

STATE PRIVACY AND SECURITY COALITION



Internet Association



NetChoice

March 1, 2017

Uniform Law Commission
111 N. Wabash Ave., Suite 1010
Chicago, IL 60602

Re: Unauthorized Disclosure of Intimate Images

Dear Members of the Uniform Law Commission:

On behalf of the members of the organizations below we submit the following comments regarding the Uniform Law Commission's model bill pertaining to the "Unauthorized Disclosure of Intimate Images."

We support the underlying goal of the legislation, to prevent the invasion of privacy known as revenge porn. In its current form, however, the bill would expose Internet service providers to unwarranted legal claims. Though the draft model bill references a Section 230 exemption, we respectfully request a clarification that the law would not apply to a provider of an interactive computer service where the content is provided by another person: **"Nothing in this Act shall be construed to impose liability on the provider of an interactive computer service, as defined in 47 U.S.C. 230(f)(2), for content provided by another person."**

While making reference to Section 230 protections is helpful, state laws should clearly exclude intermediaries from their scope so that changes to federal law or case law under Section 230 will not create new liability.

As you know, the federal government has distinguished between information *service* providers and information *content* providers, see 47 U.S.C. §§ 230(f)(2) and (3), and recognized that companies that host content from hundreds of thousands or millions of third parties cannot reasonably be expected to police them – and therefore should not be liable for that third-party content, see 47 U.S.C. § 230(c).

The Uniform Law Commission's Study Committee explicitly decided that liability should not be placed on intermediaries. Our proposed language is important because without it plaintiff's lawyers or prosecutors might misunderstand that providers of interactive computer services, such as websites, mobile applications, and other communications software providers, could be held liable for end-user third-party postings merely because the provider's services were used to cause

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distribution or dissemination of content – even though the provider did not intend to distribute or disseminate that content.

Ultimately, a clarification will save victims and law enforcement unnecessary time, aggravation, and court costs, and will save service providers the unnecessary inconvenience of having to appear in a court simply to obtain an order dismissing any case against them on Section 230 grounds.

We therefore ask the drafters to include the Section 230 exemption above. We thank you for considering our views and look forward to working with the ULC as it drafts this document.

Sincerely,

State Privacy & Security Coalition, Inc.
Internet Association
Internet Coalition
NetChoice