

Non-Consensual Sexually Explicit Media



Executive Summary

Non-consensual sexual media offenses can refer to the production, distribution, or sending of sexually explicit images or videos without the consent of the individual depicted in or receiving them. The two most common behaviors considered non-consensual sexual media offenses include revenge porn (distributing sexually explicit images without a person’s consent often in retaliation) and cyberflashing (the unsolicited sending or sharing of sexually explicit images via digital technologies). Revenge porn is not a new phenomenon and most states already have legislation criminalizing the dissemination of such content. However, given new development in technology and social media applications, cyberflashing is becoming a significant public health, criminal, and social problem that affects large segments of the population, and most states do not have legislation directly addressing the issue.

Highlights

- In a 2018 study, 52% of women and 36% of men 18–34 years old report having received an unsolicited sexually explicit image.
- Individuals victimized by revenge porn and cyberflashing can experience negative effects including anxiety and depression. The negative effects of revenge porn can also include post-traumatic stress disorder and suicidal thoughts, in addition to damaging social relationships.
- Most recent estimates suggest that 69% of children own a smartphone by the age of 12 years old and by high school, 80-90% of students own a smartphone.
 - In states without underage “sexting” laws, minor-to-minor sharing of explicit images can lead to child pornography charges for the youth involved.
- While 46 states have criminal laws against revenge porn, only two states (Texas and Virginia) have passed laws to penalize cyberflashing.

Limitations

- While laws related to sexually explicit media attempt to deter the distribution of images with legal consequences, there is little evidence to suggest that these laws reduce the occurrence of such offenses.
 - Critics suggest that laws have been outpaced by teen behaviors and developing technologies, and argue for improvements in sex and health education.
- Digital technologies used for sending explicit images have existed for a short period of time, and studies may not capture the full extent of the situation.

Research Background

Non-Consensual Sexual Media Offenses

Non-consensual sexual media offenses can refer to the production, distribution, or sending of sexually explicit images or videos without the consent of the individual depicted in the content, or the consent of those receiving them.¹ These offenses have been recontextualized with the relatively recent adoption of technologies such as smartphones and the internet. Laws to address these offenses have not always kept up with changes in technology. The two most common behaviors considered non-consensual sexual media offenses include revenge porn and cyberflashing.

Revenge Porn

Revenge porn involves distributing sexually explicit images without a person's consent, often in retaliation (or revenge) to an ending relationship.² Research suggests that subjects of revenge porn experience negative effects such as post-traumatic stress disorder, anxiety, depression, and suicidal thoughts, in addition to damage to their social relationships.^{2,3} Revenge porn is considered sexual harassment, and while it is not considered a crime at the federal level, 46 states and Washington, D.C. have passed varying laws regarding the production or distribution of nonconsensual pornographic content since 2013.⁴

Cyberflashing

Cyberflashing is the sending or sharing of sexually explicit images via digital technologies (e.g., text messaging, social media applications, device-to-device file sharing systems) to non-consenting recipients.¹ Cyberflashing can commonly contain unrequested images of the breast or genitalia. Individuals who receive unsolicited sexual images often feel violated and distressed and can experience long-term negative effects such as depression and anxiety.¹ While indecent exposure is illegal in the United States, cyberflashing (a digital version of indecent exposure) is a form of sexual harassment that is not addressed in statute in 48 states.

The Rise of Cyberflashing with Technology Developments

Revenge porn is not a new phenomenon with many states criminalizing the dissemination of such content since 2013.⁴ However, given new development in technology and social media applications, cyberflashing is becoming a significant public health, criminal, and social issue that affects large segments of the population. A survey conducted by the Pew Research Center found that 35% of U.S. adults have been sent an unsolicited explicit image.⁵ Further analysis of these data shows large discrepancies by age and gender, such that 52% of women aged 18-34 years old have received an unsolicited explicit image compared to 36% of men of the same age group. Similar results have been found in academic research when considering explicit images from strangers specifically; 40% of women have received an unsolicited sexually explicit image from a stranger compared to 14% of men.⁶

These numbers are even greater for women who use online dating applications. The number of women aged 18-34 years old who use an online dating app and have received an unsolicited explicit message increases to 57%.⁵ Recent internal surveys by Bumble, an online dating application, indicated that 48% of female customers aged 18-24 years old have been sent unsolicited sexual images in the previous year.⁷ A 2018 study, commissioned by Bumble, further found that 96% of women were not happy to receive unsolicited sexually explicit images.⁷

While much of the research investigating cyberflashing focuses on heterosexual men and women, there are elevated incidences of cyberflashing and sharing of explicit images within the LGBTQ+ community while using community-specific dating apps (e.g., Tinder, Grindr, Her). Approximately, 15% of the LGBTQ+ internet community has been threatened with or victimized by revenge porn compared to 4% of the general internet population.⁸⁻¹⁰ Specifically, men who have sex with men are more than twice as likely as the general population to experience unsolicited image abuse.^{9,10}

Cyberflashing and Minors

In 2015, 32% of 11-year-olds owned a smartphone, and by age 12, 41% owned smartphones. In 2019, 53% of 11-year-olds owned a smartphone, and by age 12, 69% owned smartphones.¹¹ Today, 80-90% of high school students own a smartphone.¹¹ Given that minors own smartphones with access to similar apps and technologies that adults have, cyberflashing is an increased concern for minors. While dating applications restrict users to be at least 18 years of age and older, popular social media applications such as Facebook, Instagram, and SnapChat require users to be at least 13 years old. Survey data from Pew Research Center suggests 1 in 4 teens have received an unsolicited explicit image. Analyzing this data by gender revealed that 29% of teen girls received an unsolicited image compared to 20% of teen boys.⁵

While there are legal ramifications for an adult sharing explicit images with a minor, there are also legal consequences for minor-to-minor cyberflashing. Minor-to-minor sharing of explicit images can lead to penalizations ranging from citations, misdemeanors, or child pornography charges, dependent upon the laws enacted in the state. These charges can also depend on the years of separation between the two parties (i.e., if separated by a few years, an older child can be tried as an adult).

State Legislation

Cyberflashing

Developments in technology have enabled the sending of unsolicited sexually explicit images and videos via digital means, but legislation has not kept up to address this. Currently, only two states have laws directly addressing cyberflashing, [Texas](#) and [Virginia](#). There is also proposed legislation in [CA](#), [NY](#), and [NH](#) to try to prevent this.

In 2019, Texas passed [HB 2789](#) and made the unsolicited electronic transmission of a sexually explicit visual image or video a Class C misdemeanor. [Texas statute](#) states that an individual found guilty of a Class C misdemeanor is punishable by a fine of up to \$500.

In April 2022, Virginia approved [SB 493](#). Under this law, any person over 18 who transmits an unsolicited sexually explicit image or video to another person over 18 is liable to the recipient of such material for the actual damages or \$500, whichever is greater, in addition to reasonable attorney fees and costs.

Sexting, Cyberflashing, and Minors Legislation

Sexting refers to the consensual exchange of sexually explicit texts, pictures, or videos. This is legal between consenting adults. However, minor-to-minor sexting is an illegal act. States have enacted minor sexting [laws](#) which differ from adult child pornography charges. However, these laws vary considerably from state to state.

In some instances, sexting laws can create leniency for minors. For example, in New Mexico and Maine, sexting between minors has been ultimately decriminalized between the ages of 14–17 years old, as long as the ages of those they are sexting or sharing images are not younger than 14 years old.¹² Some states, such as New York, offer a diversionary program that includes education about the legal and nonlegal ramifications of sharing sexually explicit material.¹² Indiana and Nebraska have criteria for affirmative defenses, such as if the teen depicted in an image voluntarily participated and there was no distribution, then there is no crime committed.¹² Similarly, in Texas, as long as the two minors are dating and within two years of age, then there is no crime committed.¹² In states without minor sexting laws, minor-to-minor sharing of explicit images can lead to similar child pornography charges. Critics suggest that laws have been outpaced by teen behaviors and developing technologies, and argue for improvements in sex and health education.

Arkansas, Oklahoma, Kansas, Nebraska, and Illinois have separate minor sexting offenses in statute. Missouri does not have a defined sexting law for minors, but the offense could be punishable under Missouri Statutes [573.040](#) and [573.110](#).

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