.<sup>17</sup> Today, revenge pornography is featured on as many as 3000 websites.<sup>16</sup> With almost 3.3 billion Internet users in the year 2015, the potential audience for revenge pornography is unnerving. To the billions of people that do not personally know you, and to even some who do know you, "You are what Google says you are."<sup>20</sup> It is extremely challenging, if even possible, to completely eliminate explicit photographs or videos once they have been electronically released.

In addition, revenge pornography websites often post the victim's name and other identifying information as well as a link to her social media account next to her photographs. A study of more than 1,244 individuals revealed that, at least 50 percent of the time, the victim's full name and social media account appeared next to an explicit photograph and, at least 20 percent of the time, the victim's e-mail address and phone number were listed alongside it.<sup>21</sup>

One of the best-known cases of revenge pornography was that of "revenge porn kingpin" and "most hated man on the Internet," Hunter Moore, who began a website called IsAnyoneUp.com in 2010.<sup>22</sup> The website featured explicit media with links to the victims' social networking profiles and reportedly attracted 30 million views monthly. Many victims claimed that the revealed photographs and videos were shared without their consent by ex-intimate partners. Other victims indicated that their personal computers or cellular devices were hacked and the explicit content stolen. Some victims even stated that the content featured on the website was fabricated. Hunter Moore paid another man, Charles Evens, to hack e-mail accounts of hundreds of victims and provide him with explicit photographs. In January 2014, Mr. Moore was indicted by the Federal Bureau of Investigation (FBI) on 15 counts of conspiracy, unauthorized access to a protected computer to obtain information, and aggravated identity theft.<sup>17</sup> In February 2015, he pleaded guilty to aggravated identity theft and aiding and abetting in the unauthorized access of a computer and faced two to seven years in federal prison.<sup>23</sup> On December 3, 2015, Mr. Moore was sentenced to two-and-a-half years in prison and fined \$2,000.<sup>24</sup>

## Mental Health Implications of Revenge Pornography

Revenge pornography can have serious mental health implications for victims. Victims must cope with long-term personal and psychological consequences, given that the disseminated photographs or videos may continue to haunt them throughout their lives. According to one study, 49 percent of victims reported that they experienced cyberharrasment and cyberstalking by online users who viewed their posted photographs. The same study noted that 80 to 93 percent of victims suffered significant emotional distress after the release of their explicit photographs.<sup>17,19</sup> The distress includes anger, guilt, paranoia, depression, or even suicide. There may also be deterioration in personal relationships and feelings of isolation.

Many of the long-term negative consequences of revenge pornography are similar to those seen in victims of child pornography. The humiliation, powerlessness, and permanence associated with these distinct but similar crimes leave victims engaged in a lifelong battle to preserve their integrity. Consequently, victims of revenge pornography suffer from similar enduring mental health effects as described by victims of child pornography, such as depression, withdrawal, low self-esteem, and feelings of worthlessness.<sup>25</sup>

Annemarie Chiarini, a college English professor in Maryland and the Victim Services Director for the Cyber Civil Rights Initiative, has spoken publicly, particularly on the Internet, about her unfortunate experience with revenge pornography. Her long-distance boyfriend pressured her for months to send him nude photographs. He promised her that the photographs would remain on a private CD that only he would access.<sup>26</sup> In February 2010, two days after they broke up, Ms. Chiarini's boyfriend started an eBay auction for the CD containing her nude photographs. He posted links of the auction on various Facebook pages associated with her college. Ms. Chiarini contacted the police, but they insisted that there was nothing that they could do. Over the next year, she lived in persistent fear that she would be exposed. She would occasionally wake up in the middle of the night just to check her e-mail and Facebook and to Google her name. In September 2011, Ms. Chiarini worst fear came true. She received an anonymous e-mail alerting her to the existence of an on-

line profile on a porn website featuring her nude photographs. Along with her nude photographs, the profile listed her full name, location of residence, and name of her employer. Again, the police denied requests for assistance and instructed her to contact them after a crime had actually been committed. Two days after she discovered her nude photographs online, Ms. Chiarini attempted suicide. Fortunately, she was unsuccessful and later went on to advocate actively for legislation criminalizing revenge pornography.<sup>27</sup>

Jessica Logan, a high school student in Ohio, was another victim of revenge pornography. She texted nude photographs to her boyfriend, who subsequently sent them to fellow classmates after they broke up. These photographs quickly circulated, and Ms. Logan suffered extreme harassment from her classmates. She was called vicious names and had objects thrown at her. The high school administration failed to intervene. Ms. Logan began skipping school to escape the humiliation. Her guidance counselor suggested that she participate in a televised interview discussing the topic of sexting. After the interview aired, Ms. Logan experienced increasing harassment. One day, after returning home from the funeral of a friend who had committed suicide, Ms. Logan took her own life by hanging herself in her bedroom.<sup>28</sup>

In April 2015, Kevin Bollaert, founder of the revenge porn website UGotPosted.com was sentenced to 18 years in state prison for 27 counts of identity theft and extortion, representing the first time a person in the United States had been convicted on charges related to operating a revenge pornography website (Mr. Moore's conviction followed in 2015). This website enabled anonymous posting of explicit photographs without victims' consent along with names, addresses, and social networking details. More than 10,000 images were posted to the website from December 2012 through September 2013. Mr. Bollaert operated an associated website called ChangeMyReputation.com where victims paid him \$250 to \$350 to have their photographs removed. One of the many women who testified in court, said she experienced considerable victim shaming and felt led to believe it was all her fault. She admitted that she had attempted suicide.<sup>29</sup>

Other victims shared stories of damaged relationships and lost jobs directly related to the release of their nude photographs. One victim, who was

thrown out of her house when her family discovered the explicit photographs, stated, “It ruined my life and I’m still going through it. I lost my family. They think that I brought shame on them. My reputation is ruined.”<sup>29</sup>

In addition to psychological damage, the victim may suffer termination of employment or may have difficulty in gaining future employment. Increasingly, employers conduct online searches to evaluate potential job candidates. Some victims resort to changing their names in an attempt to escape their past. Holly Jacobs, now a revenge pornography activist who founded the website EndRevengePorn.com, experienced firsthand the negative impacts of revenge pornography on employment. In 2009, her ex-boyfriend began posting explicit photographs of Ms. Jacobs on the Internet along with her full name, e-mail address, details of employment, and a screenshot of her Facebook profile. She spent three years in full-time damage control mode, hired a lawyer and an Internet specialist to assist with removal of posted photographs, and pled with law enforcement to file charges against her ex-boyfriend, all to no avail.<sup>30</sup> An anonymous informant e-mailed the human resources department at her university and claimed “a professor is masturbating for her students and putting it online” (Ref. 18, p 241). Ms. Jacobs ultimately quit her job in the face of such embarrassment. She even attempted to change her name to escape the scrutiny. Her harasser simply reposted her explicit photographs and linked them to her new name after learning of the name change.

### Federal and State Civil Legislation

Victims have pursued civil litigation against cyberharrassment, cyberstalking, and revenge pornography under the torts of defamation, invasion of privacy, public disclosure of private facts, and intentional infliction of emotional distress (IIED).<sup>17</sup> Forensic psychiatrists may be asked to evaluate victims and speak to psychological damages.

In an invasion-of-privacy claim, the plaintiff must prove that the defendant intentionally intruded upon her private affairs and that the intrusion would be highly offensive to a reasonable person.<sup>18</sup> In cases of revenge pornography, this tort may be used if the victim’s intimate photographs were stolen from a personal electronic device or private online account.

To successfully file a claim under the tort of public disclosure of private facts, the plaintiff must prove

that the defendant publicized an element of her private life that would be highly offensive to a reasonable person and is not a legitimate public concern.<sup>18</sup> In cases of revenge pornography, the victim can argue that private intimate photographs are not of public concern.

IIED is defined as extreme and outrageous conduct that intentionally or recklessly directly results in severe emotional distress to another individual. Such conduct is subject to civil liability not only for any physical harm that results from it but also for the emotional distress inflicted upon the target individual. Extreme and outrageous conduct extends beyond all possible bounds of decency and is considered absolutely intolerable.<sup>31</sup> IIED claims can be pursued in cases of revenge pornography since the widespread dissemination of private intimate photographs can have significant immediate and lifelong mental health consequences.

In *Doe et al. v. Hofstetter*,<sup>32</sup> the plaintiffs successfully filed a civil lawsuit against the defendant in a case of nonconsensual pornography. In November 2010, Benjamin Hofstetter published an Internet blog containing intimate photographs of Jane Doe without her consent and wrote false statements regarding her marriage to John Doe on his blog. He also e-mailed these photographs to her husband with the intention of negatively affecting their marriage. Mr. Hofstetter repeatedly harassed Jane Doe with unsolicited e-mails and text messages. He then used a fake Twitter account under Jane Doe’s name to continue distribution of the intimate photographs and communicated with third parties on her behalf. Mr. Hofstetter was found liable on one count of public disclosure of private facts and two counts of intentional infliction of emotional distress.

Filing a civil claim, however, is a lengthy and expensive process, one that many victims of revenge pornography cannot afford to pursue. In addition, tort claims are often ineffective. Since intimate photographs are often posted anonymously, it can be difficult to identify the individual responsible for posting such photographs. The strong language used in many of these torts such as “intentional,” “highly offensive,” “extreme and outrageous,” and “severe emotional distress” can be challenging to prove at trial.<sup>18</sup> Holly Jacobs was the first individual to file a civil suit against revenge pornography in the state of Florida when she filed a claim against her ex-boyfriend for invasion of privacy, public disclosure of

private facts, and intentional infliction of emotional distress. The case was ultimately dismissed, given the lack of evidence linking the release of the photographs to her ex-boyfriend.<sup>33</sup>

Moreover, civil litigation usually leads to more unwanted publicity for the victim, often deterring the victim from ever filing a claim.<sup>21</sup> If the victim does file a civil claim successfully and is able to force a website to take down the explicit photographs, nothing prevents these photographs from resurfacing on other websites. The entire process must be repeated each time the victim desires a website to remove photographs or videos.

Furthermore, websites hosting links to such content are protected under Section 230 of the Communications Decency Act,<sup>34</sup> which grants legal immunity to providers of interactive online services who publish information posted by others. This includes news websites, social media networks, blogs, and forums, to name a few. 47 U.S.C. § 230(c)(1)(1996) states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” As long as the website was not the original creator of the information, it cannot be held liable for information posted on it. Thus, websites hosting links to revenge pornography are immune from litigation under the above-mentioned civil torts. Federal crimes, however, are not protected under Section 230. For example, if a website hosts a link to child pornography, which is a federal crime, the owners of that website may be prosecuted.

Some victims have pursued civil litigation against owners of websites that post revenge pornography under copyright law, as copyright infringement is an exception for protection under Section 230 of the CDA. To own the copyright, the victim must have taken the photograph (i.e., a “selfie”). To pursue litigation, the victim must register the copyright within 90 days of the posting of the photograph or video. A takedown notice can then be sent to the website under the Digital Millennium Copyright Act (DMCA),<sup>17</sup> and if the website refuses to remove the explicit content, the victim may then proceed with litigation. There are many deficiencies in this process, however. Copyright law does little to discourage individuals from engaging in the distribution of revenge pornography in the first place. Often the indi-

vidual posting the photographs does not have to pay the victim any damages.<sup>17</sup>

### Criminal Legislation

Criminal legislation has begun surfacing around the country to combat revenge pornography. Congress passed 18 U.S.C. § 2261A in 1996, the first interstate stalking statute, to criminalize actions that intentionally place another individual in reasonable fear of serious injury or death.<sup>35</sup> Congress amended this statute in 2006, broadening its reach to include stalking behavior conducted via the Internet. Additional changes at that time included the criminalization of the intent to harass and the recognition of emotional distress as sufficient damage. The victim no longer had to fear serious injury or death for successful application of the law. All 50 states have since enacted cyberharrasment and cyberstalking statutes of their own.<sup>18</sup>

Because cyberstalking inherently involves a pattern of threatening behavior, prosecution of revenge pornography under cyberstalking legislation can be challenging. Most of the time, the perpetrator posts explicit photographs or videos of the victim in a single instance. Thus, the prosecution faces a major hurdle in establishing a pattern of behavior that could qualify as stalking. Furthermore, successful prosecution under a cyberstalking statute requires proving that the defendant posted the explicit photographs or videos with the intent to harass or threaten the victim. Accordingly, the defendant may claim other motives, such as money, fame, or fulfillment of personal sexual fantasies.<sup>18</sup>

Legislation specifically addressing revenge pornography is needed to overcome the imperfections of civil litigation, copyright law, and cyberstalking law. In total, 26 states currently have legislation targeting revenge pornography; the crime charged and whether misdemeanor or felony is state dependent.<sup>36</sup> (Fig. 1). New Jersey and California were two of the first states to enact such legislation.

Under a federal statute, victims would be represented by the federal government and therefore would not pay for legal representation. Thus, the financial burden associated with filing a civil lawsuit does not apply in federal cases. Furthermore, the fear of indictment under a federal criminal statute could serve as a better deterrent than civil lawsuits to engaging in revenge pornography in the first place.<sup>17</sup> The Intimate Privacy Protection Act of 2015, pro-



or Xbox Live when notified by a victim.<sup>42</sup> In addition, websites such as Yahoo, Facebook, Instagram, Twitter, Reddit, and Tumblr do not allow revenge pornography, and thus explicit content can be reported and its removal requested.<sup>36</sup>

An important consideration regarding revenge pornography legislation is the potential impact on minor offenders. Although tough legislation against revenge pornography seems essential, the situation can become increasingly delicate when both the victim and perpetrator are minors. Offenders who are minors who post revenge pornography could be required to register as sex offenders if convicted under child pornography laws. Often, requirements for registration as a sex offender extend for decades and may even last a lifetime. It may be important to consider separately how to address this type of pornography with minors, without excusing the associated bad behavior.

Revenge pornography has unfortunately become more commonplace over the past several years. It is important that mental health professionals understand the aspects of revenge pornography to be able to identify and address the consequences in both forensic and clinical settings.

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