

A Disturbing Picture

By Michael Arnold

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It's 2:30 in the afternoon. Trying to fight off midday malaise, you head for the break room. As you walk down the hall, you grow uncomfortable when you notice the stares of your co-workers. Your friend Colleen grabs you before you reach the coffee machine. "Come with me now," she says.

She takes you to her computer where she opens an e-mail from Eric, the guy you broke up with last week. He has e-mailed everyone you work with, including your boss and your boss's boss, graphic selfies that you had sent to him while you were on a business trip ... the ones he swore he had deleted. The e-mail even includes some sexually charged text messages you two had exchanged.

But wait, it gets worse. Colleen clicks on a link embedded in the e-mail that goes to a website containing not only this graphic content but also your home and work mailing and e-mail addresses, as well as links to your social media profiles.

You're stunned. Those pictures and texts were supposed to be private, but now the whole company—maybe the whole world—is looking at them. You feel helpless, humiliated and ashamed.

You, like many others, are a victim of revenge porn.

Increasingly Common

Revenge porn involves the distribution of sexually explicit or suggestive content of an individual to the public without the individual's consent. Typically, a spurned ex-boyfriend will post a picture or video of a former lover along with other identifying information such as the individual's name and e-mail address.

Sadly, stories of revenge porn are piling up. According to a study released recently by McAfee, a leading information security company, nearly 50 percent of women have used their mobile devices to share sexual content. Nearly 30 percent planned to send sexual content to their partners last Valentine's Day.

At the same time, 96 percent of adults trust their significant other with intimate content, and only a third of them ask for this content to be deleted when the relationship ends. The stats are eye-opening for men as well, but I focus on women because they account for nearly 90 percent of victims.

Few Legal Protections

Currently, there is little a victim can do about it. The maxim that the law often fails to keep up with the technology applies to revenge porn. Few laws protect victims. And in *People v. Barber*, 2014 NY Slip Op 50193 (N.Y. Crim. Ct. 2014), a court recently threw out New York's first revenge porn case.

Alaska, New Jersey and California have attempted to criminalize revenge porn, but those laws are plagued by exceptions that nearly swallow the rule and still must overcome inevitable constitutionality challenges.

Anti-stalking laws typically require repeated harassment to take place—something not usually associated with these one-time acts of revenge.

It is also difficult to hold accountable the websites that host revenge porn content, because the Communications Decency Act immunizes a host where the content does not violate federal copyright or criminal law. Congresswoman Jackie Speier, D-Calif., plans to introduce a federal law criminalizing revenge porn, which would have the effect of removing this immunity, but any proposed law will face stiff resistance from free-speech advocates.

'Digital Scarlet Letter'

So how does this affect the workplace? As in the composite case I described at the beginning of this article, often photos of the victim are distributed to work colleagues and she is thereafter subjected to workplace harassment. Even in the absence of harassment, victims may quit due to the emotional stress of having to face co-workers after the incident.

This is hardly surprising, as a revenge porn victim now wears what University of Maryland School of Law Professor Danielle Keats Citron calls a "digital scarlet letter." Citron is a leading advocate for cyber civil rights and a board member of The Cyber Civil Rights Initiative, a nonprofit dedicated to advancing

Damage Control

Employers can fight revenge porn by doing the following:

- **Speak with the employee about the incident as soon as possible.** Even if she is reluctant to engage in this conversation, let the employee know that the company is aware of the situation, supports her and will ensure that she continues to feel comfortable in her work environment.
- **Provide employee assistance materials to the victim.** Several organizations, including Without My Consent, End Revenge Porn and Women against Revenge Porn, offer assistance or other resources to revenge porn victims.
- **Take steps to maintain the employee's safety.** This is especially important when the revenge porn content contained the employee's work e-mail address and telephone number.
- **Take steps to limit the situation's impact in the workplace.** Tell the employee you will help keep the situation as confidential as possible. To the extent that other co-workers are aware of the incident, consider issuing a warning against further disclosure and state that you will discipline any employee who acts inappropriately.
- **Work with IT to optimize online security.** Ensure that your employees cannot gain access to the offensive materials while at work.

the legal and educational responses to cyberharassment.

Revenge porn victims may also face threats of workplace violence and have difficulty securing and retaining other jobs. The Cyber Civil Rights Initiative reports that those behind incidents of revenge porn will identify a victim's full name 59 percent of the time and their social network information 49 percent of the time.

They may also use optimization techniques designed to feature the graphic content on search engines. Thus, when a potential employer investigates the victim online, this may be the first thing that comes up. The employer may think twice about the applicant's judgment or simply want to avoid dealing with someone who comes with this so-called baggage. For the same reasons, a victim's current employer sometimes opts to fire her—a scenario that is, unfortunately, all too common.

Don't Look the Other Way

Ignoring the employee as she suffers in silence or leaves on her own volition may signal to other employees that you are endorsing this vicious act. Casual indifference may result in lower morale, lost productivity, higher absenteeism, increased turnover and higher health care costs. Employers may also be on the hook for substantial damage awards if they act negligently when faced with a revenge porn incident. Specifically, they could face discrimination, harassment or other negligence-based lawsuits if they do not respond properly.

If the former lover shows up in the workplace and assaults the employee, the employer could expose itself to a negligence action if it knew—or should have known—that the employee was in danger and failed to take appropriate action.

Thus, employers should strongly consider implementing policies designed to minimize the effect of revenge porn in the workplace and on the individual.

According to CNN, Alec Baldwin recently said: “You’re out there in a world where, if you do make a mistake, it echoes in a digital canyon forever.” Nowhere is this statement truer than when it comes to revenge porn. As an employer, give serious thought to understanding the emotional devastation revenge porn victims experience, and take steps to minimize the harm to victims and your own company.

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