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Revenge Porn: the New Form of Cyber Bullying, the 1st Amendment and Other Legal Repercussions

Adam Lipps 12/3/15

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Repercussions

Introduction

Different forms of cyber bullying have caused dramatic repercussions for victims to the point they have taken their own lives. One of the most recent and dangerous forms of cyber bullying to emerge from the infinite space of the internet has become known as revenge porn or the posting of a victim's intimate life without said victim's permission for the purpose of humiliating him or her.¹

Standard cyber bullying has clashed with the 1st Amendment in the past. An Albany, New York, anti-cyber bullying law was struck down due to the fact the vague wording allowed the prosecution of any individual who "embarrassed" another online.² This case showed how important it is to ensure that a state's law be written carefully and concisely as to not violate the 1st Amendment. However, cyber bullying was soon to evolve into a new creature entirely with the case of State v. Ravi.³ By using sexual videos of the victim to cause severe humiliation, Ravi ushered in a new variation of cyber bullying known as revenge porn which forced the states yet again to respond.

With revenge porn's severe consequences to the victim, states were forced to walk a fine line between enacting laws not too narrow as to hinder prosecution and not too broad as to be struck down by the 1st Amendment. Although some states, for example New Jersey, use existing laws such as invasion of privacy to enforce anti-revenge porn policy, other states such as California have enacted legislation to specifically target the new threat.⁴ Although California's law would present the model wording, other states would choose to enact their own wording and legislation which have presented prosecutorial dilemmas. New York's revenge porn law, for example, was

¹ End Revenge Porn, <http://www.endrevengeporn.org/revenge-porn-laws/>.

² People v. Marquan M., 24 N.Y.3d 1, 5, 19 N.E.3d 480, 483 (2014).

³ Friedman, Alexi (March 5, 2012). "Text messages revealed in Rutgers webcam trial provide case's most dramatic evidence yet". N.J.com.

⁴ N.J.S.A. 2C:33-4.1(a); Cal. Pen. Code § 647(j).

too specific as it required that the state prove how the offensive material was obtained rather than allow that issue to be assumed.⁵ On the other hand, an Arizona statute would be struck down as it violated the 1st Amendment due to the fact it allowed prosecution of images used for educational purposes.⁶ Regardless of the issue, these cases set standards on how states and the federal government can construct laws to avoid the above issues.

As for compensation and removal of the images, victims have several possible options to pursue. If the victim of revenge porn was in fact the author of the images or video, he or she can pursue remedies under the Digital Millennium Copyright Act to force the website to remove the images.⁷ In addition, if the offensive material was in the form of a video and the victim was not the original author, the victim may be able to claim joint copyright if he or she was a major actor in the video.⁸ The threat of civil damage litigation may also persuade the website to take down the photo or video especially if said website encouraged revenge porn to specifically be posted.⁹ Finally, the victim can always attempt to rely on the good will of the internet service provider to remove the offensive material.¹⁰

Regardless of the remedy involved, statutes and common law are still only in their infancy when it comes to revenge porn. Thus, it is important to enact clear and concise laws as well as remedies for the victim that will not violate constitutional rights.

Cyber Bullying and the 1st Amendment

⁵ *People v. Barber*, 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159 (Crim. Ct. 2014).

⁶ *Antigone Books v. Brnovich*, <http://mediacoalition.org/antigone-books-v-brnovich/>.

⁷ 17 USCA § 1201-1332.

⁸ *Garcia v. Google, Inc.*, 786 F.3d 733 (9th Cir. 2015).

⁹ *Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398 (6th Cir. 2014); *S.C. v. Dirty World, LLC*, No. 11-CV-00392-DW, 2012 WL 3335284 (W.D. Mo. Mar. 12, 2012).

¹⁰ What is Revenge Porn and How Can I Protect Myself?, <http://www.lsnjlaw.org/Family-Relationships/Domestic-Violence/NJ-Laws-DV/Pages/What-Is-Revenge-Porn.aspx#.VgvVCrSdJSU>.

With the age of computers and the internet, new forms of communication continue to open which have been beneficial and yet detrimental. With more and more individuals hiding behind the shroud of a screen, people began to feel more empowered not only to express their positive thoughts but also their negative thoughts at the cost of others. Although sometimes harmless, cases began to arise in which individuals would begin to constantly inflict significant emotional distress upon innocent victims. This process became known as cyber bullying.¹¹ With the emotional damage to individuals sometimes being catastrophic, such as someone ending his or her life, the powers that be realized cyber bullying needed to be contained.¹²

In order to counteract the increasing threat of cyber bullying, many states began to pass laws in order to prevent these incidents.¹³ Every state currently has a law or set of laws that address the problem of cyber bullying.¹⁴ New Jersey, for example, defines one type of cyber bullying as:

a. A person commits the crime of cyber-harassment if, while making a communication in an online capacity via any electronic device or through a social networking site and with the purpose to harass another, the person:

(1) threatens to inflict injury or physical harm to any person or the property of any person;

(2) knowingly sends, posts, comments, requests, suggests, or proposes any lewd, indecent, or obscene material to or about a person with the intent to emotionally harm a reasonable person or place a reasonable person in fear of physical or emotional harm to his person; or

(3) threatens to commit any crime against the person or the person's property.¹⁵

In addition, aggravating factors such as the age of the victim or the age of the offender can upgrade the crime of cyber harassment.¹⁶ However, ever since its inception, cyber bullying laws have been subject to the scrutiny of the 1st Amendment. The 1st Amendment states that:

¹¹ Stop Bullying, <http://www.stopbullying.gov/laws/>.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ N.J.S.A. 2C:33-4.1(a).

¹⁶ Id.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.¹⁷

One cyber bullying law that violated the 1st Amendment was the Albany, New York law that criminalized

"any act of communicating or causing a communication to be sent by mechanical or electronic means, including posting statements on the internet or through a computer or email network, disseminating embarrassing or sexually explicit photographs; disseminating private, personal, false or sexual information, or sending hate mail, with no legitimate private, personal, or public purpose, with the intent to harass, annoy, threaten, abuse, taunt, intimidate, torment, humiliate, or otherwise inflict significant emotional harm on another person"¹⁸

In the case of People v. Marquan M., a 15 year old was posting sexual comments with pictures of his classmates online (although these images were not of intimate parts).¹⁹ The Court here stated that the law went far beyond protecting children and could criminalize "a telephone conversation meant to annoy an adult."²⁰ With the significant impediment of the Albany law, the Court found it in violation of the 1st Amendment and thus held it unconstitutional.²¹ Although this case presented evidence of how a cyber bullying law may be struck down as unconstitutional, cyber bullying statutes in other states remain in full effect and force as cyber bullying laws are relatively fully developed as not to impede the rights granted by the 1st Amendment.²²

It should be noted that New York eventually enacted its own cyber bullying statute. N.Y.

Penal Law § 240.30 reads:

A person is guilty of aggravated harassment in the second degree when, with intent to harass, annoy, threaten or alarm another person, he or she: 1. Either (a) communicates with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to

¹⁷ U.S. Const. amend. I

¹⁸ Albany County Local Law No. 11 of 2010, § 2.

¹⁹ People v. Marquan M., 24 N.Y.3d 1, 5, 19 N.E.3d 480, 483 (2014).

²⁰ Id.

²¹ Id.

²² Stop Bullying, <http://www.stopbullying.gov/laws/>.

cause annoyance or alarm; or (b) causes a communication to be initiated by mechanical or electronic means or otherwise with a person, anonymously or otherwise, by telephone, by telegraph, or by mail, or by transmitting or delivering any other form of written communication, in a manner likely to cause annoyance or alarm; or 2. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication; or 3. Strikes, shoves, kicks, or otherwise subjects another person to physical contact, or attempts or threatens to do the same because of a belief or perception regarding such person's race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct; or 4. Commits the crime of harassment in the first degree and has previously been convicted of the crime of harassment in the first degree as defined by section 240.25 of this article within the preceding ten years. 5. For the purposes of subdivision one of this section, "form of written communication" shall include, but not be limited to, a recording as defined in subdivision six of section 275.00 of this part. Aggravated harassment in the second degree is a class A misdemeanor.²³

Unfortunately, New York still has included the vague language “to annoy” which is the language that caused the Albany law to fail the 1st Amendment test.²⁴ Thus, if this new statute is challenged, it is likely to also be struck down similar to its Albany predecessor.

Unlike the Albany and recently enacted New York statutes, the New Jersey cyber bullying law would likely withstand a 1st Amendment challenge. The major reason the 1st Amendment challenge would fail is because the New Jersey Statute includes wording such as “reasonable” rather than the vague wording within the Albany Statute such as “purpose to annoy.”²⁵ The wording in the New Jersey Statute would not allow petty enforcement of “minor jokes meant to annoy” as it only enforces conduct that a reasonable person would find threatening.²⁶ Thus, a single or handful of words may be crucial when it comes to a cyber bullying statute surviving a 1st Amendment challenge.

²³ N.Y. Penal Law § 240.30

²⁴ Id.

²⁵ N.J.S.A. 2C:33-4.1(a); Albany County Local Law No. 11 of 2010, § 2.

²⁶ Id.

However, a new type of cyber bullying emerged with the case of State v. Ravi.²⁷ This particular case involved two Rutgers students; Tyler Clementi and his roommate Dharun Ravi.²⁸ In late September 2010, Clementi asked Ravi if his male friend and himself could have the room for a few nights.²⁹ Ravi responded by setting up a webcam in their room to record Clementi and his guest in Ravi's absence which was recorded on a live feed.³⁰ The recording showed Clementi and his guest engaged in sexual acts which were seen by everyone who was present on the stream where the recording was shown.³¹ Clementi became aware of the recordings which led to his suicide several days later.³² Ravi was charged with several counts of invasion of privacy, bias intimidation, tampering with evidence as well as other charges.³³ This new type of cyber bullying that utilized the internet to humiliate individuals engaging in private, sexual acts, was named revenge porn.³⁴ Similar to how states and federal government have attempted to silence cyber bullying without infringing on 1st Amendment Rights, the states and federal government now face the new kind of challenge of preventing victims from suffering from revenge porn without infringing on the rights granted by the 1st Amendment of the United States Constitution.

It should be noted that the Tyler Clementi incident would not be a classic case of revenge porn but a mere precursor to the classic revenge porn cases. Ravi and Clementi were not sexual partners with Ravi extracting revenge on Clementi for ending their relationship. Although this incident leaned more on the side of cyber bullying, the charges brought against Ravi in the New

²⁷ Friedman, Alexi (March 5, 2012). "Text messages revealed in Rutgers webcam trial provide case's most dramatic evidence yet". N.J.com.

²⁸ Id.

²⁹ Id.

³⁰ Id.

³¹ Id.

³² Id.

³³ Id.

³⁴ End Revenge Porn, <http://www.endrevengeporn.org/revenge-porn-laws/>.

Jersey Superior Court would be similarly used in enforcing incidents where a victim was subject to the crime of revenge porn.³⁵

Revenge Porn, the 1st Amendment, and Other Issues Regarding Clarity

With the ever-growing threat of revenge porn, states have begun to counteract the threat by enacting laws to target revenge porn as they have done with cyber bullying.³⁶ Some states such as New Jersey have opted to use pre-existing laws to combat revenge porn while other states such as California have opted to enact laws to specifically target revenge porn.³⁷ However, when utilizing said laws, a state must be cautious not to create a statute too narrow as it is too difficult to enforce or too broad as it would violate the 1st Amendment's freedoms.³⁸ As in the case of the New York law of unlawful surveillance, said law proved to be difficult to enforce due to the fact the law required that the state prove how a said image was obtained rather than leave this wording out of the statute.³⁹ On the other hand, the broadness of the Arizona revenge porn law on its face prohibited nude pictures for educational purposes and thus was stuck down as a violation of the 1st Amendment.⁴⁰ Although the federal government has the power under the commerce clause to enact a statute that would eliminate jurisdictional issues in states that do not have revenge porn laws, this issue may be best left to the states to enforce. Regardless of the situation, a clear and concise law enforcing revenge porn is imperative due to the fact it is the innocent victim who suffers most when enforcement of said law is stayed for whatever reason. Although the state may be forced to argue its position and even amend said law so that it complies with the 1st Amendment, it is the victim's humiliation without any closure that cannot be redeemed.

³⁵ Friedman, Alexi (March 5, 2012). "Text messages revealed in Rutgers webcam trial provide case's most dramatic evidence yet". N.J.com.

³⁶ End Revenge Porn, <http://www.endrevengeporn.org/revenge-porn-laws/>.

³⁷ N.J.S.A. 2C:33-4.1(a); Cal. Pen. Code § 647(j).

³⁸ U.S. Const. amend. I.

³⁹ People v. Barber, 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159 (Crim. Ct. 2014).

⁴⁰ Antigone Books v. Brnovich, <http://mediacoalition.org/antigone-books-v-brnovich/>.

Revenge Porn has become one of the most brutal forms of cyber bullying to date due to the public humiliation the victim suffers and here is why.⁴¹ Suppose there is a couple who has been dating for several years named John and Mary. During their relationship, they have taken sexually explicit photographs together under the understanding that said photographs would be for their eyes only. Suddenly, their relationship takes a turn for the worst and Mary ends said relationship leaving John in a distraught position. Several months go by and Mary is attempting to obtain a teaching job in which her social media will be subject to heavy scrutiny by her prospective place of employment and by her students' parents. One day, Mary is confronted by a potential employer who has expressed that she cannot obtain the job due to the fact there are pornographic pictures of Mary online and said photographs of a teacher would create a bad image for the district. When Mary searches the internet, she discovers the photographs that she took with her ex-boyfriend John in the privacy of her home, are now available for all to see. Despite her attempts to remove the photographs from the internet, she has not heard from the sites' directors, and John has utterly ruined her reputations and future career. Mary has just become one of the many individuals who have fallen victim to revenge porn. Revenge porn, like the classic example above is when an individual publicly displays private images on the internet of an another individual (the victim) who has not given said individual permission to post such images.⁴² In addition, the posting of said images is usually done with malice in order to emotionally and/or socially damage ones reputation for whatever reason.⁴³ Similar to classic cyber bullying, the states realized the emotional distress to the victims of revenge porn and sought to enact laws and/or use existing laws to halt the production and distribution of revenge porn.⁴⁴

⁴¹ Id.

⁴² Id.

⁴³ Id.

⁴⁴ Id.

Since revenge porn is a relatively new form of cyber bullying, only 25 states currently have enacted legislation to curb the problem of revenge porn.⁴⁵ New Jersey, for example was one of the pioneering states to attempt to curb revenge porn by using the existing statute of invasion of privacy that was most notably utilized in the Ravi/Clementi incident discussed earlier.⁴⁶ N.J.S.A. 2C:14-9, the New Jersey statute governing invasion of privacy, states

a. An actor commits a crime of the fourth degree if, knowing that he is not licensed or privileged to do so, and under circumstances in which a reasonable person would know that another may expose intimate parts or may engage in sexual penetration or sexual contact, he observes another person without that persons consent and under circumstances in which a reasonable person would not expect to be observed.

b. An actor commits a crime of the third degree if, knowing that he is not licensed or privileged to do so, he photographs, films, videotapes, records, or otherwise reproduces in any manner, the image of another person whose intimate parts are exposed or who is engaged in an act of sexual penetration or sexual contact, without that persons consent and under circumstances in which a reasonable person would not expect to be observed.

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.⁴⁷

Although N.J.S.A. 2C:14-9 was enacted before the threat of revenge porn was ever fathomed, its language allows the prosecution of any individual who discloses, without the other individuals consent, media relating to any exposure of intimate parts or an actor performing a sexual act.⁴⁸ Even though New Jersey has utilized a pre-existing law to enforce prosecution of individuals guilty of posting revenge porn, other states have chosen to enact laws that specifically target revenge

⁴⁵ Id.

⁴⁶ Friedman, Alexi (March 5, 2012). "Text messages revealed in Rutgers webcam trial provide case's most dramatic evidence yet". N.J.com.

⁴⁷ N.J.S.A. 2C:14-9.

⁴⁸ Id.

porn as a separate entity rather than grouping it with the crime of invasion of privacy as New Jersey has done.⁴⁹

Although California was not the pioneer in prosecuting revenge porn incidents, it was the pioneer in enacting legislature to specifically target revenge porn. California Penal Code § 647(j) states

(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.

(B) A person intentionally distributes an image described in subparagraph (A) when he or she personally distributes the image, or arranges, specifically requests, or intentionally causes another person to distribute that image.

(C) As used in this paragraph, “intimate body part” means any portion of the genitals, the anus and in the case of a female, also includes any portion of the breasts below the top of the areola, that is either uncovered or clearly visible through clothing.⁵⁰

This statute, similar to the New Jersey statute, criminalizes the distribution of an image, without consent of the other party, that depicts the other party’s intimate body parts or said party engaging in sexual acts.⁵¹ The California statute, however, takes several additional clarifying steps to define the sexual acts as well as define intimate body parts.⁵² New Jersey, on the other hand, uses phrases such as “sexual contact” and “intimate body parts” which are not as clear as California’s definitions.⁵³ In addition, California has enacted a civil statute to specifically address revenge porn.

⁵⁴ California Civil Code § 1708.85 states

(a) A private cause of action lies against a person who intentionally distributes by any

⁴⁹ End Revenge Porn, <http://www.endrevengeporn.org/revenge-porn-laws/>.

⁵⁰ Cal. Pen. Code § 647(j).

⁵¹ Id.

⁵² Id.

⁵³ N.J.S.A. 2C:14-9.

⁵⁴ Cal. Civ. Code § 1708.85.

means a photograph, film, videotape, recording, or any other reproduction of another, without the other's consent, if (1) the person knew that the other person had a reasonable expectation that the material would remain private, (2) the distributed material exposes an intimate body part of the other person, or shows the other person engaging in an act of intercourse, oral copulation, sodomy, or other act of sexual penetration, and (3) the other person suffers general or special damages as described in Section 48a.

(b) As used in this section, "intimate body part" means any portion of the genitals, and, in the case of a female, also includes any portion of the breast below the top of the areola, that is uncovered or visible through less than fully opaque clothing.

(c) There shall be no liability on the part of the person distributing material under subdivision (a) under any of the following circumstances: (1) The distributed material was created under an agreement by the person appearing in the material for its public use and distribution or otherwise intended by that person for public use and distribution. (2) The person possessing or viewing the distributed material has permission from the person appearing in the material to publish by any means or post the material on an Internet Web site. (3) The person appearing in the material waived any reasonable expectation of privacy in the distributed material by making it accessible to the general public. (4) The distributed material constitutes a matter of public concern. (5) The distributed material was photographed, filmed, videotaped, recorded, or otherwise reproduced in a public place and under circumstances in which the person depicted had no reasonable expectation of privacy. (6) The distributed material was previously distributed by another person.

(d) In addition to any other relief available at law, the court may order equitable relief against the person violating subdivision.⁵⁵

Again, similar to the California Penal Code, California Civil Code § 1708.85 defines what is considered private intimate parts rather than just stating a general term that is left open to interpretation.⁵⁶ In addition, the California Civil Code also utilizes wording such as “the distributed material constitutes a matter of public concern” and “the distributed material was photographed, filmed, videotaped, recorded, or otherwise reproduced in a public place and under circumstances in which the person depicted had no reasonable expectation of privacy” as a relief from liability.⁵⁷ This wording will be crucial in later analysis when it comes to potential first amendment violations and how said wording will defend these laws from being struck down as unconstitutional.

⁵⁵ Id.

⁵⁶ Id.

⁵⁷ Id.

Even though New York has recently enacted a law in 2014 to target offenders who disseminate revenge porn, the current written law has several loopholes that must be closed. New York Penal Law § 250.55 states

A person is guilty of dissemination of an unlawful surveillance image in the second degree when he or she, with knowledge of the unlawful conduct by which an image or images of the sexual or other intimate parts of another person or persons were obtained and such unlawful conduct would satisfy the essential elements of the crime of unlawful surveillance in the first or second degree, as defined, respectively, in section 250.50 or 250.45 of this article, intentionally disseminates such image or images. Dissemination of an unlawful surveillance image in the second degree is a class A misdemeanor.⁵⁸

Although New York Penal Law § 250.55 has not been challenged constitutionally, it has been challenged under facially insufficient grounds in the case of People v. Barber.⁵⁹ The case of People v. Barber stems from Barber posting naked pictures of the victim on his Twitter account and then sending said pictures to the victims employer and sister.⁶⁰ Barber was charged with second degree aggravated harassment, public display of offensive sexual material, and dissemination of an unlawful surveillance image in the second degree.⁶¹ Here the Court dismissed all three counts.⁶² The Court reasoned that the State of New York did not plead any “facts at all regarding the manner in which the pictures were obtained, let alone the specific types of unlawful behavior identified in § 250.45, which is incorporated by reference into § 250.55.”⁶³ In other words, the major issue with New York Penal Law § 250.55 is that it relied on another statute for definitions regarding “unlawful surveillance.”⁶⁴ A violation of New York Penal Law § 250.45 occurs when

a. For his or her own, or another person's amusement, entertainment, or profit, or for the purpose of degrading or abusing a person, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or

⁵⁸ N.Y. Penal Law § 250.55.

⁵⁹ People v. Barber, 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159 (Crim. Ct. 2014).

⁶⁰ Id.

⁶¹ Id.

⁶² Id.

⁶³ Id.

⁶⁴ N.Y. Penal Law § 250.55

record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or

b. For his or her own, or another person's sexual arousal or sexual gratification, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person dressing or undressing or the sexual or other intimate parts of such person at a place and time when such person has a reasonable expectation of privacy, without such person's knowledge or consent; or

c. For no legitimate purpose, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record a person in a bedroom, changing room, fitting room, restroom, toilet, bathroom, washroom, shower or any room assigned to guests or patrons in a motel, hotel or inn, without such person's knowledge or consent; or

d. Without the knowledge or consent of a person, he or she intentionally uses or installs, or permits the utilization or installation of an imaging device to surreptitiously view, broadcast or record, under the clothing being worn by such person, the sexual or other intimate parts of such person.⁶⁵

The issue above states how the image was obtained, however this should be irrelevant. What is relevant is that the pictures were disseminated without the victim's consent and thus the New York law cannot be "violated" without knowing how the unlawfully disseminated image was obtained.⁶⁶

Although there is no clarity issue with the New York laws, there is a loophole that must be closed in order to allow successful prosecution of the individual. It is ironic that N.Y. Penal Law § 250.45 was considered too narrow while the Albany and New York cyber bullying statutes are too broad. This perhaps may have been a response to ensure future New York statutes of similar purpose are not struck down under a 1st Amendment Challenge.

What is also rather troubling about this decision is the fact that the public display of offensive sexual material charge was also dismissed.⁶⁷ This is due to the fact that the court did not consider the images sent to the victim's workplace and sister as within the public domain.⁶⁸ This

⁶⁵ N.Y. Penal Law § 250.45

⁶⁶ Id.

⁶⁷ People v. Barber, 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159 (Crim. Ct. 2014).

⁶⁸ Id.

also shows how laws similar to that of revenge porn laws must not be too narrow as to allow loopholes in prosecution and thus create no closure for the victim.

Following are the major challenges to revenge porn statutes; 1st Amendment freedom of speech issues. Even before the first statute to specifically curb revenge porn was enacted, challenges to existing statutes regarding 1st Amendment violations were present. Specifically, the case of United States v. Petrovic addressed issues with intrastate revenge porn and the 1st Amendment.⁶⁹ In United States v. Petrovic, the defendant, who was living in a different state, was disseminating sexual images of his ex-wife via postcards to multiple individuals who knew the victim.⁷⁰ Although no federal revenge porn statute existed, the United States charged him with interstate stalking under 18 U.S.C.A. § 2261A for the humiliation his ex-wife suffered.⁷¹ 18 U.S.C.A. § 2261A states a person is guilty of said statute if he or she

(1) travels in interstate or foreign commerce or is present within the special maritime and territorial jurisdiction of the United States, or enters or leaves Indian country, with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, and in the course of, or as a result of, such travel or presence engages in conduct that-- (A) places that person in reasonable fear of the death of, or serious bodily injury to--(i) that person; (ii) an immediate family member (as defined in section 115) of that person; or (iii) a spouse or intimate partner of that person; or (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of subparagraph (A); or (2) with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that--(A) places that person in reasonable fear of the death of or serious bodily injury to a person described in clause (i), (ii), or (iii) of paragraph (1)(A); or (B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A), shall be punished as provided in section 2261(b) of this title.⁷²

⁶⁹ United States v. Petrovic, 701 F.3d 849 (8th Cir. 2012).

⁷⁰ Id.

⁷¹ Id.

⁷² 18 U.S.C.A. § 2261A (West).

The defendant attempted to challenge the constitutionality of the statute claiming it violated his freedom of speech.⁷³ The Court in this case applied a four prong constitutionality test which states “A governmental regulation satisfies this standard if (1) “it is within the constitutional power of the Government”; (2) “it furthers an important or substantial governmental interest”; (3) “the governmental interest is unrelated to the suppression of free expression”; and (4) “the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.”⁷⁴ The Court refused to apply this test stating that a preliminary matter must first be applied.⁷⁵ The Court concluded that this was a matter of private speech that was used to carry out a threat and thus the constitutionality test need not be applied.⁷⁶

In Petrovic the Court recognized how the 1st Amendment does not have as much power between private expression when said expression is used to cause harm to another party.⁷⁷ Thus, in similar laws that specifically target revenge porn, it does not seem likely that said laws would be struck down as unconstitutional just because an offender believes that he or she has a right to humiliate someone as it is within his 1st Amendment right.⁷⁸ So the major question is how can a revenge porn law be a violation of the 1st Amendment? According to the holding in Petrovic, the law must far overreach its power and thus infringe on conduct that is not meant to humiliate an individual.⁷⁹ Looking back to the cyber bullying law in Marquan, it seems that the law was struck down due to the vagueness of the statute that infringed on an individual’s right to free speech under the 1st Amendment.⁸⁰ Thus, as cyber bullying laws are similar to revenge porn laws, a violation of

⁷³ United States v. Petrovic, 701 F.3d 849 (8th Cir. 2012).

⁷⁴ Id. quoting United States v. O’Brien, 391 U.S. 367 (1968).

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ People v. Marquan M., 24 N.Y.3d 1, 5, 19 N.E.3d 480, 483 (2014).

the 1st Amendment would likely occur due to the overreaching power of said law that would allow for uncontrolled prosecutorial discretion due to the vagueness of what the law prohibits as held in Marquan.⁸¹

Unfortunately the Arizona statute prohibiting revenge porn, would be doomed to fall victim to a violation of the 1st Amendment.⁸² Arizona Statute 13-1425, enacted in 2014, states

- 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.
- B. This section does not apply to any of the following:
 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.
- 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.
- D. For the purposes of this section, " state of nudity" and " specific sexual activities" have the same meanings prescribed in section 11-811.⁸³

One of the first items to notice in the Arizona Statute 13-1425 is how brief part A of said statute is.⁸⁴ In addition, the statute lists vague circumstances when said statute is inapplicable such as law enforcement duties, medical treatment, and voluntary exposures in a public setting.⁸⁵ Arizona Statute 13-1425 most importantly does not list any exceptions in regards to educational purposes and as such any nude photograph or image without the depicted person's consent will constitute a violation of the statute.⁸⁶ This means that a picture of a concentration camp depicting nude

⁸¹ Id.

⁸² Antigone Books v. Brnovich, <http://mediacoalition.org/antigone-books-v-brnovich/>.

⁸³ A.R.S. 13-1425.

⁸⁴ Id.

⁸⁵ Id.

⁸⁶ Id.

individuals presented in a World War II studies class will constitute a criminal violation of the statute due to the fact that the presenter has not obtained the consent of any of the individuals depicted in said photograph. This led to the case of Antigone Books v. Brnovich.⁸⁷

The Case of Antigone Books v. Brnovich commenced when ten plaintiffs including photographer, publisher, and other media coalitions filed suit to enjoin the enforcement of Arizona Statute 13-1425 based on the theory that its overreaching language violated the 1st Amendment.⁸⁸ More specifically, the plaintiffs argued that Arizona Statute 13-1425 “criminalizes a wide range of newsworthy, artistic, educational and historical images” and thus will negatively and unnecessarily impede the educational body.⁸⁹ Examples of works impeded include but are not limited to

the Pulitzer Prize-winning photograph, “Napalm Girl,” showing an unclothed Vietnamese girl running from a napalm attack, newsworthy images such as the videos and images of prisoners in Abu Ghraib and Anthony Weiner’s photos of himself and, artistic images from renowned photographers, such as Edward Weston, Imogen Cunningham and Robert Mapplethorpe.⁹⁰

Judge Bolton of the Arizona District Court ordered a permanent stay of enforcement of the law on July 10, 2015 due to the laws violation of the 1st Amendment set forth by the plaintiffs.⁹¹ Arizona is currently in the process of amending Arizona Statute 13-1425 so that no violation of the 1st Amendment is present, however this may take time resulting in innocent victims being victimized by revenge porn.⁹² Despite the State of Arizona agreeing not to enforce the law, this case represents how important it can be to ensure a state’s revenge porn law is drafted clear and concise lest it be overturned for a violation of the 1st Amendment as it was in Antigone Books v. Brnovich.⁹³

⁸⁷ Antigone Books v. Brnovich, <http://mediacoalition.org/antigone-books-v-brnovich/>.

⁸⁸ Id.

⁸⁹ Id.

⁹⁰ Id.

⁹¹ Id.

⁹² Id.

⁹³ Id.

Although revenge porn laws have been created with the best of intentions, as stated above there is a fine line a state must not deviate from to ensure that the state's revenge porn law is not overturned due to a 1st Amendment violation as in the case of Antigone Books v. Brnovich or that the law is not too narrow as to inhibit prosecution of said offenders as in the case of People v. Barber.⁹⁴ Even though states like New Jersey have utilized preexisting laws such as invasion of privacy to enforce the prohibition of revenge porn, the usage of more direct laws would prevent a possible overturning when unique facts in a case present themselves.⁹⁵ For example, N.J.S.A. 2C:14-9 specifically mentions sexual contact in the statute without a specific definition.⁹⁶ This can lead to several issues when enforcing the law concerning intimate kissing. If someone posted on Facebook a video of his or herself "making out" with another individual without said individual's permission, would this be considered an act of invasion of privacy due to the "sexual contact" being posted on Facebook, and hence allow for prosecutorial discretion that may be too broad?⁹⁷ Although first in enactment, the very specified California revenge porn law is one of the most if not the most clear law in the country.⁹⁸ Said law clearly defines intimate acts as well as body parts in addition to different methods of the illegal distribution.⁹⁹ This further shields said law from 1st Amendment challenges as it does not include cases of nude photos that are used for educational purposes such as the stayed law in Antigone Books v. Brnovich.¹⁰⁰ In the end, it is the victims of revenge porn that suffer more than the state whose law is overturned or is too narrow to be enforced. Without the proper remedy, said victims will never receive the closure that they so desire for the humiliation and violated trust they suffered.

⁹⁴ Id.; People v. Barber, 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159 (Crim. Ct. 2014).

⁹⁵ N.J.S.A. 2C:14-9.

⁹⁶ Id.

⁹⁷ Id.

⁹⁸ Cal. Pen. Code § 647(j).

⁹⁹ Id.

¹⁰⁰ Antigone Books v. Brnovich, <http://mediacoalition.org/antigone-books-v-brnovich/>.

Since 25 states have not yet enacted revenge porn laws, this can lead to jurisdictional issues if the offender posts the material in a state where revenge porn is not prohibited and said issues may best be solved with a federal law that specifically targets revenge porn.¹⁰¹ As in the case of Petrovic, the federal government has enforced the posting of revenge porn with an indirect statute of stalking similar to invasion of privacy statute utilized by New Jersey.¹⁰² As the federal government is considering a statute specifically targeting revenge porn, it must be cautious in its drafting as not to be too narrow to have loopholes or too broad to violate the 1st Amendment.¹⁰³ This law can be successfully drafted under the Commerce clause as the internet crosses state borders. In addition, said law can establish a set definition of revenge porn rather than have that definition vary from state to state.¹⁰⁴ Although the considered federal law can look to California for a model law, if all the states eventually enact revenge porn laws this jurisdictional issue can prove moot. However, if the states do not, a federal law modeled after California law would close the jurisdictional loophole with a revenge porn specific law.¹⁰⁵

In conclusion, there have been proven, effective laws when it comes to enforcing anti-revenge porn policy that can be used as a basis for future laws of similar purpose. As discussed above, a law can be too narrow or too broad to enforce and thus need to be revised and in that time period allow those who post revenge porn to go free.¹⁰⁶ Although the federal government can enact a unified law to enforce revenge porn postings, this may best be left to the states to handle based

¹⁰¹ End Revenge Porn, <http://www.endrevengeporn.org/revenge-porn-laws/>.

¹⁰² United States v. Petrovic, 701 F.3d 849 (8th Cir. 2012).

¹⁰³ A Federal Revenge Porn Bill is Expected Next Month, <http://www.dailydot.com/politics/federal-revenge-porn-bill/>.

¹⁰⁴ Id.

¹⁰⁵ Cal. Pen. Code § 647(j).

¹⁰⁶ Antigone Books v. Brnovich, <http://mediacoalition.org/antigone-books-v-brnovich/>.

on their own unique circumstances and policy behind their enacted laws.¹⁰⁷ With the adoption of the California revenge porn criminal and civil statutes, there are proven wordings that will allow the efficient enforcement of revenge porn laws without also violating the 1st Amendment that other states can employ.¹⁰⁸ Although these laws can enforce anti-revenge porn policy, there is still the looming problem that although the offender may be punished, the offensive image or video most likely will be present within the infinite space of the internet continuously causing humiliation to the victim.¹⁰⁹ In addition, sites may have no obligation to remove the offensive videos.¹¹⁰ However, there may be a remedy under copyright laws that will offer the victim closure and a remedy to have the offensive material removed from the internet.¹¹¹

Copyright Issues and Other Remedial Measures Relating to Victims of Revenge Porn

Rights

Although the offender may be prosecuted for revenge porn, the scarring images or videos will still lurk the internet for anyone to view. However, there is relief for some victims to pursue to ensure the images are taken down so no further damage to the victim's reputation can be done. The first route of relief applies to victims who author their images or videos under the Digital Millennium Copyright Act.¹¹² Through this, the author can send a notice of copyright infringement to have said images removed. The second route for revenge porn videos for non-authors would be joint copyright claims due to the length of time the actor appears in the work.¹¹³ Third, the victim may be able to pursue tort claims against the site if they actively encourage the offensive material

¹⁰⁷ A Federal Revenge Porn Bill is Expected Next Month, <http://www.dailydot.com/politics/federal-revenge-porn-bill/>.

¹⁰⁸ Cal. Pen. Code § 647(j); Cal. Civ. Code § 1708.85.

¹⁰⁹ What is Revenge Porn and How Can I Protect Myself?, <http://www.lsnjlaw.org/Family-Relationships/Domestic-Violence/NJ-Laws-DV/Pages/What-Is-Revenge-Porn.aspx#.VgvVCrSdJSU>.

¹¹⁰ Id.

¹¹¹ Id.

¹¹² 17 USCA § 1201-1332.

¹¹³ 17 USCA § 201.

to be posted.¹¹⁴ Finally, the victim may be able to request the site to remove said material relying on the sties goodwill. Although the latter three options are not concrete, case law and statutes may develop from attempts to curb revenge porn on websites and thus make them viable options.

The first and foremost way to have revenge porn removed from a website is to have it removed under the Digital Millennium Copyright Act (DMCA).¹¹⁵ This method, however, only works if the victim of revenge porn was in fact the author of the video.¹¹⁶ Under the DMCA, the copyright holder is the one that produced the video and thus if the victim was the one who created said video, then he or she is the copyright holder.¹¹⁷ Specifically, the DMCA states that “(a) Initial Ownership. — Copyright in a work protected under this title vests initially in the author or authors of the work. The authors of a joint work are coowners of copyright in the work.”¹¹⁸ For example, there is an individual who records a sexual video and sends it to the offender who then proceeds to post it to a website without the former individuals permission. Due to the fact the former individual is the author of said video, he or she has an automatic copyright to the material according to 17 USCA § 201.¹¹⁹ Thus as a copyright holder, the victim can send a takedown notice to the website under 17 USCA § 512(C)(3)(a) which states

(A) To be effective under this subsection, a notification of claimed infringement must be a written communication provided to the designated agent of a service provider that includes substantially the following:

- (i)** A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (ii)** Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site.
- (iii)** Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and

¹¹⁴ Garcia v. Google, Inc., 786 F.3d 733 (9th Cir. 2015).

¹¹⁵ 17 USCA § 1201-1332; What is Revenge Porn and How Can I Protect Myself?, <http://www.lsnjlaw.org/Family-Relationships/Domestic-Violence/NJ-Laws-DV/Pages/What-Is-Revenge-Porn.aspx#.VgvVCrSdJSU>.

¹¹⁶ Id.

¹¹⁷ Id.

¹¹⁸ 17 USCA § 201.

¹¹⁹ Id.

information reasonably sufficient to permit the service provider to locate the material.

(iv) Information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted.

(v) A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law.

(vi) A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.¹²⁰

Although this would be a temporary remedy, if the website refuses, the victim must register his or her copyright then pursue remedies against the website in court.¹²¹ If the victim is not the author of the work, there are still other remedies although not as effective as the DMCA.

As a substantial actor in the work, the victim may still have remedies as well as a stake in the copyrighted material even if he or she was not the creator. However, copyright has been limited for actors or those who participate in the creation of said work. The case series of Garcia v. Google represents copyright limitations in regards to actors appearing in copyrighted works.¹²² The case of Garcia arose from an actress appearing in a five second clip of a recorded work.¹²³ At the time, Garcia was unaware that the movie would be used as an anti-Islamic hate film and that her voice would be dubbed over.¹²⁴ Garcia would later receive death threats which led her to attempt to pursue a copyright interest to have the video removed.¹²⁵ The 9th Circuit held however that a five second appearance does not entitle her to a copyright or a preliminary injunction; even if the irreparable harm was potential death. Another case, 16 Casa Duse v. Merkin, would address copyright issues regarding directors and editors.¹²⁶ The 2nd Circuit in this case held that Merkin

¹²⁰ 17 USCA § 512.

¹²¹ 17 USCA § 411.

¹²² Garcia v. Google, Inc., 786 F.3d 733 (9th Cir. 2015).

¹²³ Id.

¹²⁴ Id.

¹²⁵ Id.

¹²⁶ 16 Casa Duse, LLC v. Merkin, 791 F.3d 247 (2d Cir. 2015).

was not a joint copyright holder due to the fact his minor role in directing and editing the footage for the producer did not meet the minimal requirements for a copyright holder.¹²⁷ These cases, although on their face seem to deter joint copyright for actors and directors, set out some guidance for when a participant in said instances may be a joint copyright owner of the work.¹²⁸

These cases for joint copyright may actually assist victims of revenge porn who did not create the offensive material but have a stake in its unlawful distribution. A joint work as defined by 17 USCA § 101 “is a work prepared by two or more authors with the intention that their contributions be merged into inseparable or interdependent parts of a unitary whole.”¹²⁹ Although the 9th Circuit in Garcia held that an actor only appearing in the work for five seconds did not have a copyright interest, a court may consider that an individual who appears in most of the film to have a copyright interest.¹³⁰ This may grant relief to some individuals victimized by revenge porn when trying to have their videos removed from the internet. For example, if an individual depicted in a revenge porn video appears in most of the video, he or she may have met the prerequisites for a copyright interest that Garcia could not obtain and thus can have the video removed for copyright infringement.¹³¹ Unfortunately, those who appear in still photographs are not entitled to the same joint copyright interest as those who appear in videos and thus can only have them removed if he or she was the original author. These remedies are essential due to the fact the Communications Decency Act (CDA) provides so much protection for internet service providers who do not engage in the obscene content directly.¹³² However, the threat of litigation may encourage some to remove the offensive material.

¹²⁷ Id.

¹²⁸ Id.; Garcia v. Google, Inc., 786 F.3d 733 (9th Cir. 2015).

¹²⁹ 17 USCA § 101.

¹³⁰ Garcia v. Google, Inc., 786 F.3d 733 (9th Cir. 2015).

¹³¹ Id.

¹³² 47 USCA § 230.

Currently, there are splits in the courts defining active participation in posting offensive material which can give individuals tort claims against the website entities. Two cases with almost identical facts, Jones v. Dirty World Entm't Recordings LLC and S.C. v. Dirty World, LLC, involved websites that housed, and even encouraged the distribution of offensive material that caused emotional distress to both individuals in the cases.¹³³ However, the West District of Missouri held that the web entity was not entitled to the protection and immunities offered by the CDA due to the fact that said entity took steps to attract such offensive content rather than merely hosting said content.¹³⁴ The 6th Circuit, on the other hand, held that although the website did encourage the content, it was still protected by the immunities offered under the CDA.¹³⁵ Although the offensive content in these cases was not revenge porn, the case of GoDaddy.com, LLC v. Toups, would address the issue of revenge porn regarding the CDA.¹³⁶ In this case, the class action plaintiff's alleged that GoDaddy knew of the pornographic content on their servers but failed to remove it.¹³⁷ The plaintiffs did not allege that GoDaddy encouraged said material to be posted.¹³⁸ The Court in this case, however, held that GoDaddy was protected by the CDA and thus not jointly liable to the plaintiffs.¹³⁹ It is evident from these cases that the CDA gives websites and service providers near absolute immunity when it comes to content for which said providers are aware.¹⁴⁰ However, there is a possibility that Courts will be more likely to hold websites accountable for their content when said websites actually encourage the posting of offensive material.¹⁴¹ When it

¹³³ Jones v. Dirty World Entm't Recordings LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World, LLC, No. 11-CV-00392-DW, 2012 WL 3335284 (W.D. Mo. Mar. 12, 2012).

¹³⁴ S.C. v. Dirty World, LLC, No. 11-CV-00392-DW, 2012 WL 3335284 (W.D. Mo. Mar. 12, 2012).

¹³⁵ Jones v. Dirty World Entm't Recordings LLC, 755 F.3d 398 (6th Cir. 2014).

¹³⁶ GoDaddy.com, LLC v. Toups, 429 S.W.3d 752 (Tex. App. 2014), review denied (Nov. 21, 2014).

¹³⁷ Id.

¹³⁸ Id.

¹³⁹ Id.

¹⁴⁰ Id.; Jones v. Dirty World Entm't Recordings LLC, 755 F.3d 398 (6th Cir. 2014); S.C. v. Dirty World, LLC, No. 11-CV-00392-DW, 2012 WL 3335284 (W.D. Mo. Mar. 12, 2012).

¹⁴¹ Id.

comes to revenge porn, offenders are likely to post their videos on pornographic sites that are likely to keep said material active on their sites rather than a site like YouTube where it would likely be removed. Although the cases above strongly suggest that the CDA would protect said sites, if the site specifically encourages posting revenge porn, the victim may have a tort claim against said site.¹⁴² Even though this area of law is relatively undeveloped, it may provide some relief to victims of revenge porn.

Although victims of revenge porn can have copyright, joint copyright, and tort relief to have their videos removed, there is never harm in asking the site to remove the video out of professional good will.¹⁴³ As most websites wish to preserve their goodwill and public image, despite there being no copyright claims or litigation threats against them, they may be likely to remove the content out of sympathy for the revenge porn victim.¹⁴⁴ Thus, although there would be no legal obligation, servers such as Google and Yahoo would likely wish to preserve their public image and remove said content regardless.¹⁴⁵

With these options available to victims of revenge porn who seek to have their intimate content removed, further damage from the content may be prevented. Although pursuing claims under direct author copyright law offers the highest likelihood of success, many victims are not the authors of their videos or images and thus must proceed under alternate methods.¹⁴⁶ If the offensive material is a video in which the victim was a major actor, said victim may have a joint copyright.¹⁴⁷ In addition, tort claims may discourage active participant sites from encouraging

¹⁴² Id.

¹⁴³ What is Revenge Porn and How Can I Protect Myself?, <http://www.lsnjlaw.org/Family-Relationships/Domestic-Violence/NJ-Laws-DV/Pages/What-Is-Revenge-Porn.aspx#.VgvVCrSdJSU>.

¹⁴⁴ Id.

¹⁴⁵ Id.

¹⁴⁶ 17 USCA § 1201-1332.

¹⁴⁷ Garcia v. Google, Inc., 786 F.3d 733 (9th Cir. 2015).

offenders to post their revenge porn.¹⁴⁸ If all else fails, the victim can always attempt to appeal to the sites goodwill.¹⁴⁹ Regardless of the method, as case law and statutes develop this area of revenge porn copyright law, more remedies may become available to victims.

Conclusion

In conclusion, revenge porn can be successfully monitored providing that the states and if it decides, the federal government, enact clear laws that are not too narrow or not too broad. In reality, revenge porn is merely an enhanced form of cyber bullying with much darker repercussions due to the fact it targets a person's most intimate sides as seen in the case of State v. Ravi.¹⁵⁰ Also, like cyber bullying laws, revenge porn laws are just as susceptible to a violation of the 1st Amendment if said laws include vague language that are viewed as overbroad and trespass on legal activity such as in the case of Antigone Books v. Brnovich or if said laws are too narrow as to hinder prosecution as in the case of People v. Barber.¹⁵¹ Although other remedies may be available under the DMCA as a primary or joint copyright owner to have the aforementioned content removed, the internet is a vast and unpredictable entity of its own and thus may be impossible to remove the offensive content altogether.¹⁵² Knowing the possible difficulties of enforcing anti-revenge porn laws, victims must learn the risks associated when it comes to digital media and ones intimate life. Although criminal, civil, and copyright remedies do exist for victims, these can take years to settle with scars of the incident always remaining. The best enforcement is prevention and thus victims should educate themselves about the consequences of a single picture.

¹⁴⁸ Jones v. Dirty World Entm't Recordings LLC, 755 F.3d 398 (6th Cir. 2014).

¹⁴⁹ What is Revenge Porn and How Can I Protect Myself?, <http://www.lsnjlaw.org/Family-Relationships/Domestic-Violence/NJ-Laws-DV/Pages/What-Is-Revenge-Porn.aspx#.VgvVCrSdJSU>.

¹⁵⁰ Friedman, Alexi (March 5, 2012). "Text messages revealed in Rutgers webcam trial provide case's most dramatic evidence yet". N.J.com.

¹⁵¹ Antigone Books v. Brnovich, <http://mediacoalition.org/antigone-books-v-brnovich/>; People v. Barber, 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159 (Crim. Ct. 2014).

¹⁵² 17 USCA § 1201-1332.