Revenge Pornography: An Analysis of Privacy, Obscenity, and the First Amendment

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ABSTRACT
An important issue in modern communication law and policy is the emergence of harassment via the Internet and social media. One form of such harassment is revenge pornography, the sharing of sexual images or videos without the consent of the individual depicted, usually at the hands of an ex-lover. In punishing the posters and purveyors of revenge pornography, perpetrators are often convicted of unrelated crimes such as identify theft or fraud, furthering the silence of revenge pornography. This new challenge in law raises some serious questions about the intersections of obscenity, privacy and the First Amendment in the effort to most ethically take cases to court. To handle both the logistics and impact of persecuting revenge pornography, law students and professionals must consider our country’s history of gendered violence, the intent behind such pornographic posts, and the weight of modern communication as a vehicle for violence and invasion.

Recent Case Law

The Need to Criminalize Revenge Porn: How A Law Protecting Victims Can Avoid Running Aflame of the First Amendment by Adrienne Kitchen
- Privacy tort and copyright claims are insufficient
- Litigation simplified with fines and demands to remove content, but crime is one of widespread and repeated damage
- 60-70% of victims are women
- Enacting federal law protecting victims of revenge pornography would have to be done under extreme caution, unless, perhaps, the issue is looked at through a lens of sexual harassment.

Law Review Analyses

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Conclusions
- Looking at revenge pornography law with a sexual harassment outlook – rather than a digital communications issue – could be beneficial to victims
- Further, shifting the focus from the First Amendment reconciles the issue of developing criminal law without being unconstitutional
- Would further zero in on the implications of all forms of sexual harassment

Limitations
- Constantly changing nature of social media and communication policies
- Lack of prior literature on the subject
- Lack of reporting from victims, making it challenging to develop information on few cases

Future Research
Future research should consider:
- The legal history of sexual harassment
- Similar issues, such as cyber-bullying, that also take residence on social media
- The timely spread of revenge pornography content online – and the affects it has on, not only victims, but purveyors, as well.

References