

Domestic Violence and Technology – Navigating the Intersection

By Helen Fabinyi and
Lauren Macaulay, Central
Australian Women's
Legal Service, August
2014



DV through technology on the rise

- Increasingly, technology is being harnessed by perpetrators of DV to monitor, control and humiliate a partner or ex-partner
- Online forums and modern technology can provide wider opportunities for stalking, harassment and other abusive behaviours
- The damage caused by DV through technology is intrusive and wide ranging

Revenge Porn

- A more recent phenomenon of DV through technology is “revenge porn”
- This describes the posting or sharing by one partner or ex partner of sexually explicit images or footage featuring the other party. The images may have been taken with or without consent, with the material then being circulated without the permission of the subject
- Several international examples highlighted by the media: eg #IamJada – June 2014; #twitterpurge – July 2014

Local observations and trends

Observations by CAWLS lawyers on the issue include the following:

- “Client was concerned about a tape she and the perpetrator had made together. Tape had not been released in any public way at the time we were assisting the client. However, client was very concerned about ... the tape being used against her. It was a perceived fear that if she did something to upset him he may use the tape to ‘get back at her’. This influenced how she wanted to proceed in the matter, increased her vulnerability and heightened her sense of fear of how powerful he could be.”
- “Client was both a defendant and applicant in a DV matter. Social media was used by the perpetrator to say our client was stalking and harassing him. Perception from client was that: she had extreme safety settings on Facebook. Did not understand how perpetrator had access to her Facebook. This made client question whether perpetrator knew where she was, who she was seeing and whether or not one of her friends was feeding the perpetrator information. The client began to question her own safety network because of the perpetrator accessing her accounts.”
- “Client had not had any contact with perpetrator for some time. Client was receiving up to 30 emails and text messages daily from the perpetrator. None of the emails or texts included threats, however they were long and persistently asking for our client to reconsider her decision to part ways with the perpetrator. Client felt continually harassed by perpetrator, was unable to focus and had put her job in jeopardy for the constant texting and emailing. Client felt very controlled by perpetrator even though relationship had ended, helpless to have any control over her day to day living.”

Local observations and trends

Generally, CAWLS lawyers have commented :

- “It is not uncommon for us to have clients report to us that the perpetrator seems to know private information about them and that they feel that he must be accessing their Facebook, emails and phone messages but there is no real proof of this occurring. This can occur even where diligent steps have been taken to stop the perpetrator accessing their accounts (high security settings and accounts that de-identify client). These accusations have very little weight unless backed up by evidence which can be hard to ascertain when a threat is perceived by client via technology. Often client reports that the perpetrator is “clever and that he knows what to do with technology”. This adds to their level of paranoia and helplessness, which in turn can make them seem neurotic when seeking help.”

What are the laws around DV and technology in the NT? What are the options for redress?

- General harassment or abuse – s474.17 *Criminal Code Act 1995 (Cth)* “Use Carriage Service to Menace Harass or Cause Offence”
- Revenge porn: users posting or sharing explicit images of a person under 18 can be prosecuted under child pornography laws. If over 18, there are limited options for prosecution at criminal law
- Limited protection from revenge porn is available through the *Domestic and Family Violence Act 2007* (NT)
- Complaint to the Australian Communications and Broadcast Authority
- ALRC Inquiry into Serious Invasions of Privacy in the Digital Era

How is revenge porn being addressed internationally? What can we learn from further afield?

- Recent UK campaign to adopt new criminal laws for offences committed via social media (including 'revenge porn') has been stalled by House of Lords
- USA: New Jersey and California have criminalised non-consensual pornography
- New Jersey now prohibits the non-consensual observation, recording, or disclosure of intimate images
- Californian law not applicable to images taken by victims themselves
- Jurisdictional issues - an international treaty?
- As well as being an avenue for perpetrating domestic violence, should revenge porn be construed as an invasion of privacy, or a form of sexual abuse?

How could we respond better to this issue?

- Fortified criminal sanctions *in addition* to civil actions
- Stronger options for redress against individuals responsible for uploading/sharing material AND against the companies operating the online forum
- Tighter regulations requiring demonstrated, express consent to the display of intimate and graphic images
- Public advocacy to raise awareness about the issue

Education of professionals and the broader

Ending on a positive note – ways technology can be harnessed to combat DV

- Providing a lifeline for socially or geographically isolated victims of DV
- As a source of information
- Breaking down barriers of remoteness and language
- May be less intimidating than seeking face to face support
- Equipping people to make informed decisions regarding their safety

Some excellent online resources

- ACMA Cybersmart series - <http://www.cybersmart.gov.au/>
- Stay Smart Online - <https://www.staysmartonline.gov.au/>
- Take Back the Tech - <https://www.takebackthetech.net/be-safe>
- Domestic Violence Resource Centre Victoria – Technology Safety- <http://www.dvrcv.org.au/knowledge-centre/technology-safety>
- Women’s Health West – Using the Internet Safely - <http://whwest.org.au/family-violence/resources/using-the-internet-safely/>
- iTalk Library – <http://italklibrary.com/italk/law/>

References and further reading

1800Respect Webinar: Technology, Stalking and Domestic Violence, Dr Delanie Woodlock, May 2014
<https://www.1800respect.org.au/workers/1800respect-webinars/>

ALRC Discussion Paper: Inquiry into Serious Invasions of Privacy in the Digital Era, March 2014
<http://www.alrc.gov.au/publications/serious-invasions-privacy-dp-80>

Submissions to the Inquiry into Serious Invasions of Privacy in the Digital Era (particularly by WLSV and DVRCV; DVLS and NAAJA; WLS NSW) <http://www.alrc.gov.au/inquiries/invasions-privacy/submissions>

House of Lords Select Committee on Communications, 1st report of Session 2014-15: *Social media and criminal offences*, July 2014

Franks, Mary Anne, *Combating Non-Consensual Pornography: A Working Paper*, December 5 2013
<http://ssrn.com/abstract=2336537> or <http://dx.doi.org/10.2139/ssrn.2336537>

McGlynn C, and Rackley E “The law must focus on consent when it tackles revenge porn”, *The Conversation*, 23 July 2014
<http://theconversation.com/the-law-must-focus-on-consent-when-it-tackles-revenge-porn-29501>

Newspaper articles:

“Revenge Porn: Misery Merchants”, *The Economist*, 5 July 2014 <http://www.economist.com/news/international/21606307-how-should-online-publication-explicit-images-without-their-subjects-consent-be>

Saul, Heather “Trolling of teen rape victim Jada sparks internet fightback with hashtag #IamJada”, *The Independent*, 16 July 2014 <http://www.independent.co.uk/news/world/americas/trolling-of-teen-rape-victim-jada-sparks-internet-fightback-with-hashtag-iamjada-9610180.html>

Parkinson, Hannah Jane “Twitter trend based on *The Purge* films exposes horror of revenge porn”, *The Guardian*, 22 July 2014
<http://www.theguardian.com/technology/2014/jul/21/twitter-trend-purge-film-anarchy-revenge-porn-laws>

Contact details

- Central Australian Women's Legal Service (CAWLS)
- (08) 8952 4055
- lauren.macaulay@cawls.org.au
- helen.fabinyi@cawls.org.au