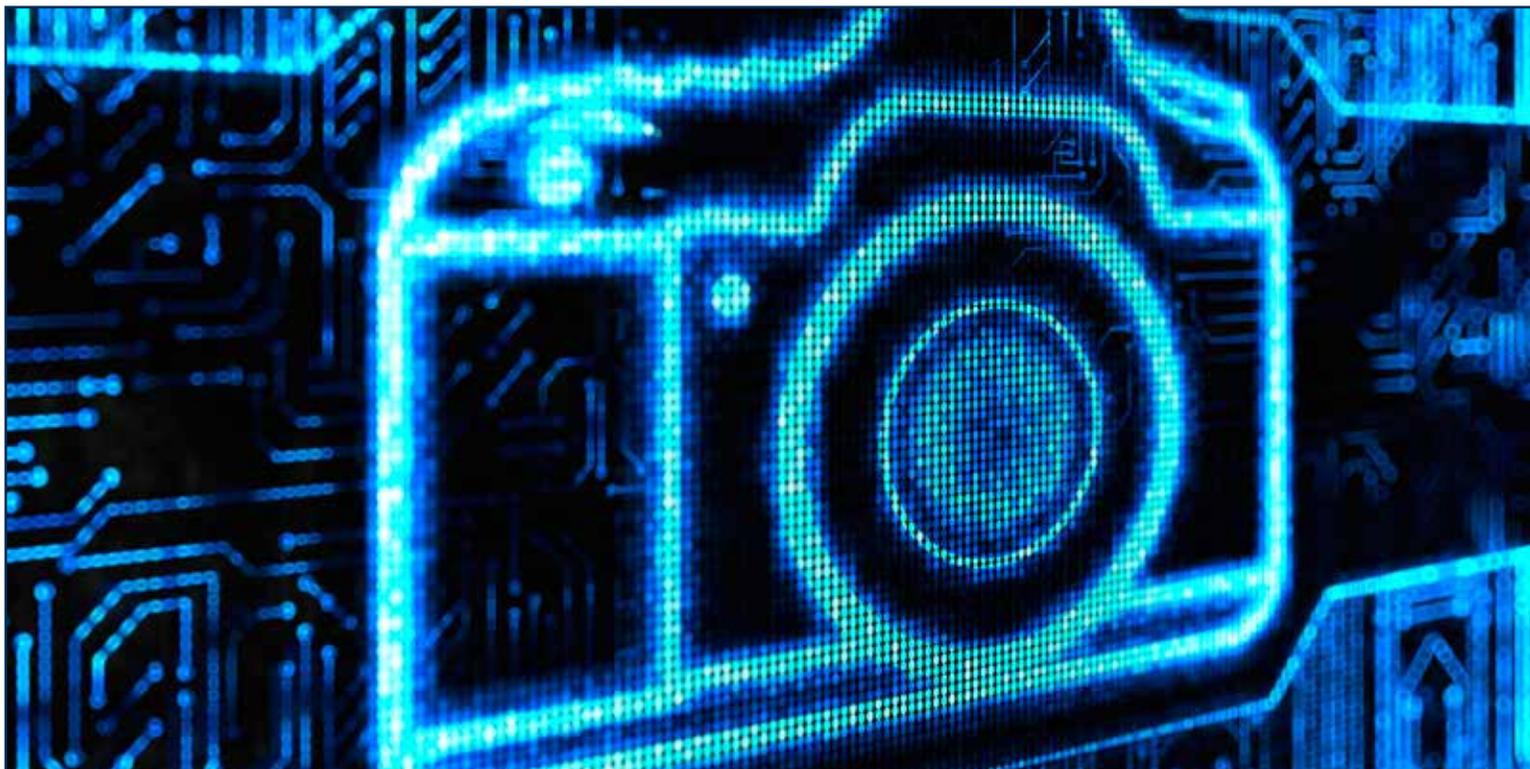


STRATEGIES

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PROSECUTING IMAGE EXPLOITATION¹

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This isn't about porn; this is about humiliation. There's [sic] plenty [of] naked women on the Internet who are there by their free will and would love to be looked at. I'm not one of them. That's the appeal of this. It's humiliation.

'Online rape' is a hard way to say it, but it's the only way I can make sense of the violation part. You're sexualizing a person and getting off on the fact that she doesn't want to be there.

— "Elizabeth," anonymous victim of image exploitation³

INTRODUCTION

Image exploitation is a distinct form of sexual abuse, involving the nonconsensual creation, possession, or distribution of an image or images depicting the victim as nude, semi-nude, engaged in consensual sexual activity, or being sexually assaulted. The image in question may be a photograph, screenshot, or video recording. By using cell phones, email, social media, and the Internet, an offender can distribute photographs and video to the victim's circle of friends, family, and colleagues, as well as the countless denizens of cyberspace.⁴

Image exploitation of this kind takes various forms. In some circumstances, images are consensually created or shared, but become exploitive and harmful when they are distributed to others without the victim's consent. In other cases, offenders record sexual assaults, thereby creating lasting images of the victim's rape, exponentially extending the harm caused by the original assault. Negative impacts on the victim may include emotional, physical, and financial damage, as well as damage to a victim's reputation, family life, and intimate relationships. All forms of image exploitation expose the victim to immeasurable trauma of essentially

infinite duration, permanently invading the victim's autonomy and security.

The comparison of image exploitation to sexual assault is not novel. While it's impossible to rank trauma, the United States Supreme Court noted that "[child] pornography poses an even greater threat to the child victim than does sexual abuse or prostitution."⁵ The Court recognized that pornography perpetuates the child's victimization: "[b]ecause the child's actions are reduced to a recording, the pornography may haunt him in future years, long after the original misdeed took place."⁶ Clinical research and anecdotal evidence support this finding.⁷ For example, one victim wrote the following impact statement:

Every day of my life I live in constant fear that someone will see my pictures and recognize me and that I will be humiliated all over again. It hurts me to know someone is looking at them—at me—when I was just a little girl being abused for the camera. I did not choose to be there, but now I am there forever in pictures that people are using to do sick things. I want it all erased. I want it all stopped. But I am powerless to stop it just like I was powerless to stop my uncle.... My life and my feelings are worse now because the crime has never really stopped and will never really stop.... It's like I am being abused over and over and over again.⁸

This perpetuity of harm exists with all forms of image exploitation, including adult victims who have been sexually assaulted and filmed, or where private images of the victim have been obtained through surreptitious, coercive, or abusive means and then shared with any number of individuals or the Internet. Even where images are consensually created and shared, victims can suffer perpetual embarrassment and invasion of privacy when those images are distributed without their knowledge or consent.

Despite the trauma suffered by victims of image exploitation, no jurisdiction currently has a comprehensive statute aimed at this type of crime; instead, certain types of image exploitation are addressed by a patchwork of criminal laws, many of which are aimed at the misuse of technology to victimize.⁹ When technology evolves faster than the law, prosecutors are challenged to hold offenders accountable under imperfect or untested laws, while continuing to combat

the routine victim-blaming attitudes confronted in other crimes of violence against women.¹⁰ This STRATEGIES will identify relevant statutes applicable to the various forms of image exploitation and suggest strategies for prosecuting perpetrators under the available laws.

VARIATIONS AND EXAMPLES OF IMAGE EXPLOITATION

Image exploitation comes in distinct, but overlapping, forms. The following sections will describe various forms of image exploitation, including the dynamics of the behavior and the potential for harm.

"Sexting"

Sending provocative text or images via cellular telephones¹¹ is commonly referred to as "sexting."¹² Existing studies tend to focus on teens and young adults, with several studies attempting to provide an accurate accounting of how many engage in sexting; figures range from 1%–33%.¹³ The discrepancy between the studies can be attributed to any number of factors, including differences in methodology,¹⁴ included age groups,¹⁵ and definitions of sexting used in each survey.¹⁶ All of the studies may also suffer from underreporting, as each necessarily relied on young people (often with their parents' permission) to self-report their participation in a behavior that they may consider to be embarrassing¹⁷ or risky.¹⁸

Sexting, by definition, includes the sharing of sexual photographs, and, thus, there is always a danger that sexting becomes a means of image exploitation. Sexting is often precipitated by an emotionally-charged incident and has been identified as an emotionally-driven behavior.¹⁹ It is most prevalent among teenagers and young adults,²⁰ a group with underdeveloped impulse control, judgment, and decision-making abilities.²¹ Regardless of the motive behind sexting, its potentially permanent consequences can cause grave trauma to victims.²²

Video Voyeurism

Hidden cameras, in the form of cellular telephones, nanny cams, webcams, and increasingly creative spy cameras, allow modern day "Peeping Toms" to secretly record victims at their most intimate moments. No longer limited to looking through windows without permission, voyeurs can

now record and disseminate images remotely.²³ By capturing these private images and sharing them online without consent, offenders re-victimize their subjects *ad infinitum*.

Recordings of Sexual Assaults

When perpetrators of, or witnesses to, a sexual assault record the crime with a still or video camera, they are creating an image of exploitation. As people with smart phones increasingly record every aspect of their lives, the recording of crimes, including sexual assaults, is also becoming more frequent.²⁴ When these images are shared or uploaded to the Internet, the victim's assault becomes part of the public domain and, in some cases, is further publicized by media outlets that publish reports on the assault crime with accompanying images.²⁵ Those who film and/or distribute recordings of a sexual assault *may* be charged with the assault itself, with crimes of image exploitation, and with additional crimes that may apply under different theories of criminal liability, as discussed in more detail below.

"Revenge Porn"²⁶

The phrase "revenge porn" describes a circumstance where a photograph or video depicting nudity or sexual activity is consensually taken or shared between individuals, but is then distributed to others or posted online without the consent or knowledge of the victim. The term "revenge porn" is used because the described scenario often occurs in the context of a break-up²⁷ where the offender intends to embarrass, harass, or harm the victim through the dissemination of private, intimate images. The nonconsensual distribution can vary in scope, intent, and harm.²⁸ The offender may show an image to a few of his friends, email an image to a shared group of friends or specified distribution list, or post an image to an online forum,²⁹ social media network, or an online video sharing platform. When the images are posted online, the offender will often also "doxx"³⁰ the victim by posting identifying information, including the victim's full name, address, email address, phone number, and/or links to her social media accounts.

Image Blackmail or "Sexploitation"³¹

Offenders with access to incriminating or sexually explicit images may use them to blackmail victims. In exchange for not revealing the images, offenders may demand cer-

tain actions or extort money, sexual favors, or other items of value from the victim. Offenders may legally possess the images, or they may have gained access to private photos or videos by illegal means, including hacking into the victim's computer, email, smart phones, or social media accounts.

PROSECUTING IMAGE EXPLOITATION: IMPLEMENTING EXISTING AND IDENTIFYING EMERGING LAWS

Although there are no comprehensive statutes aimed at image exploitation crimes, state legislatures continue to propose statutes to address gaps in the law and keep up with technological advancements. As the law continues to evolve, law enforcement and prosecutors can use existing laws to hold offenders accountable based on the scope of exploitation, their intent, and the harm inflicted upon their victims.

Stalking, Cyberstalking, and Cyber Harassment³²

Every jurisdiction has enacted a statute prohibiting stalking, and many have specific statutes aimed at the use of digital and cyber technology.³³ These stalking, cyberstalking,³⁴ and cyber harassment³⁵ laws vary in how they legally define the prohibited behavior, but the intent is the same – to protect victims from harassment.

Although cyberstalking and harassment laws are prevalent, they have not been traditionally used to prosecute individuals who post and share sexually explicit pictures online. Statutes generally require proof that the offender engaged in repeated behavior toward the victim with the intent to harass or cause emotional distress. However, particular elements of each statute differ in ways that can be important for applying the statute to offenses of image exploitation.

Revenge porn, sexting, and other forms of image exploitation may be successfully prosecuted as stalking or harassment where offenders repeatedly distribute or post images online with the intent to harm or harass the victim. Challenges can arise in particular circumstances where offenders publically post only one image that is viewed by the victim's friends, family, and/or colleagues. In such a case, the prosecutors may not be able to establish the requisite "course of conduct" or prove that communication was directed to the victim.³⁶ Where the language of the statute is broader to include continuous harassment,³⁷ the prosecutor can argue

that the statute applies to a single online posting because any image uploaded to the Internet will remain in the cyber sphere for perpetuity, and, therefore, will continually cause the victim harm. Where a statute defines stalking and harassing to include communication or conduct “directed at”³⁸ the victim or prohibits “third party” or “indirect” contact,³⁹ the prosecutor can argue that posting naked or sexually explicit images online or sending them to the victim’s friends and family satisfies that element of the crime because the offender’s clear intent is to harass, embarrass, and/or harm the victim through the dissemination of intimate images.

Video Voyeurism and Invasion of Privacy

The federal government and every state have enacted laws protecting individual privacy rights in the form of statutes addressing video voyeurism and invasion of privacy.⁴⁰ While statutory language varies, it is generally illegal to surreptitiously film or photograph a victim who is nude or engaged in sexual activity.⁴¹ Where a victim is unwittingly recorded undressed or engaged in sexual activity, there is a clear application of video voyeurism and invasion of privacy statutes.

Problematic applications of these laws can occur where statutes contain particularly narrow language allowing offenders to escape accountability for their crimes of image exploitation. For example, in 2002, the Washington State Supreme Court overturned the voyeurism conviction of a man who was found to be taking “upskirt”⁴² photographs of women at a local mall because that state’s voyeurism statute at the time did not cover intrusions of privacy in public places.⁴³ Since that decision, Washington’s legislature amended their voyeurism statute, which now proscribes voyeurism “under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.”⁴⁴ Other states have also addressed similar issues with the statutory construction of their voyeurism laws,⁴⁵ highlighting the challenges faced when criminal statutes are out-of-date with criminal behavior, especially when that that behavior is facilitated by ever-changing technology.

As technology evolves, so does the manner in which we interact with technology. Advances in hardware and software precipitate changes in behavior involving technology, in particular, individuals are increasingly using social media applications to share photographs and videos.

Depending on the individual, those images are shared within circles of friends and family or they can be shared with the public at large. Those who commit crimes are likewise recording their crimes and posting evidence online. This has led to images of sexual assaults being shared and posted online. Where the victim of a sexual assault is further assaulted and exploited by having her assault recorded and shared with known and unknown individuals, prosecutors are tasked with holding offenders accountable for the full extent of their criminal behavior and the immense and perpetual harm inflicted.

Where the statutory construction of a privacy or voyeurism statute requires that the victim be “unaware”⁴⁶ of the recording or require the recording to be surreptitious,⁴⁷ prosecutors may not be able to apply these statutes to cases where image exploitation occurs concurrently with a sexual assault and where the victim is aware that she is being recorded, but does not give consent. This particular circumstance highlights an important gap in image exploitation law and calls on prosecutors to fully examine their state’s statutory scheme to determine if other laws may apply to this type of behavior.⁴⁸

Prosecutors should seek to adapt voyeurism and invasion of privacy laws⁴⁹ to cases of sexual assault where the acts committed are the “ultimate invasion of privacy.”⁵⁰ For example, New Jersey’s invasion of privacy law contains the following language:

*[K]nowing 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 person’s consent and under circumstances in which a reasonable person would not expect to be observed.*⁵¹

Under this and similar statutes, the prosecutor can argue that sexual assault, no matter who is present and where it takes place, is a circumstance where the victim has a reasonable expectation of privacy.⁵²

When image exploitation co-occurs with sexual assault, law enforcement should also aggressively investigate the circumstances surrounding the assault to accurately ascertain the exact role that the individual who filmed the assault

played in the assault itself. Often dismissed as simply bystanders, individuals who film an assault may have orchestrated the assault or identified and encouraged perpetrators to engage in the assault – sometimes for the purpose of creating exploitive images.⁵³ According to the theory of accomplice liability, where offenders are acting in concert, aiding, or abetting, each participant is held accountable for each other's actions. Similarly, conspiracy charges are applicable where the evidence establishes an explicit or tacit agreement to commit the assault and, in this example, the overt act of filming the assault is completed.⁵⁴ Accomplice and conspiracy theories of prosecution are strengthened by the fact that the image the “bystander” created can be viewed as a lasting “trophy” of the crime itself.

As well as the invasion of privacy, video voyeurism,⁵⁵ accomplice, and conspiracy crimes discussed above, law enforcement and prosecutors should also explore charging a “bystander” who films a sexual assault with other crimes, including failing to report a crime.⁵⁶ Many of these statutes often carry felony penalties and can subject the offender to sexual registry requirements.⁵⁷

Theft by Extortion or Blackmail

Theft statutes can also be applied in cases involving image exploitation where the offender unlawfully gained ownership or control of the image and is threatening to expose the victim.⁵⁸ Many states also have specific blackmail statutes that penalize anyone who threatens to release incriminating or explicit photographs unless certain demands are met.⁵⁹ Punishment and grading under many theft and blackmail statutes may depend on the dollar value of the “thing” demanded from the victim.

Hacking or Computer Trespass

Many victims of image exploitation report that they never shared or disseminated the photographs or videos that were used to exploit them. Although some victims may simply be mistaken, misremembering, or misplacing their trust in persons or non-secure technology, the fact is that some images are illegally accessed by known or unknown offenders.⁶⁰ Specialized law enforcement investigators can gather computer forensic evidence showing that a “hacker” unlawfully gained access to a victim's computer, cellu-

lar telephone, or online storage system⁶¹ and downloaded photographs without the victim's approval. In these circumstances, offenders can be prosecuted using computer trespass or “hacking” statutes that make it illegal to access another person's computer without permission.⁶²

Child Pornography and Specific Sexting Statutes

The creation, distribution, and possession of sexually explicit images⁶³ of minors⁶⁴ violates federal and state child pornography statutes.⁶⁵ When adult offenders solicit, share, or possess such images, law enforcement should be sure to investigate whether the offender has committed any other co-occurring crimes, such as sexual battery and criminal solicitation of a minor.⁶⁶ In these cases, prosecutors can use existing child pornography laws to ensure that the offender is appropriately held accountable for his crimes, including those of image exploitation.

More complicated circumstances arise when minors⁶⁷ create, send, or receive sexually explicit images of other minors, particularly ones whom they know and with whom they have a friendly, flirtatious, or romantic relationship. In these circumstances, legal scholars, news pundits, child advocates, and legislatures have expressed concern that child pornography laws could be applied to turn typical teenagers into convicted child pornographers and registered sex offenders.⁶⁸ They argue that, unlike child pornography, the minors depicted in self-produced sexual images are not victims of sexual abuse, and, therefore, child pornography statutes should not apply in cases where minors are simply sexting each other as a volitional, experimental part of their adolescence.⁶⁹ As a result of this argument, twenty states have modified their child pornography statutes or enacted separate “sexting” statutes to address cases involving minors who engage in creating and sharing sexually explicit images.⁷⁰ For example, in Nebraska, a juvenile offender can assert an affirmative defense to child pornography charges if s/he can prove that the image was “knowingly created and provided by” a minor not younger than fifteen and that s/he did not distribute the image to others and did not coerce the creation or transmission of the image.⁷¹ Nevada likewise allows for an affirmative defense, and, where the defense is not applicable, the statute prescribes misdemeanor-level punishment and specifically states that the juvenile offender shall not be considered a sexual offender subject to registry requirements.⁷²

When and how the justice system should be involved in minor-to-minor sexting remains unsettled, in part because the motives and consequences of sexting are complicated. Sexting is often an emotionally-driven behavior by adolescents who possess poor impulse control, judgment, and decision-making abilities.⁷³ This is further evidenced by the fact that minors and young adults often look back at their sexting activity with remorse or embarrassment. One study found that 75% of teens acknowledge that sexting “can have serious negative consequences.”⁷⁴ That same study, however, also reported that 66% of teen girls described sexting as “fun and flirtatious,” while at the same time acknowledging that most sexually explicit photographs were sent after feeling “pressure” from a guy.⁷⁵

Law enforcement must be mindful of the complicated construct of adolescent behavior and not assume that sexting is merely a risky sexually experimental part of being a teenager. A study of sexting cases that had been referred to police found that approximately two-thirds of the cases involved criminal behavior other than consensual minor-to-minor sexting.⁷⁶ These “aggravated circumstances” either involved an adult or involved minors engaged in malicious, non-consensual, or abusive behavior.⁷⁷ Potential harm from sexting can be immediate (blackmail, extortion) or a result of the permanence of a digital image existing in cyber space. Abigail Judge described the potential for harm and exploitation as a result of sexting:

*The potential for digital images to exist in perpetuity... as well as the psychological effects of the widespread distribution of such images, does present the potential for uniquely pernicious harm. Further, although the exchange of images may begin in an experimental or friendly context, it may abruptly shift to an aggravated one—especially given the vicissitudes of adolescent relationships, the normative increase in sexual energy during this period, and potent neurodevelopmental influences.*⁷⁸

Prosecutors must be vigilant and thorough when investigating, charging, and resolving cases involving minor-to-minor sexting. Many factors must be considered, including whether the behavior was in fact consensual or a product of coercive behavior, whether any images were distributed to others or uploaded to the Internet, and the images’ existing and potential harm.

Where sexting occurs between consenting adults, the creation and possession of sexually explicit images is not illegal;⁷⁹ however, subsequent unwanted distribution or sharing of an image may be illegal under other theories of image exploitation, including cyberstalking.⁸⁰

Revenge Porn

Currently, at least thirteen states have enacted laws specifically targeting those who distribute or publish sexually explicit images without consent.⁸¹ Almost all other states have pending bills that would either make new law or amend their current laws to cover this type of image exploitation.⁸² Most enacted and proposed statutes make it illegal to intentionally publish a sexually explicit image on the Internet with the intent to cause harm or serious emotional distress.⁸³ However, there are other proposed bills that would make any nonconsensual publication of a sexually explicit photograph illegal.⁸⁴ Certain versions of proposed legislation also expand on what constitutes “publishing an image.” For example, instead of narrowing it to publication on the Internet, revenge porn statutes could also prohibit the sharing of photographs in person and via text message, social media, and email.

In December 2014, California had its first successful prosecution under its disorderly conduct law that is commonly referred to as its “revenge porn” law.⁸⁵ The language of California’s statute follows:

*Any person who photographs or records by any means the image of the intimate body part or parts of another identifiable person, under circumstances where the parties agree or understand that the image shall remain private, and the person subsequently distributes the image taken, with the intent to cause serious emotional distress, and the depicted person suffers serious emotional distress [is guilty of Disorderly Conduct].*⁸⁶

It should be noted that California has recently approved an amendment to include the unlawful distribution of “selfies” shared with the offender.⁸⁷ This amendment and the number of similar bills pending approval signify the evolving nature of image exploitation law.

PROSECUTING IMAGE EXPLOITATION: GENERAL STRATEGIES

Crimes of image exploitation have several common attributes: they frequently occur within an intimate partner relationship, involve digital evidence, and result in extensive, but often non-monetary harm. The following paragraphs will discuss general strategies that can be employed in any prosecution involving image exploitation.

Intimate Partner Violence

Image exploitation is often part of a larger, ongoing pattern of abuse and stalking. When appropriate, multiple acts encompassing the entirety of an offender's criminal activity should be charged substantively or introduced as prior bad act evidence.⁸⁸ Pretrial protection orders should be sought with specific language prohibiting online communication, use of the victim's image, indirect contact, and other prohibitions particular to the facts and offender's pattern of image exploitation. Domestic violence and stalking statutes may also apply, as image exploitation is commonly used in the context of an abusive intimate partner relationship (or former relationship). Harassment and terroristic threats statutes⁸⁹ may also apply to the offender's ongoing criminal acts. Victims should be advised that they can apply for civil protective orders – allowed in every state – for victims of domestic violence, sexual assault, and/or intimate partner stalking, which universally include language that prohibits contact in person, by telephone, by mail, through written notes, and via electronic communication.⁹⁰ Prosecutors can also require that a defendant agree to an indefinite civil order of protection being entered as part of plea negotiations.

Digital Evidence

Law enforcement and prosecutors must be familiar with basic digital evidence to successfully prosecute most cases involving image exploitation. Offenders use cellular telephones, digital tablets, the Internet, and social media to perpetrate their crimes. Evidence used at trial can be in the form of testimony, screenshots,⁹¹ forensic examinations, or a combination thereof. Often, the most valuable evidence is uncovered using cyber investigative techniques.

Forensic investigators can preserve and examine evidence contained on laptops, smart phones, and other digital me-

dia that can establish that the offender captured, possessed, and distributed the images used to exploit the victim.⁹² For example, many digital photographs and videos will contain metadata⁹³ that can link the image to a particular device, online account, or other identifying information. Investigators should also look for evidence of ownership, custody, and control to provide circumstantial evidence placing the offender "behind" whichever digital device was used.

Proving Harm

Many statutes that can be used to prosecute image exploitation require a proof of harm. In certain cases, typically those involving theft, blackmail, and hacking, an offender may only be exposed to misdemeanor charges (and punishments) where the victim's damages cannot be quantified to a monetary amount. In those cases, the prosecutor should ensure that the victim provides proof of any loss of employment, incurred medical expenses,⁹⁴ and other monetary damages. In all cases of image exploitation, it will be necessary to inform the court or jury the full extent of the harm inflicted on the victim by the offender's acts of image exploitation. Prosecutors can use victim impact statements, as well as testimony from the victim, her family and friends, and, with the explicit permission of the victim,⁹⁵ her counselor/therapist to show the serious and perpetual damage that the offender caused the victim, her relationships, professional life, and personal autonomy.

CONCLUSION

Cases involving image exploitation are frequently minimized as "scandals,"⁹⁶ but they are serious legal and moral violations. The nonconsensual creation, possession, or distribution of images depicting a victim nude, semi-nude, engaged in consensual sexual activity, or being sexually assaulted can cause infinite harm to a victim and his/her family. Existing criminal laws, while imperfect, can and do provide avenues for perpetrator accountability. Prosecutors handling these cases can use offender-focused strategies to counter the victim-blaming that far too often may result in investigative and trial-related challenges, as well as additional devastation for a victim.

Cases of image exploitation have unfortunately included dozens of teens and young adults who have committed suicide as a result of having sexually explicit material posted

online or shared amongst their peer group: a fifteen year old girl who posted a YouTube video detailing her online abuse before she committed suicide,⁹⁷ and a Rutgers college student who committed suicide after his roommate surreptitiously filmed and distributed video of the victim kissing another man are just two examples of the tragic consequences of image exploitation.⁹⁸ As prosecutors continue to develop strategies to support victims and hold offenders accountable, the horrific impact of these crimes should inform charging decisions, plea negotiations, trial practices, and arguments regarding appropriate sentencing.

ENDNOTES

1 The term “image exploitation” is used in this article to refer to acts involving the nonconsensual production, possession, or distribution of images depicting the victim as nude, semi-nude, engaged in consensual sexual activity, or being sexually assaulted.

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3 Tracy Clark-Flory, *Doxxing victim: “This isn’t about porn, this is about humiliation,”* SALON, (Mar. 1, 2014), http://www.salon.com/2014/03/02/doxxing_victim_this_isn%E2%80%99t_about_porn_this_is_about_humiliation/; see also Emma Holten, *Someone Stole Naked Pictures of Me. This is What I Did About It*, THE GUARDIAN (Jan. 21, 2015), <http://www.theguardian.com/commentisfree/video/2015/jan/21/naked-pictures-this-is-what-i-did-revenge-porn-emma-holten-video>.

4 Although this STRATEGIES focuses on digital and cyber means of image exploitation, “old fashioned” image exploitation also exists; e.g., offenders may make flyers with the victim’s image and personal information, and then post the flyers throughout the victim’s community.

5 New York v. Ferber, 458 U.S. 747, 759 n.10 (1982).

6 *Id.*

7 *Id.*; NMEC Chapter “Victims of Child Pornography” citing numerous studies.

8 Paroline v. United States, 134 S. Ct. 1710 (2014).

9 Stalking Resource Center, *Stalking Technology Outpaces State Laws*, 3(2) STALKING RESOURCE CENTER NEWSLETTER 3-4 (Summer 2003), <http://www.victimsofcrime.org/docs/src/source-summer-2003.pdf?s-fvrsn=0>.

10 In this article, violence against women crimes include sexual violence, intimate partner violence, stalking, and human trafficking. See Viktoria Kristiansson and Charlene Whitman-Barr, *Integrating a Trauma-Informed Response in Violence Against Women and Human Trafficking Prosecutions*, 13 STRATEGIES (2015), available at www.aequitasresource.org/library.cfm.

11 Sexting behavior is no longer limited to cell phones, but now includes exchanging photographs via applications such as Instagram, Snapchat, and Facebook Messenger. Mediums in which data can be shared continue to emerge; see, e.g., AirDrop, a feature of the latest Apple Operating System that allows users to “share photos, videos, websites, locations, and more with people nearby with an Apple device.” *Use Airdrop to Wirelessly Share Content*, APPLE, <http://support.apple.com/en-us/HT204144> (last visited Jan. 21, 2015).

12 As this article’s focus is on image exploitation, the authors will use the term “sexting” to refer to any sending or receiving of sexually suggestive or explicit images via a cell phone. It should also be noted that some use a more restrictive definition where “sexting” only refers to consensual cell phone communication between minors; for example, see THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN, POLICY STATEMENT ON SEXTING (Sept. 2009), <http://esd113.org/cms/lib3/WA01001093/Centricity/Domain/22/policystatementonsexting-ncmec.pdf> (defining sexting as “youth writing sexually explicit messages, taking sexually explicit photos of themselves or others in their peer group, and transmitting those photos and/or messages to their peers”); Abigail M. Judge, “Sexting” Among U.S. Adolescents: Psychological and Legal Perspectives, 20 HARV. REV. PSYCHIATRY 86, 92 (2012) (defining sexting as “the exchange of sexually explicit images between adolescents via cell phone”).

13 See, e.g., THE NATIONAL CAMPAIGN TO PREVENT TEEN AND UNPLANNED PREGNANCY, COSMOPOLITAN.COM, SEX AND TECH: RESULTS OF A SURVEY OF TEENS AND YOUNG ADULTS (2008), available at <http://thenationalcampaign.org/resource/sex-and-tech> [hereinafter Sex and Tech] (online survey of teens [13-19-year-olds] and young adults [20-26-year-olds] finding that 22% of teen girls and 36% of young women engaged in sexting); Amanda Lenhart, *Teens and Sexting: How and Why Minor Teens Are Sending Sexually Suggestive Nude or Nearly Nude Images Via Text Messaging*, PEW RESEARCH INTERNET PROJECT (Dec. 15, 2009), <http://www.pewinternet.org/Reports/2009/Teens-and-Sexting.aspx> (finding 4% of 12-17-year-olds had sent a sext and 15% had received a sext, but also finding that sexting increased with age, as 8% of 17-year-olds had sent a sext, and 30% of 17-year-olds had received a sext); KJ Mitchell, D Finkelhor, LM Jones & J Wolak, *Prevalence and Characteristics of Youth Sexting: a National Study*, 129 PEDIATRICS 1-8 (2012), available at <http://pediatrics.aappublications.org/content/129/1/13> (finding that less than 1% of surveyed 10-17 year olds created and sexted images that would be considered child pornography); ASSOCIATED PRESS, MTV, A THIN LINE: DIGITAL ABUSE STUDY (2009), http://www.athinline.org/MTV-AP_Digital_Abuse_Study_Executive_Summary.pdf (finding that one-third of 14-24-year-olds engaged in some form of sexting).

14 For example, variations could be due to the fact that some information was collected via online surveys and others via land-line telephone interviews after receiving consent from the teen's parent.

15 The age range included in each survey differs considerably, which is arguably a significant reason why the results are so disparate. E.g., KJ Mitchell, et al., *Prevalence and characteristics of youth sexting: a national study*. 129 PEDIATRICS 1-8 (2012), available at <http://pediatrics.aappublications.org/content/129/1/13> (includes information from surveyed individuals as young as age 10), *contra* SEX AND TECH, *supra* note 13 (including statistics from individuals as old as age 26).

16 Sexting was defined broadly and narrowly, depending on the survey. SEX AND TECH, *supra* note 13

17 MITCHELL, *supra* note 15 (finding that 21% of those engaged in sexting felt "very or extremely upset, embarrassed, or afraid as a result").

18 SEX AND TECH, *supra* note 13 (finding that 75% of teens and 71% of young adults say sending sexually suggestive content "can have serious negative consequences").

19 JUDGE *supra* note 12.

20 See, e.g., *supra* note 13.

21 JUDGE *supra* note 12.

22 *Id.*

23 Many states have passed criminal laws criminalizing this type of behavior. Lance E. Rothenberg, *Re-thinking Privacy: Peeping Toms, Video Voyeurs, and the Failure of Criminal Law to Recognize a Reasonable Expectation of Privacy in the Public Space*, 49 AM. U. L. REV. 1127 (2000); see, e.g., FLA. STAT. ANN. § 810.14 (West 2014); IND. CODE ANN. § 35-45-4-5 (2014); MISS. CODE ANN. § 97-29-61 (2014); OHIO REV. CODE ANN. § 2907.08 (2009); WASH. REV. CODE ANN. § 9A.44.115 (2014).

24 See, e.g., Chris Smith, *Police: 5 Charged in Recorded Sexual Assault on Boy*, USA TODAY (Oct. 16, 2014), <http://www.usatoday.com/story/news/nation/2014/10/16/police-teen-seriously-injured-in-video-taped-sexual-assault/17386597/>; Tyler Fingert, *Phoenix Man Accused of Recording Sexual Assault*, AZ CENTRAL (Sept. 4, 2014), <http://www.azcentral.com/story/news/local/phoenix/2014/09/04/phoenix-man-recorded-sexual-assault-charges-abrk/15031459/>; Associated Press, *Police: Round Rock Man Recorded Sex Assault of Teen*, KVUE.COM (Dec. 9, 2014), <http://www.kvue.com/story/news/crime/2014/12/09/police-texas-man-recorded-sex-assault-of-teen/20133141/>.

25 Media should redact any identifying images of victims of sexual assault; however, the publicity can lead to the discovery of non-redacted versions of the recording which may be posted to websites such as YouTube.com; e.g. Jill Filipovic, *Two Years Ago, a Woman was Sexually Assaulted While Sleeping on the Subway and a Video Went Viral. Now She's Speaking Out*, COSMOPOLITAN (Dec. 24, 2014), <http://www.cosmopolitan.com/politics/news/a34627/subway-sexual-assault/>.

26 While the term "revenge porn" appears to be solidified as the accepted term in the public's perception, media, and in recent legislative measures, the term does not appropriately identify non-offending parties as victims of an incredibly harmful type of sexual exploitation. Rather, it sometimes gives the impression that victims may have been voluntarily engaged in pornography and therefore are somehow culpable in their own victimization. However, due to general acceptance, including the titling of recent legislation, the authors will continue to use the term "revenge porn" throughout this article while maintaining their position that the term inadequately addresses the nonconsensual and harmful nature of the activity described. See, e.g., MD. CODE ANN., CRIM. LAW § 3-809 (West 2014).

27 While revenge has been the most readily identified motive of offenders engaged in this behavior, it need not be the only motivator. Additionally, offenders and victims may only briefly or casually know each other prior to the exploitation.

28 "The victims of these acts have lost jobs, been forced to change schools, change their names, and have been subjected to real-life stalking and harassment because of the actions of those who posted and distributed their images. Some victims have committed suicide." Mary Anne Franks, *Adventures in Victim Blaming: Revenge Porn Edition*, CONCURRING OPINIONS (Feb. 1, 2013), <http://www.concurringopinions.com/archives/2013/02/adventures-in-victim-blaming-revenge-porn-edition.html>.

29 There has also been much legal debate about holding websites liable for the harm they allow and from which they profit. For a discussion on liability for websites, see Susan Lichter, *Unwanted Exposure: Civil and Criminal Liability for Revenge Porn Hosts and Posters*, JOLTDIGEST (May 28 2013), <http://jolt.law.harvard.edu/digest/privacy/unwanted-exposure-civil-and-criminal-liability-for-revenge-porn-hosts-and-posters>.

30 In this context, the term "doxxing" refers to posting personal, identifying information of the victim alongside the exploitive image. For more information about the term "doxxing," see *What doxxing is and why it matters*, THE ECONOMIST (Mar. 10, 2014), <http://www.economist.com/blogs/economist-explains/2014/03/economist-explains-9>.

31 The FBI used this term to describe offender behavior; see Press Release of U.S. Attorney's Office, Kern County Man Charged with Sextortion of Minors Using Social Media (Mar. 6, 2014), <http://www.fbi.gov/sacramento/press-releases/2014/kern-county-man-charged-with-sex-tortion-of-minors-using-social-media>.

32 Harassment laws are currently being tested before the United States Supreme Court in *Elonis v. United States*, 134 S. Ct. 2819, 189 L. Ed. 2d 784 (2014). *Elonis* was convicted after making repeated threatening comments on Facebook. The comments were directed at his ex-girlfriend, who had an order of protection. While the case does not involve any images, the decision will likely shape future prosecutions involving any online stalking or harassment.

33 See AEQUITAS: THE PROSECUTORS' RESOURCE ON VIOLENCE AGAINST WOMEN, STATUTORY COMPILATION ON STALKING AND RELATED OFFENSES (2010)(available upon request); see also *The Use of Technology to Stalk*, STALKING RESOURCE CENTER, <http://www.victimsofcrime.org/our-programs/stalking-resource-center/stalking-information/the-use-of-technology-to-stalk#comp> (last visited Dec. 16, 2014).

34 See *id.*, e.g., Cyberstalking statutes.

35 See *id.*, e.g., Cyber Harassment statutes.

36 See *People v. Barber*, 42 Misc. 3d 1225(A), 992 N.Y.S.2d 159 (N.Y. Crim. Ct. 2014) (concluding “that defendant’s conduct, while reprehensible, does not violate any of the criminal statutes under which he is charged”).

37 See, e.g., IND. CODE ANN. § 35-45-10-1 (West 2014).

38 See, e.g., NEB. REV. STAT. § 28-311.02 (2010).

39 See, e.g., DEL. CODE ANN. tit. 11, § 1312 (2011).

40 For a survey of video voyeurism statutes, see NAT’L CENTER FOR PROSECUTION OF CHILD ABUSE, NAT’L DISTRICT ATTORNEYS ASS’N, NDAA VOYEURISM COMPILATION (July 2010), <http://www.ndaa.org/pdf/Voyeurism%202010.pdf>.

41 *Id.*

42 “Upskirting” is where offenders secretly position a camera to be able to take photographs underneath women’s skirts as they sit on subway cars, ride escalators, and otherwise take part in public life.

43 *State v. Glas*, 147 Wash. 2d 410, 54 P.3d 147 (2002).

44 WASH. REV. CODE § 9A.44.115

45 See, e.g., Ray Sanchez, *States – and victims – grapple with ‘upskirt’ laws against voyeurism*, CNN (Mar. 7, 2014), <http://edition.cnn.com/2014/03/06/us/upskirt-photography/index.html>; Cindy George, *Texas court throws out ‘upskirt’ photo law*, HOUSTON CHRONICLE (Sept. 17, 2014), <http://www.houstonchronicle.com/news/article/State-appeals-court-rules-upskirt-law-5763225.php?cmpid=twitter-premium&t=53c893b5408b7034ef>; Alanna Vagianos, *Upskirt photos don’t violate a woman’s privacy, rules D.C. Judge*, HUFFPOST WOMEN (Oct. 10, 2014), http://www.huffingtonpost.com/2014/10/10/upskirt-photos-legal-dc_n_5966406.html.

46 See, e.g., ARIZ. REV. STAT. § 13-1424 (2008) (stating, “It is unlawful to knowingly invade the privacy of another person without the knowledge of the other person for the purpose of sexual stimulation”).

47 See, e.g., IND. CODE ANN. § 35-45-4-5 (2014) (defining “Peep” as “any looking of a clandestine, surreptitious, prying, or secretive nature”).

48 In particular, crimes involving the use of a computer, cellular telephone, or other types of electronic communication may apply in particular circumstances. See, e.g., FLA. STAT. § 934.215 (2001) (Florida’s Unlawful Use of a Two-way Communications Device).

49 New Jersey’s invasion of privacy law was successfully used to convict Dharun Ravi. Megan DeMarco, *Dharun Ravi Found Guilty in Rutgers Webcam Spying Trial*, NJ.COM (Mar. 16, 2012), http://www.nj.com/news/index.ssf/2012/03/dharun_ravi_found_guilty_in_ru.html.

50 Cottwell, *Rape – The Ultimate Invasion of Privacy*, 43 FBI L. ENFORCEMENT BULL. 2 (1974).

51 N.J. STAT. ANN. 2C:14-9(b) (West 2014).

52 Nearly all voyeurism and invasion of privacy laws contain similar language. *Supra*, note 40.

53 The recent aggravated rape conviction of Vanderbilt student Brandon Vandenberg illustrates the application of accomplice liability to perpetrators who facilitate sexual assaults regardless of whether they carry out the assault themselves. In this case, evidence showed the defendant Brandon Vandenberg carried the unconscious victim into the room where she was sexually assaulted by three of his friends while he provided them condoms and offered them verbal encouragement. Further, a video recording of the assault showed Vandenberg saying that he could not have sex with the women because he was too high on cocaine. Vandenberg was convicted of aggravated rape, although he did not carry out the rape himself. Justin Moyer, *Two former Vanderbilt football players convicted of*

rape thanks to pictures one of them took during attack, Washington Post (Jan. 28, 2015), <http://www.washingtonpost.com/news/morning-mix/wp/2015/01/28/two-former-vanderbilt-football-players-convicted-of-rape-thanks-to-pictures-one-of-them-took-of-it/>.

54 For a discussion on accomplice liability where “bystanders” film a sexual assault, see Michael B. Farrell, *Homecoming rape: When do bystanders become accomplices?*, THE CHRISTIAN SCIENCE MONITOR (Oct. 30, 2009), <http://www.csmonitor.com/USA/Justice/2009/1030/p02s10-us-ju.html>; see also Kdansky, *Accomplice Liability in Richmond Rape Case?*, STANFORD LAW SCHOOL (Oct. 29, 2009), <http://blogs.law.stanford.edu/scjc/2009/10/29/accomplice-liability-in-richmond-rape-case/>.

55 Prosecutors need to familiarize themselves with their state laws to ensure that the circumstances fit the statutory language. Aside from the challenges detailed in this article, a further challenge may exist in jurisdictions that require that the filming be done for the purpose of sexual gratification (e.g., COLO. REV. STAT. ANN. § 18-3-404 (2013) requires that the offender observed the victim “for the purpose of the observer’s own sexual gratification”). Prosecutors will need to make appropriate arguments that while the offender’s main purpose may be humiliation or degradation of the victim, the offender had sexually prurient motives as well.

56 In Ohio, “no person, knowing that a felony has been or is being committed, shall knowingly fail to report such information to law enforcement authorities.” OHIO REV. CODE ANN. § 2921.22 (2014). In Texas, one can be held criminally liable if s/he fails to report a felony which a reasonable person would believe may result in death or great bodily harm. TEX. PENAL CODE ANN. § 38.171 (2003). See also Jennifer Bagby, *Justifications for State Bystander Intervention Statutes: Why Crime Witnesses Should Be Required to Call for Help*, 33 IND. L. REV. 571, 574 (2000).

57 *Id.* Louisiana and North Carolina both have provisions requiring video voyeurs to register as sex offenders where the victim is an adult. Other states only require registry where the victim is a minor.

58 See, e.g., OR. REV. STAT. ANN. § 164.075 (2014); NEB. REV. ST. § 28-513 (2014); PA. CONS. STAT. ANN. 18 § 3923 (2014).

59 See, e.g., KY. REV. STAT. ANN. § 21-5428 (2014); 21 OKL. ST. ANN. § 1488 (2014); CONN. GEN. STAT. ANN. § 53a-192 (2014).

60 See, e.g., Terrence McCoy, *4chan: The ‘Shock Post’ Site that Hosted the Private Jennifer Lawrence Photos*, WASHINGTON POST (Sept. 2, 2014), <http://www.washingtonpost.com/news/morning-mix/wp/2014/09/02/the-shadowy-world-of-4chan-the-shock-post-site-that-hosted-the-private-jennifer-lawrence-photos/>.

61 E.g., “The Cloud” or Apple’s iCloud.

62 See ARKANSAS CODE § 5-41-104 (West 2014) ((a) A person commits computer trespass if the person intentionally and without authorization accesses, alters, deletes, damages, destroys, or disrupts any computer, computer system, computer network, computer program, or data).

63 Child pornography laws differ from jurisdiction to jurisdiction; depending on the statutory language, sexted images may be child pornography if they depict sexual conduct, simulated sexual conduct, or erotic nudity. They may not be considered child pornography if they merely depict nudity. See NAT’L CENTER FOR PROSECUTION OF CHILD ABUSE, NAT’L DISTRICT ATTORNEY’S ASSOC’N, CHILD PORNOGRAPHY STATUTES (2010), <http://www.ndaa.org/pdf/Child%20Pornography%20Statutory%20Compilation%206-2010.pdf>.

64 Different states define “minor” as being under the age of 18, 17, or 16. See Thomson Reuters, *Child Pornography*, 0030 SURVEYS 5 (Oct. 2013), <http://www.olemiss.edu/depts/ncjrl/pdf/1%20C%20A%20C/2013%20-%20April%2018-19/APPENDIX%20A%20-%2050%20STATE%20STATUTORY%20SURVEYS%20CRIMINAL%20LAWS%20CRIMES%20Child%20Pornography.pdf>.

65 *Id.*

66 This is by no means an exhaustive list of possible co-existing crimes. Law enforcement and prosecutors should research applicable state sex crimes, crimes against children, and computer-related crimes to ensure that adult offenders are held fully accountable for their criminal conduct.

67 This discussion also applies to peers of minors who have turned 18 years old, but are still in high school and are otherwise appropriately interacting with minors of their peer-group.

68 See, e.g., Mary Graw Leary, *Self-Produced Child Pornography: The Appropriate Societal Response to Self-Sexual Exploitation*, 15 VA. J. SOC. POL'Y & L. 1 (2007); Nathan Koppel, *Are 'Sext' Messages a Teenage Felony or Folly?*, THE WALL STREET JOURNAL (Aug. 25, 2010), <http://www.wsj.com/articles/SB10001424052748703447004575449423091552284>; Jan Hoffman, *States Struggle with Minors' Sexting*, N.Y. TIMES (Mar. 26, 2011), http://www.nytimes.com/2011/03/27/us/27sextinglaw.html?_r=2&; Robert H. Wood, *The failure of sexting criminalization: a plea for the exercise of prosecutorial restraint*, 16 MICH. TELECOMM. & TECH. L. REV. 151 (2009); DENA T. SACCO, REBECCA ARGUDIN, JAMES MAGUIRE, KELLY TALLON & CYBERLAW CLINIC, THE BERKMAN CENTER FOR INTERNET AND SOCIETY AT HARVARD UNIVERSITY, *SEXTING: YOUTH PRACTICES AND LEGAL IMPLICATIONS* (June 22, 2010), available at http://cyber.law.harvard.edu/publications/2010/Sexting_Youth_Practices_Legal_Implications.

69 Meghaan C. McElroy, *Sexual Frustrations: Why the Law Needs to Catch Up to Teenagers' Texts*, 48(2) THE HOUSTON LAWYER 10, 11-12 (Nov./Dec. 2010).

70 For a survey of sexting laws, see *2012 Sexting Legislation*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <http://www.ncsl.org/research/telecommunications-and-information-technology/sexting-legislation-2012.aspx> (last visited Dec. 17, 2014).

71 NEB. REV. STAT. § 28-813.01 (West 2014) ((3) It shall be an affirmative defense to a charge made pursuant to this [child pornography] section that: (a) The visual depiction portrays no person other than the defendant; or (b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction).

72 NEV. REV. STAT. ANN. § 200.737 (West 2011).

73 JUDGE, *supra* note 12.

74 SEX AND TECH, *supra* note 13.

75 *Id.* Prosecutors and investigators should be mindful that any "pressure" that a victim describes as precipitating the taking and sending of sexually explicit photographs is likely a non-explicit form of coercion being used by the offender to elicit the image from the victim.

76 Janis Wolak, David Finkelhor & Kimberly Mitchell, *How Often Are Teens Arrested for Sexting? Data From a National Sample of Police Cases*, 129(1) PEDIATRICS 4-12 (2012), available at <http://pediatrics.aappublications.org/content/129/1/4>.

77 *Id.*

78 JUDGE, *supra* note 12.

79 Depending on the content of the image, obscenity laws may make even the consensual sharing of explicit materials illegal. Obscenity is typically defined as material which, to the average person, applying contemporary community standards, and taken as a whole: 1) predominantly appeals to prurient interests, 2) lacks serious literary, artistic, political, or

scientific value, and 3) depicts or describes nudity, sex, or excretion in a patently offensive way. For a survey of existing obscenity laws, see *State Laws on Obscenity, Child Pornography and Harassment*, LORENAVEDON.COM, <http://www.lorenavedon.com/laws.htm> (last visited Dec. 19, 2014).

80 See discussion *supra*; see also Aily Shimizu, *Domestic Violence in the Digital Age: Towards the Creation of a Comprehensive Cyberstalking Statute*, 28 BERKLEY J. GENDER L. & JUST. 116 (2013) (citing VIOLENCE AGAINST WOMEN OFFICE, OFFICE OF JUSTICE PROGRAMS, STALKING AND DOMESTIC VIOLENCE REPORT TO CONGRESS 1 (May 2001), <https://www.ncjrs.gov/pdffiles1/ojp/186157.pdf>).

81 *State Revenge Porn Legislation*, NATIONAL CONFERENCE ON STATE LEGISLATURES, <http://www.ncsl.org/research/telecommunications-and-information-technology/state-revenge-porn-legislation.aspx#2014> (last visited Dec. 19, 2014).

82 *Id.*

83 See, e.g., MD. CODE ANN., CRIM. LAW § 3-809 (West 2014).

84 See, e.g., ARIZ. REV. STAT. ANN. § 13-1425 (2014).

85 Lydia O'Connor, *'Revenge Porn' Law Sees First Conviction in California*, HUFFINGTON POST (Dec. 2, 2014), http://www.huffingtonpost.com/2014/12/02/revenge-porn-california-first-conviction_n_6258158.html.

86 CAL. PENAL CODE § 647(j)(4)(A) (West 2014).

87 "Selfies" refers to self-portrait photographs, and, in this context, it refers to photographs taken by the victim and consensually shared with the offender prior to the unlawful disclosure. Associated Press, *Bill Adds 'Selfies' to California Revenge Porn Ban*, WASHINGTON TIMES (May 27, 2014), <http://www.washingtontimes.com/news/2014/may/27/bill-adds-selfies-to-california-revenge-porn-ban/>.

88 Webinar Recording by Christopher Mallios & John Wilkinson, *Prosecuting Intimate Partner Sexual Assault*, <http://www.aequitasresource.org/trainingDetail.cfm?id=113> (recorded on Oct. 29, 2014).

89 See, e.g., 18 PA. CONS. STAT. § 2706 (in part) "A person commits the crime of terroristic threats if the person communicates, either directly or indirectly, a threat to (1) commit any crime of violence with intent to terrorize another."

90 The broad language in these orders will likely cover any type of image exploitation. Additionally, prosecutors should insist that offenders complete a Batterers Intervention Program (BIP) as part of any plea or sentence. AMERICAN BAR ASSOCIATION COMMISSION ON DOMESTIC VIOLENCE, DOMESTIC VIOLENCE CIVIL PROTECTION ORDERS (CPO) BY STATE (2007), http://www.americanbar.org/content/dam/aba/migrated/domviol/docs/DV_CPO_Chart_8_2007.authcheckdam.pdf; see, e.g., Court of Common Pleas of Ohio, Form 10.01-H: Domestic Violence Civil Protection Order (CPO) Ex Parte (Mar. 2014), http://www.supremecourt.ohio.gov/JCS/domesticViolence/protection_forms/DVForms/10.01H.pdf.

91 In this context, a screenshot is an image that captures the display on a digital device. In most cases, a screenshot can be admitted into evidence just as a photograph would be, as long as someone with knowledge can testify that it is a fair and accurate depiction of the screen display.

92 While not the focus of this article, information about digital evidence and cyber investigations can be found in AEquitas' webinar archive. Webinar Recording by Jane Anderson, *Following the Digital Breadcrumbs: Utilizing Technology in Sex Trafficking Prosecutions*, <http://www.aequitasresource.org/trainingDetail.cfm?id=115> (recorded Dec. 12, 2014).

93 Metadata is information attached to a digital item that contains additional information about that item. For more information about metadata see, NAT'L INFORMATION STANDARDS ORGANIZATION, UNDERSTANDING METADATA (2004), <http://www.niso.org/publications/press/UnderstandingMetadata.pdf>.

94 Medical expenses can also include psychiatric, psychological, and therapeutic services.

95 This should only occur in very limited circumstances where, for example, the victim has waived confidentiality and/or the victim is completely unable to testify during this phase and there has been a collective agreement and understanding that the counselor's testimony at this stage is so important that it outweighs associated privacy risks. See Viktoria Kristiansson, *Walking A Tightrope: Balancing Victim Privacy and Offender Accountability in Domestic Violence and Sexual Assault Prosecutions Parts I & II*, 9-10 STRATEGIES (May 2013), available at www.aequitasresource.org/library.cfm.

96 See, e.g., Sam Kashner, *Both Huntress and Prey*, VANITY FAIR (Nov. 2014), <http://www.vanityfair.com/hollywood/2014/10/jennifer-lawrence-photo-hacking-privacy>.

97 *Man Charged In Netherlands In Amanda Todd Suicide Case*, BBC NEWS EUROPE (Apr. 18, 2014), <http://www.bbc.co.uk/news/world-europe-27076991>.

98 Geoff Mulvihill, *Former Rutgers Student Convicted of Hate Crime*, THE BOSTON GLOBE (Mar. 16, 2012), <http://www.bostonglobe.com/news/nation/2012/03/16/former-rutgers-student-convicted-webcam-case/fGC0K8RasNC84P3nH7Lb4H/story.html>.

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