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## Law Firm Founds Project to Fight 'Revenge Porn'

By Matthew Goldstein

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Revenge Porn

A California law student and a Virginia man dated for about six months after meeting through an online dating service. The fallout from the breakup, however, has gone on far longer, as the former boyfriend faces federal criminal charges over posting nude selfies and a sexually explicit video of the woman on pornographic websites.

Now the former boyfriend has a new problem: A big law firm recently has come to the law student's aid and is suing him in federal court in Los Angeles.

The woman's lawsuit, filed under a pseudonym to protect her privacy, seeks damages for violating United States copyright law by posting the video and photos without her permission and also causing her emotional distress.

The lawsuit reflects a battle line that is being drawn in an age when it is not uncommon for couples to share nude photos digitally, and just as easy for a jilted lover to find a pornographic website willing to post them online.

The litigation is the handiwork of a new initiative by K&L Gates, a Pittsburgh-based law firm. Begun in late September, its Cyber Civil Rights Legal Project has roughly 50 lawyers at the firm volunteering their time.

The "Jane Doe" complaint filed on behalf of the law student is among the first lawsuits filed by the K&L clinic, which is working with about 100 victims of "revenge porn," a type of online harassment that involves the non-consensual posting of sexually explicit material — often involving a former girlfriend or a

spouse.

The program is believed to be the first of its kind at a major United States law firm and is led by David A. Bateman, a partner in the firm's Seattle office, and Elisa J. D'Amico, a litigator in the firm's Miami office.

Most of its clients come through the program's website or referrals from two national advocacy groups for victims of revenge porn, the Cyber Civil Rights Initiative and Without My Consent.

"The advocacy groups are really excited about what we are doing," said Ms. D'Amico, a litigator who specializes in technology and Internet law issues.

Ms. D'Amico said she came up with the idea of the legal clinic while working last year with one of the founders of the nonprofit Cyber Civil Rights Initiative during an effort to lobby Florida officials to pass a revenge porn criminal statute. Up until now, advocacy groups have largely relied on lawyers at smaller firms to contribute their time and services.

The K&L program not only advises victims as to what legal steps can be taken to sue for damages, it also works with victims to consider the pros and cons of reporting online abuse to prosecutors. In instances where the victims have taken nude selfies or videos of themselves, the K&L lawyers are using the protections offered by federal copyright law to demand that the websites take down the images or risk being sued along with the perpetrators.

More often than not, commercial pornography websites, especially those based in the United States, will comply with a request to avoid any further legal entanglement.

But if a victim wants to bring a federal copyright lawsuit, there is a catch. In many cases, she or he would first need to register any videos or photos to be protected with the United States Copyright Office. In other words, to use copyright law as a hammer, a victim must publicly register a photo or video that she or he wou

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Using copyright law to sue people for the unauthorized posting of nude photos and videos is novel, but not unprecedented. Over the last year, a number of legal scholars have advocated using copyright law as an innovative way of combating revenge porn.

“Copyright is not designed to deal with revenge porn, it just happens to give you a remedy,” said Mr. Bateman, a K&L partner. “But it’s not perfect and won’t be available in all situations.”

There have been a handful of successful jury awards to victims. A Texas jury last year, for instance, awarded one of the largest verdicts ever to a revenge porn victim, ordering a man to pay \$500,000 to his former girlfriend for posting a sexually explicit video of her online. In that case, the woman claimed she had suffered emotional distress.

It’s not clear just how widespread revenge porn is. Victims are often unwilling to come forward out of fear of bringing more attention to the videos and photos. Advocates also say that some victims are reluctant to pursue legal action because they blame themselves and worry that a jury will not be sympathetic.

Until recently, few states had criminal statutes on revenge porn. In the last year, however, a dozen states, including Colorado, Hawaii, Illinois and Pennsylvania, enacted laws criminalizing the activity.

Regulators also are beginning to tackle the problem. On Thursday, the Federal Trade Commission reached a settlement with Craig Brittain, who operated a pornography website, that required him to stop sharing and posting nude videos and photographs of people without their permission. The agency in its complaint said Mr. Brittain operated the website “for commercial gain and without the knowledge or consent of those depicted.”

Federal prosecutors, meanwhile, are going after perpetrators of revenge porn by charging a person’s online [Register](#) or [Log in](#).

instance, have been particularly active, pursuing revenge porn cases, filing charges against 10 people over the last five years, including the California woman's former boyfriend, David K. Elam II.

Agents with the Federal Bureau of Investigation in Los Angeles began investigating Mr. Elam in spring 2013, shortly after he began posting the sexually explicit photos and videos. The F.B.I. began investigating Mr. Elam shortly after the law student got a restraining order against him.

Mr. Elam, who was indicted by a federal grand jury in June on charges of stalking, aggravated identity theft and unauthorized access to computer, is said to have done much more than post videos and photos online. Authorities contend he created fake accounts for his former girlfriend on a several online dating websites in which he encouraged people to call her for sex. Mr. Elam, 29, also reportedly sent links of the video he posted to some of his former girlfriend's classmates and her mother.

The woman told an F.B.I. agent that the persistent harassment left her obsessed with searching the web for videos or photos of her, caused her to become depressed and led to some of her friends not wanting to talk to her anymore. She was particularly embarrassed when a law firm she had applied to for a job told her that they found the videos of her during an online search of her name.

Mr. Elam, a former financial adviser who now lives in Philadelphia, declined to comment as did his lawyer, Craig A. Harbaugh, a deputy public federal defender.

It is believed the videos and photos Mr. Elam posted to about half-dozen websites were removed after the law student registered them with the Copyright Office in the summer of 2013. But some of the dead URLs and links with her name remain online like echoes of the past.

Ms. D'An

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Mary Anne Franks, a professor at the University of Miami School of Law and vice president of the Cyber Civil Rights Initiative, said it was not unusual for victims to pursue civil suits even if prosecutors have filed criminal charges.

“Hypothetically one thing a victim might be after is something that will make them whole,” said Ms. Franks, whose organization began operating in 2013. “Most of the criminal punishments don’t require a person to take down the material. That is something that is better addressed by civil law.”

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