

“Revenge Porn”: The SHIELD Act of 2021

By [Timothy Shields](#). The SHIELD Act was originally introduced in 2019 as a bipartisan measure that addresses the overwhelming and damaging effect of unauthorized disclosure of private and explicit images. Given the digitalization age, nonconsensual porn (“revenge porn”) has multiplied because of new discreet recording devices, the Internet and social media, and the prevalence of hackers in committing cybercrimes. Ex-romantic partners are frequently the source of the leaked material. Alarming, the number of cyber sexual crimes has gradually increased during the COVID-19 pandemic. Consequently, the Stopping Harmful Image Exploitation and Limiting Distribution Act of 2021, otherwise known as the “SHIELD Act,” was incorporated as an amendment to H.R. 1620, the Violence Against Women Reauthorization Act of 2021, to address abuses and [remedy the devastating impacts of cybercrimes](#) on its victims. Briefly, here are the things you need to know about the SHIELD Act of 2021. **What the law seeks to do** The SHIELD Act guarantees that the Department of Justice has legal tools to address serious privacy violations and set up federal criminal responsibility for the individuals who share private or explicit pictures without consent. Also, it seeks to establish a balance between securing the victims from these violations and ensuring that freedom of online discourse is not infringed upon. Subsequently, it criminalizes the use of any means or facility to distribute an intimate visual depiction of an individual by anyone who knowingly lacks the individual’s consent to the distribution, where such an individual has a reasonable expectation that the depiction would remain private. **Prosecution under the SHIELD Act** Prosecution under the SHIELD Act would require proof that the defendant knew the individual portrayed in a picture expected the picture would stay private and that the individual did not agree to the picture’s conveyance. Violators could face up to two years in prison per incident. The amendment provides that the law does not prohibit law enforcement, correctional, or intelligence activity. It shall not apply to individuals acting in good faith who report unlawful activities or pursues a legal or professional obligation. It shall, likewise, not apply to document production or filing related to a legal proceeding. **Service Providers** Like many current “digital” laws, the law protects providers of a communications service from this law’s coverage for another content provider’s contents. For example, if a ex-partner uploaded an intimate image of a person, the ex-partner is liable, but not the technology platform. This is in line with existing law that protects online providers from liability for user content. However, the exception will not apply if the communications service provider intentionally solicits or knowingly and predominantly distributes content that the provider knows is violating this legislation. **Takeaway** The impact of an infringement of private images includes moderate to severe psychological trauma, loss of employment, loss of learning opportunities, deterioration of personal relationships, and harassment. There is a great need to address explicit image abuse because of the [prevalence of social media](#) and the speed at which widespread transmission occur. The harm can be irreparable. This expansion of Federal law overlaps with existing State laws and further highlights the need for unified privacy laws at the Federal level.



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