



# Fighting Cyber Sexual Abuse: Safety Tips, Litigation Strategies, and New State Legislation

**Nicole Fidler, Esq.**  
nfidler@sffny.org

**Lindsey Song, Esq.**  
lsong@sffny.org



## Cyber Sexual Abuse is...

- ▶ Colloquially referred to as “revenge porn,” Nonconsensual Pornography (NCP), E-Sexual Exploitation
- ▶ Typically, Cyber Sexual Abuse is the dissemination or threat of dissemination of nude or sexually explicit images or video without the victim’s consent.



## Cyber Sexual Abuse is Gender-Based Violence

- ▶ 90% of victims are female
- ▶ 93% suffered severe emotional distress due to the abuse
- ▶ 30% said they have been harassed or stalked outside of the Internet by users that have seen the material online
- ▶ 51% contemplated suicide – some completed suicides
  - ▶ Tiziana Cantone; Julia Rebecca
- ▶ Many victims in the LGBTQ community

\*All statistics taken from a 2013 Cyber Civil Rights Initiative Study *available at*  
<https://www.cybercivilrights.org/wp-content/uploads/2014/12/RPStatistics.pdf>



## Cyber Sexual Abuse – Case Examples

- ▶ **Client Profile A** – Husband used stolen naked images to coerce client to return to him, and to scare client over losing custody
- ▶ **Client Profile B** – Images widely disseminated by abuser, picked up by mainstream media; strangers arrive at victim's home seeking sex
- ▶ **Client Profile C** – Abuser spoofs naked image of victim and sends image to her religious family members; she is cut off from family and attempts suicide





## New York State Cyber Sexual Abuse Law



- ▶ Passed the NY Assembly and NY Senate on February 28, 2019 (A05981/S01719-C)



- ▶ Signed into law on July 23, 2019
- ▶ Became effective on **September 21, 2019**



## New York State Cyber Sexual Abuse Law



The new law creates:

- ▶ Crime of Unlawful Dissemination or Publication of an Intimate Image
- ▶ Family Offense of Unlawful Dissemination or Publication of an Intimate Image
- ▶ A private right of action for individuals to pursue injunctive relief and damages

And it allows for an action or special proceeding to obtain a court order to permanently remove images from internet – it's the first in the country to do so.



## Criminal Penalty: Unlawful Dissemination or Publication of an Intimate Image



- ▶ NY Penal Law 245.15
- ▶ Class A misdemeanor
- ▶ Makes it a crime to share someone else's naked or sexual images without consent
- ▶ Elements
  - ▶ Intent to cause harm to the emotional, financial, or physical welfare of another person
  - ▶ Video or still image depicts (i) unclothed or exposed intimate part of victim or (ii) victim engaging in sexual conduct
  - ▶ Victim must be identifiable
  - ▶ Disseminated/published without victim's consent
  - ▶ Victim had a reasonable expectation that the image would remain private
  - ▶ Perpetrator knew or reasonably should have known the person depicted intended for the image to remain private



## Criminal Penalty: Exceptions



- ▶ The reporting of unlawful conduct
- ▶ Dissemination or publication of an intimate image made during lawful and common practices of law enforcement, legal proceedings or medical treatment
- ▶ Images involving voluntary exposure in a public or commercial setting
- ▶ Dissemination or publication of an intimate image made for a legitimate public purpose.



## Civil Relief



- ▶ Amends Article 8 of the Family Court Act so that Unlawful Dissemination is included in the list of family offenses (N.Y. Family Court Act § 812)
  - ▶ Obtain civil order of protection
  
- ▶ Amends Civil Rights Law to create a private right of action for Unlawful Dissemination (NY Civil Rights Law Section 52-b)
  - ▶ Mostly same elements as criminal penalty except that the **private right of action includes dissemination/publication AND threats to publish**
  - ▶ Injunctive relief, punitive damages, compensatory damages and reasonable court costs and attorney's fees.
  - ▶ Same exceptions as in criminal penalty



## Actions against Websites



- ▶ Amends the Civil Rights Law to allow victims to bring an action or special proceeding to obtain an order requiring a website to permanently remove an image/video (NY Civil Rights Law Section 52-b)
  
- ▶ Image video must be reasonably within website's control
  
- ▶ Only allows for injunctive relief. Cannot bring an action for damages.



## Other Criminal Offenses Available to Cyber Sexual Abuse Victims



- ▶ Offenses again the right to privacy (Article 250)
  - ▶ Unlawful surveillance
  - ▶ Dissemination of an unlawful surveillance image
  - ▶ Tampering with private communications
- ▶ Harassment
- ▶ Coercion
- ▶ Stalking
- ▶ Witness tampering



## Other Criminal Offenses Available to Cyber Sexual Abuse Victims



- ▶ Local Laws
- ▶ At the end of 2017 New York City Council passed a bill that:
  - ▶ Created the crime of unlawful disclosure of an intimate image
  - ▶ Created a civil cause of action
- ▶ Other counties in NY have done the same (ex: Nassau, Suffolk)





## Cyber Sexual Abuse and The Courts



### The Court's Role

- ▶ **Family Court and Supreme Court**
  - ▶ Encourage litigants to include cyber sexual abuse in their Family Offense Petitions and Petitions for Custody/Visitation, where applicable.
  - ▶ Add language to address cyber sexual abuse in Orders of Protection and Orders of Custody/Visitation.
  - ▶ Admonish parties in Order of Protection and Custody/Visitation proceedings where Cyber Sexual Abuse is present.
- ▶ **Criminal Court**
  - ▶ Address cyber sexual abuse under the current penal law, including unlawful surveillance, harassment, coercion, stalking, sexual offenses, witness tampering, and others, where applicable.
  - ▶ Add language to address cyber sexual abuse in Orders of Protection.



## New Family Offense!



- ▶ New state law created the family offense of “unlawful dissemination or publication of an intimate image”
- ▶ Same elements as criminal law

## Family Court authority to address Cyber Sexual Abuse – Section 842(k)



- ▶ Family Court may require a respondent “to observe such other conditions as are necessary to further the purposes of protection.” N.Y. Family Ct. Act 842(k)
- ▶ “The Family Court has the authority to impose reasonable conditions when they are likely to be helpful in eradicating the root of family disturbance,” *Miriam M. v. Warren M.*, 859 N.Y.S.2d 66, 67-68 (1st Dept. 2008).

## Cyber Sexual Abuse and Alternative Family Offenses



- ▶ Stalking in the Fourth Degree
- ▶ Harassment in the Second Degree
- ▶ Coercion in the Second Degree
- ▶ Etc.,

## Cyber Sexual Abuse and Family Offenses: Harassment in the Second Degree



- ▶ Harassment in the Second Degree
  - ▶ Intent to harass, annoy, or alarm another person
  - ▶ He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose
- ▶ Example
  - ▶ Where abuser has repeatedly threatened to disseminate, or actually disseminated images, video, or other media of cyber sexual abuse

## Cyber Sexual Abuse and Family Offenses: Coercion in the Second Degree



- ▶ A person is guilty of coercion in the second degree when he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which he or she has a legal right to engage, or compels or induces a person to join a group, organization or criminal enterprise which such latter person has a right to abstain from joining, by means of instilling in him or her a fear that, if the demand is not complied with, the actor or another will:
  - ▶ 3. Engage in other conduct constituting a crime; or
  - ▶ 5. Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
  - ▶ 9. Perform any other act which would not in itself materially benefit the actor but which is calculated to harm another person materially with respect to his or her health, safety, business, calling, career, financial condition, reputation or personal relationships.



## Orders of Protection



- ▶ Family Courts throughout New York City have added language to Orders of Protection to address cyber sexual abuse.

**“The Respondent is not to post or transmit or cause a third party to post or transmit, any images, pictures, video, or other media, depicting the Petitioner in a naked state or participating in any sexual act OR threaten to do the same.”**

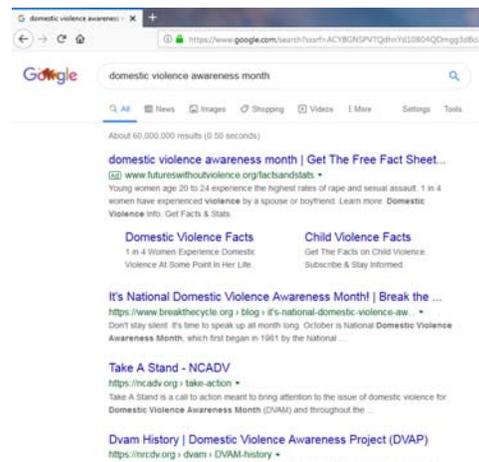


## Screening for Cases

- ▶ Proactively ask whether Abuser has intimate images of Survivor
  - ▶ Has abuser threatened to disclose images?
  - ▶ Has abuser actually disclosed images?
  - ▶ Does abuser have access to survivor's phone, computer, social media accounts, or other technology?
  
- ▶ Discuss options:
  - ▶ Safety planning
  - ▶ Reporting to law enforcement
  - ▶ Family Court remedies

## Preserve Evidence

- ▶ Screenshot or .pdf all places where the image was posted (e.g., on web sites, social media sites, messaging apps, etc.)
  - ▶ Include images **and** comments to images
  - ▶ Include time and date stamp where possible
  - ▶ If a web site, capture the whole page, date, time, and URL of the website
  
- ▶ .Pdf the page of search results

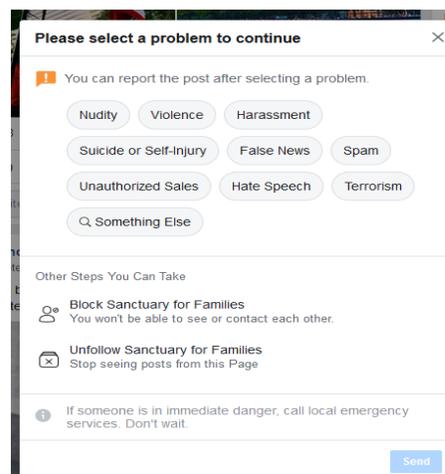


## Preserve Evidence

- ▶ Texts, emails, and other communications related to the cyber abuse, including threats to post
- ▶ Preserve the continuity of message exchanges
- ▶ Remember that if your client blocks someone on social media or phone they usually will no longer have access to the history of direct messages with them.
- ▶ Discuss with your client a safe place to keep these images (USB flash drive, device that client is certain abuser doesn't have access to, etc.).

## Getting Content Taken Down

- ▶ Preserve evidence first!
- ▶ Contact web site
  - ▶ Response depends on the site.
  - ▶ May require persistence and advocacy
  - ▶ May never happen (ex. Grindr)



## Getting Content Taken Down



- ▶ Takedown letters
- ▶ Request takedowns directly from site
- ▶ Injunctive relief against website/ISP – questionable

### Submit a copyright takedown notice

If your [copyright-protected](#) work was posted on YouTube without authorization, you may submit a copyright infringement notification. Be sure to consider whether [fair use](#), [fair dealing](#), or a similar exception to copyright applies before you submit. These requests should be sent by the copyright owner or an agent authorized to act on the owner's behalf.

The fastest and simplest way to submit a copyright takedown notice is through our webform. We recommend using a computer for the easiest method.

[Submit a copyright complaint](#)

The name you enter as copyright owner will be published on YouTube in place of the turned off content. If you can give us a valid legal alternative, such as a company name or the name of an authorized representative, we'll



## Safety Planning Tips



- ▶ Make sure the client's phone, laptop and other devices have passcodes
- ▶ Change all passwords and answers to security questions on all accounts to secure, unique ones that cannot be guessed by the abuser
- ▶ Use different passwords for different social media accounts
- ▶ Use two-factor authentication wherever possible
- ▶ Enable firewalls and install anti-virus and anti-spyware software on devices
- ▶ Have client's computers and electronic devices checked for spyware
- ▶ Have client do a Google search, and set up a Google news alert for their name so they get an email when new hits are found





## Safety Planning & Resources

- ▶ NNEDV resources on tech safety
  - ▶ [www.techsafety.org](http://www.techsafety.org)
  - ▶ [www.nnedv.org/safetynetdocs](http://www.nnedv.org/safetynetdocs)
- ▶ CCRI – Cyber Civil Rights Initiative
  - ▶ Great source of information regarding cyber sexual abuse and privacy - <https://www.cybercivilrights.org/>
- ▶ Operation Safe Escape
  - ▶ [Goaskrose.com](http://Goaskrose.com)
  - ▶ Quotemania app



## Cyber Sexual Abuse Task Force



## Cyber Sexual Abuse Task Force



- ▶ New York state-based legal and non-legal professionals, cyber sexual abuse survivors, and other individuals committed to fighting cyber abuse, which includes but is not limited to the non-consensual dissemination of sexual images, “revenge porn,” hacking, stalking, spoofing, harassment, identity theft, and impersonation
- ▶ Interested?
  - ▶ Contact Task Force co-chairs Lindsey Song at [lsong@sffny.org](mailto:lsong@sffny.org) or Jessica Morak, [jmorak@sffny.org](mailto:jmorak@sffny.org), to join our e-mail listserv and stay abreast of meetings and other updates



QUESTIONS?

