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Using Company Policy to Take Down Nonconsensual Porn

It is much easier to take down nonconsensual porn content than it used to be. A growing number of companies will voluntarily take down nonconsensual porn on their platforms, regardless of whether the victim owns the copyright.

Use Cyber Civil Rights Initiative's new [Online Removal Guide](#) for step-by-step instructions on how to report and take down non-consensual porn across multiple technology platforms, including, [Instagram](#), [Twitter](#), [Reddit](#), [Tumblr](#), [Yahoo](#), [Google](#), [Microsoft](#).

Before you ask anyone to remove content from the internet, be sure to preserve reliable copies of the content as it existed before it was removed. Here is WMC's guide to [Evidence Preservation](#).

If you are curious about how this change came about, the following blog post provides a great summary of the major events of 2007 through 2015: Danielle Keats Citron, *Online Engagement On Equal Terms*, B.U. L. REV. ANNEX (October 19, 2015), perma.cc/MHQ5-YX9V.

Why would I use copyright law to combat the nonconsensual distribution of intimate images?

Intimate photos may implicate a number of rights. For example, when an intimate photo or video of you is shared without your consent, your right to privacy may be violated. When a photo that you and your partner agreed would remain private is disclosed to the public, the confidentiality you were promised is violated.

Intimate photos may be defamatory, portray you in a false light, or be intended to cause you extreme emotional distress. Although these forms of harm may give rise to viable legal claims against the people who posted the photos, due to certain legal immunities they may not be enough, on their own, to convince a third-party website to take the content down. Copyright is a valuable tool for content removal, in part because there are laws that make it (relatively) straightforward for copyright owners to take down unauthorized use of their copyrighted works online.

How does copyright protect intimate images?

Copyright automatically protects works of authorship at the moment they are created (in the language of the law, "fixed in a tangible medium of expression"). Among other things, photos, videos, and certain written content are among the works of authorship protected by copyright law. In most circumstances that are likely to be present when intimate images are recorded, the person who took the photo or video is likely to be deemed the "author" of the work, and therefore the copyright owner.

How do I obtain copyright in intimate images?

If you are a victim of nonconsensual porn, one of the first things you'll want to do is secure copyright ownership of the non-consensual porn content. It's possible that you may already have ownership because copyright automatically vests in the author of a work like a photograph. So, if you took the photograph (e.g., a selfie), it is likely that you already own the copyright.

If someone else took the photograph, then you must go through the extra step of getting an assignment in writing from the author.

If the author is friendly, you may find it quite straightforward to obtain an assignment in writing simply by asking the photographer to complete a copyright assignment.

Sample Copyright Assignment

For other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, [Name of person who took the photo/video] irrevocably transfers and assigns to [Name of nonconsensual porn victim], her successors and assigns, in perpetuity, the entire right, title, and interest in and to (i) the copyright in the work attached hereto as Exhibit A and any registrations and copyright applications relating thereto and any renewals and extensions thereof, (ii) all works based upon, derived from, or incorporating the work listed above, (iii) all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, (iv) all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights, and (v) all rights corresponding to the foregoing throughout the world.

[Name & signature of person who took the photo/video]
[Date]

If the photographer is adversarial, the procedure is the same, but it may be more difficult to get them to agree to assign the copyright to you. You may find the assistance of legal counsel helpful in persuading them to give you an assignment. Photographers will often agree to assign the copyright to you in connection with a settlement of your potential legal claims against them. However, we strongly recommend that you consult a lawyer before giving up potentially valuable legal claims that you may have against someone in exchange for a copyright assignment, or any other consideration.

Sample Copyright Assignment Provision In A Settlement Agreement

1. Private Content

- 1.1 [Defendant] hereby assigns to [Plaintiff] the entire right, title, and interest – including but not limited to all copyright rights – in and to any photographs, images, stills, video, audio recordings, or any other content of any type which he has created in which [Plaintiff] is nude or partially nude or is engaging in sexually explicit conduct (the “Private Content”), including without limitation those materials more particularly described in Exhibit A.¹

1. Ideally, copies of the works being assigned will be attached. Another approach would be to arrange for the works to be returned, then reference all works returned. Exhibit A should include a separate copyright assignment, so it can be shared with others, without the need to share the entire agreement.

- 1.1.1 [Defendant] shall execute all documents and take all acts that [Plaintiff] deems reasonable and necessary to effect this assignment.

- 1.2 [Defendant] represents and warrants that he has either returned to Plaintiff or destroyed any and all copies of the Private Content within his possession, custody or control

- 1.2.1 If [Defendant] later discovers any Private Content that should have been destroyed under Section 1.1, he agrees to immediately destroy such content.

How do I request that the website take down the copyright infringing content it is hosting?

Once you have established that you own the copyright in the content, send a DMCA takedown notice to the website. Many sites make a DMCA takedown webform available for your use. You may feel free to use such a form. Pinterest has an exemplary DMCA takedown [webform](#).

If a webform is not available, or if you prefer not to use it, you may send a DMCA takedown via email or regular mail. Most sites list in their Terms of Use (and/or a separate copyright policy) who a DMCA/infringement notice should be sent to. In addition, the U.S. Copyright Office maintains a database of registered DMCA agents for websites: http://www.copyright.gov/onlinesp/list/a_agents.html. Not all sites have a registered agent, but if the site in question is listed in the Copyright Office database, you should send your notice both to that registered agent, and to any contact identified in the site’s terms or copyright policy. If there is no contact listed on the website or in the copyright office database, the WHOIS database contains ownership and contact information for most internet domains. You can search it here: <http://whois.domaintools.com>.

Use clear and accurate language in takedown requests that carefully follows the DMCA notice elements set forth in 17 U.S.C., Section 512(c)(3). We have provided a sample takedown notice that you may feel free to adapt to your situation: [Sample DMCA Notice](#).

Please note that the person who posted the content may receive a copy of your DMCA notice, including your contact information and any other information you may have included in the notice. If you are not comfortable divulging, e.g., your street address to the user you are filing against, consider using a post office box in place of your home or office address and/or authorizing a third party to file on your behalf. The third party doesn’t need to be a lawyer; any person may be authorized to act on behalf of the copyright owner in sending a DMCA notice. For additional ideas, see [5 Ways to Protect Your Privacy When Sending DMCA Notices](#), Plagiarism Today (Aug. 19, 2014).

- You do not need to be a lawyer to send DMCA notices, but if you wish you can hire a lawyer or a company to send DMCA takedown notices on your behalf. Visit the Cyber Civil Rights Initiative website <https://www.cybercivilrights.org/our-part>

[ners](#) for information about companies that provide DMCA takedown services for victims.

- Remember, if you are asking anyone to remove anything, [be sure to preserve a copy before you send your request](#).
- Once the website removes the content, you can then refresh Search. Use the search company's webform to refresh Search. See, e.g., Google's [How to remove outdated content](#).

Most websites will comply with valid DMCA takedown notices because if they don't, they risk being sued and liable for copyright infringement.

What if the website refuses to comply with the DMCA takedown notice?

Even though websites have strong incentives to comply with valid DMCA takedown notices, sometimes they won't, and you may need to escalate your efforts to get them to comply. We recommend contacting a lawyer for advice if this occurs.

Even if a website refuses to take down content, you can ask search engines to de-index the work. To understand how search companies de-index content, and why you still need to deal directly with websites, it's helpful to understand how search works. See Matt Cutts, *How Search Works*, [Youtube](#) (uploaded by Google on Mar. 4, 2010), <https://www.youtube.com/watch?v=BNHR6IQJGZs>. As that video explains, “[w]hen you do a Google search, you aren't actually searching the web. You're searching Google's index of the web. Or, at least as much of it as we can find.” So, for

example, when you go online and run a search for someone's name, the search results that appear on your screen are just an index of potentially relevant websites. It's like how libraries used to use an index card system to help visitors locate books in the library. Shredding a library's index card (de-indexing something from a search company) will make the book (the webpage) very difficult to find unless you know exactly where it is located in the library (have a direct URL). But, the book is still in the library, which is one reason why we recommend contacting the website first. The other reason is that search engines update their indexes, so if you can get the book removed from the shelf in the first place, there is generally no need to send a DMCA notice to the search engine.

- The easiest way to submit a DMCA notice to Google is to use their online webform. DMCA instructions and a link to that webform are available [here](#).
- If the content is a nude or sexually explicit photo or video of you that's been shared without your consent, you may not need to use the DMCA to de-index the content from Search, because [Google Search](#) and [Microsoft Bing Search](#) don't tolerate that type of content as company policy. Many reputable social media companies will take it down too. See *Using Company Policy to Take Down Nonconsensual Porn* (above).

Do I need to register the copyright with the US Copyright Office in order to send a DMCA takedown?

No. To send DMCA takedowns, you do not need to have registered the copyright with the U.S. Copyright Office.