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ARTICLE



## “Why Take the Photo if You Didn’t Want It Online?”: Agency, Transformation, and Nonconsensual Pornography

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### ABSTRACT

This article analyzes nonconsensual pornography, the form of image-based sexual abuse colloquially known as “revenge porn,” through a consideration of agency and circulation in visual rhetoric as well as in the broader context of discourse on sexual assault and harassment. It argues that responses to nonconsensual pornography continue to blame women whose photographs are circulated online without their consent and, in doing so, reinforce a double bind of victimhood and agency. Because these victim-blaming responses fail to account for the difference between consenting to a photograph’s production and its appearance online, I argue for an understanding of nonconsensual pornography as an issue of circulation, wherein agency is produced as people, images, texts, and technologies interact.

### KEYWORDS

Agency; circulation; nonconsensual pornography; sexual assault

An email came in. “Someone is trying to make life difficult for you. They posted ‘compromising’ pictures of you at [www.doxed.me](http://www.doxed.me). They are clearly labeled as being you.” I clicked on the link and didn’t have to search for my name; my gallery was the third one on the homepage of this site. Then the threatening emails started rolling in.

—Holly Jacobs

In a 2013 article for *XOJane*, Holly Jacobs describes her experience with nonconsensual pornography that consumed her life for more than two years. After an ex-boyfriend posted nude photos and videos of her online, the images circulated across hundreds of Web sites, eventually forcing Jacobs to change jobs, e-mail addresses, and even her name. Despite countless hours spent tracking down her images, distributing takedown requests, and policing Web sites, Jacobs, like most U.S. women in 2011, had little ability to control the spread of her images or seek legal recourse for their posting.<sup>1</sup> When communicating with lawyers, police, and Web site administrators, Jacobs and victims like her have been told that they are dealing with one or more of the following phenomena:

1. the harsh reality of a digital environment where photos are easier to repost than remove and Web site owners are not responsible for user-generated content (Love);

2. a civil (as opposed to criminal) matter, a simple “scuffle” between former romantic partners (Jacobs); or
3. the inevitable consequence of having taken the photographs in the first place (Laws).

Each of these responses conveys specific assumptions and attitudes about image-based digital communication, the law, and agency. The third, however, seems to combine all three sets of attitudes by suggesting that women who record sexually explicit images (or who allow their recording) must assume that those images *will* be circulated across hundreds of Web sites and, given the nature of both the Internet and the protections of free speech, that they will have no legal option but to accept this fate. To put it as succinctly as the detective with whom Charlotte Laws’s daughter spoke when someone hacked her laptop and posted her nude photos: “Why would you take a photo like that if you didn’t want it to end up on the Internet?”

This detective’s response is likely familiar, a refrain which Boor Tonn, Endress, and Diamond refer to as part of a lingering “propensity to blame women for acts of violence visited upon them” (177). Though men—especially sexual minority men—are also victims of nonconsensual pornography, women are both more likely to become victims (Eaton et al.) and to have their experiences reframed in an established pattern of victim-blaming discourse that specifically works against them, particularly in the legal realm. This victim blaming is often enacted through standards of victimhood that place women in what Caroline Picart calls the “double bind” of victimhood and agency (99). This article considers how nonconsensual pornography, a phenomenon of digital image circulation, contributes to and complicates this double bind through the multiple associations and subsequent transformations of the images as they materialize online. In addition to fostering a better understanding of the paradox of agency that forms when women report being nonconsensual porn victims, this analysis extends current discussions of agency and consequentiality in visual rhetoric by considering the ways that circulating images transform their subjects.

I understand the intertwined concepts of agency, consequentiality, and rhetorical transformation to be crucial in the study of nonconsensual pornography, particularly as these images enter circulation after and in divergent ways from the contexts of their production and distribution. In studying the nonconsensual circulation of nude photographs and sexually explicit videos, I owe my analytical approach to scholars who help me consider how images actively contribute to public life (DeLuca and Wilferth; Proppen; Finnegan), understand agency as emergent and distributed (Miller; Cooper; Wolford), and trace the rhetorical transformation of matter (Gries). In particular, my taking up questions of agency, consequentiality, and rhetorical transformation expands upon the work of Laurie Gries, who traces the ways that images undergo transformations and consequently transform other human and nonhuman agents “as they materialize in differing spatiotemporal configurations” (86).

Any consideration of visual rhetoric in circulation also needs to account for the multiple discourses in which the image in question participates. One of nonconsensual pornography’s multiple associations is the law, which it encounters but often eludes as it slips in and out of established realms of current legal understanding, where agency

(often reframed as consent) is often limited to the human. This article thus applies concepts of circulation, agency, and consequentiality to consider the rhetorical transformations a nonconsensual porn image and its subject undergo as they materialize across the Web; in addition, it raises questions about how this approach to agency may bridge the gap between the study of visual rhetoric and the deliberative and judicial discourses with which these images and their subjects necessarily interact.

To frame my analysis, I first define the phenomenon of nonconsensual pornography and briefly explain the concepts of agency most useful in understanding the phenomenon. Because the law is an important field of discourse with which nonconsensual porn images and their subjects become entangled, I then offer a more detailed discussion of agency in this field, highlighting the victim-agent double bind that has historically plagued victims of sex and gender-based crimes and continues to inform the legal and social responses to nonconsensual porn. As a means of countering the limited notions of agency underpinning these responses, I suggest the importance of rhetorical transformation in understanding nonconsensual pornography and trace the shifts in genre, function, and agency that occur as nonconsensual porn images surface in new contexts and form new associations. Ultimately, understanding the agency produced when people, images, texts, and technologies interact can aid in the creation of more effective legal definitions of nonconsensual pornography and protections for its victims.

### Defining nonconsensual pornography and agency

Nonconsensual pornography is the practice of sharing “private, sexually explicit images” without the consent of the individual depicted (“Definitions”). Nonconsensual pornography images may be shared among only a few people or across hundreds of Web sites, particularly when they appear on Web platforms that allow and encourage users to repost content easily. Nonconsensual pornography is often referred to, both colloquially as well as in news reporting and even some legislation, as “revenge porn”; however, Mary Anne Franks, a University of Miami law professor and cofounder of the Cyber Civil Rights Initiative (CCRI), has argued against the use of this term. In a 2017 survey of nonconsensual pornography victims and perpetrators, 79 percent of individuals who obtained and/or shared these images claimed not to be motivated by revenge (Eaton et al.). In addition, the word *revenge* in “revenge porn” also implies an initial action on the part of victims that somehow provokes revenge, making this more ubiquitous term not only inaccurate but also counterproductive for victims who wish to be understood as agents without assuming partial blame for actions taken against them. Because many images that become nonconsensual pornography are created consensually, often by the depicted individuals themselves,<sup>2</sup> they transform into nonconsensual pornography at a point after their initial creation and/or distribution, either through hacking incidents or when the initial recipients or cocreators of the images circulate them without the consent of the image’s subject. As the images transform from private artifacts into viral ones and enter into new associations across the multiple sites of their circulation, they participate in what Gries refers to as a “distributed, dynamic dance” (58) that belies the simple attributions of agency suggested by the name “revenge porn.”

While agency can be defined most simply as an ability to act, the concept has been scrutinized and debated within rhetorical scholarship for decades. Although attempts to define or “pin down” (Wolford) a concept of rhetorical agency differ widely (see Campbell; Geisler; Lundberg and Gunn), some consensus has been reached on the notion of agency as distributed and emergent rather than as a stable quality or possession that can be linked to an individual (and usually human) agent (see Miller; Herndl and Licona; Gries). Scholars have identified the limitations of the stable-agent model, particularly as it fails to account for power differentials and shifting subject positions, or for the agency of nonhuman objects and beings (Cooper; Barnett). To account for both of these issues, Carolyn Miller suggests locating agency within performance, and more specifically, to the kinetic energy produced within each performance:

I'm comparing agency not to the energy of a stone sitting at the top of the cliff but rather to the energy it has as it falls, the energy of motion. If agency is a potential energy, it will be thought of as a possession or property of an agent (like a stationary stone), but if agency is kinetic energy, it must be a property of the rhetorical event or performance itself. Agency thus could not exist prior to or as a result of the evanescent act. (147)

For the purposes of this analysis, locating agency within the kinetic energy of performances means accounting for the multiple interactions—with humans, technologies, discourses, and other objects—a single photograph experiences and the subsequent transformations both image and subject undergo. Doing so can allow for a better understanding of the consequentiality of nonconsensual pornography in particular and of the concept of agency within the broader contexts of both visual rhetoric and of sex and gender-based crimes more generally. For Miller, understanding agency as kinetic energy can also help resolve the duality of “capacity” and “effectivity” that has often framed discussions of agency (see Campbell; Geisler; Lundberg and Gunn). As I indicate later in my discussion of agency in legal responses to sex and gender-based crimes, women's agency is often relegated to the realm of capacity or of potential energy, often with harmful results for victims.

Before tracing the transformations in agency that occur in the digital circulation of nonconsensual porn images, I would like to consider what I understand to be the problem of agency in legal discourses surrounding sex and gender-based crimes, including nonconsensual pornography, particularly as it contrasts with more distributed, kinetic notions of agency. This consideration is necessary because nonconsensual pornography victims must contend with much more limited and often harmful logics of agency and image circulation than those described thus far.

### **Victimhood and agency in legal discourse: Capacity, effectivity, and temporal collapse**

While this article understands nonconsensual pornography images to be actants involved in multiple forms of transformation as they circulate online, in many social and legal responses to nonconsensual porn, images are seen as “the problem itself” (Gries 67), and too much attention is given to an image's interior dimensions and its initial relations rather than to the distributed dance of agency in which the image takes part after production and distribution. In legal discourse, images are largely treated as

evidence, as proof or consequence of an action taken by a human agent, rather than transforming and transformative actants in their own right. While posthumanist notions of agency understand it as dispersed, kinetic energy (Miller), the language used to discuss crime—and sex and gender-based crimes in particular—continues to rely on static, “potential” energy definitions that often equate agency with culpability and preclude agents (especially women) from being understood as victims. I would like to suggest that these standards of victimhood rely on (1) a victim-agent double bind that turns capacity against effectivity and (2) a temporally essentialized notion of agency.

As Miller points out, agency has often been described as a two-part concept: as capacity and as effectivity. Karlyn Kohrs Campbell defines agency as “the capacity to act, that is, to have the competence to speak or write in a way that will be recognized or heeded by others” (3). Noting that these effects are ultimately produced as a result of the interaction between rhetor and audience, Miller expresses concern about the difficulty of resolving the capacity/effectivity duality when rhetor and audience are on uneven footing, questioning whether agency-as-capacity “can survive when the possibility of agency as effectivity has completely dried up” (145). Understanding agency as kinetic energy produced within specific performances can help resolve this duality but, as will be discussed shortly, definitions of agency within legal discourse continue to attribute it as potential energy, or as a capacity to act, that is turned against victims.

Though Miller writes about the agency of student writers, her concern about resolving the agency dilemma also applies to victims of such sex and gender-based crimes as sexual assault, harassment, domestic violence, and nonconsensual pornography. Several scholars have examined how discourse surrounding these crimes creates a standard of the ideal victim who “must be protected from ‘evil’ and predatorial forces because she is incapable of any acts of agency to defend herself” (Picart 97). In other words, to be worthy of recognition as a victim, one must sacrifice any semblance of capacity to act. When women become victims of these crimes, their capacity to act is often turned against them, canceling out their ability to be “recognized” as a victim or “heeded by others” who could aid them in seeking justice.

In much of the discourse surrounding sex-related crimes, agency and victimhood are narrowly framed and exist in binary opposition. Within this polarity, female victims’ agency negates their victim status and holds them responsible for what has happened to them. In a recent article for *Glamour*, Leah Juliett illustrates how she internalized the binary between agency and victimhood: “I am not a perfect victim . . . I sent the photos that would eventually be used to exploit me. But I did not consent to be harassed, exposed, or publicly shamed.” Juliett acknowledges her own agency in sending the photos and, interestingly, uses passive voice to describe the actions of the person who shared her photos, hedging away from a discursive attribution of agency. But even as she argues for the legitimacy of her own victim status, Juliett calls attention to the tension caused by that initial demonstration of agency: The bodily control exercised by consenting to the photos has made her an imperfect victim, despite the clear distinction she draws between that action and the later exploitation and harassment.

The victim-agent binary also underpins outward responses to nonconsensual pornography that fall into established discursive patterns in the context of sex and gender-based crimes. Communication scholars including Linda Coates, Sandra French, and

Sonya Brown have examined attributions of agency in this type of legal discourse and have found that assigning agency to victims casts doubt on their accusations, calling into question the legitimacy of their claims to victimhood by assigning them partial or total blame. Particularly relevant are “unaccusative” constructions made in courtroom statements by lawyers and judges, which elide any presence of a human agent by personifying nonhuman objects (e.g., “the door shut”) (French and Brown 10–11). Reactions to nonconsensual pornography like those outlined in the introduction can similarly obscure or deflect the presence of human agents: Rather than emphasizing the way images transform their subjects via their associations and interactions with new viewers, algorithms, and other Web texts, they instead attribute all agency, and with it, blame, to the unstoppable machine. Responses that describe nonconsensual pornography as inevitable fallout from Web 2.0 constitute an all-or-nothing approach to agency: They attribute to the victim no capacity to act in response to the isolated actions of the machine agent and fail to account for the multiple humans and nonhumans that interact to move and transform the image.

While passive constructions overemphasize nonhuman agents in isolation from their human associates, other sex-related crime discourse redirects agency away from accused perpetrators and toward the only other potential human agent: the victim. This practice suggests that within the context of sex and gender-based crimes, there is room for only one human agent. If both accuser and accused are framed as agents, they are both framed as at fault. Thus, the accuser has no legitimate complaint. Responses that frame nonconsensual porn as a “scuffle” between former romantic partners, rather than as a matter for police involvement, mirror this single-agent approach. While the response acknowledges the presence of two human agents, it does so at the expense of reframing the situation in a civil rather than criminal context. Like responses that claim the impossibility of action in response to machine agents, the “scuffle” response attributes to the victim no capacity to act within the context of criminal law, framing the individual as an agent in the scuffle and therefore not as a victim of a crime.

Responses to nonconsensual pornography from lawyers and law enforcement reflect the logics of laws within which women must situate their experiences, making it difficult for women to be recognized as victims where it matters most. Caroline Picart describes the “strict dichotomies separating the ‘autonomous’ from the ‘victimized’” (99), arguing that the contradiction within the legal framework goes beyond a simple binary and creates a double bind of victimhood and agency. Some of the earliest attempts to legislatively combat nonconsensual pornography in the United States perpetuated this double bind. The first California law criminalized only the nonconsensual recording of images, eliminating any legal recourse for women who self-recorded the images that were later circulated without their consent.<sup>3</sup> This early law thus failed to acknowledge that a victim’s agency in her sexual decisions (e.g., voluntarily taking nude photos of herself) does not preclude her ability to become a victim of a sex-related crime if those photos are circulated against her will. Within the context of laws like this, women’s agency-as-capacity is incompatible with agency-as-effectivity (i.e., being recognized as a victim or heeded by others in pursuit of justice).

But when women do demonstrate a capacity for action, as do women whose selfies become nonconsensual porn, that capacity to act is turned against them, reframed as a



capacity to have acted differently or, in other cases, to have chosen inaction. This twisting of agency-as-capacity is evident in responses to nonconsensual pornography that frame the circulation of explicit photographs as the direct (and inevitable) result of a woman's decision to take such a photograph. In the "Why take the photo if you didn't want it on the Internet?" response, the victim's ability to effect change is negated by her capacity to act (namely, her capacity to have taken the photograph months or years before it was transformed into nonconsensual pornography). The only way to change the material reality of the photograph's online presence is not to have acted (i.e., not have taken the photo) in the first place. But because she *has* acted (and the photographs present visual evidence of that action), she is not attributed the ability to produce any change or effect on the situation. Effectivity is thus framed in the negative, not as a result of an agent's capacity to act but in her capacity not to.

Demonstrations of agency can invalidate a woman's claim to victimhood even when those demonstrations occur in a time or place separate from the actual assault, harassment, or abuse she has experienced. Attributions of agency in sexual assault course cases, for instance, often collapse time and space so that any demonstration of a capacity to act, in any context—however loosely connected to the assault—can prevent women from being recognized as victims or from effectively seeking justice. Women are often held accountable for actions they take well before or well after their experiences of sexual assault, abuse, or harassment, so that if they have ever been or will ever be understood as agents with a capacity to act, they can never be recognized as victims.

A temporally essentialized notion of agency treats it as a static resource, a stable capacity or potential for action, rather than as kinetic energy generated and distributed within a performance. As Miller argues, discussions of agency have "tended to essentialize the temporal, condensing into a property or possession of the hypostatized agent what more productively should remain temporalized in the act or performance" (147). Generally, temporal essentialization in legal attributions of agency takes the form of "risky behavior" accusations that discredit women. In her analysis of the "ideal victim" archetype in sexual assault cases, Melanie Randall describes the tendency for women to be seen as legitimate victims only when they can prove themselves to be "responsible," in that they avoid the kinds of potentially dangerous situations in which they could become victims of a crime. She argues that accusers who are perceived to live "risky" lives "are seen to have failed to exercise precautionary measures to avoid sexual assault and have, by definition, undermined the legitimacy of their claims to victimhood, along with their entitlement to criminal justice intervention" (Randall 415). While a variety of actions can be rebranded as risky behavior in sexual assault trials, past demonstrations of sexual agency are all but guaranteed to be used to negate a woman's claim to victimhood if she becomes a victim of a sex-related crime (Anderson). As recording a sexually explicit photo or video can be both a demonstration of sexual agency and construed as a "risky" action, victims of nonconsensual pornography often face this kind of negation.

Such is also the case when women are seen as agents *after* they become victims of sex and gender-based crimes. Though victim-blaming statements more heavily rely on attributions of past agency, when women demonstrate a capacity to act after suffering abuse or harassment, this capacity can also be used to negate their victim status.<sup>4</sup> Laws that frame nonconsensual pornography as a type of harassment, such as Florida's Sexual



Cyberharassment statute and Texas's law against "Unlawful Disclosure or Promotion of Intimate Visual Material," rely on evidence of severe distress and/or harm to the victim after the harassment incident, which places the burden on victims to prove they have been incapacitated by the nonconsensual circulation of their images. Demonstrations of agency on victims' parts, such as Jacobs's transformation into algorithm expert and porn Webmaster correspondent, could work against the required performance of harm and distress.

As this indicates, overstabilized notions of agency driving many legal responses to sex-related crimes present a significant hurdle to victims seeking justice. In the case of nonconsensual pornography, these limitations are compounded by the fact that the law "lacks tools and traditions for mitigating the risks of image-driven communication" (Porter, "Taking Images" 1756). Images like photographs and video footage are most often relegated to a form of evidence that assumes they more or less faithfully capture reality. John Berger and Jean Mohr have argued that "the photograph, irrefutable as evidence but weak in meaning, is given a meaning by ... words" (92). Nonconsensual porn images can simultaneously function as evidence of victimhood and of agency because the photographs and videos that constitute nonconsensual pornography are themselves visual evidence of a woman's sexual past and, when the images are self-recorded, of her agency and bodily autonomy within that sexual past. Therefore, within the confines of existing discourse on sex and gender-related crimes that position women as all-or-nothing victims, it is nearly impossible for women who record their own nude photographs to be rhetorically configured as "passive victims." This means that to resist the double bind of victimhood and agency, nonconsensual pornography cannot be understood only in terms of the photograph or video itself but must be read in terms of its circulation and subsequent transformations.

Responses to nonconsensual pornography that equate the visual with the visual-in-circulation stem from a failure to account for the new meanings the photograph acquires when it travels outside of its original production and/or distribution context and enters into new associations with human and nonhuman agents. The question "Why take the photo if you didn't want it on the Internet?" represents the type of temporal essentializing Miller describes; it fails to account for the time and space between a photograph's production and the moment in which viewers encounter it. As Berger and Mohr write, "All photographs have been taken out of a continuity. Discontinuity always produces ambiguity" (91). Or, as an anonymous user on the CCRI victims forum page puts it: "People see the images; they don't know the story behind them." In current responses to nonconsensual pornography, the agency demonstrated in taking the photographs in the past is collapsed into the present, transformed into an accusation of responsibility for the photos' current circulation. These responses fail to account for the full life of the images, for the stories behind them, for the multiple performances in which a circulated image has taken part. In doing so, these responses also essentialize agency rather than regard it as temporal.

As I have suggested, in instances of nonconsensual pornography, an image which represented an enactment of a woman's sexual agency at the moment of its production can transform into an instrument of shaming for, or erasure of, that same agency in the process of its circulation. To understand the impact of a circulating image, we must

attend to how its different performances and contexts produce new agencies and actions. Recognizing the spatial and temporal shifts between the moment of an image's production and its resurfacing on hundreds of Web sites may provide better realities for nonconsensual pornography victims.

### **Locating agency in the circulation and transformation of nonconsensual pornography**

Given the problem of agency in legal discourses surrounding sex and gender-based crimes that tends to regard agency as static and temporal, the rest of this article focuses on the various performances and interactions in which nonconsensual pornography images take part, emphasizing the transformations the images undergo and initiate as well as the agencies produced by interactions among people, images, texts, and technologies. To foreground this analysis, it is necessary to provide a brief discussion of the different moments in what Cara Finnegan calls "the life of an image" as it pertains to nonconsensual pornography. Theories of production, distribution, circulation, and transformation by scholars Finnegan, James Porter, and Gries provide a framework for tracing the various stages in which nonconsensual porn images might be created, shared, and spread.

For Finnegan, accounting for the technological and cultural circumstances of an image's production can help answer the question, "How did this photograph end up here?" While it is important to note that the CCRI's definition of nonconsensual pornography focuses on the sharing of images, rather than their creation, and that this distinction is informed by consideration of legal consequences, more capacious definitions of "image-based sexual abuse" (McGlynn et al.) account for diverse kinds of nonconsensual image creation. It is possible, for instance, for nonconsensual pornography images to have been created without consent by way of upskirt photographs,<sup>5</sup> hidden cameras installed in hotels or fitting rooms, and nudeshopping or deepfaking.<sup>6</sup> Likewise, nonconsensual pornography can be recorded as part of another form of abuse, including recordings of sexual assault that further humiliate or intimidate victims. Understanding the production phase requires understanding the ubiquity and power of the technologies that facilitate the production of nonconsensual porn (from the shoe-embedded cameras that enable upskirting, to the photo-editing software and artificial intelligence algorithms used to create nudeshops and deepfakes, to the cell phones used to record selfies) without downplaying the importance of our relationships with those technologies.

While production emphasizes the technologies and social structures that enable a photograph's creation, an analysis of reproduction considers "the ways that the arrangement of image, text, and caption work to create meaning in the contexts of particular rhetorical events" (Finnegan 204). Reproduction, in Finnegan's framework, attends to what the image is "made to do" within the context(s) in which viewers encounter it, while circulation refers to how the image moves to and between these contexts. As my analysis indicates, the interactions among image, caption, interface, viewer, subject, and digital travel pathway are critical for understanding how agency is enacted and erased as nonconsensual pornography circulates and participates in multiple discourses.

Finally, James Porter's distinction between distribution and circulation is useful as it calls attention to issues of control and consent in the delivery of digital messages. Porter defines distribution as "the initial decision about how you package a message in order to send it to its intended audience," while circulation acknowledges "the potential for that message to have a life of its own and to be re-distributed without your direct intervention" (214). Porter's definitions allow for conceptualizing the distribution of sexual images as including (1) the decision to record the image or to allow recording, (2) the decision to share that image within the confines of a personal relationship, and (3) the decision about which method(s) will be used to share the image (such as via text message, Snapchat, or Skype). These decisions demonstrate consent as well as a sense of sexual agency and bodily autonomy on the part of the depicted person.

Most important for this article is an understanding of circulation as the spread of messages beyond the scope of the decisions made by the original creator/sender. Circulation describes the image's movement beyond its initial distribution, but understanding the image's "life of its own" must also mean accounting for that image's relationship with humans who post and share it, algorithms that sort it to retain visibility, and Web site terms of use which could impede its travel (Porter, "Recovering" 214). By emphasizing both the far-reaching capacity for messages to spread and the ways in which a photograph participates in multiple discourses as it surfaces in different contexts, I attempt to account for the "multiplicity of associations" (Gries 89) that an image picks up in circulation, as well as the power dynamics between these stages and the human and nonhuman actants involved in each stage. I use the terms *production*, *distribution*, and *circulation* to refer to potential phases in the life of a nonconsensual porn image, while maintaining Gries's emphasis on transformation, agency, and consequentiality throughout.

The relationships between agency and production, distribution, and circulation play an important role in tracing the power shifts that can occur at any stage of a nonconsensual porn image's existence. My primary focus is on the nonconsensual circulation of images, as attention to circulation foregrounds the transformations that occur in the image's varied performances. For Gries, transformation refers to a "virtual-actual process of becoming in which rhetoric unfolds in unpredictable, divergent, and inconsistent ways" (86). Nonconsensual pornography images transform (in genre and function) as they circulate, but they also have constitutive power that unfolds as the image materializes and rematerializes, shaping how audiences understand and respond to both the image's subject and its sharer. Importantly, attributions of agency shift as these images transform, as both the images and their depicted subjects interact with a variety of agents in multiple contexts.

Some of the earliest and most well-known sites of circulation for nonconsensual pornography were Web sites that allowed users to submit photos of their exes. The term "revenge porn" emerged from these sites. Even as activists' efforts have successfully shut down some revenge porn sites, including doxed.me and Anon-IB, these images continue to circulate in a variety of online platforms, including major social networking sites like Facebook and Instagram, mainstream porn Web sites, and meeting/forum-based platforms like Discord and Slack. Each of these spaces facilitates a variety of interactions between human and nonhuman actants, including the images and the textual

material attached to them, their posters, viewers, and commenters, and their subjects. Algorithms and search indexes also participate across multiple platforms as they flood search engine results for victims' names with nonconsensual porn content; likewise, the victims' work, school, and/or home networks are pulled into association with the image, indicating how image and subject are intertwined as the photographs and videos materialize across the Web.

### ***"Revenge" sites***

Below photos on the site, his followers posted crude and misogynistic remarks. The website was not about pornography; it was about ridiculing and hurting others.

—Charlotte Laws

Standalone Web sites devoted to nonconsensual pornography first emerged around 2010, when Hunter Moore began hosting hacked, stolen, or otherwise private images and videos along with the depicted subjects' personal information on his website *IsAnyoneUp*. Revenge-driven Web sites like *IsAnyoneUp*, where Laws found her daughter's pictures, feature user-submitted images and are hosted by a third party who either profits from ads displayed on the site or runs an extortion business charging women hundreds of dollars to have their photos removed. Some images are the result of e-mail, hard drive, and/or cloud storage hacks, while others are submitted by the original recipients or cocreators of the images, like Jacobs's ex-boyfriend. In either case, the submission of the image transforms it from private memento, message, or expression and enters it into new associations of public shaming for site users and profit generation for the site administrator. The revenge site platform then "organize[s] people"—including the poster, the site owner, the depicted subject, and the other site visitors—"into networked publics" (Gillespie 5), organizing a community built on shaming and a sense of vigilante justice. Once the image is posted, the user who submitted it can become a more or less visible actant by including a caption describing his or her relationship to the image's subject. The site itself functions as a gathering place where viewers assemble to add commentary to the images and show support for the poster.

The crude and misogynist comments that Laws describes are a common feature in nonconsensual pornography, especially when the images function to shame the individual depicted. As the images materialize on revenge-driven sites, they pick up "rhetorical accretions," a phrase Vicki Tolar Collins uses to describe the "process of layering additional texts over and around the original text" (548). Multiple features of the interface facilitate rhetorical accretions, including post titles, which typically function as labels for the depicted subject (e.g., "this cheating bitch"); captions or text posts, which allow more space for narratives about the depicted subject; ranking systems for images; and comment sections (Uhl et al. 59). This layering has the effect of silencing or speaking over the original author in some way. As Collins writes, "With each accretion to a text, the speaker of the core text is respooken. Respeaking can be a way ... to modify the ethos of the original speaker" (549). The combination of photograph, caption, and commentary calls into question the ethos of the image's subject, respeaking her initial statement of sexual agency and bodily autonomy into a new question about her virtue, her fidelity, or her humanity. Miller likens ethos to agency, calling them both "energy

within performance” that is produced by the attribution or “construction of character” (151). In the acts of respeaking common in nonconsensual pornography, the victim’s agency/ethos is modified through the re/deconstruction of her character.

The types of accretions enabled by the revenge site’s interface also become invitations, encouraging viewers to “digitally consume and critically dissect the victim’s body” (Uhl et al. 54). Ranking systems and search functions organize site content, directing users to specific posts and sorting site content based on high traffic or ranking. The captions or text posts, in addition to providing full names and contact information for depicted person, can transform the portrayed subject into a villain, a subject of scorn and ridicule, and a target for “real-life” harassment framed as vigilante justice. Uhl et al. found that roughly 35 percent of images posted on revenge-driven Web sites were accompanied by “reason statements” indicating why the image was being posted. Posts that included reason statements got more views than posts without them, and reason statements were more likely to be posted if the site allowed commenting. This suggests that captions, even more than the images themselves, invite and inspire comments. (More specifically, reason statements invited threats, as Uhl et al. found that viewer comments were more likely to include threatening statements if they were posted on a photo with a reason statement.)

Although reprinting these narrative comments at length risks reinscribing the shaming narrative, a brief example of revenge site comments is useful for understanding their constitutive function. One such comment refers to the depicted subject as a “frigid slut,” a phrase which at first glance reads as bizarrely paradoxical but demonstrates a double-layered discursive shaming pattern when analyzed more closely. In the context of a narrative about the depicted subject’s implicit guilt or blame, the description “frigid slut” functions to punish the subject for two perceived transgressions: first, for exercising sexual agency via recording a nude photograph of herself; and second, for using that same sexual agency to refuse or withhold sex from the commenter. In other words, any “agency-resistance” (Miller 144) enacted through the production and/or distribution of the image is countered by the patriarchal agency that the photo’s redeployment on the revenge site enacts, an attempt to resolve into status quo power differentials.

On the revenge-driven site, the photograph’s composition remains unchanged, yet it transforms as it participates in a new narrative about the relationship between subject and the poster, one in which the image’s subject is attributed agency and therefore blame, and the poster is the victim of her actions. These attributions of agency are used to support the narrative that the subject “got what she deserved,” to quote another caption. This caption of course echoes the question: “Why take a photo like that if you didn’t want it on the Internet?,” indicating that both the enactment of and the response to nonconsensual pornography offer limited options for considering women’s agency as anything other than a stable, static entity that precludes their status as victims.

### ***“Mainstream” porn sites***

I had received a flurry of emails from strangers ... letting me know how much they were enjoying my pictures, sending me lewd photographs of themselves to prove it.

—Holly Jacobs

Many pornography Web sites, including PornHub, have joined the fight against non-consensual pornography, but nonconsensual images continue to show up on many porn Web sites, where content categories like “amateur” allow nonconsensual pornography to blend in. This circulation platform differs from others in its audiencing as well as its function and genre. Tracing this genre transformation is worthwhile; as Campbell notes, genre has a kind of agency that governs how texts are to be read and taken up. She writes that generic agency “has the power to separate a text from its nominal author and from its originary moment of performance” (7). When a nonconsensual porn image materializes as a new genre, it not only is separated from its original performance but also invites specific reactions from viewers, thereby entering the image’s subject into a hailstorm of new (and unwelcome) associations.

While mainstream porn Web sites share many interface features with revenge sites (such as title and caption spaces, comment sections, and ranking systems), the platform encourages discourses of appreciation and pleasure more than threats or shaming. On mainstream porn Web sites, the genre of the images is pornography, in the sense that it has more of an erotic function (as opposed to a revenge site, where the genre and interface facilitate less erotic currency). This genre transformation is produced through the image’s association and juxtaposition with the other site content; it looks as though it belongs there, alongside any other amateur porn video. Drucilla Cornell’s definition of pornography frames porn as a speech act that includes “the explicit presentation and depiction of sexual organs and sexual acts with the aim of arousing sexual feeling” (106), and the images and videos themselves, when posted on these kinds of sites, fit that definition.

While acknowledging the erotic aim of pornography, Cornell argues that, for women who are forced to view it, pornography can function “to strip someone forcibly of her self-image, particularly when that image is as basic as that of bodily integrity” (148). Victims whose images surface on porn Web sites are, of course, not just forced viewers but forced participants in pornography, unwillingly transformed into porn stars for as long as their videos remain on the porn Web site. Their videos may be sorted into any number of categories, made more visible by upvotes, and searchable within the site based on how the videos are tagged by the poster or by other users. Thus, nonconsensual pornography removes from women the agency and autonomy of their bodies via an image that no longer belongs to them; rather, the body exists “as it is fantasized as a dismembered, castrated other, found in bits and pieces” (Cornell 103). The genre of pornography that is created when images appear on these Web sites without consent thus severs a connection to the depicted subject through the use of the self-image stripping video, while the captioning work reinforces that connection by naming the subject.

While its materialization on a porn site transforms the image from a private memory of a sexual moment to pornography for public consumption, nonconsensual images circulating on porn Web sites also enter the image’s subject into new associations, some of which are an intended result of the image’s caption, while others are unexpected. The porn site audience is anonymous, but image or video descriptions contain the subject’s identifying information, enabling site users to imagine her as a concrete “someone” rather than a completely anonymous “anyone” (Sharon and John 4181). These descriptions may also include an invitation for viewers to contact the depicted subject. In the



epigraph to this section, Jacobs confirms that many viewers accepted this invitation, entering her into associations with these men not only via her image on the porn site but in her private e-mail. However, Jacobs also developed unexpected associations with the site administrators as a result of her image's materialization on this type of site: "I ... started to get to know some of the porn site webmasters so well that one in Russia found a lawyer for me in Miami and offered to buy me dinner the next time he was in the area." This new relationship can be read as just one of many divergent ways an image becomes consequential.

### ***Social/networking platforms***

The video was less than 20 seconds of footage of twerking for the camera; however, the captions told the whole story. There were several tags and hashtags of very recognizable social organizations and workplaces.

—Malissa Henderson

While Jacobs was notified about the circulation of her photographs via a stranger's e-mail, many victims of nonconsensual pornography report seeing their own images appear for the first time on social networking sites like Facebook and Instagram. As Henderson indicates in the epigraph at the beginning of this section, on social media, interaction between image and surrounding text, including hashtags, continues to do substantial work in inflicting trauma on the victim. However, the structure of social networking platforms and their connectedness to the rest of the Internet makes this site of nonconsensual pornography circulation stand out from the others. Although some social media platforms encourage more connections with people outside one's "real-life" social circles, José Van Dijck notes that "most Web 2.0 platforms started out as indeterminate services for the exchange of communicative or creative content among friends" (7). This history is built into the way that social networking platforms organize their users, allowing for group membership/affiliation and the creation of "close friend" circles within larger follower pools. Thus, when nonconsensual pornography is posted on social media, it is likely that the subject herself, as well as mutual contacts who already know her, will see it. This is partially due to the platform's algorithmic logic that makes content in which one is tagged more visible to those with whom one frequently interacts.

Like other materializations of nonconsensual pornography, the associations between the image and its context on social media demonstrate the consequentiality of visual things. In contrast to the anonymous viewership on revenge and porn sites, nonconsensual pornography functions on social media as a shaming by particularity—outing the subjects to people they know in smaller, more personal social or professional circles. In this space, many audience members will already recognize victims from their images and/or names alone; indeed, Tzlil Sharon and Nicholas John argue that such identifiability is a central feature of social networking sites (4180). Understood this way, the genre of nonconsensual porn images on social media might best be labeled "evidence," as the photographs themselves do the majority of the work of identifying the subjects and of making claims about them. Here, the constitutive power of the image lies in its potential to overwrite the existing perception the viewer may hold about the depicted subject, and the image changes the relationship between viewers and subject.



As I have indicated, all circulation of nonconsensual porn images entails some form of rhetorical accretion through which the ethos of the speaker-subject is called into question and her original act of sexual agency is respoken into one of shame. In Henderson's example, the subject of the video is respoken by the video's placement on social media, with her ethos as a member of the tagged organizations called into question. Meanwhile, tags that sort content allow the image to appear on multiple pages simultaneously, including the pages of the tagged businesses or organizations. Thus, the organization itself is brought into a relationship with the image, while the content of the image calls into question the subject's ethos as a member or employee.

In addition, social networking infrastructure allows for the consequentiality of images to extend beyond the borders of a single social networking platform. Users can link their accounts across multiple platforms, which, coupled with the ease of screenshotting posts on mobile phones, encourages content to jump from one platform to the next. Once there, reposting functions that are the hallmark of social media interfaces increase the image's visibility and its associations, often while rendering the user who posted the original image even less visible. Finally, because of social media's contribution to the "real-name web" (Sharon and John 4178), many of these associations can be pulled into search engine results for the image's subject, as well as any tagged organizations or businesses.

The varied interactions involved in these different circulation performances indicate that a focus on the image itself is far too limited a scope for understanding how agency operates in nonconsensual porn. However, current responses to nonconsensual pornography, including the response types identified in this article's introduction, as well as formal attempts to criminalize the practice, continue to rely on humanist notions of agency that do not account for the transformative work these images do once they are out in the world. The difficulty in responding to nonconsensual pornography stems, in part, from a failure to distinguish between the agency produced in recording a photograph and the agency produced in reposting it on Facebook alongside personal information. This one-dimensional view of agency is typical of legal discourse, which typically relies on "looking backward" (Gries 48) at an event to determine what happened and does not often assign agency without also assigning blame. We are not yet at the point of resolving this problem, and I believe it is the task of communication scholars, as well as legal practitioners, to work toward bringing these two discourses in conversation with each other so that future responses to image-based sexual abuse can free women of the double bind of victimhood and agency.

### **Toward a transformed legal framework for image-based abuse**

After two years spent waging a daily, solitary battle against the spread of her images, Holly Jacobs, along with Mary Anne Franks and Charlotte Laws, founded the Cyber Civil Rights Initiative, which works with legislators to craft legal solutions to nonconsensual pornography and offers resources for victims. In 2016, Leah Juliett founded the March Against Revenge Porn, an organization whose efforts contributed to New York City's 2017 legislation against nonconsensual pornography. These women have utilized their victim status as a platform for community action, subverting the victim-agent double

bind and demonstrating how these images transform their subjects—in this case, into activists. Yet as both organizations attest, developing legal, social, and technological solutions to the problem of nonconsensual pornography continues to be a challenge. This is due in part to the continued presence of the victim-agent double bind in legal and popular discursive frameworks, the widespread inability to recognize nonconsensual pornography as a problem of circulation, and a lack of adequate legal protection for victims.

At the time of writing, there is no federal law against nonconsensual pornography, and legal protection varies widely from state to state, where the practice is alternatively defined as a form of harassment, extortion, invasion of privacy, or disorderly conduct. Franks suggests that a federal law must define nonconsensual pornography as a violation of privacy, while others such as P. J. Patella-Rey see this as a dangerous and potentially harmful route, noting that U.S. privacy law has a fraught history of excluding and/or punishing women. While it is outside of this article's purview to suggest a suitable framework for a federal nonconsensual pornography law, supplementing the growing body of legal analyses (including those conducted by Franks and McGlynn et al.) with a rhetorical approach is an early step in bridging the current gaps in understanding of the phenomenon.

Because the law is ill-equipped to deal with images, borrowing from a circulation-focused framework to study images that break the law is a useful step toward breaking the double bind of victimhood and agency in responses to nonconsensual pornography. A more distributed notion of agency may result in less temporally flattened notions of consent that do not conflate consent for production with consent for circulation. This may also help to do away with harm-centered versions of anti-nonconsensual pornography laws that trap victims in the double bind.

Finally, accounting for the distribution of agency across people and platforms may guide legislation to hold platforms more culpable, in a similar fashion to “aiding and abetting” (Cambron). Legal professionals risk approaching visuals with a sense of naive realism, believing that an image delivers a transparent truth about an individual, situation, or event and ignoring the larger contexts in which the image operates; but the distributed notions of agency utilized in visual rhetoric can help legal reforms better differentiate between image production, distribution, and circulation. A nonconsensual porn image cannot be viewed on its own; it can only be understood in terms of how its subsequent materializations alter its form and effects. Because the issue of nonconsensual pornography lies in the complex relationships among image, text, and context as the image circulates, we need legal and social responses which attend to the complex dance of agency in circulating images and which view women as actors with the right for their fully realized selves to exist in the public domain, on their own terms and with their consent.

## Notes

1. Since 2012, forty states and the District of Columbia have passed civil or criminal laws against nonconsensual pornography.
2. The CCRI estimates that up to 80 percent of nonconsensual pornography images originate as selfies.
3. This law has been updated after advocacy groups like the CCRI argued its ineffectiveness.
4. See Ranney's discussion of sexual harassment case *Staton v. Maries County*. Staton was determined not to have been truly harmed because she returned to work for ten days after being sexually assaulted by a superior.

5. Upskirting involves taking photos of women's otherwise "covered" body parts, in other words, under skirts, in public places.
6. Nudeshoppers use image-editing software like Photoshop to combine pornographic images with a photograph of an individual's face (see Gander), while deepfaking refers to the use of artificial intelligence (AI) deep-learning methods to analyze known images of an individual and using an AI algorithm to "map" that face onto a different image or video (see Johnstone).

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