
HORWITZ

LAW PLLC

DANIEL A. HORWITZ
DANIEL@HORWITZ.LAW

4016 WESTLAWN DR.
NASHVILLE, TN 37209
WWW.HORWITZ.LAW

MELISSA K. DIX
MELISSA@HORWITZ.LAW

LINDSAY E. SMITH
LINDSAY@HORWITZ.LAW

O: (615) 739-2888

SARAH L. MARTIN
SARAH@HORWITZ.LAW

Legal Remedies Available to Victims of “Revenge Porn” and Other Non-Consensual Pornography in Tennessee¹

I. INTRODUCTION

In 2016, Tennessee enacted a new law criminalizing the “unlawful exposure” of certain sexually explicit, private images: a form of sexual abuse commonly known as “revenge porn.”² Tennessee’s “unlawful exposure” law supplemented a pre-existing criminal statute that prohibited certain non-consensual photography taken for the purpose of sexual arousal. The principal function of this pre-existing statute was to criminalize the distribution of surreptitious recordings of individuals engaged in sex acts.

In many cases, though, a person who disseminates non-consensual pornography will be able to evade criminal liability in Tennessee. Further, even when criminal statutes are implicated, the nature of the criminal process is poorly suited to address victims’ needs. As a result, civil remedies will generally afford victims the best—and often the only—means of achieving goals like immediately stopping the dissemination of non-consensual pornography; ensuring its prompt destruction; and obtaining compensation.

¹ By [Daniel A. Horwitz](#), Horwitz Law, PLLC. This is a draft whitepaper current through November 14, 2024. It is not intended to be legal advice, and it should not be relied on for that purpose.

² Nick Shepherd, *Social media harassment, online revenge porn becomes illegal in Tennessee*, TIMESNEWS (December 28, 2016), https://www.timesnews.net/news/crime/social-media-harassment-online-revenge-porn-become-illegal-in-tennessee/article_253d1bd1-b710-5df2-893b-2ab9fd4833a3.html.

II. CRIMINAL REMEDIES FOR NON-CONSENSUAL PORNOGRAPHY AND THE LIMITATIONS OF CRIMINAL LIABILITY

In 2016, the Tennessee General Assembly enacted a criminal statute prohibiting the “unlawful exposure” of “an image of the intimate part or parts of another identifiable person” under certain specified circumstances.³ Commonly referred to as Tennessee’s first “revenge porn” law, violating Tenn. Code Ann. § 39-17-318 is punishable as a Class A misdemeanor.⁴ Non-consensual photography that is “focused on the intimate area of [an] individual” and was “taken for the purpose of sexual arousal or gratification” has long been prohibited under a pre-existing criminal statute—Tenn. Code Ann. § 39-13-605—as well,⁵ which criminalizes most secret recordings of individuals engaged in sex acts.

³ See Tenn. Code Ann. § 39-17-318.

⁴ In full, Tenn. Code Ann. § 39-17-318 provides that:

(a) A person commits unlawful exposure who, with the intent to cause emotional distress, distributes an image of the intimate part or parts of another identifiable person if:

- (1) The image was photographed or recorded under circumstances where the parties agreed or understood that the image would remain private; and
- (2) The person depicted in the image suffers emotional distress.

(b) As used in this section:

- (1) “Emotional distress” has the same meaning as defined in § 39-17-315; and
- (2) “Intimate part” means any portion of the primary genital area, buttock, or any portion of the female breast below the top of the areola that is either uncovered or visible through less than fully opaque clothing.

(c) Nothing in this section precludes punishment under any other section of law providing for greater punishment.

(d) A violation of subsection (a) is a Class A misdemeanor.

⁵ In full, Tenn. Code Ann. § 39-13-605 provides that:

(a) It is an offense for a person to knowingly photograph, or cause to be photographed, an individual without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian, if the photograph:

Under circumstances when these criminal prohibitions are implicated,

(1)(A) Would offend or embarrass an ordinary person if the person appeared in the photograph; or

(B) Is focused on the intimate area of the individual and would be considered offensive or embarrassing by the individual; and

(2) Was taken for the purpose of sexual arousal or gratification of the defendant.

(b) As used in this section:

(1) “Photograph” means any photograph or photographic reproduction, whether taken using digital media or conventional film, still or moving, or any videotape, live television transmission, or social media broadcast of any individual; and

(2) “Intimate area” means the naked or clothed genitals, pubic area, anus, buttocks, or female breast of a person.

(c) All photographs taken in violation of this section shall be confiscated and, after their use as evidence, destroyed.

(d) (1) A violation of this section is a Class A misdemeanor.

(2) A violation of this section is a Class E felony if:

(A) The defendant disseminates or permits the dissemination of the photograph to any other person; or

(B) The victim of the offense is under thirteen (13) years of age at the time of the offense.

(3) A violation of this section is a Class D felony if:

(A) The defendant disseminates or permits the dissemination of the photograph to any other person; and

(B) The victim of the offense is under thirteen (13) years of age at the time of the offense.

(e) Nothing in this section shall preclude the state from electing to prosecute conduct in violation of this section under any other applicable section, including chapter 17, parts 9 and 10 of this title.

(f) In addition to the punishment provided for a person who commits the misdemeanor unlawful photographing in violation of privacy, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, compiled in title 40, chapter 39, part 2.

wrongdoers may be subject to significant punishment—including incarceration—for disseminating revenge pornography. As one commentator has observed, however, there are many instances in which “[p]roblems in effective prosecution under this law have presented, narrowing the scope of the crime and excluding certain victims.”⁶

Most prominently: Tenn. Code Ann. § 39-17-318(a) is restricted to circumstances in which a perpetrator disseminates non-consensual pornography “with the intent to cause emotional distress[.]” *Id.* As a result, it does not apply to cases in which a perpetrator disseminates non-consensual pornography *without* intending to cause a victim emotional distress—such as for amusement, pecuniary gain, gratification, or gossip. Such common circumstances may—and often do—cause victims to suffer exactly the same degree of “personal consequences [and] profound personal violation and humiliation,” *see State v. VanBuren*, 2018 VT 95, ¶ 57, 210 Vt. 293, 322, 214 A.3d 791, 810 (2019), *as supplemented* (June 7, 2019), even if causing a victim to suffer emotional distress was not an intended result. For that reason, many victim’s advocates characterize the violation as a matter of “non-consensual pornography” rather than “revenge” porn, because “revenge” as a motivation is not a necessary condition for producing harm.⁷

The scope of Tenn. Code Ann. § 39-17-318(a) also is restricted to images involving “the intimate part or parts of another identifiable person[.]” *see id.*, and it expressly references “[t]he person depicted in the image” as an element of the offense. *See* Tenn. Code Ann. § 39-17-318(a)(2). A victim of non-consensual pornography need not be

⁶ Doni L. Porteous, *Tennessee Revenge Porn Law: Prosecutorial Problems and Potential Solutions* (2020) (unpublished J.D. thesis, Nashville School of Law), <https://www.nsl.law/wp-content/uploads/2019/11/2019-Porteous-Doni.pdf>.

⁷ *Non-consensual Pornography (Don't call it Revenge Porn)*, Prosecuting Attorneys Association of Michigan, https://www.michiganprosecutor.org/files/VAWP/Public/PAAM-VWAP-NCP_Article.pdf.

“identifiable” from or “depicted in” an image to suffer harm from the image’s dissemination, though. Even so, based on these explicit statutory qualifications, victims of non-consensual pornography who are not identifiable from—or depicted within—an image may not be (and often will not be) protected by the statute, even if their identity can be ascertained by other means.

These gaps in Tennessee’s criminal law leave many victims of non-consensual pornography without protection under Tennessee’s criminal law. Further, even when criminal prohibitions are implicated, the nature of the criminal process is poorly suited to address many victims’ needs.

To begin, the criminal process is slow, while the need to stop the dissemination of circulating non-consensual pornography is pressing. Further, the remedies available in criminal proceedings are limited, and victims are not parties to criminal cases and cannot intervene in them.⁸ In general, victims also cannot maintain anonymity in criminal proceedings and have no means of controlling them. Jurisdictional barriers to prosecution—such as an out-of-state or unknown perpetrator disseminating non-consensual pornography that depicts a Tennessee resident—present additional obstacles.

For all of these reasons, victims of non-consensual pornography often will not be able to achieve their goals through Tennessee’s criminal prohibitions alone. In many cases, they also will be left without a criminal remedy at all.

To meaningfully address the harm wrought by the dissemination of non-

⁸ See, e.g., *State v. Johnson*, 538 S.W.3d 32, 56 (Tenn. Crim. App. 2017) (“It is well-established that ‘a victim in a criminal case does not meet the definition of a ‘party’ in a criminal trial.’”) (quoting *State v. Flood*, 219 S.W.3d 307, 314 (Tenn. 2007) (citing *City of Chattanooga v. Swift*, 223 Tenn. 46, 442 S.W.2d 257, 258 (1969))). See also *United States v. Laraneta*, 700 F.3d 983, 985 (7th Cir. 2012) (“There is, however, no right for ‘victims of crime to intervene in criminal proceedings.’”) (quoting *United States v. Issa*, 21 F.4th 504, 508 (7th Cir. 2021)).

consensual pornography, victims will often require, at minimum, each of the following remedies that are unavailable through Tennessee's criminal law:

- A. Rapid injunctive relief, including an injunction forbidding a defendant's further dissemination of prohibited material;
- B. The ability to identify the recipients of non-consensual pornography to prevent further dissemination of prohibited material by non-parties and achieve the destruction of prohibited material;
- C. Compensation for harm caused; and
- D. The ability to obtain relief anonymously.

Fortunately, as detailed below, the civil process can be and usually will be able to provide these remedies.

III. CIVIL REMEDIES AVAILABLE UNDER TENNESSEE LAW FOR NON-CONSENSUAL PORNOGRAPHY

When criminal remedies fall short of serving the needs of Tennessee-based victims of non-consensual pornography, civil remedies can provide a solution. A recent, successful civil lawsuit filed in Davidson County Chancery Court against two purveyors of non-consensual pornography also illustrates the effectiveness of civil remedies in this space.

Courts across the United States have held that non-consensual pornography is tortious under a wide variety of common law tort theories recognized by Tennessee law, including, without limitation, Intentional Infliction of Emotional Distress (IIED), Intrusion Upon Seclusion, False Light Invasion of Privacy, Defamation, and Public

Disclosure of Private Fact.⁹ Although necessarily fact-dependent, in most instances, tort claims for IIED, Intrusion Upon Seclusion, and Public Disclosure of Private Fact will support a claim of liability when a perpetrator has disseminated non-consensual pornography.¹⁰ Similarly, under circumstances when a victim is readily identifiable in a pornographic image and the fact that a victim did not consent to the dissemination of the image is not apparent, a claim for False Light Invasion of Privacy will generally be available under the theory that the perpetrator conveyed the false and highly offensive impression that the victim consented to have the image disseminated, when, in fact, he or

⁹ See generally Emily Poole, *Fighting Back Against Non-Consensual Pornography*, 49 U.S.F. L. REV. 181, 200–02 (2015) (discussing cases applying tort theories to acts of non-consensual pornography), available at <https://repository.usfca.edu/cgi/viewcontent.cgi?article=1375&context=usflawreview>; Caroline Drinnon, *When Fame Takes Away the Right to Privacy in One's Body: Revenge Porn and Tort Remedies for Public Figures*, 24 WM. & MARY J. WOMEN & L. 209 (2017), available at <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1467&context=wmjowl> (discussing tort theories available to public-figure victims of non-consensual pornography); 147 Am. Jur. Trials 319, *Litigation of Liability for Internet Posting of "Revenge Porn"* (Aug. 2021 Update) (discussing the availability of claims for Intentional Infliction of Emotional Distress, Intrusion Upon Seclusion, False Light Invasion of Privacy, Defamation, and Public Disclosure of Private Fact); *Wood v. Hustler Mag., Inc.*, 736 F.2d 1084, 1089 (5th Cir. 1984) (“Under public disclosure of private facts, Hustler gave publicity to the highly private fact of LaJuan’s nude appearance, the publication of which, absent her consent, would be highly offensive to a reasonable person and was not of legitimate public concern.”); *Doe v. Hofstetter*, No. 11-CV-02209-DME-MJW, 2012 WL 3398316, at *1 (D. Colo. Aug. 14, 2012) (awarding \$155,000.00 in damages in revenge porn lawsuit premised upon claims of intentional infliction of emotional distress and public disclosure of private fact); *Pohle v. Cheatham*, 724 N.E.2d 655 (Ind. Ct. App. 2000) (affirming damages award in revenge porn lawsuit based on theories of intentional invasion of privacy and intentional infliction of severe emotional distress); *Patel v. Hussain*, 485 S.W.3d 153, 184 (Tex. App. 2016) (affirming \$345,000 damages award, as remitted, based on invasion of privacy claims); *Taylor v. Franko*, 2011 WL 2118270 at *8–9 (D. Haw. 2011) (finding all elements of a claim for public disclosure of private fact, IIED, NIED, and defamation to be established), *report and recommendation adopted*, 2011 WL 2115836 (D. Haw. 2011); Brian Rogers, *Jury Awards \$500,000 in 'Revenge Porn' Lawsuit*, HOUSTON CHRONICLE (Feb. 21, 2014, 10:33 PM), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Jury-awards-500-000-in-revenge-porn-lawsuit-5257436.php>. *Accord Doe v. Doe*, No. 16 CIV. 0332 (NSR), 2017 WL 3025885, at *6 (S.D.N.Y. July 14, 2017); *Matter of Jones*, No. A19-8027, 2020 WL 908445, at *2 (Bankr. D. Neb. Feb. 25, 2020) (citing *In re Grossman*, 538 B.R. 34 (Bankr. E.D. Cal. 2015)); *In re Boland*, 596 B.R. 532, 550 (B.A.P. 6th Cir. 2019) (“Boland’s intentional acts of creating and displaying the images of the Appellants in pornographic acts would lead an average person to know that Appellants’ privacy and reputation interests would be invaded.”).

¹⁰ See, e.g., Verified Complaint, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty. Chancery Ct. Sep. 22, 2021), <https://horwitz.law/wp-content/uploads/Verified-Complaint.pdf> (asserting claims for IIED and invasion of privacy under theories of Intrusion Upon Seclusion and Public Disclosure of Private Fact).

she did not.¹¹

A. Availability of Rapid Injunctive Relief

In civil cases, the Tennessee Rules of Civil Procedure enable litigants to seek and obtain rapid, pre-judgment injunctive relief in appropriate circumstances. Helpfully, as a general matter, the immediate need to stop the dissemination of non-consensual pornography will qualify.

To begin, courts “may issue a temporary restraining order without written or oral notice to the adverse party or its attorney” if:

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition; and
- (B) the applicant’s attorney (or pro se applicant) certifies in writing efforts made to give notice and the reasons why it should not be required.

Tenn. R. Civ. P. 65.03(1).

Consequently, by attesting to the fact that a defendant has disseminated non-consensual pornography and, if necessary, posting an injunction bond under Tenn. R. Civ. P. 65.05, a victim may and generally will be able to secure immediate injunctive relief enjoining any further dissemination of non-consensual pornography through a restraining order.¹²

A restraining order also may be converted into a temporary injunction and

¹¹ See, e.g., *Wood*, 736 F.2d at 1089 (“Under the false light theory, Hustler's publication falsely represented that LaJuan consented to the submission and publication in a coarse and sex-centered magazine of a photograph depicting her in the nude.”).

¹² See, e.g., Restraining Order and Order Setting Temporary Injunction Hearing, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty. Chancery Ct. Sep. 22, 2021), <https://horwitz.law/wp-content/uploads/Restraining-Order.pdf> (ordering that “Defendants Divine Ogbonnaya and Kionte Gray are hereby RESTRAINED and prohibited from publishing or disseminating to any person or entity any sexually explicit videos, photographs or images of Plaintiff, pursuant to Rule 65.03 of the Tennessee Rules of Civil Procedure.”).

extended through the conclusion of trial afterward. Specifically, under Tenn. R. Civ. P. 65.04(2), courts consider the following four factors when determining whether a temporary injunction should issue:

(1) The threat of irreparable harm to the plaintiff if the injunction is not granted;

(2) The balance between this harm and the injury that granting the injunction would inflict on defendant;

(3) The probability that plaintiff will succeed on the merits; and

(4) The public interest.

See Moody v. Hutchinson, 247 S.W.3d 187, 199-200 (Tenn. App. 2007) (citing *Mosby v. Colson*, 2006 WL 2354763 (Tenn. Ct. App. Aug.14, 2006)). As detailed below, in cases involving non-consensual pornography, all four of these factors usually will support issuance of a temporary injunction.

First, a victim of non-consensual pornography often will suffer irreparable harm if a temporary injunction is not granted. For instance, absent temporary injunctive relief, a plaintiff generally will be unable to prevent sexually explicit images from being disseminated and published across the internet on a massive scale—publications which may cause permanent and lifelong humiliation and embarrassment, reputational harm, and invasions of privacy that can never be adequately remedied by a money judgment. Accordingly, the first factor of the temporary injunction inquiry generally favors granting a victim of non-consensual pornography a temporary injunction through the conclusion of trial.

Second, absent rare circumstances involving public figures or other exceptional

cases, a defendant usually will not be harmed by the issuance of a temporary injunction forbidding the dissemination of non-consensual pornography. Indeed, in most instances, a temporary injunction will serve only to restrain a defendant from activity that is already criminally proscribed. *See* Tenn. Code Ann. § 39-17-318. Under such circumstances, the “harm” to a defendant that would result from a temporary injunction would not be cognizable as a legal harm at all, because the conduct to be enjoined is already a criminal offense.

Third, as detailed above, under circumstances when a plaintiff is victimized by a defendant’s dissemination of non-consensual pornography, the conduct giving rise to a plaintiff’s tort claims is actionable, and the likelihood that the plaintiff will succeed on the merits at trial is high.¹³

Fourth, just as a defendant will not generally suffer harm from a court’s issuance of temporary injunction forbidding the continued dissemination of non-consensual pornography, the public interest typically generally will not be disserved by one, either. Where Tennessee’s duly enacted criminal statutes are implicated, there is significant public interest value in ensuring compliance with them. *Cf. New Motor Vehicle Bd. of California v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (“any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.”). Tennessee public policy also affords crime victims substantive state constitutional and statutory rights that entitle them, for instance, to be free from intimidation, harassment, and abuse, *see* Tenn. Const. art. I, § 35; to be treated with dignity and compassion, *see* Tenn. Code Ann. § 40-38-102(a)(1); and to protection

¹³ *See supra* n. 9.

and support with prompt action in the case of intimidation or retaliation. *See* Tenn. Code Ann. § 40-38-101(a)(2). *Cf.* Daniel A. Horwitz, *Safeguarding Crime Victims' Private Records Following the Tennessean v. Metro*, TENN. B.J., February 2017, at 20, 24 (“releasing sexual and domestic violence victims’ private information to the public could frequently result in such victims experiencing ‘intimidation,’ ‘harassment,’ ‘abuse,’ ‘indignity’ or ‘lack of compassion’—five consequences that Article I, section 35 and Tenn. Code Ann. § 40-38-102 expressly prohibit.”). With this context in mind, courts have concluded that “it is always in the public interest to prevent the violation of a party’s constitutional rights.” *G & V Lounge, Inc. v. Michigan Liquor Control Comm’n*, 23 F.3d 1071, 1079 (6th Cir. 1994) (citing *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979); *Planned Parenthood Association v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir.1987)). Further, enjoining unlawful conduct is within a court’s inherent power, even when there is no authority permitting a damages recovery. *Cf. Anderson v. Clarksville Montgomery Cty. Sch. Sys.*, No. 3:06-0324, 2006 WL 1639438, at *2 (M.D. Tenn. June 13, 2006) (“Even though there is no authority for the recovery of damages for a violation of the Tennessee Constitution, the Court has the inherent power to enjoin unconstitutional conduct.”) (internal citation omitted).

Given the above considerations, a victim of non-consensual pornography who applies for a temporary injunction may—and usually should—be able to obtain one.¹⁴

B. Availability of Discovery

Unlike criminal cases—in which a victim of non-consensual pornography has no

¹⁴ *See, e.g.*, Order Granting Plaintiff’s Application for Temporary Injunction, *A.D. v. Divine Ogbonnaya and Kionte Gray*, No. 21-0951-I (Davidson Cty.. Chancery Ct. Oct. 18, 2021), <https://horwitz.law/wp-content/uploads/Order-Granting-Temporary-Injunction.pdf>.

right to participate in evidence-gathering or the exchange of discovery—Tennessee’s standard civil litigation process affords victims a right to utilize discovery tools almost immediately. Thus, pursuant to Tenn. R. Civ. P. 26.01, a victim of non-consensual pornography “may obtain discovery” aimed at, for instance, identifying all recipients of prohibited material “by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property for inspection and other purposes; physical and mental examinations; and, requests for admission.” *Id.* A victim may utilize the Court’s subpoena power to compel cooperation by non-parties, too, including those who may have received non-consensual pornography illicitly.

C. Compensation for Harm Caused

Unlike the criminal process, civil litigation also enables victims of non-consensual pornography to obtain compensation for actual harm caused—including damages for humiliation and emotional injuries. Courts and juries across the United States also have indicated their willingness to take cases of non-consensual pornography seriously and issue substantial damages judgments against purveyors of non-consensual pornography in many instances. For example, published judgments in recent cases reflect damages awards spanning \$151,123.00–\$6,462,600.00, several of which were determined not to be dischargeable in bankruptcy thereafter.¹⁵ News reports of judgments entered in 2014,

¹⁵ *In re White*, 551 B.R. 814, 819 (Bankr. S.D. Ohio 2016) (bankruptcy proceeding following state court judgment in which “[t]he State Court entered judgment in favor of Ms. Hoewischer for damages in the amount of \$151,123.00, consisting of compensatory damages (\$50,000), punitive damages (\$100,000) and attorney fees (\$1,123).”); *Doe v. Hofstetter*, No. 11-CV-02209-DME-MJW, 2012 WL 3398316, at *1 (D. Colo. Aug. 14, 2012) (holding, in case involving “three state-law tort claims, namely intentional infliction of emotional distress (‘IIED’) as to Jane Doe, IIED as to John Doe, and public disclosure of private facts (‘PDPF’) as to Jane Doe,” that “[t]he Court concludes that a total award of \$155,000 to Jane Doe and John Doe is appropriate.”); *Liamsithisack v. Bruce*, Case No. 112CV233490 (Santa Clara Super. Ct. 2014) (“Plaintiff Manyla Liamsithisack is entitled to judgment against Defendant Jonathan William Bruce in the

2016, 2018, and 2021 reflect similarly large awards of \$500,000.00–\$5,150,000.00 in several additional cases as well.¹⁶

amount of \$100,000. Plaintiff Manyla Liamsithisack is entitled to judgment against Defendant Ranila Rodil in the amounts of \$90,000, and \$60,000 in punitive damages, for a total of \$150,000.”); *Patel v. Hussain*, 485 S.W.3d 153, 158 (Tex. App. 2016) (“we modify the trial court’s judgment to remove the damages associated with the defamation and IIED claims and affirm the judgment as modified, resulting in a judgment of \$345,000.”); *Doe v. Bollaert*, No. 2:13-CV-486, 2014 WL 1091053, at *1 (S.D. Ohio Mar. 18, 2014) (“the Court ENTERS default judgment against Defendant Kevin C. Bollaert and Defendant Eric S. Chanson, jointly and severally, in the amount of \$385,000.00”); *Taylor v. Franko*, No. CIV. 09-00002 JMS, 2011 WL 2746714, at *5 (D. Haw. July 12, 2011) (“The court therefore finds that Plaintiff is entitled to general damages in the amount of \$425,000 to fairly and adequately compensate Plaintiff for her past, present, reasonably probable future pain and emotional distress on Plaintiff’s claims against Franko for Public Disclosure of Private Facts (Count II), Negligent and Intentional Infliction of Emotional Distress (Count III), and Defamation of Character (Count IV).”); *Del Mastro v. Grimado*, No. A-1433-11T4, 2013 WL 4746486, at *1 (N.J. Super. Ct. App. Div. Sept. 5, 2013) (“On August 19, 2005, following a seven-day bench trial, Judge Peter E. Doyne issued a written opinion finding Grimado liable to plaintiff for intentional infliction of emotional distress and invasion of privacy (underlying tort action). The conduct forming the causes of action stemmed from Grimado’s reaction to plaintiff’s decision to end their intimate, nine-month relationship. Grimado hacked plaintiff’s computer contacts to mail or deliver to her family, friends, and business clients “Christmas cards” filled with explicit photographs of plaintiff. An August 30, 2005 judgment awarded plaintiff \$531,820.47 in compensatory and punitive damages. The judgment was affirmed on appeal. *Del Mastro v. Grimado*, No. A-0618-05 (App.Div. Mar. 20, 2007) (slip op. at 5).”); *Prezioso v. Thomas*, 211 F.3d 1265 (4th Cir. 2000) (“At the outset of the bench trial that followed, the district court granted summary judgment to Thomas on the invasion of privacy claim and the action proceeded on the intentional infliction of emotional distress claim. Following the trial, on March 3, 1999, the district court awarded Prezioso \$300,000 compensatory damages and \$125,000 punitive damages.”); *Fed. Trade Comm’n v. Cottelli*, 854 F. App’x 837, 840 (9th Cir. 2021) (“We reject Cottelli’s contention that the district court abused its discretion in awarding a \$2 million judgment in favor of the FTC. First, the record is replete with evidence gathered through the FTC’s investigative efforts linking Cottelli to MyEx.com. Second, Cottelli offers no evidence to rebut the claim based on evidence and the district court’s finding based on the same evidence that the \$2 million award represents the amount collected in extortion fees through MyEx.com—specifically, fees paid by more than 5,070 victims.”); *Jane Doe v. David K. Elam II*, No. CV 14-9788 PSG (SSX) (C.D. Cal. Apr. 4, 2018), at Doc. #149, PageID #4262 (“IT IS THEREFORE HEREBY ORDERED that Plaintiff is awarded \$450,000 from Defendant for her Copyright Infringement Claims; \$3,000,000 in compensatory damages from Defendant for her claims of intentional infliction of emotional distress, online impersonation with intent to cause harm, and stalking [(or) negligence]; \$3,000,000 in punitive damages from Defendant arising from her claims of intentional infliction of emotional distress, online impersonation with intent to cause harm, and stalking; and \$12,600 from Defendant in attorneys’ fees for a TOTAL JUDGMENT of \$6,462,600.”).

¹⁶ Brian Rogers, *Jury Awards \$500,000 in ‘Revenge Porn’ Lawsuit*, HOUSTON CHRONICLE (Feb. 21, 2014, 10:33 PM), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Jury-awards-500-000-in-revenge-porn-lawsuit-5257436.php>; Katrease Stafford, *Oakland County woman gets \$500K in revenge porn case*, DETROIT FREE PRESS (Aug. 25, 2016, 7:32 PM), <https://www.freep.com/story/news/local/michigan/oakland/2016/08/25/oakland-county-woman-receives-500k-revenge-porn-case/89351938/>; James Herrera, *Jury awards Fremont woman over \$5 million in revenge porn case*, THE MERCURY NEWS (Jul. 30, 2018, 7:15 AM), <https://www.mercurynews.com/2018/07/30/jury-awards-5-15-million-to-fremont-woman-in-monterey-county-revenge-porn-case/>; Derick Hutchinson, *Oak Park man ordered to pay \$500,000 for posting ex-girlfriend’s nude photos, videos on website*, CLICKONDETROIT (Apr. 8, 2021, 8:28 PM), <https://www.clickondetroit.com/news/local/2021/04/08/oak-park-man-ordered-to-pay-500000-for->

D. The ability to secure relief anonymously.

When the disclosure of a litigant’s identity would itself give rise to a specific and articulable harm, courts generally will permit a litigant to proceed under a pseudonym.¹⁷ The need to protect a litigant from retaliation and embarrassment also has been held to justify proceeding under a pseudonym under circumstances that are objectively far less concerning than those involving non-consensual pornography. *See, e.g., Doe v. HCA Health Servs. of Tennessee, Inc.*, 46 S.W.3d 191, 194, n.1 (Tenn. 2001) (“The trial court permitted the plaintiffs to use pseudonyms because ‘Mrs. Doe’ is employed in a physician’s office, and she feared that public disclosure of her identity might subject her employer to retaliation and/or embarrassment.”).

Given such concerns, courts frequently permit victims of non-consensual pornography to proceed pseudonymously.¹⁸ Tenn. Code Ann. § 39-17-318 also expressly recognizes that a specific harm associated with the distribution of revenge pornography

[posting-ex-girlfriends-nude-photos-videos-on-website/](https://horwitz.law/wp-content/uploads/Order-Granting-Motion-to-Proceed-Under-Pseudonym.pdf).

¹⁷ *See, e.g.*, Davidson County Local Rule 6.04 (permitting a movant to proceed pseudonymously when a motion is “accompanied by an affidavit stating specific facts explaining why anonymity of the party is necessary and facts sufficient to overcome the presumption of public access to the identities of litigants.”).

¹⁸ *See, e.g.*, Order Granting Plaintiff’s Motion to Proceed Under Pseudonym and Motion to File Attachment #1 to the Plaintiff’s Complaint Under Seal, *A.D. v. Divine Ogbonnaya and Kionte Gray*, No. 21-0951-I (Davidson Cty. Chancery Ct. Sep. 22, 2021); *Doe v. Hofstetter*, No. 11-CV-02209-DME-MJW, 2012 WL 3398316, at *1 (D. Colo. Aug. 14, 2012); *Doe v. Doe*, No. 16 CIV. 0332 (NSR), 2017 WL 3025885, at *6 (S.D.N.Y. July 14, 2017). <https://horwitz.law/wp-content/uploads/Order-Granting-Motion-to-Proceed-Under-Pseudonym.pdf>; *Doe v. Hofstetter*, No. 11-CV-02209-DME-MJW, 2012 WL 3398316, at *1 (D. Colo. Aug. 14, 2012); *Doe v. Doe*, No. 16 CIV. 0332 (NSR), 2017 WL 3025885, at *6 (S.D.N.Y. July 14, 2017); *see also Doe Williams v. Williams*, No. 3:24-CV-165-DPJ-ASH, 2024 WL 2805642, at *5 (S.D. Miss. May 31, 2024) (“The Court has examined the few § 6851 cases addressing this issue, and none denied the request to proceed under a pseudonym.”); *Doe v. Giorso*, No. 2:24-CV-57, 2024 WL 3511641, at *2 (S.D. Ga. July 23, 2024) (“Plaintiff’s substantial right to privacy outweighs the customary presumption she would proceed in her own name. Accordingly, I GRANT Plaintiff’s Motion.”); *C.V. v. Carminucci*, No. 2:24-CV-2096 (JXN) (SDA), 2024 WL 3983007, at *2 (D.N.J. Aug. 28, 2024) (“Here, the Court finds good cause to allow Plaintiff to proceed under a pseudonym. First, Plaintiff’s lawsuit seeks relief under 15 U.S.C. § 6851, which expressly provides that a plaintiff may proceed in litigation using a pseudonym. Second, even if the statute did not provide for such protection, the Court is also satisfied that the Provident Life Factors weigh in favor of proceeding under a pseudonym.”); *Doe v. Willis*, No. 23-CV-2171-REB-SBP, 2023 WL 6907100, at *2 (D. Colo. Sept. 22, 2023) (“plaintiff should be permitted to proceed pseudonymously.”).

is that a victim is “identifiable.” *See* Tenn. Code Ann. § 39-17-318(a) (“A person commits unlawful exposure who, with the intent to cause emotional distress, distributes an image of the intimate part or parts of another **identifiable** person”) (emphasis added). Accordingly, preventing the identity of a victim of non-consensual pornography from becoming publicized permanently is appropriately regarded as a central purpose of the litigation itself, and victims of non-consensual pornography should be permitted to maintain civil claims anonymously under most circumstances as a consequence.

IV. CIVIL REMEDIES AVAILABLE UNDER FEDERAL LAW FOR NON-CONSENSUAL PORNOGRAPHY

In 2022, Congress enacted into law an important federal statute—15 U.S.C. § 6851, *et seq.*—that provides a federal remedy for the unlawful disclosure of intimate images. 15 U.S.C. § 6851(b)(1)(A) provides that:

Except as provided in paragraph (4), an individual whose intimate visual depiction is disclosed, in or affecting interstate or foreign commerce or using any means or facility of interstate or foreign commerce, without the consent of the individual, where such disclosure was made by a person who knows that, or recklessly disregards whether, the individual has not consented to such disclosure, may bring a civil action against that person in an appropriate district court of the United States for relief as set forth in paragraph (3).

Under 15 U.S.C. § 6851(b)(3), the law further provides:

(A) In general

In a civil action filed under this section--

(i) an individual may recover the actual damages sustained by the individual or liquidated damages in the amount of \$150,000, and the cost of the action, including reasonable attorney's fees and other litigation costs reasonably incurred; and

(ii) the court may, in addition to any other relief available at law, order equitable relief, including a temporary restraining

order, a preliminary injunction, or a permanent injunction ordering the defendant to cease display or disclosure of the visual depiction.

(B) Preservation of anonymity

In ordering relief under subparagraph (A), the court may grant injunctive relief maintaining the confidentiality of a plaintiff using a pseudonym.

Id.

Although 15 U.S.C. § 6851(b)(4) contains certain exceptions for disclosures that are made in good faith, are a matter of public concern or public interest, or are “reasonably intended to assist the identifiable individual[,]” the law is substantially comprehensive. Its liquidated damages provision also enables faster, less painful recoveries and protects victims from being subjected to the discomfort, stress, and embarrassment of detailing the harms they suffered during discovery or at a later damages trial. The statute contains a broad definition of disclosure, too, providing that: “The term ‘disclose’ means to transfer, publish, distribute, or make accessible.” *See* 15 U.S.C. § 6851(a)(4). For these reasons and others, utilizing the relatively new federal cause of action enabled by 15 U.S.C. § 6851—either independently or alongside state-law tort claims—may and often will benefit victims of non-consensual pornography as well.

V. CASE STUDY DEMONSTRATING THE EFFECTIVE USE OF CIVIL LITIGATION TO REMEDY NON-CONSENSUAL PORNOGRAPHY IN TENNESSEE

A recent case out of Davidson County Chancery Court—which represents the first reported Tennessee civil judgment in a non-consensual pornography case—provides an encouraging example that demonstrates how effectively the civil process can be used to remedy cases of non-consensual pornography. In September 2021, a plaintiff sued two defendants—a former friend and an ex-boyfriend—for disseminating, without her

consent, several pornographic videos depicting her and her ex-boyfriend. The plaintiff's complaint asserted tort theories of Intentional Infliction of Emotional Distress, Intrusion Upon Seclusion and Public Disclosure of Private Fact, and it sought both a restraining order and temporary injunctive relief, in addition to an award of damages.¹⁹

Within a day of her complaint being filed, the trial court granted the plaintiff's motion to proceed under a pseudonym²⁰ and issued a temporary restraining order against both defendants, ordering that they “are hereby RESTRAINED and prohibited from publishing or disseminating to any person or entity any sexually explicit videos, photographs or images of Plaintiff, pursuant to Rule 65.03 of the Tennessee Rules of Civil Procedure.”²¹ Faced with the prospect of substantial civil liability, one defendant—with the assistance of counsel—also promptly stipulated to the entry of a consent judgment against her. That judgment: (1) afforded the plaintiff robust, immediate, and permanent injunctive relief forbidding the continued dissemination of the sexually explicit videos at issue; (2) required the defendant to identify the recipients of those videos, thereby enabling the plaintiff to stop their further dissemination by non-parties; and (3) afforded the plaintiff an immediate money judgment covering the costs of the proceedings to that point.²² Thereafter, the plaintiff obtained a temporary restraining order against the

¹⁹ See Verified Complaint, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty.. Chancery Ct. Sep. 22, 2021), <https://horwitz.law/wp-content/uploads/Verified-Complaint.pdf>.

²⁰ See, e.g., Order Granting Plaintiff's Motion to Proceed Under Pseudonym and Motion to File Attachment #1 to the Plaintiff's Complaint Under Seal, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty.. Chancery Ct. Sep. 22, 2021), <https://horwitz.law/wp-content/uploads/Order-Granting-Motion-to-Proceed-Under-Pseudonym.pdf>.

²¹ See, e.g., Restraining Order and Order Setting Temporary Injunction Hearing, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty. Chancery Ct. Sep. 22, 2021), <https://horwitz.law/wp-content/uploads/Restraining-Order.pdf>.

²² See, e.g., Agreed Order and Consent Judgment, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty. Chancery Ct. Sep. 30, 2021), <https://horwitz.law/wp-content/uploads/Agreed-Order-and-Consent-Judgment.pdf>.

remaining defendant²³ and both a final judgment of liability and permanent injunctive relief against him weeks later.²⁴ Following a damages hearing, the plaintiff was awarded an additional money judgment of \$10,000.00, which included a punitive award.²⁵

VI. CONCLUSION

As detailed above, despite certain criminal statutes forbidding the dissemination of revenge porn in Tennessee, existing criminal law leaves many Tennessee victims of non-consensual pornography without a remedy. Further, even where criminal law applies, the remedies that the criminal process affords victims of non-consensual pornography often will be insufficient to meet their needs. As a result, available civil remedies will generally afford victims the best—and often the only—means of achieving goals like stopping the dissemination of non-consensual pornography; ensuring its prompt removal or destruction; and obtaining compensation while maintaining anonymity.

Contact the author:

Daniel A. Horwitz
daniel@horwitz.law
HORWITZ LAW, PLLC
www.horwitz.law

²³ Order Granting Plaintiff's Application for Temporary Injunction, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty. Chancery Ct. Oct. 18, 2021), <https://horwitz.law/wp-content/uploads/Order-Granting-Temporary-Injunction.pdf>.

²⁴ Order Granting Plaintiff's Motion for Entry of Judgment by Default Against Defendant Kionte Gray, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty. Chancery Ct. Nov. 9, 2021), <https://horwitz.law/wp-content/uploads/Order-Against-Kionte-Gray.pdf>.

²⁵ Memorandum and Final Judgment, A.D. v. Divine Ogbonnaya and Kionte Gray, No. 21-0951-I (Davidson Cty. Chancery Ct. Apr. 8, 2022), <https://horwitz.law/wp-content/uploads/Memorandum-and-Final-Judgment.pdf>.