

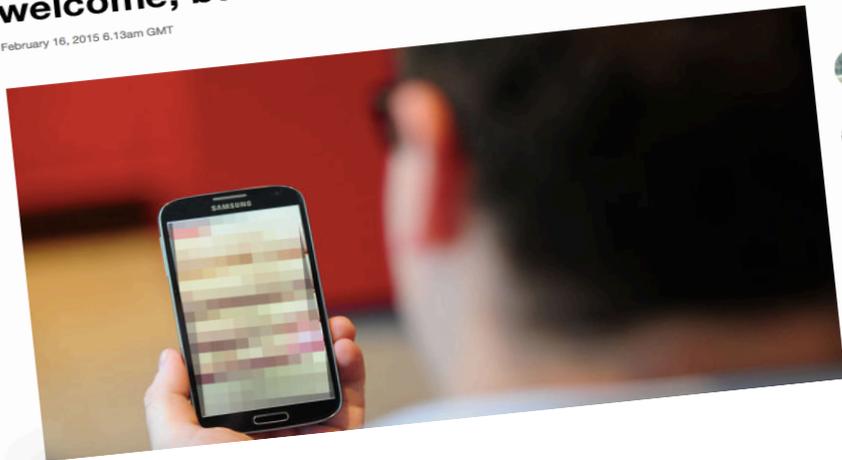
Introducing 'Revenge Pornography' legislation: The UK Experience

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The new law against 'revenge porn' is welcome, but no guarantee of success

February 16, 2015 6:13am GMT



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Disclosure statement

Erika Rackley receives funding from The British Academy.

Clare McGlynn does not work for, consult, own shares in or receive funding from any company or organization that would benefit from this article, and has disclosed no relevant affiliations

During 2014-15, we advised members of the UK Government on proposals to introduce a new 'revenge pornography' law in the UK



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Baroness Thornton: My Lords, I am pleased to say that we on these Benches support these amendments. Some time ago my right honourable friend Yvette Cooper said that people who post intimate images of their former partners online in so-called revenge porn attacks, or who blackmail them with such images, should face new criminal charges, so of course we support the amendments.

The use of intimate, private sexual images as a weapon with which to embarrass, humiliate and degrade is a crime, and it is right that it should be recognised in law. The new offence is a positive step, although in itself it is not adequate to address the underlying societal attitudes and behaviours that create and legitimise sexual violence, abuse and harassment in all its forms, so a government commitment to addressing those issues is also vital. The noble Baroness, Lady Brinton, is quite right to raise the issue of young people and the importance of not criminalising them or, for example, having them put on the sex offender register at a very early age for doing the extremely stupid things that young people are sometimes prone to doing.

20 Oct 2014 : Column 522

The Government's amendments will ensure that this is enacted. However, we need to ask today how effective they will be. I therefore have a series of questions to put to the Minister and to the noble Lord, Lord Marks. Could the Minister explain why this offence was not made part of the Sexual Offences Act? Will convictions for this offence be recorded by the CPS as a sex offence—in other words, would the person convicted be on the sex offender register?

As it stands, depending on the interpretation of "distress", the law will provide a remedy to a victim who is distressed, but not angry. Professors Rackley and McGlynn, who have been advising many Members of the House throughout the discussions about revenge porn and rape porn, explained that the focus of the law should be on the offender's actions and the absence of consent, not on the victim's response, and I think that is right. Does the distress element also place an unnecessary additional burden on the prosecution? Professors Rackley and McGlynn contend that the mental element of the offence should be the intentional act of posting private sexual images without consent, including for the purpose of financial gain. We have to ask whether the issue of distress could actually significantly limit the effectiveness of this offence.

There is concern about the restriction of the offence to identifiable images. It should be immaterial whether someone else recognises the person in the relevant image. The publishing of private sexual images without consent should be a criminal offence, whatever the motivation of the offender and whatever form the victim's response takes. It is the absence of consent that is fundamental. Would the restriction of the offence to identifiable images result in unnecessarily complicated evidential debates in court?

'Revenge pornography' in England and Wales

- New criminal law introduced in April 2015
- 175 cases reported to police in first 6 months – though overall figure likely to be higher
- Victims were aged between 12 and 58
- Vast majority of cases involved explicit pictures of women shared without permission by their male ex-partners
- So far, 12 men and 1 woman have been convicted under the new legislation. Sentences have ranged from a 12-month community order to 12 weeks in jail (max sentence is 2 years)

What's the harm of 'revenge pornography'?

- ❑ Technology is fuelling new ways of perpetrating harassment and abuse of women
- ❑ 'Revenge pornography' just one form of on-line abuse and the misuse of private sexual images
- ❑ Breach of fundamental rights
 - ❑ to privacy & sexual expression
 - ❑ to the dignity and respect of the person
 - ❑ NOT about pornography per se or sexual gratification

English law: 'Disclosing Private Sexual Images with Intent to Cause Distress'

Four elements to the offence:

- 1. Disclosure**
- 2. Of a private sexual image**
- 3. Without the consent of the individual in the image, and**
- 4. With the intention of causing that individual distress**

Punishable by up to 2 years in prison and a fine

Lessons to be learned from English experience

- 1. Reach of the law – what images are covered/ not covered?**
- 2. Limitations - requirement of intent to cause distress**
- 3. Liability of primary and secondary distributors**
- 4. Availability of a statutory civil option**
- 5. Victim anonymity**
- 6. Danger of the rush to legislate**

English law does not cover all misuse of private sexual images

- ❑ 'Revenge pornography' just one form of the misuse of private sexual images
- ❑ Other examples include
 - ❑ Creating/distributing up-skirting images
 - ❑ Voyeurism
 - ❑ Distribution of hacked/stolen images

Limits of law: 'intent to cause distress'

- ❑ The law says that intention to cause distress cannot be assumed just because distress is likely to follow disclosure
- ❑ This means that the law is less or unlikely to cover/police are less likely to prosecute:
 - ❑ disclosures for financial gain
 - ❑ disclosures 'for a laugh'
 - ❑ 'secondary distributors' (ie when image goes viral)
 - ❑ distribution of hacked images (unless accompanied by 'doxxing')

Who should be covered? Primary and secondary distributors

- **Primary and secondary distributors**
 - **PRIMARY:** first person to non-consensually create/distribute image
 - **SECONDARY:** the next person to non-consensually distribute image
- **What about when an image goes ‘viral’?**
- **Secondary distributors are collectively responsible for the harm of ‘revenge pornography’**

Possibility: include statutory civil option

- ❑ Criminalisation provides a strong recognition of the harm of 'revenge pornography'
- ❑ In England & Wales, there are a number of civil remedies, eg harassment, privacy, defamation
- ❑ But a specific civil remedy to cover misuse of private sexual images would provide victims with another legal option which clearly covers this harm

Warning: Danger of rush to legislate

Ideally, law should include:

- ❑ All misuse of private sexual images
- ❑ Combination of criminal and civil remedies

Legislation alone is not enough

- ❑ Awareness campaigns and police support
- ❑ Effective implementation and monitoring of existing law
- ❑ Cultural change

Scotland: current proposals

- Currently consulting on new provision:
'Disclosure of an intimate photograph or film'
- Wider than English law:
 - Includes threats to disclose
 - Covers reckless disclosure so more likely to cover secondary distributors
 - Broader definition of 'intimate situation'
- BUT ...
 - Focused on specific 'revenge porn' scenario
 - Victim must not have consented to previous disclosure to 'any section of public'
 - Defence of reasonable belief in V's consent

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