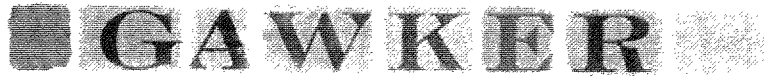


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## **EXHIBIT 23**

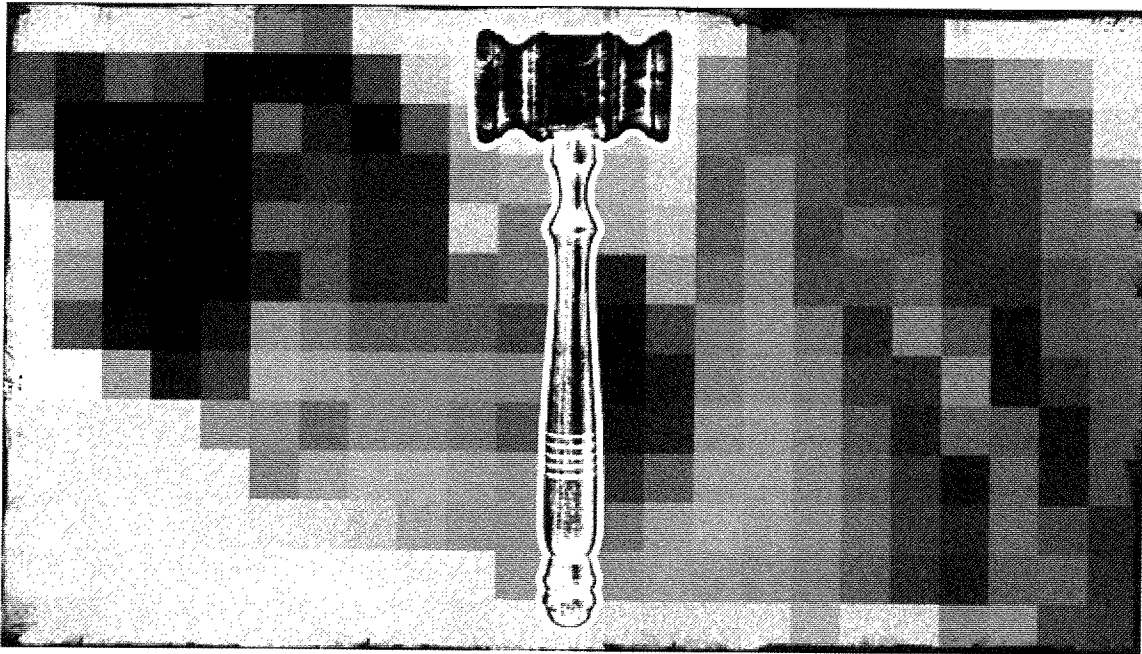


# The Case for Making Revenge Porn a Federal Crime



Michelle Dean

Filed to: REVENGE PORN 3/27/14 2:45pm



With Rep. Jackie Speier's announcement yesterday that she intends to introduce a federal bill criminalizing "revenge porn" into the house in the month, people were asking the same question they often ask about revenge porn: Why isn't this already illegal?

The short answer is that law enforcement often doesn't take it seriously. There are existing laws against harassment, but even victims of ordinary harassment have always had a hard time getting the authorities to pay attention. And anecdotal

evidence suggests that the cops tend to presume that harassment laws don't apply to the behavior of the kind of people who contribute to websites like Is Anyone Up, You Got Posted, and myex.com ("It's just online").

So: absent specific criminal laws addressing the subject, people who are harassed in this particularly vile way can't convince anyone to do anything about it.

This is why, once Speier has actually got a draft of this proposed bill out there, we're going to have to have a discussion about making the non-consensual distribution of each other's naked photographs a federal crime.

State politicians, moved by all the news stories you've also been reading about this varietal of internet cruelty, have begun to respond too. Of course, they've done so in the lethargic and occasionally ham-fisted way of state legislatures. California, New Jersey, and (as of two weeks or so ago) Idaho do now all have laws on the books designed to address revenge porn specifically. Alaska and Texas also have broader statutes that could apply to the dissemination of nude pictures. Some of these laws are better drafted than others — the California law (stupidly) excludes selfies from protection, and the Texas law has already been declared unconstitutional by an appeals court.

More than twenty other states, including Florida, Maryland, and Utah, have bills designed to address revenge porn moving along somewhere in their legislative processes. The map below simply shows where the bills and legislation are either in place or in progress, and where they aren't, per the National Conference of State Legislatures:



*... online entities protected by Section 230 of the Communications Decency Act are provided with a special defense against state criminal laws, but not against federal criminal laws (or federal copyright laws, for that matter). A federal law means that a revenge porn site claiming to merely provide a platform for angry exes to upload sexually explicit images of their former partners will not be able to hide behind Section 230.*

In other words? Having a federal law against revenge porn might mean that instead of having to bust people like Hunter Moore for hacking if we want to put them in prison, we could just prosecute them directly for, as Sam Biddle once put it, "building an entire career atop posting stolen naked images of women across the country."



#### **The FBI Just Busted the King of Revenge Porn**

After building an entire career atop posting stolen naked images of women across the country,...

Are there First Amendment concerns to consider here? Yes. In the original article on the Speier bill, one attorney for the Electronic Frontier Foundation summed up the concern quite nicely:

*"Frequently, almost inevitably, statutes that try to do this type of thing overreach," he said. "The concern is that they're going to shrink the universe of speech that's available online."*

But Citron adds that she doesn't think a federal law, if drafted properly, would have that effect. Existing laws against cyber-stalking and extortion have not chilled people's freedom of speech so far, she notes, so a law singling out malicious and intentional revenge porn would not likely do so either.

Franks, who says Speier's bill will look something like the model statute she provides here, adds, "I take very seriously both the grave nature of the harm and the First Amendment implications of regulating it. I have worked very hard to ensure that the definitions of the conduct are very narrow and that the type of conduct prohibited is very clear. I have also worked very hard to include exceptions for disclosures that serve the public interest."

Any future social media activities of one Anthony D. Weiner, in other words, probably will still be reportable under this law.

*[Images by Jim Cooke.]*



**dontshootme** ▶ Michelle Dean

3/27/14 2:51pm

I think the EFF's concerns are being under valued here. The likelihood of overreach is very large, in my opinion. Also, it strikes me as being very dangerous to start messing with Section 230. I get that this is a very real problem, I just suggest a knee-jerk reaction by lawmakers (which is what almost always happens with public outcry type stuff) will result in bad law.



**Michelle Dean** ▶ dontshootme

3/27/14 2:53pm

Undervalued by who? Me? The people working on this legislation? Sincere question.



**dontshootme** ▶ Michelle Dean

3/27/14 3:03pm

Sorry, undervalued may be the wrong word and I'm referring to the people making the law. Maybe it's just me, but I seem to see a lot of talk about how "bad" section 230 is (not in this article) so when I see issues like this, I get concerned that a law will be created that generates an exception. I believe we should go after the ones who upload. Hunter Moore's situation is fairly straightforward, but what about sites that link to it? Are they responsible? How about if I linked to it here in the comments, is Gawker responsible? Right now, no. If we weaken 230 then censorship gets easier and easier.



**Oddchild13** ▶ Michelle Dean

3/27/14 3:17pm

And with that we summoned the fedoras