

A PROPOSAL FOR A
NOTICE-AND-TAKEDOWN PROCESS FOR
REVENGE PORN

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INTRODUCTION

One of the most compelling legal and ethical problems on the Internet today is revenge porn. Revenge porn is the phenomenon of placing nude or sexual photographs and videos on the Internet without the consent of the subjects of those media.¹ The vast majority of revenge porn victims suffer from “significant emotional distress [and] . . . impairment in social, occupational, or other important areas of functioning.”² Before 2013, only three states had laws that made revenge porn illegal, and victims of revenge porn often had a difficult time soliciting help from law enforcement.³ There have been positive developments since then: thirty-eight states now have laws criminalizing revenge porn acts,⁴ and large Internet companies have implemented policies to combat revenge porn directly.⁵ However, many of those laws have been criticized as having “narrow applicability,”⁶ and only eleven states currently offer a civil

¹ See Emily Reynolds, *Why there’s no ‘silver bullet’ for ridding the web of revenge porn*, WIRED (Mar. 16, 2017), www.wired.co.uk/article/revenge-porn-facebook-social-media.

² *Id.*

³ See Mary Anne Franks, *“Revenge Porn” Reform: A View From The Front Lines*, 69 FLA. L. REV. 1, 5–6 (2017).

⁴ *Id.* at 6.

⁵ See Jessica Roy, *How Tech Companies Are Fighting Revenge Porn—And Winning*, THE CUT (June 24, 2015), <https://www.thecut.com/2015/06/how-tech-companies-are-fighting-revenge-porn.html>.

⁶ See Emily O’Hara, *The ACLU Is Fighting to Keep Revenge Porn Safe and Legal for Perus*, VICE (Nov. 12, 2014), https://www.vice.com/en_ca/article/wd4yq9/why-

remedy to victims.⁷ Additionally, while efforts by Google to delist images identified as revenge porn from search results are a step in the right direction, the images still remain on the Internet after delisting.⁸ In fact, it is often difficult to legally require the removal of revenge porn images from the Internet due in large part to Section 230 of the Communications Decency Act (“Section 230”).⁹

Section 230 is designed to protect websites and online services from liability arising from content that is posted by users of the websites and services.¹⁰ This protection is available so long as the website did not curate the content itself, and it is often defended as an important tool for promoting free speech and avoiding censorship.¹¹ However, this law also enables websites to keep user-generated content online even if it has been found to be harassing or defamatory by a court.¹² Although many websites will comply with takedown orders when it becomes legally clear that content is illicit, some websites retain a policy of non-removal, which enables the content to remain online indefinitely.¹³ In the context of

the-aclu-is-fighting-to-keep-revenge-porn-safe-and-legal-for-pervs. State laws often target those who upload revenge porn but not website operators who host revenge porn. *See, e.g.*, ALASKA STAT. § 11.61.120 (2003) (criminalizing the distribution or publication of photographs depicting nude subjects or subjects engaged in a sexual act); FLA STAT. § 784.049 (2015) (criminalizing the publication of “sexually explicit image[s] of a person that contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person”); LA. STAT. ANN. § 14:283.2 (2015) (criminalizing the “[intentional disclosure of] an image of another person who is seventeen years of age or older, who is identifiable from the image or information displayed in connection with the image, and whose intimate parts are exposed in whole or in part”).

⁷ *See State Revenge Porn Laws*, C.A. Goldberg (last updated Mar. 20, 2018), <http://www.cagoldberglaw.com/states-with-revenge-porn-laws/>.

⁸ *See Roy, supra* note 5.

⁹ 47 U.S.C. § 230 (1996).

¹⁰ *See* Arthur Chu, *Mr. Obama, Tear Down This Liability Shield*, TECHCRUNCH (Sept. 29, 2015), <https://techcrunch.com/2015/09/29/mr-obama-tear-down-this-liability-shield/>.

¹¹ *See CDA 230: The Most Important Law Protecting Internet Speech*, Elec. Frontier Found., <https://www.eff.org/issues/cda230> (explaining that most online service providers would probably choose to not host any user content at all if it were possible that they could be liable for it) (last accessed Apr. 1, 2018).

¹² *See* Eric Goldman, *Ripoff Report Not Bound by Takedown Injunction Against User - Blockowicz v. Williams*, TECH. & MKTG. LAW BLOG (Dec. 22, 2009), http://blog.ericgoldman.org/archives/2009/12/ripoff_report_n.htm.

¹³ Ripoffreport.com is an example of a website that retains a policy of non-removal. *See General Frequently Asked Questions*, RIPOFF REPORT (last updated

revenge porn, Section 230 can enable a website to keep media online despite the fact that the subject did not consent to it being uploaded.¹⁴ It is true that Section 230 has exceptions for illegal content,¹⁵ but as noted above, since the criminal laws governing revenge porn are state laws, they are unable to override Section 230, which is federal law.¹⁶

One solution that has been proposed in the past is a notice-and-takedown process in the style of the Digital Millennium Copyright Act (DMCA).¹⁷ The notice-and-takedown process is intended to provide a “safe harbor” to online service providers by protecting such providers from liability for hosting copyright infringing content so long as the provider removes the content when requested to do so by the copyright holder.¹⁸ The service provider must also notify the user who posted the allegedly infringing material, and that user is then given the opportunity to submit a counter-notice claiming a right to post the material and asking for it to be reposted.¹⁹ If the sender of the the original notice-and-takedown request chooses, he may sue the user at this point; otherwise, the online service provider must place the material back online.²⁰ A very similar regime could work in the revenge porn context; a victim could

Nov. 13, 2016), <https://www.ripoffreport.com/faq> (“We will not remove Reports even when they are claimed to contain defamatory statements”).

¹⁴ If a photograph or video was taken with the subject’s consent, but uploaded online without the subject’s consent, it can be difficult to compel removal. Some websites will not remove pornographic imagery unless the subject has a copyright claim. See Sara Ashley O’Brien, *Woman Awarded \$6.45 Million in Revenge Porn Case*, CNN (Apr. 9, 2018), <http://money.cnn.com/2018/04/09/technology/revenge-porn-judgment/index.html>; See also Erica Fink, *To Fight Revenge Porn, I had to Copyright my Breasts*, CNN (Apr. 27, 2015), money.cnn.com/2015/04/26/technology/copyright-boobs-revenge-porn/index.html?iid=EL.

¹⁵ See 47 U.S.C. § 230 (1996).

¹⁶ See Josh Blackman, *Federal “Revenge Porn” Legislation in the Works*, JOSH BLACKMAN’S BLOG (Nov. 25, 2013), <http://joshblackman.com/blog/2013/11/25/federal-revenge-porn-legislation-in-the-works/>.

¹⁷ See Sarah Jeong, *The Final Text of the Proposed Intimate Privacy Protection Act is Better Aligned With Tech Interests*, MOTHERBOARD (July 15, 2016), https://motherboard.vice.com/en_us/article/53d59z/new-revenge-porn-bill-shows-silicon-valleys-influence-in-politics.

¹⁸ See 17 U.S.C. § 512 (1998); see also Digital Millennium Copyright Act, ELEC. FRONTIER FOUND., <https://www.eff.org/issues/dmca> (last accessed Apr. 1, 2018).

¹⁹ See *Responding to a DMCA Takedown Notice Targeting Your Content*, DIGITAL MEDIA L. PROJECT, <http://www.dmlp.org/legal-guide/responding-dmca-takedown-notice-targeting-your-content> (last accessed Apr. 1, 2018).

²⁰ See *id.*

give notice to the online service provider, who would be required to take down the content. If the original poster believes she has a legal right to post the content, she can send a counter notice. If a counter-notice is sent, then the victim would be able to pursue litigation with the content removed from the website in the meantime.²¹

I. THE NOTICE AND TAKEDOWN PROCESS OF THE DIGITAL MILLENNIUM COPYRIGHT ACT

The DMCA was signed into law in 1998 and added an important new aspect of copyright law: limited liability for online service providers due to copyright infringement.²² This limited liability is found in Title II of the DMCA and section 512 of the Copyright Act, and is given to online service providers that “adopt and reasonably implement a policy of terminating in appropriate circumstances the accounts of subscribers who are repeat infringers.”²³ Specifically, the service provider is not liable for either monetary damages or injunctive relief when it hosts infringing content if it:

- Does not have actual knowledge that the material or an activity using the material on the system or network is infringing;
- In the absence of such actual knowledge, is not aware of facts or circumstances from which infringing activity is apparent; or
- Upon obtaining such knowledge or awareness, acts expeditiously to remove, or disable access to, the material;
- Does not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity; and
- Upon notification of claimed infringement . . . responds expeditiously to remove, or disable access to, the material that is claimed to be infringing or to be the subject of infringing activity.²⁴

²¹ This strategy is already employed in cases where the subject of the revenge porn is able to make a copyright claim in the media. *See supra* note 14. This proposal would extend this protection to cases where it is not possible for the subject to make such a copyright claim.

²² *See The Digital Millennium Copyright Act of 1998 Summary*, U.S. COPYRIGHT OFF. (Dec. 1998), <https://www.copyright.gov/legislation/dmca.pdf>.

²³ *Id.*

²⁴ *Supra* note 18. It is important to note that Section 230 does not apply to intellectual property law, and thus online service providers are not protected by

This is the statutory source of the notice-and-takedown process that exists in copyright law. An example of this process in action follows: a user posts a video on YouTube that contains copyrighted material that the user does not own and has not paid a license for—therefore, the act is copyright infringement. YouTube does not know that this material is infringing when it is placed on its servers. The owner of the copyrighted material then alerts YouTube that the video is infringing, and YouTube responds by immediately removing the material from the website.

The alleged copyright owner must submit the notice “under penalty of perjury” that they are the owner or an authorized representative of the owner, and there is liability imposed on any person who “knowingly materially misrepresents . . . that the material [in question] is infringing”; these two facets of the statute should work to disincentivize abuse of the process.²⁵ Additionally, the user who put up the content that was taken down may send a counter-notice claiming that the uploading of the material is not copyright infringement.²⁶ This counter-notice must include:

- A physical or electronic signature of the subscriber (the user who originally uploaded the material in question).
- Identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled.
- A statement under penalty of perjury that the subscriber has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled.
- The subscriber’s name, address, and telephone number, and a statement that the subscriber consents to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if the subscriber’s address is outside of the United States,

Section 230 from liability stemming from media posted by users that infringes copyright. *Supra* note 9 (“Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.”). Thus, the DMCA extends Section 230-like protection to online service providers in the area of intellectual property infringement so long as the online service provider meets the listed criteria. Without this protection, online service providers could be liable for contributory or vicarious infringement for media posted by users. S. Rep. No. 105-190, at 20 (1998) (“The [safe harbor] limitations . . . protect qualifying service providers from liability for all monetary relief for direct, vicarious and contributory infringement.”).

²⁵ *See supra* note 18.

²⁶ *See id.*

for any judicial district in which the service provider may be found, and that the subscriber will accept service of process from the person who provided notification . . . or an agent of such person.²⁷

After a counter-notice is filed, the entity that sent the original notice-and-takedown request has fourteen days to decide if they will sue the uploader—if they don’t, the material is put back on the website.²⁸ Additionally, attorney’s fees can be awarded to either party if the opposing party knowingly uses either the notice or counter-notice illicitly, which again should incentivize honest behavior.²⁹

This aspect of the DMCA is often referred to as a “safe-harbor” because it gives online service providers a shield from liability for hosting copyright infringing material so long as those providers comply with the rules of Section 512.³⁰ The intention of this safe-harbor was “for copyright owners and internet service providers to cooperate to detect and address copyright infringements.”³¹ Logistically, the safe-harbor regime has allowed websites that host user-generated content, such as YouTube, Reddit, Facebook, and others to thrive; without the safe-harbor, it is doubtful that these platforms would be able to survive the torrent of litigation that would come with the copyright infringement committed by users.³² Additionally, the notice-and-takedown process can help artists and creators police their content without needing to pay the high price of litigation.³³ However, there is also criticism that the safe-harbor and

²⁷ *Id.*

²⁸ See *supra* note 19.

²⁹ See *supra* note 18. For an example of a case in which a notice-and-takedown process led to a counter notice and then a lawsuit, see *Hosseinzadeh v. Klein*, 276 F. Supp. 3d 34 (2017).

³⁰ See *Copyright of Digital Information*, DIGITAL L. ONLINE (2002), <http://digital-law-online.info/lpdii.o/treatise33.html>.

³¹ See *Section 512 Study*, U.S. COPYRIGHT OFF., <https://www.copyright.gov/policy/section512/> (last accessed Apr. 1, 2018).

³² See *supra* note 18.

³³ See Jon Brodtkin, *Twitter Won’t Take Down “Giant Food” Photos, so Artist Sues*, ARSTECHNICA (Sept. 11, 2012), <https://arstechnica.com/tech-policy/2012/09/twitter-wont-take-down-tiny-food-photos-so-artist-sues/> (noting that while Twitter did not accommodate artist Christopher Boffoli’s takedown requests, Pinterest, Facebook, and Google “ma[d]e it very easy to send a DMCA takedown and . . . respond[ed] very quickly”).

notice-and-takedown process have created a system that allows for censorship without a constitutional check, effectively limiting free speech.³⁴

II. SECTION 230 OF THE COMMUNICATIONS DECENCY ACT

The Communications Decency Act was signed into law in 1996 and included an industry shaping provision: limited liability for online service providers stemming from user posted content.³⁵ This limited liability is found in Section 230 of Title 47 of the U.S. Code, and states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.”³⁶ Specifically, the service provider is not liable for either monetary damages or injunctive relief when it hosts content created by users of the service. Additionally, online service providers are protected from civil liability in instances where they voluntarily take any action “in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected.”³⁷ Revisiting the previous example: if a user uploads a video on YouTube that is found by a court to be defamatory, the user who uploaded the video can be liable for damages, but YouTube cannot. Under Section 230, YouTube does not even have to remove the video.³⁸ Many websites probably would remove content that a court found to be defamatory, but some websites have a specific policy to not take anything down unless it is legally obligated to do so³⁹—and few laws require removal of undesirable content, including revenge porn.⁴⁰

³⁴ See Catherine R. Gellis, *Second Comment of Floor64, Inc. d/b/a The Copia Institute*, Comment before the U.S. Copyright Office, Docket No. 2015-7 (Feb. 21, 2017), <https://assets.documentcloud.org/documents/3472924/512study-Followup-Floor64-FINAL.pdf>. For a general discussion on the benefits and harms of the notice and takedown process, see Richard Chapo, *What Are the Pros and Cons of the DMCA?*, LAW OFF. OF RICHARD A. CHAPO (June 30, 2012), <https://www.socalinternetlawyer.com/pros-cons-dmca/>.

³⁵ See *supra* note 11.

³⁶ 47 U.S.C. § 230 (1996).

³⁷ *Id.*

³⁸ See *supra* note 12.

³⁹ See *supra* note 13.

⁴⁰ As noted *supra*, Section 230 provides online service providers with protection from liability from state laws that criminalize revenge porn. *Supra* note 9 (“No

Section 230, like the safe-harbor provision of the DMCA, allows websites like YouTube, Reddit, Facebook, and many others to host massive amounts of user-generated content without fear of liability. Without Section 230, it is unlikely that these platforms could afford to exist. Unlike traditional print publishers, websites do not generally have a screening process before publication, and requiring them to do so would very likely diminish the amount of user-generated content on the Internet. However, Section 230 also allows content to remain online even when a court has found it to be defamatory, so long as it is legal and is not a copyright infringement.⁴¹ One complaint that has arisen is that Section 230 enables vile content and incentivizes websites to avoid cleaning up due to the lack of repercussions.⁴²

III. PROPOSAL: A NOTICE AND TAKEDOWN PROCESS FOR REVENGE PORN

A notice-and-takedown process for revenge porn could work very similarly to the notice-and-takedown process for copyright infringement provided by the DMCA. This regime would need to include one major shift in the law: revenge porn victims currently do not have an absolute right to have any nude or sexual images of themselves taken down. Part

cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.”). If the revenge porn at issue is not illegal at the federal level and does not infringe copyright, then a website likely would not be obligated to take it down. For example, Reddit banned submissions of involuntary pornography in 2015 but was not legally obligated to do so; if the website had chosen, it could have continued to permit such submissions (assuming they didn’t violate copyright law).*See* Abby Ohlheiser, *Reddit’s New Privacy Policy Bans Sharing Nude Images Without Consent*, WASH. POST (Feb. 24, 2015), https://www.washingtonpost.com/news/the-intersect/wp/2015/02/24/reddits-new-privacy-policy-bans-sharing-nude-images-without-consent/?utm_term=.17dd972c57b2. It is relevant to note that a bill has recently been passed and signed by President Trump that will amend Section 230 to provide liability to online service providers that recklessly contribute to sex trafficking. *See* Tom Jackson, *Trump Signs ‘FOSTA’ Bill Targeting Online Sex Trafficking, Enables States and Victims to Pursue Websites*, WASH. POST (Apr. 11, 2018), https://www.washingtonpost.com/news/true-crime/wp/2018/04/11/trump-signs-fosta-bill-targeting-online-sex-trafficking-enables-states-and-victims-to-pursue-websites/?noredirect=on&utm_term=.79782571cfa5. While this will not cover many forms of revenge porn, it might lead websites towards more proactive and aggressive removal of lewd content in general.

⁴¹ *See supra* note 12.

⁴² *See supra* note 10.

of this proposal would include federally providing that right to victims. In that scenario, requesting revenge porn content to be taken down becomes even more similar to requesting copyright infringing material to be taken down; in both cases, the requester has a legal right to prevent others from displaying the media.

The proposed notice-and-takedown process could also give online service providers a shield from liability in situations where the service provider is unaware that it is hosting revenge porn, does not directly profit off of the revenge porn, and removes the revenge porn expeditiously once it is informed of it. These conditions are the same as those found in the DMCA safe-harbor requirements, and thus online service providers would already be aware of them in the copyright context. This would hopefully allow for a smooth transition into the proposed anti-revenge porn regime.

The actual mechanics of the notice-and-takedown could also work very similarly to that of the DMCA: victims would contact the online service provider and affirm under the penalty of perjury that they are one of the nude or sexualized subjects of a photograph or video. The online service provider would then remove the media and contact the uploader to let them know what had happened. The uploader could then give a counter-notice to have the content reposted if he is willing to affirm under penalty of perjury that he is not violating the requester's rights by displaying the content online.⁴³ At that stage, the requester would have fourteen days to decide whether or not to sue the uploader in order to keep the content down. Either the requester or the uploader would be liable for attorney's fees in the event that they knowingly abused the notice or counter-notice.

This solution is attractive for a number of reasons. First, it would provide victims with a reliable means to remove revenge porn from the Internet. Second, it would unify the patchwork of state laws into a cohesive regime that enables lawyers to advocate effectively on behalf of their clients. Third, this solution would compel online service providers to remove revenge porn in all cases, and it would prevent Section 230 from allowing bad actors to keep up revenge porn that is not technically illegal under current law. Fourth, as mentioned *supra* some lawyers are

⁴³ This would require the uploader to provide his identity, which would work to prevent anonymous users from abusing the system.

already using the DMCA notice-and-takedown process to combat revenge porn under a theory that the subject owns a copyright in the photograph.⁴⁴ However, this approach currently remains limited because there are many cases in which the subject is not the copyright owner and may not even have a copyright interest. Broadening the notice-and-takedown process to apply to all revenge porn would allow this strategy to be implemented on a wider scale.

There are potential downsides to this proposed solution as well. Similar to the DMCA notice-and-takedown regime, some critics would likely contend that this process would chill and suppress free speech.⁴⁵ It is fair to say that at least some legitimate speech may be removed if this law were to be implemented.⁴⁶ While this could be limited by making it more difficult to request a takedown, doing so would defeat the purpose of the process (empowering victims to remove their image from the Internet easily). Another critique is that identifying the owner of a copyright is easier than identifying which photographs a victim has a right to remove. However, this should be less of a problem if victims are provided with a blanket right to remove images in which they appear naked or sexualized. Additionally, a courtroom can make the final determination in a case where there is contention on both sides over whether a photograph should be removable or not. An additional critique is that this would negatively impact industry that is built on nude and sexualized photographs; though, those businesses would still have the ability to use consensual images. To the extent that the photographs were placed with consent, the issue becomes a contract case—presumably, subjects of photographs could license their nude image, in which case they would waive their right to removal. Ultimately, if the balance is between enabling the mass removal of revenge porn and the health of the industry for nude and sexualized photographs, it may be worth allowing the right to dig-

⁴⁴ See *DMCA Takedowns and Revenge Porn Removal*, FRONT RANGE LEGAL SERVS., www.frontrangelegalservices.com/services/intellectual-property-patent-trademark-copyright/dmca-takedowns-online-content-removal-revenge-porn/ (last accessed Apr. 1, 2018).

⁴⁵ Wendy Seltzer, *Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of the DMCA on the First Amendment*, 24 HARV. J.L. & TECH. 171 (2010).

⁴⁶ For example, there could be an abuse of the notice-and-takedown process if a third party with no interest in the image at issue initiates a takedown request. Despite the fact that said party would incur liability for abusing the process, it is still possible for this abuse to occur. The original uploader might not want to bother sending a counter-notice, which would lead to the legitimate content being removed at no cost to the abusive third party.

nity and privacy win out. Finally, this solution would require the victim to monitor a (potentially large) number of websites and to send notices to each online service provider that hosts infringing content. This will be a very time consuming process, and it will be expensive for victims to retain legal services to do this work on their behalf (although it may be cheaper than the current legal costs that are associated with typical revenge porn cases).

Another interesting parallel between copyright infringement and revenge porn is the attempt by social media companies to use content identification technology to solve the problem in an autonomous manner. YouTube allows copyright owners to submit their copyrighted content to a database that YouTube checks new uploads against; if a new upload contains part of that copyrighted content without the owner's permission, the new upload is automatically flagged, and can later be blocked.⁴⁷ Similarly, Facebook has started a project that requests users to send nude photographs that they don't want appearing online into a database.⁴⁸ Facebook then hashes the photographs and uses that unique identification to check against all photographs uploaded to the site. If another photograph has the same hash as one in the database, it is automatically removed.⁴⁹ These solutions are certainly a step in the right direction for keeping unwanted content off of the Internet, but they do not solve the problem to a degree that makes the notice-and-takedown process superfluous. These technological measures only work when the online service provider is willing and able to use the measure, and this method is premised on the online service provider actually having access to the material at issue. While this might be a useful method in the copyright context, it is understandably difficult in the revenge porn context to know which images will possibly be displayed - and it would probably be difficult for many individuals to simply hand over all of their sensitive pictures to a social media company and trust that they will be safe.⁵⁰ Thus,

⁴⁷ See *How Content ID works*, YOUTUBE, <https://support.google.com/youtube/answer/2797370?hl=en> (last accessed May 8, 2018).

⁴⁸ See Olivia Solon, *Facebook Asks Users For Nude Photos In Project To Combat Revenge Porn*, GUARDIAN (Nov. 17, 2017), <https://www.theguardian.com/technology/2017/nov/07/facebook-revenge-porn-nude-photos>.

⁴⁹ See *id.*

⁵⁰ Additionally, these measures are not always accurate. See Jessica Guynn, *Google Photos Labeled Black People 'Gorillas'*, USA TODAY (July 1, 2015),

even with these technological measures, a notice-and-takedown process for revenge porn may still be desirable.

CONCLUSION

Some experts in the world of law and technology worry that an over-regulation of revenge porn could lead to innocent behavior being criminalized.⁵¹ Others claim that revenge porn can be regulated in a way that avoids capturing non-harmful behavior.⁵² Any proposed solution to revenge porn must be cognizant of the importance of allowing non-infringing behavior to continue while still providing an effective way to inhibit the problem. A notice-and-takedown process might provide that balance. It would empower victims by putting usable tools in their hands and it would provide lawyers with a clear and direct strategy for better aiding clients in difficult situations. Importantly, it would also create a format for obtaining relief for those who are wrongly accused. Paired with the tools currently being developed by Internet companies, a notice-and-takedown process for revenge porn could be an important step towards providing safety, security, and dignity to Internet users across the country.

<https://www.usatoday.com/story/tech/2015/07/01/google-apologizes-after-photos-identify-black-people-as-gorillas/29567465/>. Difficulties in such software can remain pervasive over time. See Tim Simonite, *When It Comes To Gorillas, Google Photos Remains Blind*, WIRED (Jan. 1, 2018), <https://www.wired.com/story/when-it-comes-to-gorillas-google-photos-remains-blind/>.

⁵¹ See Sarah Jeong, *Revenge Porn is Bad. Criminalizing it is Worse*, WIRED (Oct. 28, 2013), <https://www.wired.com/2013/10/why-criminalizing-revenge-porn-is-a-bad-idea/>.

⁵² See Neil M. Richards & Danielle Citron, *Regulating Revenge Porn Isn't Censorship*, AL JAZEERA AM. (Feb. 11, 2015), <http://america.aljazeera.com/opinions/2015/2/why-regulating-revenge-porn-isnt-censorship.html>.