

Revenge Porn: "Is Anyone Up" on Copyright Law?

December 20, 2011 by [David Kluff](#)



Here's something you probably don't want fixed in a tangible medium of expression: *revenge porn*.

Twenty-five-year-old Hunter Moore (pictured, above right) is the creator of the website [Is Anyone Up](#). In essence, here's how revenge porn works: Remember those naked pictures you took of yourself and sent to a very close friend with the explicit instruction or implicit assumption that the images would remain private? Well, just make sure you don't give your friend cause to become a former friend. If you did, your former friend may already have sent those pictures anonymously to Mr. Moore. Upon receipt, Mr. Moore will post them on his increasingly popular website, along with a helpful link to your actual [Facebook](#) page, just in case there was any doubt the pictures were of you.

For Mr. Moore's troubles, he has received numerous death threats, [one actual attempt on his life](#) and, most recently, [a very angry letter from Facebook's lawyers](#). He has also reaped an estimated \$13,000 per month in ad revenue and a great deal of media attention.

Here's why we're interested: In a recent episode of NPR's On the Media, Bob Garfield [interviewed Moore](#), who explained why he believes he is immune to legal action. Part of the conversation went like this:

HUNTER MOORE: . . . And then also with the copyright issue, you know, a lot of people are sending me DMCA requests and –

BOB GARFIELD: They say, I own this photo, you have no right to display it; please take it down.

HUNTER MOORE: Yes, but when you take a picture of yourself in the mirror, it was intended for somebody else, so actually, the person you sent the picture to actually owns that picture because it

was intended as a gift. So whatever the - that person does with the picture, you don't even own the nude picture of yourself anymore.

Is that correct? No way. With a few exceptions with respect to [works made for hire](#), the copyright in a photograph subsists with the person who takes the photograph. Once the photograph is distributed, copyright law makes a [distinction](#) between on the one hand the object itself (which the new owner can sell or give away under the [first sale doctrine](#)), and on the other hand the rights to further reproduce or publish that image (which rights generally can [only be transferred in writing](#)).

So, it is true that you probably can't use copyright law to stop your former friend from giving, say, a printout of your nude self-portrait away, and as a practical matter it is very difficult to stop your former friend from emailing that picture around. However, you may be able to use copyright law to stop Mr. Moore from publishing that image on-line. At the risk of incurring the wrath of the revenge porn industry, Mr. Moore appears to have learned copyright law from the same place he learned to respect other people's privacy.

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