

Online and over-exposed

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CATEGORY:

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Politicians go on the (ex-)offensive over criminalising 'revenge porn' A battle is raging in the UK about whether or not to follow several US states in criminalising 'revenge porn'. This is — worryingly — a growing phenomenon where aggrieved former partners post explicit images of their exes, taken during happier times, online without their consent. Women's Aid and the UK Safer Internet Centre both support criminalising the practice, while Lord Marks and Baroness Greener proposed the introduction of a one year prison term for offenders. However, critics question whether the sledgehammer of the criminal law is required and whether any new legislation would cover explicit 'selfies' (i.e. pictures the subject takes of themselves but then provides to others) which are estimated to make up 50-80% of images uploaded by revenge pornistas. **Your rights to privacy** There are civil law options currently available to those who find themselves over-exposed online. The law protects information in respect of which we have a reasonable expectation of privacy and any publication (be that electronic or hard copy) of this information without justification is likely to constitute an infringement of our right to respect for our privacy. Historically the Courts have placed special emphasis on private information recorded in photographs, which Lord Nicholls described as 'worth thousand words' in the landmark *Campbell v MGN Limited* case in 2004. Key factors in assessing whether a party has a reasonable expectation of privacy include:

- The subject matter of the photograph and, importantly, what was taking place (for example, a private act);
- Who it concerned (for example, minors / vulnerable people);
- When and how the image was taken (for example, surreptitiously, by long lens, without consent).

Where a photo is explicit in nature and taken in private, the subject will almost certainly have an expectation of privacy and any purported justification will have to be significant to displace it. **Taking action** If you find unwanted photos of you posted online, it may be appropriate to contact the person responsible for uploading them and simply ask for them to remove the images; the nature and status of your relationship with the poster will, of course, impact on how they are likely to react to such a request. But where — as will be the case in most instances — you are concerned that approaching the poster may back-fire, possibly precipitating the publication of further images, you should consider writing to the website itself to seek removal of the images. A responsible website will often have an acceptable use policy in its T&Cs prohibiting the posting of explicit images and this can be relied upon, whatever the jurisdiction of the website, in addition to the domestic law of privacy protection. Where the website is a specialist 'revenge porn' site — and sadly, these do exist — you are likely to be better off contacting the website host providing independent services to the website because it too will have its own terms of use that may be being breached. You can usually find out who the web host is by searching directories such as the [Who.is website](#). If it were not clear to us before, it should be only too apparent now that taking intimate images of ourselves and others may give us a rush of excitement; but we may have to rush to remove these images if they are posted for the world to see without our consent. There are remedies available should we find ourselves exposed beyond the confines of what, and to people other than those, we had expected. But the safest way to keep our privates private, is not to take the images in the first place. Just a thought.

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