RESOLVED, That the American Bar Association approves the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act, promulgated by the National Conference of Commissioners on Uniform State Laws, as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.
REPORT

Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act

Summary

The disclosure of private, sexually explicit images without consent and for no legitimate purpose—often referred to as “revenge porn”—causes immediate, devastating, and in many cases irreversible harm. A vengeful ex-partner, opportunistic hacker, or other person with mal-intentions can upload an explicit image of a victim to a website where thousands of people can view it and hundreds of other websites can share it. In a matter of days, that image can dominate the first several pages of search engine results for the victim’s name, as well as be emailed or otherwise exhibited to the victim’s family, employers, co-workers, and peers. Additionally, victims of revenge porn often find their personal safety is at a heightened risk after an unauthorized disclosure is made. Incidents of revenge porn and non-consensual pornography are increasing nationally. States have adopted criminal and civil laws to address this issue. However, they differ considerably in their definitions, scope, effectiveness, and remedies. This lack of uniformity creates confusion and inefficiency and leaves victims without a clear path to justice. In response to this issue the Uniform Law Commission promulgated the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act (UCRUDIIA) in 2018.

Section 3 of the UCRUDIIA creates a cause of action for the unauthorized disclosure of intimate images. The basic elements of this cause of action are: (1) an intentional disclosure or threat to disclose; (2) an intimate image; (3) of an identifiable individual; and (4) without the consent of the depicted individual. Additionally, the act limits liability to those who (5) know or show reckless disregard for whether the depicted individual had a reasonable expectation of privacy or know or show reckless disregard for whether the intimate image was made accessible through theft, bribery, or similarly unlawful means. The act leaves the question of whether a cause of action under this act survives the death of the depicted individual for the states to decide.

Section 4 provides for exceptions to liability for disclosures made in good faith under the act. Disclosure is permitted for law enforcement, legal proceedings, medical education or treatment and other proper needs. Section 4 further provides that a discloser who is a child's parent or legal guardian, or individual with legal custody of the child is not liable under the act for the disclosure or threatened disclosure of an intimate image, unless the disclosure was prohibited by law other than this act or made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

Section 5 protects the privacy of a plaintiff. This section allows the plaintiff to use a pseudonym and otherwise protect his or her identity. Section 5 further permits the court to exclude or redact other identifying characteristics of the plaintiff from all pleadings and documents filed in the action. To exercise this right, a plaintiff must file with the court a confidential information form that includes the plaintiff’s real name and other information and serve a copy of this form on a respondent.
Section 6 provides various remedies for victims. A prevailing plaintiff may recover actual damages, statutory damages, punitive damages, and attorney’s fees. A plaintiff may also recover an amount equal to the gain made by the respondent from disclosure of the intimate image if applicable. Section 6 does not affect a right or remedy available under other law.

Section 7 addresses statutes of limitations. Under this section, an action for the unauthorized disclosure of intimate images must be brought no later than four years from the date the unauthorized disclosure was discovered or should have been discovered with the exercise of reasonable diligence. Actions brought under the act for a threat to disclose an intimate image must be brought no later than four years from the date of the threat to disclose. The act also applies relevant state tolling statutes. For actions brought by individuals who are minors, this section provides states with an optional provision allowing the statute of limitations to begin running on the date the depicted individual attains the age of majority. This section is drafted to allow states to choose a different period of limitation if desired.

Section 8 excludes interactive computer service providers from coverage under the act to the extent they are already protected under federal law. This section does not alter state law on sovereign or governmental immunity.

The Uniform Civil Remedies for the Unauthorized Disclosure of Intimate Images Act and the work of the Drafting Committee is available at www.uniformlaws.org, the website of the Conference.

Respectfully submitted,

Anita Ramasastry, President
National Conference of Commissioners on Uniform State Laws
January 2019
GENERAL INFORMATION FORM

Submitting Entity: National Conference of Commissioners on Uniform State Laws

Submitted By: Anita Ramastastry, President

1. Summary of Resolution(s).

The National Conference of Commissioners on Uniform State Laws (NCCUSL) requests approval of the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act by the American Bar Association (ABA) House of Delegates.

2. Approval by Submitting Entity.

The National Conference of Commissioners on Uniform State Laws granted final approval to the Act at its July 2018 Annual Meeting.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

Not applicable.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable)

The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act has not yet been enacted in any jurisdiction.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

NCCUSL will present the Act to state legislatures for consideration and enactment.

8. Cost to the Association. (Both direct and indirect costs)

None.
9. Disclosure of Interest. (If applicable)

None.

10. Referrals.

Pursuant to the agreement between the NCCUSL and the ABA, all members of the House of Delegates and Chairs of all ABA entities were advised of the drafting project, and those that expressed interest were provided with tentative drafts. The Drafting Committee’s work can be at uniformlaws.org.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

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12. Contact Name and Address Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting. Be aware that this information will be available to anyone who views the House of Delegates agenda online.)

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EXECUTIVE SUMMARY

1. Summary of the Resolution

That the American Bar Association approves the Uniform Unauthorized Disclosure of Intimate Images Act promulgated by the National Conference of Commissioners on Uniform State Laws in July 2018 as an appropriate Act for those states desiring to adopt the specific substantive law suggested therein.

2. Summary of the Issue that the Resolution Addresses

The disclosure of private, sexually explicit images without consent and for no legitimate purpose—often referred to as “revenge porn”—causes immediate, devastating, and in many cases irreversible harm. States have adopted criminal and civil laws to address this issue. However, they differ considerably in their definitions, scope, effectiveness, and remedies. The Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act provides uniformity, eliminates confusion, and offers victims a clear path to justice.

3. Please Explain How the Proposed Policy Position Will Address the Issue

Approval of the Uniform Unauthorized Disclosure of Intimate Images Act by the American Bar Association House of Delegates would demonstrate to states that the Act is an appropriate approach for addressing the issues described above.

4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified

None known.