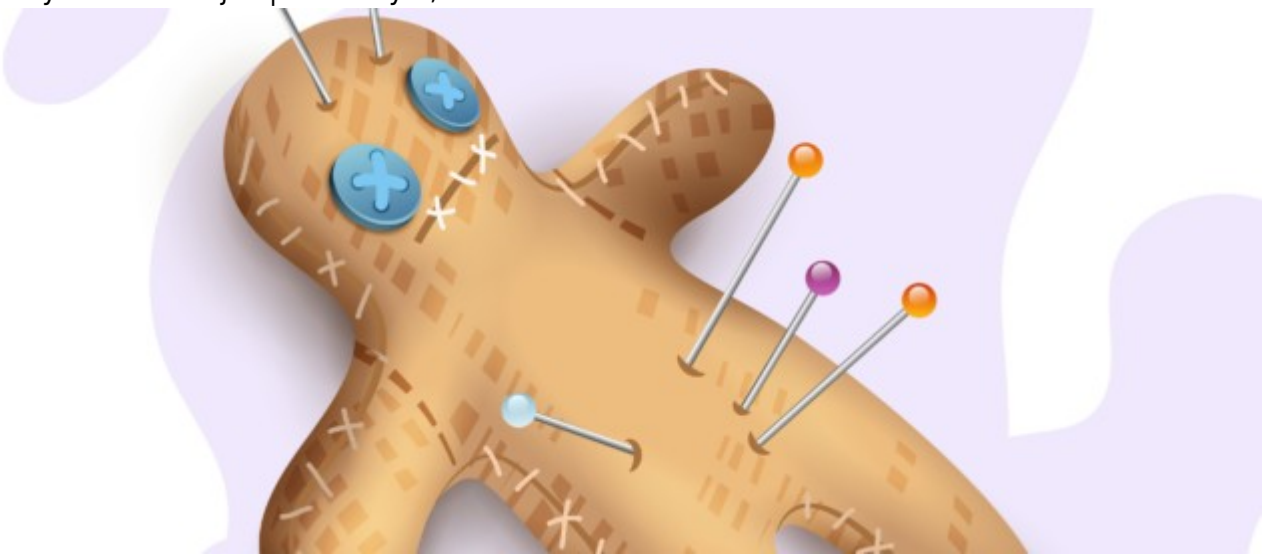
SEND NUDES

Category: Commercial Law,Media and OTT,Privacy Law, Infosec, and POPIA,Technology Law
written by Yashoda Rajoo | February 8, 2019



While most people chuckle at the “send nudes” gifs and memes that are an ongoing source of humour on the internet, for some, the tragic reality is that these nudes may ruin their lives. People in relationships usually trust the person they’re with and could never imagine being betrayed by them. However, the startling number of “revenge porn” cases evident in society today indicates just how cautious we need to be with our images.

Revenge porn is the distribution of sexually explicit videos or images without the permission of the person(s) featured in them, usually for the sake of humiliation or intimidation. The content is used to blackmail individuals, coerce them into staying in a relationship or punish them for leaving.

Revenge porn can be associated with psychological abuse, domestic violence and even as a form of sexual abuse. Section 16 of The Cybercrimes Bill (B6-2017) tries to confront this by stating that:

(1) Any person (“A”) who unlawfully and intentionally makes available,

broadcasts or distributes, by means of a computer system, a data message of an

intimate image of a person (“B”) without the consent of B, is ***guilty of an offence****.*

(2) For purposes of subsection (1)—

(a) “B” means—

(i) the person who can be identified as being displayed in the data message;

(ii) any person who is described as being displayed in the data message,

irrespective of the fact that he or she cannot be identified as being

displayed in the data message; or

(iii) any person who can be identified from other information as being

displayed in the data message; and

(b) ”intimate image” means a depiction of a person—

(i) real or simulated and made by any means in which—

(aa) B is nude, or his or her genital organs or anal region, or if B is a

female, her breasts, are displayed; or

(bb) the covered genital or anal region of B, or if B is a female, her

covered breasts, are displayed in a manner that violates or offends

the sexual integrity or dignity of B; and

(ii) in respect of which B so displayed retains a reasonable expectation of

privacy at the time that the data message was made.

The pending cyber legislation includes criminalising the distribution of intimate images without consent and possible jail time of up to 5 years and/or a fine.

However, the Cybercrimes Bill has not yet been passed, so these provisions are yet to come into effect. The closest alternative we have is to look at Copyright law for some sort of relief. Our Copyright Act specifically provides for urgent interdictory relief, which could result in having the offending images removed if you were the person that took the photograph or video. This is based on the fact that since you took the photo, you own the Copyright. However, Copyright law can do very little to assist victims who did not take their own images.

Despite the pending Cybercrimes Bill and Copyright legislation, it’s difficult, if not impossible for victims to revert to their usual lives. One of the worst revenge porn attacks occurred in Cape Town to a woman named Greta Potgieter. Potgieter sought justice from the Western Cape High Court. However, even though she won and the perpetrator was prevented from posting content about her online, and was further ordered grant a computer expert access to all his electronic devices, the images posted of her could never be completely removed from the internet.

If you need help protecting your identity on the internet, look at Darren’s article on How To Sext Safely.