

COMMENTS OF THE
CYBER CIVIL RIGHTS INITIATIVE, INC.
and
WITHOUT MY CONSENT, Inc.

to

THE FEDERAL TRADE COMMISSION

In the Matter of Craig Brittain, Individually.

FTC File No. 132 3120

February 23, 2015

By notice published on February 6, 2015, the Federal Trade Commission (“FTC” or “Commission”) proposed an Agreement Containing Consent Order (“Consent Order”) to resolve the allegations contained in the Commission’s complaint against Craig Brittain (“Brittain” or “Respondent”).¹ The Consent Agreement aims to settle allegations against Brittain for two violations of Section 5(a) of the FTC Act. Pursuant to this notice, the Cyber Civil Rights Initiative, Inc. (“CCRI”) and Without My Consent (“WMC”) (collectively “CCRI-WMC”) jointly submit these comments and recommendations to advance the protection of consumers and the public.

CCRI is a 501c3 not-for-profit organization. CCRI’s mission is to bring awareness to and reduce the occurrence of harassment on the Internet. CCRI’s End Revenge Porn (“ERP”) campaign specifically focuses on the problem of the nonconsensual distribution of intimate images (commonly referred to as “revenge porn” or “nonconsensual porn”). Through ERP, CCRI advocates for technological, social, and legal innovation to fight nonconsensual pornography and provides direct support to its victims. CCRI collaborates with law firms, such as K&L Gates, and private attorneys to provide pro bono legal services to victims around the world. It also operates a 24-hour hotline for victims, providing them with emotional support and referrals for takedown services and lawyers. Finally, CCRI works with major social media and tech companies to develop policies to prevent the proliferation of intimate images and other forms of online harassment. CCRI conducted a survey² on revenge porn in 2013 that is frequently cited on the topic. In 2014, CCRI provided direct services to

¹ Craig Brittain, Individually; Analysis of Proposed Consent Order to Aid Public Comment, 80 Fed. Reg. 6,714, (proposed February 6, 2015)

² See <http://www.endrevengeporn.org/system/attachments/150206craigbr> (published Feb. 3, 2015), <http://www.endrevengeporn.org/revenge-porn-infographic/> and [Revenge Porn Statistics](http://www.endrevengeporn.org/main_2013/wp-content/uploads/2014/12/RPStatistics.pdf) (published Dec. 31, 2014), http://www.endrevengeporn.org/main_2013/wp-content/uploads/2014/12/RPStatistics.pdf.

1,500 victims of revenge porn. Last month (January 2015) alone, its website saw almost 94,000 unique visitors from 191 countries. CCRI educates stakeholders on the drafting of criminal legislation prohibiting nonconsensual pornography. As of February 2015, sixteen states have passed criminal laws against the conduct, 13 in the last year and a half. CCRI is presently working on several other state laws as well as working with the office of Rep Jackie Speier (D-CA) on a federal criminal law to prohibit the practice. The founders, board members, and volunteers of CCRI are comprised of leading academics and prominent victims, advocates, and practitioners in the field.

WMC is a 501c3 not-for-profit organization. It provides tools and educational materials free of charge to empower victims and survivors of online harassment to combat online invasions of privacy. Its website is the foremost one-stop resource for attorneys seeking substantive information about current statutes, case law, and procedure on the legal topics of personal privacy and online harassment. WMC publishes and updates practical resources for victims and advocates across the U.S. and provides training to law enforcement, lawyers and victim advocates on how to effectively fight online harassment through the criminal and civil justice system. It studies the impact and experience of online harassment victims, and publishes study results³ on its website. It distributes a weekly newsletter summarizing the latest news on online harassment, with particular focus on the nonconsensual distribution of intimate images. Finally, it brings together industry leaders, government actors, victims, and victims' advocates to discuss policy priorities, share information, and collaborate on common goals through private meetings, public events, trainings, panels, and symposia. The founders and advisory board are comprised of leading academics, practitioners, and Internet and privacy experts.

Section I of this comment discusses the problem of nonconsensual pornography. Section II describes the FTC Complaint. Section III discusses the proposed FTC Consent Order. Section IV responds to the Commission's decision to commence this case. Section V sets forth CCRI-WMC's recommendations for a stronger Consent Order. Sections VI and VII talk about next steps for the Commission (and Congress) to take to better deter companies from using unfair or deceptive practices that harm privacy.

CCRI-WMC supports the findings in the FTC Complaint and supports the directives contained in the Consent Order with the modifications described below in Section V. The Complaint and Consent Order unambiguously establish the Commission's position that it is unfair or deceptive to: 1) disseminate intimate videos or photographs without consent of the person depicted, 2) disseminate

³ See Preliminary Report: Without My Consent's Survey of Online Stalking, Harassment and Violations of Privacy (published Sept. 17, 2014), http://www.docstoc.com/docs/document-preview.aspx?doc_id=172507797

intimate photographs that the depicted person originally shared with the expectation that they would remain private. The Commission should translate the ideas contained in this case into new rules promulgated to protect consumer privacy. Such rules would give way to stronger enforceability options for the Commission and deter the harmful practices that continue to ruin lives.

I. The Crisis of Revenge Porn

The disclosure of sexually explicit images without consent and for no legitimate purpose – popularly but misleadingly referred to as “revenge porn” – causes immediate, devastating, and in many cases irreversible harm. A vengeful ex-partner, opportunistic hacker, or rapist can upload an explicit image of a victim to a website where thousands of people can view it and hundreds of other websites can share it. In a matter of days, that image can dominate the first several pages of search engine results for the victim’s name, as well as being emailed or otherwise exhibited to the victim’s family, employers, co-workers and peers workers and peers.⁴

Nonconsensual pornography is not a new phenomenon, but its prevalence, reach and impact have increased in recent years. The Internet has greatly facilitated the rise of nonconsensual pornography, as dedicated “revenge porn” sites and other forums openly solicit private intimate images and expose them to millions of viewers. As many as 3000 websites feature “revenge porn.”⁵ Intimate material is also widely distributed without consent through social media blogs, emails, and texts. Websites dedicated solely to revenge porn, such as Respondent’s, are popular because they provide an easily accessible, largely anonymous platform that connects individuals who wish to disclose intimate material without consent with individuals who wish to consume it. Visitors to these sites are frequently not content to merely view the material, but often also engage in vicious harassment of the subjects depicted, including crude commentary about victims’ bodies and speculation about victims’ promiscuity and sexual health. Respondent’s website,⁶ like most revenge porn websites, posts personal information about the victims (e.g. full name, age, address, employer, email address, social media screenshots, social security number, school, etc.) alongside the images. Visitors frequently interpret this information as an invitation to engage in unsolicited contact with victims. Visitors encourage one another to unearth and publish even more intimate images and personal details about the victims, prying into their personal lives and sometimes hacking into email accounts in this quest.

⁴ See Mary Anne Franks, *Drafting an Effective ‘Revenge Porn’ Law: A Guide for Legislators*, END REVENGE PORN (Jan. 10, 2015), <http://www.endrevengeporn.org/guide-to-legislation/>

⁵ *Revenge Porn: Misery Merchants*, THE ECONOMIST, July 5, 2014, <http://www.economist.com/news/international/21606307-how-should-online-publication-explicit-images-without-their-subjects-consent-be>.

⁶ Complaint, paragraph 5.

Victims are routinely threatened with sexual assault, stalked, harassed, fired from jobs,⁷ forced to change schools, disciplined at school, forced to move and change their names.⁸ Some victims have even committed suicide.⁹ At minimum, most victims close their social media accounts and withdraw from the Internet.¹⁰

Revenge porn website operators often escape civil and criminal liability for their critical role in hosting revenge porn by invoking federal law, specifically, Section 230 of the Communications Decency Act, which grants online intermediaries immunity for content posted by third parties.¹¹ Even though some states have now criminalized revenge porn, many websites continue to evade the reach of the law because “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with” Section 230.¹²

II. The Complaint Allegations

The Complaint alleges two counts of unfair or deceptive acts.

Count 1 discusses Brittain’s dissemination and publication of intimate images for commercial gain and without the subjects’ consent. It states that Brittain “knew or should have known that the depicted person had a reasonable expectation that the image would not be disseminated through the Website for commercial gain.” It further states that his practices “have caused or were likely to have caused substantial injury” to the subjects that is “not reasonably avoidable.” Lastly, it indicates that the injuries to the depicted subjects outweigh any benefit to consumers or competition.

Count 2 relates to the intimate images that Brittain personally acquired under the pretense that they were for his personal use, but then published along with the depicted subjects’ personal information.

⁷ See Ariel Ronneberger, *Sex, Privacy, and Webpages: Creating a Legal Remedy for Victims of Porn 2.0*, 21 SYRACUSE SCI. & TECH. L. REP. 1, 10 (2009).

⁸ See Danielle Keats Citron & Mary Anne Franks, *Criminalizing Revenge Porn*, 49 WAKE FOREST L. REV. 345 (2014).

⁹ Emily Bazelon, *Another Sexting Tragedy*, SLATE, Apr. 12, 2013, http://www.slate.com/articles/double_x/doublex/2013/04/audrie_pott_and_rehtaeh_parsons_how_should_the_legal_system_treat_nonconsensual.html.

¹⁰ DANIELLE KEATS CITRON, HATE CRIMES IN CYBERSPACE (2014).

¹¹ Criminal charges have been brought against some operators when other illegal conduct accompanies the posting of images, such as extortion, hacking, child pornography. See Press Release, Attorney Gen. Kamala D. Harris Issues Statement on Cyber-Exploitation Verdict (Feb. 3, 2015), <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-statement-cyber-exploitation-verdict>; Press Release, Two California Men Arrested in E-Mail Hacking Scheme that Yielded Nude Photos that were Posted on ‘Revenge Porn’ Website, FBI L.A. Div. (Jan. 23, 2014), <http://www.fbi.gov/losangeles/press-releases/2014/two-california-men-arrested-in-e-mail-hacking-scheme-that-yielded-nude-photos-that-were-posted-on-revenge-porn-website>.

¹² 47 U.S. Code § 230(e)(3)

III. The Commission's Proposed Consent Order

Like many prior privacy-related consent orders, this one prohibits wrongful activities including the inducement of breaches of confidentiality and extortion, requires consumer notification, demands the deletion of private information and changes in privacy policies, requires consent and recordkeeping programs, institutes compulsory compliance reports and material changes in circumstance.¹³

Although the Consent Order imposes as much rigor as we can expect from the Commission given its restricted authority, most of the prohibitions are moot. That is because Brittain's website is no longer operational and he claims to have exited the "revenge porn business permanently."¹⁴

The proposed Consent Order is divided into seven prohibitions.

Part I prohibits Brittain from "dissemination of videos or photographs without consent" that depict individuals with "his or her intimate parts exposed." He may only disseminate images online containing exposed intimate parts if he "obtain[s] affirmative express consent in writing from the individual for such dissemination" and "clearly and prominently disclos[es] directly to that individual, and not as part of a 'privacy policy,' 'terms of use'" etc. that he intends to distribute the image(s) online and for commercial gain.

Part II restrains Brittain, and those acting under his direction, from misrepresenting "any material facts" via a website. The material facts include, but are not limited to, Brittain's "collection, use, disclosure, or deletion of personal information, his own identity, the identity of persons providing content or advertisements displayed on a website."

Part III restrains Brittain from benefiting from the personal information obtained through his business prior to the execution of the Consent Order and requires that within thirty days of the entry of the order all such information is destroyed, unless otherwise directed by a government agency or pursuant to law, regulation, or court order.

Part IV imposes future recordkeeping obligations which must be maintained by Brittain and be available for inspection by the Commission. These obligations include A) maintaining copies of express written consent from individuals whose intimate parts are exposed as referenced in Part I, B) for a period of five or more years from the date of creation or publication, maintaining all outward representations regarding the collection and use of personal information from any website that he operates that collects personal information, this includes terms of use, FAQs, privacy policies, C) for a

¹³ Daniel Solove & Woodrow Hartzog, *Snapchat and FTC Privacy and Security Consent Orders*, LINKEDIN PULSE, May 12, 2014, <https://www.linkedin.com/pulse/20140512053224-2259773-the-anatomy-of-an-ftc-privacy-and-data-security-consent-order>.

¹⁴ Press Release/Open Letter, Craig Brittain (Jan. 30, 2015), www.isanybodydown.com.

period of five years from the date received, all consumer complaints and requests for content removal relating to his collection, use, disclosure, or sharing of personal information, D) all responses to those complaints for five years from date of response, E) copies of all subpoenas and communications with law enforcement regarding collection, use, disclosure or sharing of personal information for five years from date received or sent, F) all documents prepared by or on Brittain's behalf that contradict, qualify or call into question his compliance with this order, for a period of five years from the date received or created.

Part V gives Brittain 30 days to serve the Consent Order on all current employees, agents, and representatives. Future employees must be served the Consent Order within 30 days from date of hire.

Part VI requires that Brittain notify the Commission of changes in business or employment for ten years following the date of the Consent Order.

Part VII requires that within 60 days from the date of the Consent Order Brittain file with the Commission a report detailing his compliance with the Consent Order.

Part VIII states that the agreement expires after 20 years.

IV. The Commission's Decision to Address the Crisis of Nonconsensual Porn is Valuable and Worthy of Praise

The Commission's pursuit of one of the most notorious revenge porn sites is a step forward in the protection of consumer privacy in the twenty-first century. By issuing this Order, the Commission has sent the message that it is an unfair consumer practice to solicit breaches of confidentiality involving the posting of nude images and to profit from its removal. This acknowledges the suffering experienced by countless victims and vindicates the work of CCRI-WMC.

The consumers harmed by Brittain and his ilk are unwilling ones. Unlike many privacy breaches, where the breach occurs during the course of a consumer's engagement with a commercial enterprise, here, the privacy breach itself coerces the victim into the commercial relationship.

The ideas advanced by the Commission are important. The complaint reinforces key notions about what constitutes unacceptable commercial conduct. It recognizes that individuals who share an intimate photo in a private context have a reasonable expectation of privacy. It notes the inevitability of harm to victims stemming from the nonconsensual dissemination of the images and the fact that there are no positive results from the conduct that outweigh the injuries caused by it.

More specifically, the Commission makes official its position that it is unfair or deceptive:

1. To operate a business involved in the dissemination of intimate images when that dissemination is without the depicted party's consent.¹⁵

¹⁵ Complaint Para 13-14

2. For anybody who receives intimate pictures of another under the pretense of using them for private personal use, to then disseminate them online with personal information for commercial gain.¹⁶

The Complaint also advances several normative principles surrounding the nonconsensual distribution of intimate images:

1. Persons who share their intimate pictures with another person have a reasonable expectation that it will not be disseminated.¹⁷
2. The individual or company who receives intimate images, unless otherwise informed, knows or should have known that the depicted person expects them to remain private.¹⁸
3. Dissemination of intimate images without consent causes or is likely to cause “substantial injury” to the victims—economic (due to lost jobs), emotional, and potentially physical harm.¹⁹
4. The injury from dissemination is not “reasonably avoidable” by the victims.²⁰
5. There are no benefits to any entity that outweigh the harm suffered by the victims.²¹

V. The Following Changes to the Consent Order are Recommended:

1. The images covered must be expanded to include not just images that contain “intimate parts,” but, alternatively, images depicting “sexual acts.” Sexual acts can be defined as “anal, oral, or vaginal penetration, masturbation, receiving or performing oral sex, any transfer or transmission of semen upon any part of the clothed or unclothed body of the victim within a sexual context.”²²
2. The definition of “Personal information” in paragraph five should be amended to include the additional categories of “(7) school, (8) employer, (9) health information, and (10) personal information about family members.”
3. The city and state should suffice as address information in paragraph 5.
4. Section I(B) should be amended to require advance affirmative consent in writing from all individuals depicted.

¹⁶ Complaint Para 15-16.

¹⁷ Complaint, Para 13.

¹⁸ *Id.*

¹⁹ Complaint, Para 14.

²⁰ *Id.*

²¹ *Id.*

²² *See* Consent Order, Para 4.

5. The Commission should provide more guidance in Section I(B) of the Consent Order, including:
 - a. Proposed language for acquiring depicted individual's "affirmative express consent" in Section I(B) of the Consent Order.
 - b. A verification process to confirm that the "affirmative express consent" is actually provided by person(s) depicted and not somebody else.
6. Section I should require a prohibition of any images submitted by anybody other than the depicted person(s).
7. Section IV should be amended to add "(G. verified name, address, IP address, email for persons who submit content), for a period of five (5) years from the date received."
8. Section V. should be amended to require Respondent to use reasonable measures to serve the Consent Order on all persons featured on his website and all persons who submitted pictures.

VI. The Commission Should be Empowered to Fine Respondent.

Unfortunately, none of the other notorious revenge porn sites have been deterred from continuing to operate businesses that mimic the unfair and deceptive practices in this case. The fact that other revenge porn sites continue to operate²³ illuminates the impotence of an approach lacking a financial sting.

To be sure, the Commission has limited power to impose fines and penalties under Section 5 of the FTCA.²⁴ We ask that to the extent that the Commission *is* empowered to impose civil penalties, disgorgement of profits²⁵, and demand for reimbursement of the Commission's costs, the Commission should do so. To the extent that the Commission lacks this authority, an authority so critical for deterring similar sexually exploitive online regimes, CCRI-WMC directs its criticism toward Congress.

Congress should enlarge the Commission's authority to impose civil penalties in cases that involve the nonconsensual dissemination of private personal information, including images. The

²³ For instance, one popular site presently contains pictures of over 10,000 victims, 110 of whom became victims in the week following the January 28, 2015 notice of the complaint against Brittain. In that week their pictures have already been clicked on as many as 60,000 times. And alongside their intimate images are the victims' name, age, and location.

²⁴ Danielle Keats Citron, *Spying, Inc.* Forthcoming 72:3 WASHINGTON & LEE LAW REVIEW (2015); Daniel J. Solove & Paul M. Schwartz, *Information Privacy Law*, 854 (5th ed. 2014).

²⁵ See Gateway Decision & Order agreeing to pay \$4,608 to U.S. Treasury as disgorgement; *In re Vision I Props.*, 139 F.T.C. 296, 311 (2005) (agreeing to pay \$9,101.63 to U.S. Treasury as disgorgement).

deterrent value of penalties would justify the time, effort, and expense the Commission dedicates to these important cases and produce industry-wide results as similar businesses conform their practices to align with standards articulated in Consent Orders. For instance, if Brittain had suffered a fine, even a fine no greater than that of the Commission's costs of bringing the case with partial waiver for hardship, many revenge porn sites might well darken overnight. Site operators would be unwilling to take the risk of a Commission complaint. Revenge porn operations tend to be so small and lacking any corporate structure or legitimacy that anonymous operators are more likely to close shop than risk exposure and financial penalties.

The influence of the Internet in privacy breach cases requires that Congress re-think the penalizing authority granted to the Commission. Privacy breaches facilitated by the Internet cause far more severe harms than were ever before possible. The accelerating and force-multiplying characteristics of the Internet cause irretrievable and widespread injuries when personal information or pictures are released. After-the-fact penalties cannot undo the harm to consumers when personal information or pictures can go viral and appear on thousands of websites within an hour. The deterrent value of the threat of financial penalty is an essential preventive measure needed in privacy cases. Individuals are relatively helpless when faced with an Internet-related privacy invasion. In most cases, these invasions cannot be prevented or cured by the individual consumer. Most consumers lack the ability or legal right to regain control of their online presence or search engine results once private material has spread. The personal and commercial value of one's online presence cannot be overstated and must be safeguarded by the Commission.

Greater authority for the Commission to impose commensurate fines against companies that engage in unfair or deceptive business practices related to the dissemination of private personal information and intimate pictures will prevent the harm to victims before it happens because of the deterrent value of these penalties.

VII. The Commission should Promulgate a Substantive Rule to Address the Prevalent Ongoing Practices Described in the Brittain Complaint.

The Commission should take advantage of its sparingly-used rulemaking power to crack down on the nonconsensual distribution of intimate images. It is empowered to create a substantive rule declaring that nonconsensual pornography is an unfair or deceptive and unlawful trade practice.

Section 202 of the Magnuson-Moss Warranty – FTC Improvements Act authorizes the Commission to promulgate trade regulation rules (“TRR”) which define with specificity acts or

practices in or affecting commerce which are unfair or deceptive.²⁶ TRRs may include requirements aimed at preventing the future occurrence of unfair or deceptive acts or practices.²⁷

The commission can seek hefty penalties in United States District Court against TRR violators.²⁸ Violators can be fined \$10,000 per violation per day.²⁹

According to the Commission's operating manual, when the Commission becomes aware of allegedly unfair or deceptive acts or practices that appear "widespread," it should consider rulemaking. In making the determination whether to make new TRRs, the relevant factors the Commission must consider are the following:

- (1) Prevalence of the acts or practices under investigation.
- (2) Seriousness of consumer injury
- (3) Vulnerability of the affected consumer group
- (4) Amount of money involved in the consumer transaction
- (5) The impact of the rule on the particular industry and on the industry members not engaging in the underlying unfair or deceptive practice
- (6) Cost of the Commission's investigation and rulemaking proceedings
- (7) Feasibility of enforcing the TRR³⁰

Revenge porn websites that engage in unfair or deceptive practices by disseminating intimate images without the depicted person's consent are numerous. As noted above, as many as 3000 websites feature nonconsensual pornography, and the sheer number of victims seeking help from CCRI-WMC on a weekly basis provides compelling evidence of the prevalence of these practices.. In its complaint against Brittain, the Commission persuasively describes the seriousness of the injuries from nonconsensual pornography and the vulnerability of the affected consumer group. The financial cost to victims is extreme, including paying extortionate sites to remove their images, search engine optimization, court costs, and therapy. Then there are the unquantifiable costs of the privacy invasion,

²⁶ 15 U.S.C. § 45 (a)(1)(B).

²⁷ FEDERAL TRADE COMMISSION OPERATING MANUAL, Chapter Seven, Section 2.2 <http://www.ftc.gov/sites/default/files/attachments/ftc-administrative-staff-manuals/ch07rulemaking.pdf>.

²⁸ Magnuson-Moss, Pub. L. No. 93-637, 88 Stat. 2183 (1975), amended FTCA Section 5 by adding subsection m(1)(A) which authorizes the commencement of a civil penalty suit in a United States District Court against persons, partnerships, or corporations that violate a TRR with actual knowledge or knowledge fairly implied by the facts. Magnuson Moss also added Section 19 to the FTCA which offers redress in federal or state court against a violator of a TRR to provide redress for persons injured by the violation.

²⁹ 15 U.S.C. § 45(m)(1).

³⁰ COMMISSION MANUAL, *supra* note 27, at Chapter Seven, Section 3.1

job discrimination, stress on other relationships, harassment, and withdrawal from the Internet all of which many victims report.³¹

A well-crafted rule could help eliminate the practice of nonconsensual pornography without unduly burdening other online service providers or legitimate adult entertainment companies. The rule would be straightforward: before publishing private, explicit material, sites would be required to obtain express advance consent of the individuals depicted. Their recordkeeping obligations would be an expanded version of that already required in the commercial pornography industry with regard to age verification.³² Victim advocacy groups could track violations of the rule and inform the Commission of such trends accordingly.

The rule itself and the consequent m(1)(A) litigation powers against violators³³ would likely lead to the shuttering of many of revenge porn websites and prevent innumerable privacy breaches.

CONCLUSION

CCRI-WMC supports the Consent Order with the modifications discussed here in Section V. While we applaud the enforcement action taken by the FTC, we doubt this alone will deter the operation of scores of other revenge porn websites. The threat of financial consequences has greater

³¹ Ninety-two percent of participants in WMC's study on on-line harassment generally reported emotional effects of the harassment. (Study at 12.) Most commonly reported effects were anger, anxiety, depression, sadness, and being hyper-alert. (Study at 12.) Forty-seven percent of participants reported that the harassment cost them a monetary amount, with 10% reporting it cost \$10,000 or more (and some reporting it cost in excess of \$100,000). (Study at 13.) Of the participants who were employed at the time of the harassment, 53.4% reported that their employment was affected by the harassment. (Study at 13.) In qualitative responses, the nature of these effects took many forms: preventing participants from obtaining future employment, contracts being terminated, supervisors receiving false information about participants, undergoing investigations at work, failing to be promoted, having to resign in attempt to end the harassment, loss of clients or patients, decreased ability to focus and negative effects on job performance. (Study at 13.) Of the participants who were in school at the time of the harassment, 58.6% reported effects on their academic experience. (Study at 14.) These effects ranged from dropping out of school, being asked to leave a program, avoiding enrollment in certain classes due to the harasser's attendance, and missing classes to having significant difficulties concentrating, being unable to engage in professionally important activities, and experiencing significant reductions in performance. As one participant put it, "I went from Dean's list to devastated." (Study at 14.) Finally, in response to an open question about other effects, victims recounted many effects including trauma diagnoses and symptoms (e.g. nightmares, flashbacks), the loss of relationships and social support (e.g., divorce, friends and family members disengaging or shunning the participant), being blamed, having one's time and energy engulfed by court battles, shame, self-destructive behavior for some (e.g., alcohol use) losses in self-esteem and confidence, worsening of medical conditions, weight loss or gain, decreased trust in other people (especially men), a sense of paranoia, becoming more reclusive, and even considering suicide. (Study at 14.)

³² 18 USC 2257

³³ Under m(1)(A), the Commission may seek \$10,000 per violation. Calculating violations on a per photo basis, a site with 3000 images would face \$30 million in civil penalties.

potential to intimidate other operators. We urge the Commission to seek Congressional action to grant it fining power in Section 5 privacy cases and to promulgate a new privacy-related rule enforceable by the FTCA in court. Both would likely dramatically deter the costly financial and personal harms experienced by victims of privacy invasions.

By using its limited resources to target a revenge porn site operator, the Commission proves its commitment to the protection of privacy rights. The Commission's intervention validates the intrinsic (as well as commercial) value of privacy, even when that privacy right belongs to individuals who have not voluntarily become consumers and when the harms are abstract as well as financial. The Commission's actions are a signal to the public - including law enforcers, lawmakers, and state consumer protection agencies - that to exhibit intimate images of people without their consent is an unfair or deceptive business practice. It also expresses condemnation of individuals who receive confidential, intimate images in order to distribute them publicly without consent.

This case underscores the value in protecting private intimate information from public dissemination. The Commission is uniquely positioned to take a powerful stand against businesses that capitalize on betrayal, sexual exposure and humiliation.

Respectfully Submitted,

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