

## How to Remove Nude Photos from “Revenge Porn” and other Internet Websites

### Related Professionals

Colleen M. Devanney

Whitney C. Gibson

### CLIENT ALERT | 2.12.2014

Whether it is on Facebook, Instagram, or another popular website, many people today love sharing photographs about themselves and their whereabouts. But legal issues often arise when a person uploads or posts photos (or videos) of someone else – especially when they involve nudity or are otherwise sexual in nature. Furthermore, once one of these photos is posted online, they tend to go viral, making it increasingly difficult to get them down from the internet.

Mainstream websites such as Facebook, Instagram and Twitter each have guidelines or policies pertaining to sexual or inappropriate media. Facebook has the strictest. Twitter, meanwhile, admits to not mediating content and allows users to flag their own media as “containing sensitive content.” Regardless of where each website comes down on the nudity issue, all three have reporting or complaint mechanisms that make the removal of inappropriate or embarrassing content fairly simple.

Likely more harmful and often more difficult to deal with are the growing number of “revenge porn” websites, which refers to the non-consensual collection of nude photo or video submissions that typically come from ex-spouses, or ex-boyfriends or girlfriends (but sometimes hackers as well). In some cases, simply contacting the website and requesting the photos be removed is enough. But many websites will not honor these requests, and some will even charge money to remove the photos. When this happens, you may wish to resort to legal methods.

### *Legal remedies for “revenge porn” and other websites*

Nude or other inappropriate photos of someone that end up on one of these websites can be grouped into two categories: 1) self-portrait photos (more affectionately known as “selfies”) and 2) photos taken by another.

Self-taken photos are often easier to deal with because the photographer owns the copyright to his or her own photos and, thus, they possess the exclusive rights to use and distribute them. Accordingly, under the Digital Millennium Copyright Act (DMCA), the copyright holder may send a “takedown notice,” essentially a formal request sent to these websites to remove the content. An attorney can help prepare this type of request, as well as a cease and desist letter.

When uploaded photos are taken by another person, however, you will want to try to have that person assign their copyright interest to you. Under the U.S. Copyright law, the transfer must be in writing and signed by the copyright owner or an authorized agent. Once the copyright is legally transferred, you can use the DMCA takedown approach to try to get the content removed.

There are other legal options available when you do not have a copyright interest, as often times you may be unable to get the photographer to voluntarily assign their copyright to you. These include invasion of privacy claims (note: personal information is also included with the photo postings on revenge porn websites) or negligence per se claims. An attorney can also assist in filing a lawsuit seeking monetary damages, as well as a court order to remove the photos.

### ***Criminality of “revenge porn”***

Like with most situations, it is important to be aware of the law in various jurisdictions.

In October 2013, California joined New Jersey as the only states, to date, to criminalize revenge porn. California law classifies the non-consensual distribution of a nude image of someone, “with the intent to cause serious emotional distress,” a misdemeanor. This offense is punishable up to \$1,000 and six months in jail. California does not, however, criminalize “sexting.” Therefore, if the recipient of a nude photo posts it without the sender’s permission, even though it originated from the sender’s phone, it is not illegal.

Other states have tried, but thus far failed, to enact similar laws. In January, an Illinois senator became the latest lawmaker to propose a ban on revenge porn. Meanwhile, the American Civil Liberties Union will continue to oppose these types of bills, arguing against the potential restriction of free speech.

Recently, Israel became the first country to make posting revenge porn a sex crime, and this offense is now punishable there for up to five years in jail.

*For more information, contact Whitney Gibson at 855.542.9192 or [wcgibson@vorys.com](mailto:wcgibson@vorys.com). Read more about the practice at <http://www.internetcrisesattorneys.com/>.*