

Dear Chairwoman Grad,

We applaud your committee's interest in H.105, intended to stop the abhorrent practice of posting the intimate pictures of an ex-partner with the intent to shame, embarrass, control or sometimes cause physical harm that person.

The effects of these posts can be devastating to the victims who may receive threats, lose their jobs and could even end up having to move to a new location.

However, before advancing H.105 from your committee, we respectfully ask you to consider adding an exemption for providers of Internet communication services that are misused by the perpetrators causing display of revenge porn.

There are a number of popular Internet communications services, email, websites, software, mobile applications and instant messaging services that could be used by a person to display revenge porn.

It is impossible for such services to prevent users from posting content illegally, and we ask that you please consider adding the following paragraph to clarify that a provider of an interactive computer service, information service or telecommunications service does not commit a crime simply by allowing a perpetrator to display illegal content:

Nothing in this Act shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. 230(f)(2), or an information service or a telecommunications service, as defined in 47 U.S.C. 153, for content provided by another person.

The amendment above would make Vermont law consistent with Federal law, which would apply even if H. 105 is not amended. The federal government has distinguished between information *service* providers and information *content* providers, *see* 47 U.S.C. §§ 230(f)(2) and (3), and recognized that companies that host content from hundreds of thousands or millions of third parties cannot reasonably be expected to police them – and therefore should not be liable for that third-party content, *see* 47 U.S.C. § 230(c). Beyond federal law, other states, including Arizona, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Maryland, Rhode Island, Utah, and Wisconsin, have adopted similar exemption language.

The lack of language such as the above may lead prosecutors and plaintiff's lawyers to mistakenly think that websites, applications or other communications or software providers could be held liable for end-user third-party postings of revenge porn, even if the site or service did not intentionally or knowingly display prohibited images. In addition to saving Vermont victims and law enforcement unnecessary time, aggravation, and court costs, our clarifying amendment would also save service providers the unnecessary inconvenience of having to appear in court simply to obtain a summary judgment dismissing any case against them on Section 230 grounds.

For the above reasons, we strongly urge you to consider amending H. 105 to make it consistent with Federal law that protects innocent website, application or communication and software providers.

Please let us know if you have questions or would like to discuss this issue further.

The Internet Coalition

State Privacy & Security Coalition