

## The Darkside of Digital Intimacy

As human intimacy and relationships adapt to new technology, there is a rise in potential threats that can take place through our screens. The sending of mature photos has become the preferable and most popular way for couples to participate in digital intimacy. While this is the norm, it can potentially lead to ruinous exploitation. Individuals who fall victim to image-sharing abuse, otherwise known as revenge porn, by manipulative partners are left with little legal protection or societal support. It is indisputable that the protection of individuals who choose to participate in digital intimacy must be considered to a much greater extent. It is necessary for us to question the lack of formal state laws protecting revenge porn victims, the general prosecution of those who publish revenge porn, as well as the problematic sexual education curriculum that is being taught within the United States.

With technology constantly advancing, so do the behaviors of manipulative partners. Some call it online sexual harassment or non-consensual porn, but it has popularly been referred to by the media as revenge porn. Revenge porn is “sexually explicit images or videos of a person posted on the Internet, typically by a former sexual partner, without the consent of the subject in order to cause them distress or embarrassment.” (Merriam-Webster, n.d.). The Center for Innovative Public Health Research found that four percent (roughly 10.4 million) of Americans have fallen victim to threats or actual posting of revenge porn or other sensitive images (Young, 2016, para. 1).

Revenge porn seems to correspond with the facade that it is an issue derived out of modern day technology. In reality, the origins of this image-based abuse exist almost a decade before the birth of the World Wide Web. The first case of non-consensual porn was documented

in the 1980s when the popular adult magazine, *Hustler*, encouraged women to submit mature photos of themselves to be published in a monthly feature called the “Beaver Hunt” (McChrystal, 2018, para. 1). The images of the readers would be accompanied by their “interests, hobbies, sexual fantasies”, and sometimes, their first and last names (McChrystal, 2018, para. 1). Featured women began coming forward claiming that they had not personally submitted their images. Due to lack of verification information and an abundance of forged consent applications, the incident resulted in several lawsuits against *Hustler* (McChrystal, 2018, para. 1), ultimately marking the formal birth of revenge porn.

Non-consensual porn has no bias -- anyone, in any career field, can fall victim to image sharing abuse. Darieth Chisolm, an Emmy-winning television personality, former NBC News Anchor, international speaker and author, knows this all too well. Chisolm found herself living in a nightmare after an ex-boyfriend took explicit photos of her without her knowledge or consent and uploaded them to a website with her name attached. In her 2018 Ted Talk, she explains the reel of emotions she experienced once becoming aware of her exploitation: “I couldn't think. I couldn't breathe. I was so humiliated and so embarrassed and so ashamed. I felt like my world was coming to an end... this [was the beginning of] months of pain and depression and anger and confusion and silence” (Chisolm, 2018).

Jurisdictional questions from the court often lead revenge porn cases to drag on for months or years, making the process painfully exhausting. After 11 months in court and thousands of dollars in legal fees, Chisolm only received “a protection from cyberstalking and cyber abuse...and language from a judge that would force a third-party internet company to

remove the content” (Chisolm, 2018). A Chisolm states, bringing a revenge porn case to court is “expensive, complicated and confusing.”

With stories such as Chisolm’s, the topic of non-consensual porn has grown in both popularity and in controversy. Recently, it has been debated as to whether or not the posting of revenge porn should be criminalized, for some argue that if it were to be criminalized, it would be actively infringing upon people’s First Amendment rights to free speech. In 2015, both Vermont and Texas passed laws protecting victims against non-consensual porn. Two years later, both states went back to court over complaints that their non-consensual pornography laws violated the First Amendment (Tolentino, 2018, para. 3). Criminal laws are often used to protect privacy, such as protecting people from “unauthorized disclosures of private financial or medical information as well as laws against trespass and voyeurism.” (Franks, 2019). Revenge porn is, at the very least, a violation of personal privacy. If criminal laws are meant to protect all other forms of privacy, all while remaining compatible with the First Amendment, why is there a lack of carefully crafted laws that protect sexual privacy as well?

The relationship between revenge porn and the jurisdictional court is complicated. There are merely a handful of states that consider the distribution of revenge porn a felony. A majority of states still consider the distribution of revenge porn a misdemeanor or punishable by fine. It is arguable that the sole existence of laws that are revenge porn specific can be considered a large step in safer digital intimacy. Ultimately, it is still not enough.

Before the creation of any formal laws unique to the distribution of revenge porn, many victims still went unprotected by pre-existing laws against stalking, harassment, and voyeurism. According to the Cyber Civil Rights Initiative,

“Laws prohibiting stalking and harassment often only apply if the victim can meet the heavy burden of showing that the nonconsensual pornography was part of a pattern of conduct directed at the victim with intent to distress or harm. Such laws do not apply to perpetrators careful enough only disclose an intimate image once – though in one of the most public and permanent ways possible – or those motivated by a desire for money or notoriety rather than revenge.” (Franks, 2019)

In states that still do not have formal laws specifically targeted toward the sharing of revenge porn, victims often remain legally unprotected.

When attempting to formally bring a case to court, many victims choose to pursue civil litigation against cyberharrasment/cyberstalking and revenge pornography under “the torts of defamation, invasion of privacy, public disclosure of private facts, and intentional infliction of emotional distress (IIED)” (Kumal et. al., 2016, para. 23). Even if an individual is able to successfully file a tort claim, they are commonly ineffective.

Filing a civil claim is another option, but even then, the process in doing so is commonly too tedious and expensive for revenge porn victims to undertake (Kumal et. al., 2016, para. 25). The first individual to file a civil suit against revenge pornography in the state of Florida was Dr. Holly Jacobs. In 2013, Jacobs chose to file a claim against her ex-boyfriend for “invasion of privacy, public disclosure of private facts, and intentional infliction of emotional distress” (Roy, 2013). Ultimately, the case was dismissed for lack of evidence that was able to conclusively link the distribution of her private photos to her ex-boyfriend (Roy, 2013). Jacobs’ and Chisolm’s experiences showcase the pricey, confusing, and unreasonable loops victims are forced to jump through when legally prosecuting their manipulators.

Although there are now 46 states that have laws designed to prohibit the distribution of non-consensual porn (Franks, 2019), they are still considerably new and are in need of development. Many, if not all of the laws, require updating due to the lack of consideration in regards to developing technology. With new forms of which people are able to acquire sexually explicit photos without one's consent, states must begin to take into account where "up-the-skirt" photos, as well as photos taken with hidden cameras, fall within pre-established privacy laws and revenge porn laws. States must specify what is punishable under pre-established laws, what exactly is necessary for an image to be considered revenge porn, and what form of punishment is necessary for those who publish revenge porn, all while guiding and supporting victims throughout the process.

While society enjoys shaming revenge porn victims, declaring that they deserve the unfair exploitation that they have fallen casualty to, many people seem to have forgotten (or chosen to remain ignorant to) the fact that it is not just grown women and men who are victims of image sharing abuse -- it is also adolescent minors. According to survey results conducted by University of Florida Professor, Dorothy Espelage, sixty-eight percent of high school girls have been sexually harassed at least once (Espelage et. al, n.d., pg. 11, para. 4). Sexual harassment in schools hosts a slew of other growing concerns, one of them being the developing pressure young girls feel to send nude photos. Of all girls who send explicitly revealing images, twelve percent claim that they feel pressured to do so (National Institute of Justice, n.d.). Eleven percent of teenage girls ages 13 to 16 in the United States admitted that they have been involved with sending or receiving sexually explicit messages ("Do Something," 2015).

The pressure to send nude photos is felt in young people across the globe. Based on results by Childnet International, over half (51%) of respondents in the United Kingdom ages 13 to 17 years-old said “they have witnessed people their age circulating nude or nearly nude images of someone they know...while six percent have been the target of this behaviour.” (Childnet International, 2017, para. 10). As more and more smartphones are being placed into the hands of impressionable adolescents, we can only expect the number of young revenge porn victims to increase.

This leads us to question the sexual education curriculum in American public school systems. With a large percentage of sex education in middle schools and high schools being abstinence-only programs, young people are experiencing a lack of education on how to explore themselves and others in a safe and healthy manner. Why are young adults not learning about the dangers of sharing sexually revealing images? Do they understand the laws of sharing sexually explicit photos as a minor? If they *do* share mature photos of themselves, what should they do next?

In order to educate future generations on the topic of digital intimacy, we must address and change the angle of how sexual education is taught to adolescents. Only 24 states mandate sex education to be taught in public schools, while 27 states require abstinence to be stressed within the curriculum (Guttmacher Institute, 2016). Abstinence-only programs typically advocate “monogamous, heterosexual marriage as the only appropriate context for sexual intercourse and as the only certain way to avoid unwanted pregnancies and sexually transmitted diseases” (McCammon, 2017, para. 2). While theoretically effective in preventing pregnancy, abstaining from sexual activity is often unsuccessful (Santelli, 2017, para. 4). Due to the prevailing idea of

teenage abstinence, society turns the other way when presented with even the mere idea of teenage sexual curiosity and promiscuity. This must change.

The American public school system is failing young adults when they feel they can not participate in sexual exploration. When they are not accurately informed, young adults are naive to the dangers that can take place during sexual activity, both physically and digitally. Young adults do not leave the classroom enlightened when being taught a curriculum that encourages “abstinence-only.” Instead, they leave the classroom void of any skills and knowledge on how to truly protect themselves and others, and more often than not, they leave the classroom feeling ashamed. In order to stop the climbing rates of adolescent sexual harassment and the sharing of non-consensual pornography, the dangers of revenge porn and how to avoid it must be integrated into modern day sexual education within public schools.

From its emergence to now, revenge porn has remained an issue that is seemingly unable to be universally tackled by lawmakers within the United States. Despite the recent creation of laws that are revenge porn specific, they offer little protection to victims and little punishment to offenders. In order to change this, states must reconsider their laws and update them according to developing technologies, as well as consider the number of new ways to obtain nonconsensual pornography during their amending. Change must also take place in our school systems. As abstinence-only sexual education programs are still heavily prominent within the United States, it brings on a massive amount of misinformation and shame to young people. Technology will only continue to become more and more popular among emerging generations. They must be informed and prepared on how to practice safe digital intimacy if they choose to do so, and how to avoid finding themselves a victim of revenge porn.

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