

Fighting the Dissemination of Non-Consensual Intimate Images: a comparative analysis

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Introduction

Among the subjects pertaining to our Inequalities and Identities research area, the issue of online gender-violence has taken a major role in recent years. Between 2015 and 2016 we did a research on the legal confrontation of the dissemination of non-consensual intimate images (NCII), or “revenge porn”, in Brazil; this work resulted in the book *“The Body is the Code: juridical strategies to face revenge porn in Brazil”*¹, a multifaceted analysis of this phenomenon with a **brief theoretical background** on violence, gender, sexuality, and the Internet, the development of a study on how we face this problem in Brazil **analyzing in a qualitative manner 90 decisions** from the São Paulo Court of Justice, and a **case study** on the practice of shaming schoolgirls in São Paulo’s outskirts. We concluded that the Brazilian law has the possibility of framing all cases that we encountered, even if there is not an specific NCII legislation; however, we identified inadequacies which were mainly related to procedural issues and institutional bottlenecks.

The problem with NCII is not exclusive to Brazil. Therefore, as we continued to map our national juridical framework, we began to research other legislation (or, in some cases, important judicial decisions) around the world. Through the analysis of the solutions proposed by twenty-seven countries (including Brazil) selected by the methodology we will explain further on, this report presents (i) the organization of sparse information that can be an important initial source for larger researching projects and (ii) we will explore how diverse legal systems deal with this topic, allowing for a reflection on the regulatory models and inspiring creative solutions.²

Methodology

a. Brief notes on comparative law methodology

There are many possibilities for beginning a research on comparative law. Van Hoecke (2015) makes a compilation of the most used tools to conduct a research in the field -- as well as his criticisms to them -- and presents five major methodological paths: (i) functional method; (ii) analytical method; (iii) structural method; historical method and (v) law-in-context method. By using the author’s categorization, this work adopts the functional and law-in-context methods.

¹ The book is available digitally and can be downloaded for free at:

<http://www.internetlab.org.br/wp-content/uploads/2016/07/OCorpoOCodigo.pdf> [n Portuguese]

² We do not consider that solutions can simply be transported from contexts, given their political, economical, and historical specificities but they can shine a light on relevant aspects of the problem. When it is possible, thus, we will indicate this factors.

The functional method consists of looking at a specific social problem (in our case, the dissemination of non-consensual intimate content) and the ways found by each jurisdiction to solve this problem. From there, we compared the ways we encountered, pointing to differences and similarities between the approaches.

According to Van Hoecke (2015), the functional method has been in use for a long time but it has also been criticised for, in a certain level, supposing that different localities will face the same problems. This supposition can be problematic when we analyze countries with very distinct historical, cultural, and social backgrounds. For this reason, we tried as much as possible to also understand the cultural context of each country on this research, at least on what concerns the perceptions of gender and gender violence. We also aimed to go beyond the analysis and interpretation of the pure legal text, as the “law-in-context” method required, as we tried to understand, even if in a limited manner, how laws are truly understood and enforced in their legal contexts. For this, we relied on secondary sources, like academic and news articles. Therefore, our sources for this research were: (i) official legal documents (laws, bills, judicial decisions, reports by government entities); (ii) academic articles on the topic; (iii) consultations with international partners about the topic in their region; (iv) local newspaper and magazine articles.

With the intention of bypassing one of the biggest limitations of a research in comparative law, the language barrier, in the cases that lacked a normative production in Portuguese, English, Spanish, or French, we counted on secondary sources like academic commentary and translations, as well as our international partners.³

b. The methodological path

For the purpose of approaching the field, we used Wikipedia’s⁴ compilation of discussions involving revenge porn (independently of having a specific legislation or not) as a starting point. Through this first research, we found legal remedies in the United States (depending on the state the discussion can lead to different ways), Australia (also depending on the province), Canada, United Kingdom, Northern Ireland, Philippines, Israel, and Japan.

This stage -- of exploratory character -- was divided into two parts: an independent research and the consultation with our partners in other countries. On the first stage, we looked

³ In addition to the language barrier, one of the greatest difficulties on the search for regulations on non-consensual dissemination of intimate images is the lack of a single term to describe/name the phenomenon. While many media outlets call it “revenge porn”, it is hard to see this name used by the government in the formulation of laws.

⁴ Wikipédia. Revenge Porn. Available at: https://en.wikipedia.org/wiki/Revenge_porn <Accessed on 20/01/2017>

for sources on each of these countries on official government websites and academic articles with the key-words and combinations: “revenge porn”, “revenge porn + name of the country”, “dissemination of intimate images + name of the country”, “revenge porn + international law”. We also searched for these terms in Portuguese, English, Spanish, and French. We had a special preoccupation with trying to combine these terms with names of countries in Latin America, Africa, and Asia, with the goal to go beyond the Anglo-Saxon axis and therefore establish diverse aspects of this issue in different contexts.

We used these terms in academic search engines such as *SSRN*, *JStor*, *HeinOnline*, *GoogleScholar*, and *Academia.edu*. When we did not get results on these scopes (as it was the case with France and some Latin American countries), we looked for news in the media and official government websites.⁵

These searches allowed us to identify the countries in which this discussion is being held, as follows: Argentina, Australia (South Australia, Victoria, New South Wales, and Queensland, as well as the discussions for a federal bill), Cameroon, Canada (federal law and a specific regulation in Manitoba), Chile, Colombia, Denmark, France, Germany, India, Israel, Japan, Kenya, Malawi, Mexico, New Zealand, Philippines, Portugal, Puerto Rico, Scotland, South Africa, Spain, Uganda, Uruguay, United Kingdom and the United States (38 states). Including Brazil, there are 27 countries. It is worth pointing out that, given this method’s limitations, the research did not intend to be conclusive and, thus, we did not try to outline tendencies or take quantitative conclusions.

On the second part, we contacted our international partners (mostly members of organizations who work with gender and technology issues) from several regions of the world in order to get information about the discussions on non-consensual dissemination of intimate content, provide clarifications, and confirm our sources. The consultation with experts in the field from each region was especially important so that we could have access to the legal context (application of the “law-in-context” method).

c. Categories of Analysis

⁵ The reports produced by the APC for the project “*Enough of violence: women’s rights and online security*” were important sources for us. Through these works we had access to information on Pakistan, Bosnia-Herzegovina, South Africa, New Zealand, Colombia, Democratic Republic of Congo and Kenya -- which we incorporated in this text as we found legislation on revenge porn. See: MOOLMAN, Jan; SMITH, Erika; PLOU Dafne Sabanes; FIALOVA, Katerina. *Basta de violencia: derechos de las mujeres y seguridad en línea - Tecnología y violencia contra las mujeres: tendencias recientes en la legislación*. Association for Progressive Communications (APC), 2014. <Available at: :<https://www.apc.org/es/node/15192/>>

From the reading of part of the material and the research we did on the national scope (VALENTE *et al*, 2016), we developed categories of analysis to systematize the situation of the countries we studied, based on the following elements:

- i. Summary of the country's situation: contextualization of the country on what concerns this topic;
- ii. Year (if identifiable) in which the law, judicial decision or bill on the topic was released;
- iii. Judicial answer: kind of answer given to the problem, from the proposition of new laws to the interpretation of already existing laws or amendments to these laws;
- iv. Proposal of a juridical answer: we highlighted the countries that, in spite of not currently having an enacted law, have bills that deal with the non-consensual dissemination of intimate images;
- v. Other legal instruments in the country: we identified the countries that regulated the issue from other legal instruments, among the ones that did not have a specific law on the matter;
- vi. Name of the law/instrument/proposal;
- vii. Excerpt of the regulatory text: excerpt of the legal texts that dealt with the matter in each legal framework;
- viii. Personal punishment: the indication of the existence or not of personal punishment for the responsible for the dissemination of intimate content;
- ix. Accountability of providers and intermediaries: the existence or not of rules about the liability of providers or intermediaries through which the NCII was published;
- x. Extrajudicial solution: indication and description of the cases in which extrajudicial solutions are provisioned.

Over the next sections, we will present the main results from our analysis. Firstly, we will talk about the recurrence with which isolated cases of NCII with great repercussion and severe consequences for the victims are promoters for the discussion to happen in the public sphere and, more specifically, in the Legislative. The second section is description-based and points to the juridical solutions which were already proposed or are in discussion in the analyzed countries. The third and fourth sections are analytical: according to the information collected from each country we will talk about tendencies, the identification of relevant issues for the discussion about the exposure of intimacy and, lastly, we present a reflection on the presence or absence of the thematization of gender issues on the bills and laws.

1. What prompted the bills? Revenge porn and the role of the press

In Brazil, the discussion about the non-consensual dissemination of intimate content became prominent for political stakeholders in 2013⁶, after two teenage girls took their own lives less than a week apart due to the dissemination of videos and images containing sexual content on WhatsApp groups. At the time, the Brazilian Congress was discussing Law 12.965/2014 -- the Brazilian Internet Civil Rights Framework (BICRF) -- and so a special provision for the accountability of intermediaries in cases of revenge porn was added to the bill.

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Keeping this context in mind, at first, one of our research hypotheses was that the repercussion of cases in the media would promote the legislative discussions in other countries. However, differently from what happened in Brazil, even though all countries have several cases reported by the press,⁸ we were only able to identify with more certainty one episode in particular in a small parcel of countries which then would have increased the incentive for legislators: Israel, Japan, United States, Canada, and South Africa.

In Israel, two news articles⁹ mention the relevance of one NCII episode for the creation of their 2014 legislation. In this case, a man disseminated through WhatsApp a video having sexual intercourse with his ex-girlfriend and thousands of people had access to the content.

In Japan, according to Matsui (2015), the matter gained recognition in 2013 with the *Mitaka Stalker Murder Case*, in which a girl was murdered by her ex-boyfriend. They both met

⁶ A great reconstitution of cases is available at this news article (in Portuguese): DIP, Andrea; AFIUN, Giulia. Como um sonho ruim. A pública, December 19th, 2013. Available at: <https://apublica.org/2013/12/6191/>. <Accessed on 17/04/2018>

⁷ The rule for the removal of third-party content by intermediaries which is established in the BICRF demands a judicial order to remove the content and to hold the provider (intermediary) accountable. However, art. 21 creates an exception for cases in which this content portrays images, videos or other materials with scenes of nudity or private sexual acts. In this cases, the content should be removed after the notification of the participant of the videos or their legal representative, meaning that a judicial order is not necessary.

⁸ We also identified cases reported by the media in Chile, Spain, Malawi, Uganda and Uruguay. To see the details, check the table.

⁹ YAAKOV, Yifa. Israeli Law labels revenge porn a sex crime. Times of Israel, January 6th 2014. Available at: <http://www.timesofisrael.com/israeli-law-labels-revenge-porn-a-sex-crime/> <Accessed on 17/04/2018>. FRANCESCHI-BICCHIERAI, Lorenzo. Israel Votes Unanimously to Ban Revenge Porn; Mashable, January 8th 2014. Available at: <https://mashable.com/2014/01/08/israel-bans-revengeporn/#CnOVF2d.8sqV> <Accessed on 17/04/2018>

online and the man constantly insisted for them to get back together after a recent break-up. The girl's denial led to her being stalked by the man, which she then denounced to the local authorities. Still, he broke into her house and murdered her. At the time of his arrest, authorities found out that, in addition to having stalked and killed her, he had also disseminated her intimate images online. From there the case and the revenge porn agenda gained wide attention from the country's media.¹⁰

In the United States, the famous Hunter Moore case (the man who created the website IsAnyoneUp.com, in which he published women's intimate material) also appears as important for the visibility of the problem and as a catalyst for the engagement of the academic community around the formulation of solutions.¹¹

In Canada, the law that regulates the non-consensual dissemination of images came in a package of measures, along with laws that also address the issues of cyberbullying. The need for regulations on both of these matters came after the widespread repercussion of Rehtaeh Parsons¹² and Amanda Todd's¹³ suicide cases, between the end of 2012 and beginning of 2013. In the first case, the young girl was sexually abused in a party when she was only 15-years-old and pictures of this episode were then spread online. After this, several of her schoolmates began to send her pictures with sexual content. In the second case, Amanda suffered threats to have pictures of her exposing her breasts disseminated and, a month after recording a very successful video telling what happened to her, she committed suicide.

In South Africa, we identified that the murder of a television news reporter in 2009 would have driven the passing of the *Protection From Harassment Bill*.^{14,15}

¹⁰ Stalker in Mitaka murder case sentenced to 22 years. Japan Times, August 2nd 2014. Available at: <http://www.japantimes.co.jp/news/2014/08/02/national/crime-legal/stalker-in-mitaka-murder-case-sentenced-to-22-years/#.WMxE79IrJdg>. <Accessed on 17/04/2018>

¹¹ In this sense, check the broad work of Professor and researcher Mary Franks: OHLHEISER, Abby. Revenge porn purveyor Hunter Moore is sentenced to prison. Washington Post, December 3rd 2015. Available at: https://www.washingtonpost.com/news/the-intersect/wp/2015/12/03/revenge-porn-purveyorhunter-moore-is-sentenced-to-prison/?utm_term=.bb873d0249da <Accessed on 17/04/2018>

¹² Rehtaeh Parsons case: No jail over photo of 'assault'. BBC, November 14th 2014. Available at: <http://www.bbc.com/news/world-us-canada-30058254> <Accessed on 17/04/2018>

¹³ Amanda Todd case: Accused Dutch man jailed for cyberbullying. BBC, March 16th 2017. Available at: <http://www.bbc.com/news/world-us-canada-39295474> <Accessed on 17/04/2018>

¹⁴ England. Protection from Harassment Act 1997. Available at: <https://www.legislation.gov.uk/ukpga/1997/40/contents>

¹⁵ We found this data in Nyst (2014). More information about the case in: CAPAZORIO, Bianca. Stalker victims vulnerable. IOL News, February 13th 2011. Available at: http://www.iol.co.za/news/south-africa/stalker-victims-vulnerable-1025429#.UzXNgIF_s6I <Accessed on: 17/04/2018>

2. The four possibilities of regulation: Specific Law, Other Laws (or general law), Bills, Public Policies

By analyzing the countries that have some regulation (whether it is incipient or not) regarding the non-consensual dissemination of intimate images, we divided them into three main categories concerning their **legal matter**: (a) specific laws about the subject; (b) other laws or general laws; or (c) countries that have a specific bill on the subject. Later, we identified a fourth possibility of regulation that happens through the (d) implementation of public policies, such as educational campaigns, alteration of the school curriculum, etc.

In some cases, there is the intersection between different categories. There are also countries that have specific laws on the topic and also enforce general laws. However, the analysis revealed that these cases usually involve the pre-existence of specific laws for the protection of minors -- in these situations, either we have the simultaneous enforcement of these norms or just the enforcement of laws regarding minors or the prohibition of child pornography in favor of a new law to combat the dissemination of NCII.¹⁶

Within all legal categories we sought to identify which are the provided solutions: if they are focused on the criminal area, if there are civil solutions, if there is a provision for penalties against the providers or if there were provisions for public policies to deal with this subject. Regarding public policies, we tried to identify which policies were they and their target audience.

Bills	Specific Laws	General Law	Public Policies
-Argentina -Australia (national scope) -Brazil -Chile -Denmark -Mexico -Portugal -Puerto Rico -South Africa -United States (2 federal bills in 4	-Australia (Victoria, South Australia and New South Wales) -Canada (federal law and Manitoba law) -France -Israel -Japan -New Zealand -Philippines -Scotland -Spain	-Argentina (B) -Australia (Victoria, Queensland, and South Australia and in the federal scope ¹⁸) -Brazil (B) -Cameroon -Canada (L) -Chile (B) -Colombia -Denmark (B) ¹⁹	-Australia -Canada -Denmark -New Zealand

¹⁶ We will further indicate the occurrence of these cases in the description of the countries' regulations on a footnote.

states) ¹⁷ -Uruguay	-United Kingdom -United States (38 states regulate the matter)	-Germany -India -Japan (L) -Kenya -Malawi -Mexico -Portugal (B) -Puerto Rico (B) -South Africa (PL) -Spain -Uganda -United States (B/L) -United Kingdom -Uruguay (B)	
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2.1 Specific law

In this category, we considered legislation created specifically to fight the non-consensual dissemination of images. It can be a new independent law or a new specific article incorporated to other legal bodies (for instance, the addition of an article to the Criminal Code).

Depending on the legal system of each country there might be more than one law, according to the state or province, as it happens in the United States, Canada, and Australia. In addition, the country can also have a law valid throughout all national territory and other specific laws in smaller locations (as it happens in Canada) -- in these cases, we will refer to the laws regarding all territory as national and the ones regarding smaller locations as state or provincial laws.

¹⁸ The States of Queensland and South Australia enforce child pornography laws when the victims are underage. There are laws in the federal scope that deal with the problem of liability of the intermediaries. Check the map [here](#).

¹⁹ We classified Denmark within the group of countries that have bills because the plan of the government's public policies announced the intention to toughen the penalties that dealt with the non-consensual dissemination of intimate images in the criminal laws. Also in this plan, there is the provision of establishing other measures, like educational campaigns and production of materials to be used in schools, making periodical queries in schools, plans for the re-education and training of state agents, etc., which led to Denmark's classification in the group of countries with the implementation of public policies as well. It is important to highlight that some of these measures are already being implemented, such as part of the educational actions, internet campaigns, etc., as we will further explain.

¹⁷ 38 states of the United States federation that criminalize the non-consensual dissemination of intimate images, but the ways in which this offense is criminalized can be different from state to state. Currently, at least another four states have bills on the subject and there is also a federal bill called "*Intimate Protection Privacy Act*" that criminalizes the non-consensual dissemination of intimate images in the whole country. Another bill has already been passed in the House of Representatives and was sent to the Senate, called "*HR 2052 - Protecting the Rights of Individuals Against Technological Exploitation Act*", which amends the Military Code in order to hinder the disclosure of sexually explicit images without consent. (Franks, 2018)

2.1.1 Australia

In Australia, there are criminal laws on the non-consensual dissemination of intimate content in the states of Victoria and South Australia -- two out of six states --, and the national government is also in the process of holding consultations for the establishment of a general regulation.

In October 2014 the *Crimes Amendment (Sexual Offences and Other Matters)* was passed in the state of **Victoria**, which was an amendment to the *Summary Offences Act 1966 (Vic)*²⁰ and the *Crimes Act 1958 (Vic)*. In the amendment to the *Summary Offences Act*, the legislation created the crime of distributing images with intimate content (41DB). The amendment to the *Crimes Act 1958 (Vic)* provisioned exceptions to the child pornography offenses (70AAA) so that teenagers who exchanged messages with intimate content were not excessively penalized. In these exception cases, for example, there is not the inclusion of the name of the minor sex offender in the *Sex Offender Register*, a public list with the offenders' names, who are then forced to keep their information updated, periodically report themselves to the authorities and, depending on the case, these individuals cannot leave the state without authorization.

However, this amendment was revoked on July 1st, 2017.

In **South Australia**, there are specific provisions in the *Summary Offences Act* since 2003 which are related to Filming and Sexting (Part 5A - *Filming and Sexting Offences*). These are the crimes of (i) humiliating or degrading filming (26B) (ii) distribution of invasive image (26C), (iii) indecent filming (26D), (iv) Threat to distribute invasive image or image obtained from indecent filming (26DA). In addition, item 26A defines some terms of the legislation, such as the concepts of a humiliating or degrading act, invasive image or private act. The crime of threat to distribute images (26AD) was added in late 2016.

In 2017, Division 15C of the *Crimes Act 1900* called "recording and distributing intimate images" was implemented in **New South Wales**. Both the act of recording and the act of distributing intimate images without consent (91P and 91Q), as well as the threat to record or distribute images (91R), are criminalized. The law establishes what is or is not consent and determines that, if the person who is sentenced does not take the necessary measures to remove, destroy, or recover any intimate image without a reasonable justification, there is the provision of additional penalties. Furthermore, if the accused is under 16-years-old, the

²⁰ Each Australian State has their own Summary Offences e Crimes Act.

prosecution will only go forward after the approval of the *Director of Public Executions*; the law also provides some exceptions, like in cases of image sharing for health purposes.

2.1.2 Canada

In 2014, Canada passed a law that establishes guidelines for fighting various crimes in the digital environment, like cyberbullying, computer invasions, and the non-consensual dissemination of intimate images (referred to as distribution of intimate images). This amendment to section 162.1 of the Criminal Code criminalized NCII; additionally, autonomous measures which can be used by judges were also passed, like the issuing of warrants for the seizing of copies of images, restriction to the use of the Internet, electronic interception of private communications²¹, etc.

In 2013, during the discussions of the bill, there were talks on the treatment that would be given to minor infractors who were involved with victims who are also minors; would they be accused of distributing child pornography or would they be framed in the new legislation?²² The conclusion was that the new law gave enough flexibility for the judge to decide between enforcing the crime of non-consensual distribution of intimate images or child pornography, given that the situation is in conformity with the precedent set by the *R. vs. Sharpe* (2001) case, which allows minors to own images from other minors (an act criminalized by the law that rules child pornography) as long as the recording is consensual and the use strictly personal (see item 3.2 ahead).

In 2016, the **province of Manitoba** passed the Intimate Protection Act, through which victims of non-consensual distribution of intimate images can ask for an indemnity from the author of the crime -- the one who distributes intimate images without consent is committing a tort. Moreover, the law foresees a series of assistance and support measures for the victims through the State, like providing aid to remove the material from the internet or anywhere it can be seen, helping to facilitate the resolution of conflicts with the person who owns the images, and giving juridical guidance. The government has a partnership with the program *Cybertip.ca*, of the Canadian Centre for Child Protection (C3P) to receive complaints and answer the first requests.

²¹ The law puts the crime of non-consensual dissemination of intimate images in the list of those in which it is possible to use the electronic interception of private communication since authorized by a court order for its investigation. These interceptions also include phone calls made through VOIP (ex. Skype calls). The interception can be used by authorities to establish an electronic surveillance.

²² Canadá. Legislative Summary, Publication No. 41-2-C13-E. Available at <https://lop.parl.ca/Content/LOP/ResearchPublications/l412-e.htm>.

The offended party does not need to prove that they were damaged by the dissemination and the law is not applied to images that were published due to public interest -- a concept that is not very detailed in the legislation and appears both in the province law as well as in the Criminal Code as a clause for exclusion of punishment.

2.1.3 France

In October 2016, France's legislature passed the "Loi pour une République Numérique" (LOI 2016-1321), which, among other provisions, included article 226-2-1 in the Penal Code. This new article criminalizes the diffusion of any kind of media or document with content of sexual nature (whether in written or visual forms) to the public or to a third-party. Even if there was explicit or implicit consent to record the sexual act, this initial agreement does not automatically extend to the diffusion. Thus, the law applies to any case in which there is the lack of explicit consent in order to disclose intimate images.

Before this law, some judicial decisions had already dealt with this issue and, recently, one caused some controversy:²³ on March 2016, the highest court in the country (Cour de Cassation) had annulled a conviction for the dissemination of non-consensual intimate content. The conviction by the Nîmes lower court (Cour d'Appel de Nîmes) was grounded on article 226-1 of the Penal Code ("assault to privacy"), and it argued it would be against the law to disseminate an image taken in a private location without consent. However, the higher court understood that since the victim had consented to having her picture taken, the dissemination could not be penalized.²⁴

2.1.4 Israel

In January 2014, the Knesset (Israel Parliament) amended the Prevention of Sexual Harassment Law (5758-1998). This amendment criminalized the act of distributing images of a person focusing on hers or his sexuality without consent, in circumstances in which this publicizing might humiliate or degrade the person. In addition to constituting sexual

²³ (...) It was about time! Since the Supreme Court of Appeal had recently issued an order (arrêt édifiant) declaring that a woman who accepted to be photographed naked by her partner could not complain about the dissemination of this content on the internet. This is symbolic. We are at the beginning of the path for the recognition by the public powers of the severity of the harm cause to these young women" (Translation from French by the authors) Meillet, D (2016). *Il était temps! Le revenge porn enfin réprimé*. Huffington Post, October 3rd 2017. Available at <http://www.huffingtonpost.fr/delphine-meillet/il-etait-temps-le-revengeporn-enfin-reprime/>. <Accessed on 17/04/2018>

²⁴ Decision in French: Cour de cassation. Arrêt n° 780 du 16 mars 2016 (15-82.676). Available at https://www.courdecassation.fr/jurisprudence_2/chambre_criminelle_578/780_16_33845.html

harassment, this type of offense is also a violation of privacy pursuant to section 5 of the Protection of Privacy Law (5741-1980/81).

This offense may be punished/pursued both in the civil and criminal spheres. The amendment also establishes possible defenses for the crime, such as the disclosure of an image for purposes of public interest.

2.1.5 Japan

In 2014, after the discovery that a young woman who was murdered by her boyfriend also had her intimate images disseminated on the Internet, the Japanese Legislature passed in two days the Revenge Porn Victimization Prevention Act. The aim was to criminalize the non-consensual publicization of private sexual images that might disturb the tranquility of someone's life. Moreover, the act also eased the process of withdrawing online content -- the previous deadline for intermediaries to remove content was of 7 days whereas after the new law, it is now of 2 days.

The act does not apply when the disseminated images are of minors.

2.1.6 New Zealand

The 2015 Harmful Digital Communication Act (HDCA) introduced new principles of communication, new criminal offenses and amended the Harassment Act 1997, the Human Rights Act 1993, the Crimes Act 1961 and the Privacy Act 1993.

The HDCA made the act of causing harm through digital communications a new criminal offense. Among the acts capable of causing harm through digital communications is the dissemination of intimate images recordings. The law also provides civil remedies to contain the damage originated by the dissemination, such as takedown orders, cease and desist orders, etc.

2.1.7 Philippines

In 2009 the Anti-Photo and Voyeurism Act came into force, which criminalizes the act of recording and broadcasting someone's image in a sexual context or to capture an image of the private area of a person without consent or under circumstances in which the person has a reasonable expectation of privacy (section 4). This is the oldest specific law among the analyzed countries here.

In addition to that, Philippines also has the 2009 Anti-Child Pornography Act, which applies to images depicting children and the 2012 Cybercrime Law,²⁵ which criminalizes "cybersex" (lascivious exhibition of sexual organs or sexual activity, with the aid of a computer system, for favor or consideration). It was questioned before a court²⁶ whether this law would turn any kind of virtual sex illegal, to which the Supreme Court responded that the illegality concerning cybersex would only exist if a commercial transaction between two parts happened or if it lacked consent²⁷, such as in cases of virtual prostitution by webcam, for instance²⁸. If the exchange of intimate content occurs consensually between two individuals, without commercial intent, this law does not apply. There is no prohibition against pornography in itself.

2.1.8 Scotland

In July of 2017, the Abusive Behaviour and Sexual Harm Act was passed by the Scottish Legislature, which makes the act of threatening or concretely revealing media in which a person is (or appears to be) in an intimate situation (disclosure of an intimate image or film) without their consent a crime. The law punishes both those who would have the intention to harm as well as the ones who are negligent/indifferent ("is reckless as to whether...") to the possibility of causing intense suffering by the broadcasting of these images. Additionally, this act also provides more severe penalties to abusive behavior towards a partner or ex-partner.

Regarding the term "intimate situation", the law defines it as a moment in which the individual is taking part in an act that: (a) a reasonable person would consider sexual; (b) does not generally happen in public; (c) the individual's genitals, buttocks or breasts are exposed or covered only by underwear.

²⁵ However, the constitutionality of this instrument was questioned in the Philippine Supreme Court by at least 5 motions, once if the concept of criminal defamation began to be understood in a broader manner, it could compromise freedom of speech. After the trial, in 2014, the Supreme Court decided that article 5 (about incentivizing cybercrimes) of the law was constitutional as well as sections 4-C-3, 7, 12 and 19 (that deal with data traffic and restriction or blocking of computed data). See the law: <http://www.gov.ph/2012/09/12/republic-act-no-10175/>

²⁶ Philippines. Supreme Court. *Disini v. The Secretary of Justice*. Feb. 11th 2014. Available at https://www.lawphil.net/judjuris/juri2014/feb2014/gr_203335_2014.html#fnt24. <Accessed on April 17th 2018>

²⁷ For example, in cases of sexual exploitation of human trafficking victims.

²⁸ "But the deliberations of the Bicameral Committee of Congress on this section of the Cybercrime Prevention Act give a proper perspective on the issue. These deliberations show a lack of intent to penalize a 'private showing x x x between and among two private persons x x x although that may be a form of obscenity to some.' The understanding of those who drew up the cybercrime law is that the element of "engaging in a business" is necessary to constitute the illegal cybersex. The Act actually seeks to punish cyber prostitution, the white slave trade, and pornography for favor and consideration. This includes interactive prostitution and pornography, i.e., by webcam "Philippines. Supreme Court. *Disini v. The Secretary of Justice*. Feb. 11 2014. Available at https://www.lawphil.net/judjuris/juri2014/feb2014/gr_203335_2014.html#fnt24. <Accessed on April 17th 2018>

Along with the passing of the legislation, the government released some campaigns for its promotion.²⁹

2.1.9 Spain

Since July 2015, with the reform of the Spanish Criminal Code, the diffusion of images made in private to third-parties without authorization began to be criminalized. This crime was included in a part of the Criminal Code that deals with the discovery and revelation of secrets. During this reform, more attention was also given to the issue of child pornography and to the age in which a minor is able to consent to sexual relations.³⁰

2.1.10 United Kingdom

In early 2015, the Criminal Justice and Courts Act 2015 came into force and established new provisions in the criminal system of the United Kingdom (England, Wales, North Ireland). One of the new provisions is the crime to *disclose private sexual photographs and films with the intent to cause distress*. Private photos and recordings of sexual nature are defined as those that may depict parts that are not usually seen in public, such as genitals, pubic region or any content that a reasonable person would consider sexual by its nature or context. It is a crime to disclose those images without consent online or offline. In item (b), the law also establishes that in order for an action of this nature be considered a crime, there must be the intent to cause harm to the victim -- so the disclosure without this specific intention does not constitute a crime.³¹

2.1.11 United States

As we have shown in the table above, the US does not have a federal law regarding this topic, but 39 states³² and the District of Columbia address the NCII problem: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida,

²⁹ Images can be seen here:

<http://www.heraldscotland.com/resources/images/6697774.jpg?display=1&htype=0&type=responsive-gallery>

³⁰ The age in which a young person is able to consent to having sexual relations, according to the current Spanish Criminal Code, is now of 16-years-old. Before, it was 13-years-old.

³¹ Some authors criticize the need of intention, stating that it makes the protection of the victim more difficult. For instance, in a recent case in the US (<https://jezebel.com/why-its-so-hard-to-make-revengeporn-laws-effective-1820442428>), a young woman had her pictures disseminated on Tumblr after her boyfriend's Dropbox account was hacked. It would be hard to say that the people who shared the photo had the intention of harming the woman, which can hinder someone from suing the people who shared the content or even that people who are not so diligent when storing intimate images or the ones who hack files or databases from being liable for the unconsented dissemination.

³² In Franks (2018), the author lists 38 states that regulate this matter but this number refers only to the states that have adopted the specific regulation after 2013. More information can be found on this link: <https://www.cybercivilrights.org/revenge-porn-laws/>

Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New Hampshire, North Dakota, North Carolina, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Vermont, Virginia, South Dakota, West Virginia, Washington, and Wisconsin.³³

According to Franks (2018), the crime provisioned in these states is at times a *felony* (more serious, usually punishable with a year or more in prison), and at others a *misdemeanor* (less serious, punishable with up to a year in prison)³⁴. In 6 states (Arizona, District of Columbia, Hawaii, Idaho, Illinois, New Jersey, Texas), it is primordially a felony, while in the others it can be both a felony and a misdemeanor, depending on the circumstances, or only a misdemeanor. For instance, in Alabama and in Oregon, the distribution of non-consensual intimate images is a misdemeanor when it is the first offense of the accused and it becomes a felony for repeat offenders. In Alaska, the crime becomes a felony in some cases when there is the sharing of content with minors. In Arkansas and Pennsylvania, the offense is only a misdemeanor.

Franks (2018) and other authors and speakers³⁵ raise the discussion that there is a dispute involving the laws which are already in force and the bills going through discussions about the insertion of the element of the *intention of causing harm* by the accused party -- that is, if this should or should not be a necessary condition for punishment. According to the author, the American Civil Liberties Union (ACLU), along with other organizations, has argued that this element of intentionality is necessary for the legislation to respect the First Amendment (freedom of speech). However, the author affirms that this is not confirmed, since the only state law about this topic that has been considered unconstitutional had a requirement for the intention of causing harm. Therefore, if the main element of the crime is the invasion of privacy, there would not be any incompatibility with the First Amendment. Beyond the unconstitutionality, the author says that the intention of causing harm is something extremely hard to prove and that the dissemination without the explicit intent to cause harm nonetheless causes it and should be equally punished.

³³ We recommend accessing the website of the Cyber Civil Rights Initiative <https://www.cybercivilrights.org/revenge-porn-laws/> for more details on each of the legislations.

³⁴ There are three main types of crime in the US, ranked here from mild to severe: infraction, misdemeanor e felony. The penalty for infractions are fines or warnings, while the other two types can have penalties of reclusion. There is a lot of flexibility for the accusation body to decide which will be the penalty for a misdemeanor and each state can also detail the punitive possibilities (like fines and community service) but if there is the penalty of reclusion, it can be of up to one year. A felony is the most serious kind of crime, usually punishable with over a year of reclusion.

³⁵ The discussion appears on the text by CITRON and FRANKS (2014) and also in EVANS, Lauren. *Why is it so hard to make revenge porn laws?*. Jezebel, November 16th 2017. Available at <https://jezebel.com/why-its-so-hard-to-make-revenge-porn-laws-effective-1820442428> <Accessed on 17/04/2018>

2.2 Other laws or general laws

Many countries find legal strategies to deal with NCII within their existing legislation, in other words, they find ways to deal with this problem looking at their current criminal laws or privacy and intimacy protection laws. Brazil is included in this category. During the research, those cases were identified in academic articles (Malawi, Uganda, South Africa, Colombia, Puerto Rico, Kenya, and India), official government documents (Dinamarca, Puerto Rico and Australia), articles in media outlets (India, Puerto Rico, Argentina, United Kingdom and Germany) and from consultations to our international partners (Argentina, Chile, Cameroon, India and Uruguay). Even in the cases that the information we received/found came from a secondary source, we have sought the original source of the information, whether it is the law itself in official government websites or judicial decisions.

In some cases, the news articles or consultations with international partners indicated that the law had been applied on the basis of a court decision. As for Uruguay, for instance, examples of judicial decisions were sent to us and, after analyzing them, we were able to identify which laws were being applied in the cases in question. A different example is the case of Germany, in which a judicial decision on NCII became notorious and was reported by several international news outlets.

Countries that have a broad legislation (with its enforcement partially decided based on judicial decisions)	Countries that have a broad legislation with an enforcement that is not <i>strictly</i> defined by a judicial decision
<ul style="list-style-type: none"> - Argentina (B) -Brazil -Cameroon (B) -Chile (B) -Germany -Portugal (B) -Uruguay (B) 	<ul style="list-style-type: none"> -Australia / West Australia (L) -Australia / Victoria (L) -Canada (L) -Colombia -Denmark (B) -India -Japan (L) -Kenya -Malawi -Puerto Rico (B) -South Africa (B) -Spain (L) -Uganda

Note: B and L indicate that in addition to a broad legislation, the countries have, respectively a Bill or Law which regulates this matter.

2.2.1 Argentina

According to a report made by the Centre for Freedom of Speech and Access to Information - CELE (2015), Law 26.485 called "*Protección Integral para Prevenir, Sancionar y Erradicar la Violencia contra las Mujeres en los ámbitos en que desarrollen sus relaciones interpersonales*" (Integral protection to prevent, sanction and eradicate violence against women in their interpersonal relations) could be applied to protect women who are victims of non-consensual intimate images. It considers all conducts, actions or omissions that, direct or indirectly, in the public or private spheres, based on an unequal power relation, can affect the lives, the freedom, the physical, psychological, sexual, economic, patrimonial integrity and the personal safety of these victims as violence against women. Moreover, one of the forms of violence encompassed by the law is the mediatic violence.

Argentina does not have a law that limits the responsibility of third-parties. The Corte Suprema de Justicia de La Nación (Supreme Court) decided in the "*Rodríguez María Belén c/ Google Inc. y ot. S/ Ds. y Ps.*³⁶" case that search engines can only be liable from the moment they are aware of the harmful content by a valid notification, then creating a removal obligation. The legal grounds for the removal of harmful content is the right to their honor.

The Argentine Constitution also protects the fundamental right to privacy, as well as its Civil Code, Commercial Code, and art. 31 of the *Ley de Derechos de Autor* no. 11.723.

2.2.2 Australia

In the national jurisdiction, Australia has the Commonwealth of Australia laws and other laws that are applied in the state level as well. The competence of the Commonwealth and of the states is different: while the Commonwealth rules on liability on the Internet, communications uses and services, postal services and border protection, the States has the constitutional competence to rule on criminal matters. Regarding offenses related to non-consensual intimate images, the Commonwealth punishes the undue use of communication providers to store, sell, disseminate, among others, the intimate content of minors (Criminal Code Act 1995, especially sections 474.19, 474.20, 474.22 e 474.23, and others). Perpetrators can be prosecuted for crimes in the federal and state levels at the same time.

³⁶ Corte Suprema de Justicia de la Nación. Rodríguez María Belén c/ Google Inc. y ot. S/ Ds. y Ps. Buenos Aires. 2014. Available at http://www.stf.jus.br/repositorio/cms/portaIStfInternacional/newsletterPortaIInternacionalJurisprudencia/anexo/Fallo_R.522.XLIX_Corte_Suprema_da_Argentina_28_oct_2014.pdf

South Australia has the Criminal Law Consolidation Act 1953, a kind of consolidation of some acts related to the criminal law, like provision n. 63 that deals with the production and dissemination of material exploiting minors.

When the specific law that now rules filming and sexting was still a bill, a report produced by the government³⁷ highlighted that this law could be used alongside other offenses -- before this, none of the provisions in the Summary Offences Act applied to minors. That is, in cases involving minors and non-consensual intimate images, the rule is that the child pornography law should be enforced.

In **Victoria**, the specific legislation enforced also refers to minors: these are sections 68, 69, and 70 of the 1958 Crimes Act, which criminalize aspects of child pornography, like its production and possession.

In **Queensland**, the Queensland Sentencing Advisory Council (QSAC)³⁸ released a report³⁹ in May 2017 which analyzed the profile of people who were accused of offenses involving material with child exploitation between June 1st, 2006 and June 30th, 2016. According to the Queensland Criminal Code of 1899, in the chapter of offenses against morality, section 228C prohibits the distribution of material that includes child exploitation and section 228D prohibits the possession of materials with children under 16-years-old. On the contrary of other states, there are no exceptions in the law regarding child offenders; however, since November 2016, some orientations were added to the Operational Procedures Manual⁴⁰, used by judicial authorities, to guide cases involving young offenders -- strictly, by law, the mere possession or the act of sending any type of sexual message (sexting) is illegal even when there is not the dissemination to a third-party if one of the parties is under 16-years-old. Depending on the circumstances, there will be a criminal investigation which will take into account factors like the age of the offender and of the victim, if there were consent for the sharing of the image at some point (for instance, if the person did consent to send the image to the offender and there was no dissemination, or if the person only consented to send the image but not to its dissemination), the kind of relationship, criminal records etc.

³⁷ Australian Government. Attorney-General's Department Revenge Porn Explanatory Paper: Summary Offences (Filming and Sexting Offences) Amendment Bill 2015. Available at https://www.agd.sa.gov.au/sites/g/files/net2876/f/revengporn_final.pdf?v=1490938438. <Accessed on 17/04/2018>

³⁸ According to its website (<http://www.sentencingcouncil.qld.gov.au/>), this council makes independent research, gives recommendations, makes queries about the population's views and promotes the understanding of the community about the sentences.

³⁹ Queensland Sentencing Advisory Council. Child exploitation material offenses. May 2017. Available at http://www.sentencingcouncil.qld.gov.au/_data/assets/pdf_file/0010/519535/Sentencing-Spotlight-on-childexploitation-offences-July-2017.pdf. <Accessed on 10/11/2017>

⁴⁰ Queensland Police Service. Operational Procedures Manual. Capítulo 7. Available at <https://www.police.qld.gov.au/corporatedocs/OperationalPolicies/Documents/OPM/Chapter7.pdf>

According to the report, 3035 people committed offenses involving materials with child exploitation, 1470 being young offenders that did not get sent to court. They received other types of punishment before the process was handed to a judge. Out of the total, 1565 people (children and adults) were sent to the judiciary system, with only 28 young offenders among them. The majority of cases involving young people was, at some point, consensual sexting -- but, in the report, the circumstances that led these minors to the authorities are not detailed.

2.2.3 Brazil

The Brazilian Internet Civil Rights Framework (BICRF - Law n. 12.965/14), in its article 19, determines that an Internet application provider will only be liable for damage that resulted from a third-party content if, after the court order, it does not take the specific content down (the Brazilian case law has usually indicated the need to provide the URL as a way to identify/specify the content that should be removed).⁴¹ One exception to this rule is established in article 21, that says that the intermediary will be subsidiarily liable for the violation of intimacy through the publication without authorization of materials that contain scenes of nudity or sexual acts without an authorization from the participants, in case it does not take this content down within the technical limitations of its service after the notification from one of the parties involved or their legal representative. The law also demands the notification to have elements that allow the specific identification of the material indicated by the participant or their representative. This differentiated policy was adopted after two suicide cases involving teenagers who had their intimate images shared on the Internet reached the press.

As it is analyzed in detail in the book *The Body is The Code* (VALENTE *et al*, 2016), the victim of non-consensual dissemination who is over 18-years-old, in the lack of a specific legislation, can file a criminal lawsuit for libel and slander (arts. 139 and 140 of the Criminal Code), which will be assessed by the Special Criminal Court, which determines milder penalties. If the act is also associated with other crimes, like threat or rape, the case is assessed by the Ordinary Justice. The victim can also request protective measures to the Ordinary Justice (like measures of constraint to prevent the perpetrator from approaching or communicating to the victim) in case the parties are or have been in an intimate relation of affection, which makes the Maria da Penha Law enforceable, protecting the victim of domestic violence. In the civil scope,

⁴¹ The Brazilian Superior Court of Justice - STJ (STJ is a judicial entity of extreme importance in Brazil which judges, often as the highest court, infraconstitutional matters that are contested) spoke in the Special Appeal n. 1.629.255/MG (tried in 22/08/2017) that, for the removal of content, it was necessary to provide the URL of the corresponding material. However, there are some occasional dissidences in state courts. STJ decisions are very important as they can be used as reference and orientation to the other state courts.

the victims can request the indemnity referring to moral and material damages that they had suffered. In the case of underage victims, the Child and Adolescent Statute is enforced.

2.2.4 Cameroon

There are no laws that specifically prohibit the distribution of non-consensual intimate images in Cameroon but judges enforce the laws referring to cybercrimes to regulate the matter, like Law n. 2010/012 Relating to Cybersecurity and Cybercriminality. In these cases, section 74 of this law is used, which criminally punishes the ones who transmit or record private electronic information without the consent of their authors.⁴²

2.2.5 Canada

The Canadian Criminal Code, in its Offenses Tending to Corrupt Morals chapter, criminalizes child pornography in article 163.1 (1). Any person who owns, prints, publishes, distributes, circulates or possesses any content that involves any sort of media, audio or visual representation that shows a person that is or is described as a person under 18-years-old and: (i) is involved in a sexual activity, (ii) whose genitalia and anal region are exposed for sexual purposes, and also (iii) any material, visual representation or audio recording that stimulates or advises a person under 18 of age to have sexual activities that would be offensive according to the law.

As we have mentioned in item 2.1.2, the intention with the new law is that, in borderline cases, it is up to the judge to decide whether to enforce the Criminal Code or the specific law for non-consensual intimate images when both parties are underage. As the penalties for pedophilia are very severe and not always adequate to deal with sexuality between teenagers, the case *R. v. Sharpe* (2001)⁴³ determined that minors can be in possession of images of other minors as long as there has been consent for the recording and the use is strictly personal -- that is, they cannot send the images to other people.

2.2.6 Chile

In Chile there is a 2014 specific bill that aims to regulate the issue of non-consensual intimate images; we had access to three judicial decisions sent by our international partners to better understand which is the legislation enforced in these cases. In one of the decisions (RTBF Chile 1243-2016), article 19, n. 4 of the Political Constitution of the Republic of Chile was

⁴² According to our informant, on this context the inexistence of laws is common in Central Africa and Western Africa countries.

⁴³ Supreme Court. British Columbia. *R. v. Sharpe*. 2001. Available at <https://scc-csc.lexum.com/scc-csc/scccsc/en/item/1837/index.do>. <Accessed on 17/04/2010>

enforced, which regards the protection of private life and the honor of the person and their family, with the conclusion that the diffusion of intimate images to third-parties was a threat to private life. We also found cases that were reported in the media: one dealt with the conviction of army captains for disseminating intimate images of a sub-lieutenant and the other addressed a young woman who had a video disseminated and its content went viral on the Internet.⁴⁴ We noticed that there was a criminal conviction to the army members and a civil one to the other case, as it dealt with an ordinary person (indemnity/obligation to carry out certain actions -- like taking down the content).

2.2.7 Colombia

According to the APC report (Moolman et al, 2014), Law n.1273 of 2009 included in the Criminal Code a new chapter on cybercrimes through Title VII BIS (*De la protección de la información y de los datos*), which complements and excludes some provisions of Chapter VII. This change includes in the Colombian legal system some provisions of the Budapest Convention on Cybercrime. The new provisions aim to protect the confidentiality, integrity, and availability of data and computer systems and create, among other things, the crimes of abusive access to a computer system, interception of computer data, violation of private data, and web spoofing⁴⁵ to collect personal data. The penalties for these crimes are aggravated when the perpetrator takes advantage of the trust bestowed by the victim and when it is known that the diffusion of the information will harm the other.

2.2.8 Denmark

According to a report made by the Danish government about digital sexual abuse,⁴⁶ the ones who transmit or publish sexually offensive content are subjected to the Criminal Code, as well as to the Act on Processing of Personal Data (*Persondataloven* - Act n. 429/2000), depending on the circumstances. In the Criminal Code, paragraph 264d penalizes the publication of photos that describe strictly private aspects of one's life; paragraph 232 punishes

⁴⁴ Porno venganza: cinco casos en la farándula chilena. La Cuarta, May 20th 2013. Available at <http://www.lacuarta.com/noticia/porno-venganza-cinco-casos-en-la-farandula-chilena/> <Accessed on 17/04/2017>

⁴⁵ Web spoofing is the act of creating a fake website, making who accesses it believe that it was made by a legitimate organization or a natural person that does not correspond to the actual creator. At times, the website imitates or has a very similar layout to already existing websites of organizations. This practice is usually associated to phishing.

⁴⁶ Report on sexual harassment. Skærpet indsats mod digitale sexkrænkelser. Available at http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/digitale_sexkraenkelse_r u dspil.pdf <Accessed on 17/04/2018>

“indecent exposure”; and paragraph 235 criminalizes the dissemination or possession of pornographic images or videos of any person under 18-years-old.

2.2.9 Germany

The Germany Federal Court of Justice (*Bundesgerichtshof*) decided in a specific case that images of an ex-partner must be deleted if requested by them. Germany criminalizes acts that "violate intimate privacy by taking pictures", which includes the prohibition to illegally disseminate an image to third-parties even if consent was granted at the time of the recording, as this entails a violation of privacy.

The decision was based on articles 823 and 1004 of the German Civil Code (BGB), which determines the right to have the damage repaired and to demand to someone the exclusion of a good when its use is inappropriate. In addition, the decision was also based on the protection of privacy and personality rights guaranteed in the German Constitution (GG, Art. 2, Abs 1, Art. 1, Abs 1) because the content in question is very intimate. The ex-partner claimed that the request to delete the photos of his ex-girlfriend would violate his right to exercise his profession, as he is a professional photographer, and that the photos were taken consensually. However, the Court did not consider this argument to be valid in relation to the former partner's personality rights, since images of sexual content are extremely private, and considered that only photos that show daily situations, such as vacations, would not be subject to removal because they would not have as much potential to achieve the image and reputation of the former partner if exposed to third-parties.

2.2.10 India

According to Chaudhari (2016)⁴⁷, there are three main statutes to which one can resort in cases of dissemination of intimate images: the Indian Criminal Code of 1890 (considering the 2013 amendment), the Information Technology Act de 2000 (considering the 2008 amendment), and the 2013 Protection of Children from Sexual Offenses Act.

Before 2013, the Criminal Code did not have an article that directly dealt with harassment or online crimes involving women. The 2013 amendment helped to address this issue: section 345A defines sexual harassment and section 345C criminalizes “voyeurism”, that is, the act of capturing images of a woman during private actions and/or disseminating this image without her consent since under these conditions the woman is not usually expecting to

⁴⁷ CHAUDHARI, Disha. Your Handy Guide To Cyber Laws In India. Feminism in India, November 24th 2016. Available at <https://feminisminindia.com/2016/11/24/cyber-laws-india/> <Accessed on 17/04/2018>

be watched by the perpetrator or anyone else. Within the definition of private activity, it is understood that it happens in a place where privacy is expected and in which genital parts, breast, and other intimate areas of the victims are undressed or covered by underwear; when the victim is using the toilet; or when the victim is involved in sexual acts that are not usually done in public. The offense includes the situation in which the victim agrees with the capturing of the image but not with its dissemination. This amendment also dealt with virtual stalking and situations in which a woman is exposed to pornographic content against her will.

In addition to these specific provisions, it is also possible to attribute the crimes of libel (Section 499 of the Criminal Code) or threat (Section 503 and 507) to the perpetrator.

Since 2008, the Informational Technology Act has an article (Section 66E) that punishes the violation of privacy. This article provisions that any person who, intentionally or not, captures, publishes or transmits the image of someone else's private body parts to a third-party without the victim's consent, in circumstances that violate their privacy, will be criminally punished. Section 67 of this act prohibits the transmission or publishing of obscene content and section 67A (also added by the 2008 amendment) expressly prohibits the publication or transmission of sexually explicit material. Lastly, our international partner also indicated that section 72 can too be enforced, as it punishes the breach of confidentiality and privacy.

Regarding minors (people under 18-years-old), the Protection of Children from Sexual Offenses Act is enforced, which in its sections 13 and 15 prohibits the portrayal of children in any sexual manner, whether in simulated or real acts, with or without penetration.

Finally, there is the Indecent Representation of Women Act, which prohibits the indecent representation of women in the media, advertising, publications etc.

However, as much as there are laws covering the matter, the fight against non-consensual intimate images is difficult due to the social stigma faced by women in India who go through this kind of situation. Although it is becoming more and more a common occurrence in the country,⁴⁸ we see reports on the struggle victims face to have these crimes appraised by authorities, in addition to the culture of victim-blaming regarding women.⁴⁹

2.2.11 Japan

The article *The Criminalization of Revenge Porn in Japan* (MATSUI, 2015) affirms that, even before the new specific law on non-consensual intimate images, it was already possible to enforce other legal provisions to these cases. According to the Civil Code, in its articles 709 and

⁴⁸ Sex, honour, shame and blackmail in an online world. BBC, October 26th 2016. Available at <http://www.bbc.com/news/magazine-37735368> <Accessed on 17/04/2018>

⁴⁹ The WhatsApp suicide. BBC, October 29th 2016. Available at <http://www.bbc.com/news/magazine37735370> . <Accessed on 17/04/2018>

710, the victim can receive an indemnity for damages caused by invasion of their privacy, considering that this damage has occurred due to the accused-party's conduct. The service providers would also be subjected to being liable for the damage.

In the Criminal Code, the publicizing of an intimate image could be considered obscene and, therefore, criminally punished in accordance to article 175, which prohibits any distribution and public exposition of obscene material, including electronic exposition. According to the Japanese Supreme Court, a material is considered obscene if it exposes images of sexual intercourse, genitals or pubic hair, since this kind of images stimulates the sexual desire, and other images that break the normal sense of sexual embarrassment of a average person. The Child Prohibition Act would protect the exposure of minors. One could also resort to the laws against libel, which criminally punish any information that can hurt one's social reputation, if it is not of public interest.

At last, Matsui (2015) states that the copyright law (Law n. 48/1970) can be enforced in some cases. When a woman takes a photo of herself, she likely has the copyright regarding this image, even after it is sent to someone else. If the receiver posts the picture, there is a violation of this right.

2.2.12 Kenya

Kenya has a cybercrime law, called Kenya Information and Communications Act. Its chapter 411A recognizes the improper use of computer systems, sending of offensive, indecent, obscene, or threatening messages, sending of fake messages for disturbance, inconvenience, or anxiety, as well as the electronic publication of obscene material. However, these criminal provisions are mainly aimed at commercial or computer system attacks and not the protection of individual persons.

2.2.13 Malawi

Malawi does not have a specific law to deal with non-consensual intimate images, neither does it recognize this phenomenon as gender related violence. However, its Criminal Code has an anti-obscenity law that prohibits the diffusion of any kind of content of this nature.

Authors who are dedicated to the topic of this regulation in the country (CHISALA-TEMPELHOFF & KIRYA, 2016) consider that the aforementioned law actually worsens the situation of women in the region, as it can serve to criminally blame both the perpetrator and the victim since the laws do not take into consideration the circumstances in which the images are produced and distributed.

In addition, the 1998 Malawi Communications Act compels radio-broadcasters to not disseminate any sort of obscene, indecent or offensive material to the public morality and also requires the respect of individual privacy, except in cases of public interest. However, according to the authors, this legislation has not been used to protect victims or take down intimate images, which raises the argument that radio-broadcasters would be violating the law by allowing their publication without any sanction. We still have to consider that to effectively take down a content, the victim would have the burden of filing a lawsuit and confronting a context that does not protect them.

2.2.14 Portugal

In Portugal, two cases had an impact on the media. The first one⁵⁰, in 2015, determined a man's conviction, not by the dissemination of an intimate video recorded consensually between him and his ex-partner, but because he was not careful when storing the video -- he confessed that several people had had access to his computer. It was not possible to prove that he was the disseminating agent but the Lisboa Court considered that his negligence in protecting the material (omission of security, storing and secrecy duties of his ex-partner's sensitive data) generated the obligation to indemnify the victim, in the terms of art. 486 of the Portuguese Civil Code, which establishes that simple omissions enable the compensation for damages in which there is the duty of practicing the omitted act. The indemnity was set in 10 thousand Euros.

The second case happened in 2016 and was highlighted by the press⁵¹ as the first time that the Portuguese Justice enforced a prison sentence in a revenge porn case. A man published two intimate videos with images of himself and his ex-partner on 21 pornography websites as revenge after finding out that he was being cheated on. Additionally, he created a fake profile on Facebook pretending to be this ex-partner and arranged dates with other men. He was convicted for cyber fraud for the creation of the fake profile (Cybercrime law, art. 3) and for the intrusion of privacy on the disclosure of the images (art. 192, Criminal Code). The man was sentenced to three years and nine months in prison.

2.2.15 Puerto Rico

⁵⁰ SÉNECA, Hugo. Tribunal de Lisboa condena homem por não guardar em segurança vídeo pornô com ex-namorada. Exame Informática, December 25th 2015. Available at <http://exameinformatica.sapo.pt/noticias/mercados/2015-12-15-Tribunal-de-Lisboa-condena-homem-pornao-guardar-em-seguranca-video-porno-com-ex-namorada>. <Accessed on 10/05/2018>

⁵¹ REVENGE Porn: primeira condenação em Portugal para um crime que a APAV conhece bem. Delas, July 23rd 2016. Available at <https://www.delas.pt/porn-revenge-condenacao-inedita-em-portugal-paracrimes-que-a-apav-conhece-bema-em-portugal-para-um-crime-que-a-apav-conhece-bem/> <Accessed on 10/05/2018>

In February 2015, the Puerto Rican Chamber of Representatives passed a specific bill designed to fight “revenge porn”. The topic generated discussions, on the one hand, defending the need for a specific law, on the other, claiming that the existing legislation would be enough to counter this kind of act. Part of this discussions happened in the Faculty of Law of Puerto Rico’s Interamerican University (UIRP), in April 2015⁵². At the time, independently of the their position on the matter, professors listed some legal provisions that could be enforced in the lack of a specific law. The first of these provisions was the Law Against Domestic Violence (Ley 54), which, in theory, establishes that serious emotional damage against a partner is a violation.⁵³ The second law that was mentioned was the Criminal Code, that could be enforced in cases of extortion.

2.2.16 South Africa

According to the APC’s (NYST, 2014) report, in 2011 the South African legislature passed the Protection from Harassment Act, which came into force in April 2013. This law establishes a process in which a person who has been subjected to harassment, online or offline, can request a protective order before a Court, valid for five years. The law also has provisions that force communication service providers to assist the Court on the identification of the harassment perpetrators and creates the legal figure of a “protective order and contempt violation offense”, in which a communications service provider can incur if they do not surrender the requested information.

The report points out that, even though harassment can have a broad legal interpretation, the framing of revenge porn in this law relies on the judge’s interpretation.

2.2.17 Spain

In addition to the specific provision in its Criminal Code, Spain has an Organic Law for the Protection of Personal Data (Ley Orgánica no 15/1999 de Protección de Datos de Carácter Personal), which recognizes that inadequate or excessive personal data can be erased by making a request to the Spanish Agency of Data Protection.⁵⁴ In case this data is stored on a website, the agency acts as an mediator between the content and hosting provider and the applicant. If the website is hosted in Spain or other countries in the European Union, the agency has the power

⁵² TORRES ESTRADA, Michelle. Mirada multidisciplinaria al proyecto de ley de pornovenganza. El Nuevo día, April 10th 2015. Available at <http://www.elnuevodia.com/noticias/locales/nota/miradamultidisciplinariaalproyectedeleydepornovenganza-2032334/>. <Accessed on 17/04/2018>

⁵³ It is important to note that the Puerto Rican Supreme Court determined that this law is not applicable to same-sex couples.

⁵⁴ AGENCIA Española de Protección de Datos. Available at <https://www.agpd.es/>. <Accessed on 05/05/2018>

to file orders for the removal of content -- there is an obligation to cooperate under the Information Society Law (*Ley de Servicios de La Sociedad de la Información*). In case the website is hosted outside the European Union, the Spanish Agency can send notifications and hinder the access to this content within Spain.

2.2.18 Uganda

Similar to Malawi, Uganda also has anti-pornography and obscenity laws. The Anti-pornography Act criminalizes both those who produce and disseminate as well as those who take part in the pornographic content, making this law enforceable both against perpetrator and victim.

An evidence that this law can indeed be enforced against a victim is the case of a famous woman artist in the country who had a video with content made in a private context disseminated by her ex-boyfriend: the Ministry of State was considering to criminally prosecute her for taking part in a pornographic content but ended up not pursuing her (CHISALA-TEMPELHOFF & KIRYA, 2016).

2.2.19 United Kingdom

In early 2015, the United Kingdom passed the Serious Crime Act, which complemented several legislations and created the crime of sexual communication with a child (when an adult communicates with sexual undertones with children under 16-years-old) in item 67. However, in spite of being passed, the law is not in force⁵⁵, which means that even if an adult commits this crime, they cannot be indicted for this offense.

2.2.20 United States of America

In 1995, Section 230 was introduced to the Communications Decency Act. As a whole, this law deals with the regulation of the transmission of any content that is considered indecent, and this section had the goal of discharging the intermediaries of any liability for this type of content when they are merely the hosting platforms for third-parties, excluding the copyrights violations (regulated by the Digital Millennium Copyright Act). However, when the case deals with a co-creator or co-developer of content, this waiver is removed.

2.2.21 Uruguay

⁵⁵ ELGOT, Jessica. New law to stop adults sexting children not being enforced. The Guardian, February 16th 2017. Available at <https://www.theguardian.com/law/2017/feb/16/new-uk-laws-to-stop-adults-sexting-children-are-not-being-enforced>. <Accessed on 17/04/2018>

After the consultation with our international partners, judicial decisions were sent to us and we were able to identify that revenge porn cases have been judicially framed in the Criminal Code in two articles: 335 and 278. Article 335 was used when it was considered that the accused committed a slander defined by *“the offense in any manner, with words, written or facts, the honor or the decency of a person”*, with penalty of three to eighteen months of prison or a fine of 60 to 400 reajustable unities, and article 278, when it was considered that the accused committed a “pornographic exposure”, defined as the *“public offering in obscene theatre or cinema presentations or that transmit sounds or makes publications of the same character”*. For this crime, the penalty is of three to twenty-four months in prison.

2.3 Bills

This category lists the countries that are still discussing specific bills to fight the problem of the non-consensual intimate images. These countries are Argentina, Australia (national scope), Brazil, Chile, Denmark, Mexico, Portugal, Puerto Rico, South Africa, United States of America, and Uruguay.

Here, we included Australia (national scope) and Denmark⁵⁶, which, in spite of not properly having a bill, have been publishing reports and are signaling the intention of improving and rethinking their policies on this topic. Australia published in late 2016 a report⁵⁷ that synthesizes a public consultation on the non-consensual dissemination of intimate content as the first step towards a more robust regulation.

As for the other countries, neither of them has the intention of creating an independent specific law. All bills aim to create specific articles within their respective Criminal Codes.

Country	Purpose of the Bill	Year of Presentation
Argentina	Creating a complementary article in its Criminal Code that provisions a penalty of reclusion and also forces the convicted person to take down the intimate material	2016

⁵⁶ Danish Government. Ministry of Justice. Report about sexual harassment. Skærpet indsats mod digitale sexkrænkelser. Available at http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/digitale_sexkraenkelse_r_u_dspil.pdf <Accessed on 17/04/2018>

⁵⁷ Parliament of Australia. Report: Phenomenon colloquially referred to as 'revenge porn'. Commonwealth of Australia 2016. Available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Revenge_porn/Report <Accessed on 17/04/2018>

Australia (national scope)*	The federal senate conducted, between the end of 2015 and the beginning of 2016, a consultation to get to know the situation of NCII in the country as a whole. On 25/02/2016, a report that lists several recommendations (without force of law) was published, with items like using the term “non-consensual image sharing” instead of “revenge porn” in the legislation, the creation of an agency to issue “takedown notices”, and for the Commonwealth to legislate on the matter within its competence.	2016
Brazil	<p>In March 2018, the Federal Senate passed the PLC 18/2017 (which was Bill 5555/2013 while in the Chamber of Deputies). The substitutive text that was passed includes the term “violation of intimacy” in article 7, II, of the Maria da Penha Law and proposes the creation of two new criminal types in the chapter of the Criminal Code that deals with crimes against sexual liberty: the unauthorized disclosure of sexual intimacy, with penalty of reclusion of two to four years, and detention of six months to a year, respectively. The new text also alters the Criminal Code so that, in crimes related to the exposure of sexual intimacy, the criminal action is public and conditioned to representation. As the original text suffered alterations, the matter returns to the Chamber of Deputies for a new analysis.</p> <p>In April, another bill was presented in the Chamber of Deputies. Bill 9930/2018 aims to alter the Criminal Code and criminalize the conduct of those who spread, without consent, photos, videos, or other material related to a woman’s intimacy. The proposal adds the criminal type to the chapter about crimes of public outrage to decency, providing a penalty of reclusion from 3 months to a year and a fine, and includes the typified behavior in the system of combating violence against women of the Maria da Penha Law (Law 11340/2006).</p>	2013-2018
Chile	Creating a complementary article in the Criminal Code, in which the act of diffusing images with sexual content obtained in a private scope without the authorization of the person becomes an offense. The administrator of the website in which these images might be hosted that does not take down the content as soon as it is notified will be subjected to the same penalties as the person who	2014

	disseminated the images.	
Denmark	Denmark's Ministry of Justice presented a plan against what is called "digital sexual abuse" (digitale sexkrænkelser). In addition to toughening the penalties for this kind of offense, the plan also intends to facilitate the access to the judiciary and to the authorities for the victim and the creation of educational campaigns directed to young people and adolescents with the aim of changing the mentality surrounding this practice.	2017
Mexico	Complementing an article and creating a new one in its Criminal Code. The first one extends the penalty of revealing secrets within professional relations to family or affective relations as well. The second one creates the new offense of harassment (hostigamiento).	2016
Portugal	In 2016, the Socialist Party presented a bill that alters the Criminal Code, creating aggravating factors for the penalty of already existing crimes in cases that involve the disclosure of data, videos or intimate recordings, through the Internet or equivalent media, without the consent of the victim. In the crime of domestic violence (art. 152), the punishment is aggravated from 2 to 5 years. In the framework of crimes against the intimacy of the private life (arts. 190 and 195) and the crime of illicit photography and recording (art. 199), the aggravation results in an increase of up to ½ within the minimum and maximum limits of the penalty.	2016
Puerto Rico	The bill creates the <i>Ley Contra La Venganza Pornográfica de Puerto Rico</i> (Puerto Rico's Law Against Revenge Porn) that typifies the dissemination and publication of any explicit material of intimate character (whether it is visual, illustrative, graphic, video or even audio recordings) without consent and/or authorization (even if there was consent for the recording). The law is enforced on people who had a spouse relationship, lived together, had an intimate physical relation, independently of their sexual orientation or gender identity. In December 2015, the bill was archived by the	2015

	Senate ⁵⁸ . The Department of Justice stated that it was still discussing different projects to try and forward the most adequate one.	
South Africa	The "Cybercrimes and Cybersecurity Bill" deals with several crimes committed in the digital environment. In the chapter about malicious communications, item 18, there is the typification of <i>distribution of data message of intimate image without consent</i> : any person who illegally and intentionally makes available, transmits or distributes, through an electronic system, a message with data of an identifiable person's intimate images, knowing that the person described in these images did not consent to making these images available, transmitting or distributing them. An intimate image consists in a visual description of a person made through any media when: (a) a person has a reasonable expectation of their privacy; (b) the person is naked, exposing genital organs or anal region and, in the case of women, the breasts.	2017
United States of America	There are two bills on NCII in the US in distinct scopes. The first one is a federal bill called Intimate Privacy Protection Act (HR 5896), proposed in 2016, with the goal of criminalizing the dissemination of non-consensual intimate images in which the victim is identifiable or their personal information is also available, and the person is showing any intimate body part or engaged in a sexual activity. The second one is the Protecting the Rights of Individuals Against Technological Exploitation Act (HR 2052), proposed in 2017, and enforced only to the military. The bill was proposed after several scandals involving the leaking of photos of military women by their male colleagues. The intention is to punish military personnel who disseminate intimate images without consent, and the punishment for the people convicted for this crime is at the discretion of the military court.	2016 and 2017
Uruguay	Creating a new article in its Criminal Code that criminalizes the dissemination of intimate images. It also provisions that, if the administrator of the	2015

⁵⁸ JIMÉNEZ SAKER, Gabriela. Engavetado proyecto contra la venganza pornográfica. Noticel, November 25th 2015. Available at <http://www.noticel.com/ahora/engavetado-proyecto-contra-la-venganzapornogrifica/610934252>. <Accessed on 17/04/2018>

	<p>website in which the images are being hosted does not take them down immediately after being notified, it will be sanctioned with the same penalty of the one who spread the content.</p>	
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2.4 Public Policies

As we have indicated on item 2.1.2, with the passing in 2016 of the Intimate Image Protection Act, in the province of **Manitoba, Canada**, in addition to the right to request an indemnity for NCII, a series of measures to provide assistance to the victims were implemented, as well as facilitating channels for them to easily hinder the dissemination of this material. In the time preceding the passing of the law, the government announced a partnership and an investment in the *Cybertip.ca* program, of the Canadian Centre for Child Protection (C3P)⁵⁹, which would be responsible⁶⁰ for the first contact with the victims. The entity was chosen for its expertise in the work with young people and sexual content on the Internet.

In **New Zealand**, along with the promulgation of the *Harmful Digital Communications Act*, the new law also established an agency (NetSafe) which is the primary responsible for the investigation and resolution of cases involving harmful digital communication.⁶¹ The Agency works with the involved parties, facilitating the negotiations so that extrajudicial solutions can be reached more quickly, aside from counseling victims, providing orientations about online safety, educating the general public, and collaborating with connection and content providers and other government agencies so that the objective of the law is fulfilled. Only before the impossibility of solving a case through the agency, it is forwarded to the Judiciary.

Denmark put in operation a series of public policies⁶² whose main target-audience are adolescents, since, according to a government-led study, most victims and perpetrators of NCII have between 15 and 24 years of age. One of the goals of this initiative is to encourage a shift of paradigm regarding the act of disseminating images. According to information available on a

⁵⁹ News about this partnership can be seen on the following links: *Province Proposes Law, partners with cybertip.ca to assist victims when intimate images are distributed without consent*. Available at <http://news.gov.mb.ca/news/index.html?item=35135> and https://www.cybertip.ca/app/en/media_release_201506_intimate_images_manitoba.

⁶⁰ Even though the announcements were made in 2015, it was not possible to find on Cybertip.ca a specific part dedicated to NCII.

⁶¹ *NetSafe* reported that, since the beginning of their work (2016) up until early 2018, more than 900 complaints were made about acts of harmful digital communication and, among them, approximately 260 involved NCII. Available at <https://www.netsafe.org.nz/wp-content/uploads/2016/12/31.05.2017-Online-bullying-abuse-and-harassment-service-receives-over-900-reports-in-first-six-months.pdf>.

⁶² *Digital krænkelse. Alle for en mod mobning*. Available at <http://www.alleforenmodmobning.dk/ungdomsuddannelse/digital-krænkelse/> <Accessed on 17/04/2018>

government website⁶³, they are striving for the conscientization that it is wrong to expose other people on the web and break their trust, as well as affirming that people who have their images disseminated or that choose to send or take pictures with sexual content are not less worthy because of this -- it is a valid expression of sexuality.

Official educational websites made available materials for teachers to approach this topic with students of various ages and also to start a conversation and guide the parents of students.⁶⁴ In 2016, the Ministry of Education released an online campaign for young people with the hashtag "#stopdigselv" with the participation of 10 famous YouTube vloggers who produced videos talking about the matter, reaching almost 1 million views. This campaign was realized in partnership with *Save the Children* and other organizations that deal with sexuality. Since 2017, schools began to count with a hotline for reporting cases or receiving questions about how to deal with cases of non-consensual intimate images. Another plan is to give an emphasis to digital education during primary school and address topics like ethics, safety, and the consequences of sharing one's own and third-party material online. Lastly, among the public policies, there is still the projection of capacity building and training of personnel in investigative and judiciary institutions so that the crime can be more frequently reported and that the employees are better prepared to assist and guide victims.⁶⁵

At the federal level, **Australia** does not yet have a regulation on NCII but in 2017 the government released the pilot-version of a website for assisting victims of "image-based abuse"⁶⁶. The website was elaborated by the Office of the eSafety Office Commissioner of the Australian government, the entity that was originally in charge of dealing with issues of cyberbullying (and precisely chosen based on this previous experience). On the website, victims can access information on the applicable laws in each state of the country, seek legal help (the site does not directly offer juridical assistance but can connect victims to those who offer the service), receive aid to take down contents and make complaints about websites or platforms that are exposing non-consensual sexual content. There are also instructions on how to report to the police, models of motions or cases that were successful in the Australian legal system, along with

⁶³ Information available at *Regeringen styrker indsatsen mod digitale sexkrænkelser. Justits Ministeriet*, February 3rd 2017. At <http://justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2017/regeringen-styrker-indsatsen-mod-digitale-sexkraenkelser> <Accessed on 17/04/2018>

⁶⁴ *Til lærere - om digital krænkelser*. EMU. Available at <http://www.emu.dk/modul/til-l%C3%A6rere-omdigital-kr%C3%A6nkelse> <Accessed on 17/04/2018>

⁶⁵ *Regeringen styrker indsatsen mod digitale sexkrænkelser. Justits Ministeriet*, February 3rd 2017. Available at

<http://justitsministeriet.dk/nyt-og-presse/pressemeddelelser/2017/regeringen-styrkerindsatsen-mod-digitale-sexkraenkelser>. <Accessed on 17/04/2018>

⁶⁶ Australian Government. Image based abuse. Available at <https://www.esafety.gov.au/image-based-abuse/>. <Accessed on 17/04/2018>

testimonies from people who went through this type of situation, from various ages and origins. During the use of pilot-version, the government will study the volume and the complexity of the cases received by the platform to release the official version in 2018.

3. The major trend among laws and bills: Criminalization

The description of the responses of the countries above, in item 2, indicates a clear trend towards the criminalization as a manner to face the dissemination of non-consensual intimate images. Few countries go beyond the creation of new penal sanctions and offer specific civil alternatives or have plans for the implementation of public policies to deal with the issue as a structural phenomenon, as gender related violence.

As we have pointed out, among the countries that already have a **specific legislation** on this subject, only in four (Philippines, Israel, Japan, and Scotland) the maximum penalties related to NCII involving adult women exceed 2 years of prison -- respectively, the penalties range from 3 to 7 years, up to 5 and 3 years, up to 5 years. Within the bills, the average for the maximum penalties varies between 2 and 3 years. The country that presented the bill with the longest penalty was Chile, which provisions a minimum penalty of 541 days (1 year and 6 months, approximately) and a maximum of 5 years.

The most severe penalties are the ones related to child pornography (both related to the possession and the dissemination), and the shortest penalties were found in cases from Denmark and Japan (the minimum penalties, without aggravating factors, are, respectively, 2 and 3 years), which differs from the other countries: in Canada the penalties can reach up to 14 years and in India there are cases of life imprisonment. Among the countries that have a specific law, only the province of Manitoba in Canada has a law focused on civil aspects (in this case, in the possibility of the victim receiving an indemnity) and on public policies regarding this matter. Other cases that also stand out from the trend in criminalization, but in a less intense manner, are Japan and New Zealand.

Among the countries that have **enforceable general laws** for these cases but that also have a specific legislation, the legislation previous to the specific one generally concerns laws on the criminalization of child pornography (Australia, both South and the state of Victoria, Canada, and Japan). In the countries that have a legislation on the criminalization of child pornography, possessing and giving other uses (like selling, transmitting, disseminating) to the intimate images of minors are considered offenses and usually have reasonably severe punishments. This becomes complicated, especially when something happens between two teenagers or young adults -- would it be the case of framing the offense as child pornography? Australia, Canada, and Denmark provision some exceptions to the crime of possession of material with sexual

content of minors if the infractor is also a minor, among other considerations, whose characteristics and implications will be more detailed in item 3.2.

In other countries that still do not have a specific legislation, only Argentina, Chile, Germany, and South Africa have solutions that are not excessively focused on the criminal path, as we have seen. However, it is important to notice that in Chile and South Africa bills on the dissemination of non-consensual intimate images have been presented and, in them, the main solution to face this issue is the criminal path.

Concerning the **bills**, the vast majority deal with the non-consensual dissemination of intimate content as a criminal issue.⁶⁷ During the discussions about the bill in New South Wales, deputy Lynda Voltz (Labor)⁶⁸ questioned whether the response should be purely criminal, stating that giving powers to an agency for taking down offensive images would be far more efficient than the proposed legislation. She also affirmed that the perspective of compulsorily filing a criminal lawsuit may hinder victims from denouncing harassments to the authorities. Still, the new criminal legislation passed.

3.1 Other issues (I): the role of the intermediaries

The majority of the **laws** does not address the issue of the intermediaries -- that is, the Internet connection providers, website administrators, platforms, domains etc. Out of the ones that do, there are two kinds of approaches: **criminal or civil**.

In most countries that have **specific laws or bills** on the dissemination of non-consensual intimate images, the figure of the intermediaries was not directly addressed.

It is important to indicate that there are different forms through which the intermediaries can be engaged. In some cases, they are liable or punished for not taking down content; in others, special procedures are created to encourage the rapid removal of intimate content from the web. The countries that deal with this matter in their specific legislation (or in specific bills) on the dissemination of non-consensual intimate images are Argentina (B), Chile (B), Japan (L), New Zealand (L), Puerto Rico (B), and Uruguay (B). In **Brazil** (B), even though the country does not have a specific legislation on the topic, there is a provision in the Brazilian Internet Civil Rights Framework, art. 21, which enables the victim or their legal representative

⁶⁷ This consideration -- about the majority of criminal responses -- is also present in several APC reports about fighting online gender violence. Check Moolman et al, 2014; Fialova e Fascendini, 2015; Nyst, 2014; WLB, 2015.

⁶⁸ McNALLY, Lucy. 'Revenge porn' to be criminalised in response to NSW privacy inquiry. ABC News. September 5th 2016. Available at <http://www.abc.net.au/news/2016-09-05/criminalising-revenge-porn-innsw-a-step-closer/7813446> <Accessed on 14/10/2017>

to request the removal of intimate content from platforms and for it to be fulfilled without the need of a court order to authorize this type of content removal.

In the **United States**, Section 230 of the *Communications Decency Act* takes the burden of responsibility for the content of third-parties from the intermediaries, unless they have contributed direct and materially with the illegal conduct of their users. Only federal laws can circumvent this exemption, as it occurs in the cases of copyright violation and child pornography -- in these last cases, there is the legal obligation to take down any material that violates copyright and any material containing child pornography. Therefore, Franks (2018) argues that there is the necessity for a federal legislation for the regulation of the matter since in the current scenario, the process of taking down an intimate content when the person who posted is unknown is not so easy. Thus, the author stands by the *Intimate Protection Act* (bill), through which intermediaries would only be liable when they have the knowledge of hosting illegal material.

In the **Argentinian** proposal, the convicted person would also be forced to contact the platforms and pursue the necessary mechanisms for blocking or removing the content with their own means, in the deadline established by the judge.

In **Chile's** bill, the administrators of web pages that do not take down contents immediately after the request from the affected party will be sanctioned with the same penalties as the perpetrator(s) (penalty of imprisonment of 541 days to 5 years and fine). This hypothesis is slightly different from the previous ones, since the responsibility of the intermediary only begins after the request for the removal, however it remains ambiguous if the request is to be considered at first when issued extrajudicially or solely as a judicial order. **Uruguay** adopts a similar strategy, determining that the administrators of the web pages that do not immediately remove the content after being notified will be sanctioned with the same penalty of the perpetrators. It also does not clarify the issue of the judicial or extrajudicial order.

In **Japan**, the specific law facilitated the removal of intimate content disseminated without consent by internet providers and administrators of platforms and websites -- the deadline given to the providers is of 2 days after the notification, altering the previous limit of 7 days. The original person responsible for the content (the one who posted) may question the notification but this person could already be subjected to several legal sanctions. The Internet providers were already subjected to the *Provider Liability Limitation Act*, through which ISPs can be made responsible if they host certain types of content, when they know (or have reasonable evidence to know) that rights of third-parties were violated by the posting of a certain content or information, and when it is possible for the Internet provider/platform administrator to prevent the transmission of information that can violate rights.

In the bill found in **Puerto Rico**, every person who intentionally or knowingly publishes without authorization or consent any explicit material in any medium of cybernetic or electronic communication, independently of who they are, will have committed a serious offense and will be sanctioned to a 3-year penalty. If the accused is a legal person/legal entity, they shall be sanctioned a fine of up to 10 thousand dollars. The bill does not clarify who would be the legal persons or from which point they would be responsible for the dissemination -- if it is after the notification, it could be interpreted in a similar way to Japan's *Provider Liability Limitation Act*.

In **New Zealand**, the specific law creates a new offense of causing damages through digital communications, which can punish companies with fines of up to 200.000 New Zealand dollars. The law, beyond establishing the punishment, also creates a kind of public policy, giving powers to a special agency to bridge the gap between the victims and the intermediaries -- this agency will, at first, contact the intermediaries and can, for example, issue requests for content removal. In case this first contact does not achieve any results, Special Courts have been given powers to issue orders for content removal and establish fines for the non-compliance with the law and judicial orders, among other measures.

As we have seen, **Malawi** and **Uganda** have telecommunication laws and, theoretically, these instruments could hinder the dissemination of intimate images. However, the context of these countries can make the onus on the victim of contacting the authorities and proving that the content is illicit too heavy, as they could be framed as violators before the anti-obscenity law. This could be an obstacle for the enforcement of the telecommunication laws.

3.2 Other issues (II): the use of laws against pedophilia for facing NCII between minors

The description and the analysis of cases point to a challenge that is imposed in situations of dissemination of intimate content involving the liability of minors, especially when one of the subject (or both) is an adolescent. As we have seen, most child pornography laws that we have analyzed criminalize not only the transmission of this content but also its possession (even with the consent of both parties).

In a report about cyberbullying and non-consensual distribution of intimate images, the workgroup of **Canada's**⁶⁹ Ministries of Justice and Public Security affirms that⁷⁰, when dealing

⁶⁹ CCSO Cybercrime Working Group. Report to the Federal/Provincial/Territorial Ministers Responsible for Justice and Public Safety on Cyberbullying and the Non-consensual Distribution of Intimate Images. June 2013. Available at <http://www.justice.gc.ca/eng/rp-pr/other-autre/cndii-cdncii/pdf/cndii-cdnciieng.pdf>. <Accessed on 10/07/2017>

⁷⁰ In October 2012, a meeting of ministries responsible for matters of justice determined that a report with the purpose of identifying holes in their criminal law regarding online bullying and NCII should be made. Since then, the "Cybercrime Working Group" was formed and the report was presented to the ministries in June 2013.

with young people at the end of adolescence, the legal provisions on child pornography are not adequate, even more so when the perpetrator is also an adolescent who had relationships with people close to their age. A problem that derives from this situation is that authorities would be reluctant to enforce child pornography laws, due to the stigma that they can cause.⁷¹ In 2001, the Canadian Supreme Court positioned itself in an emblematic manner in the *R. v. Sharpe* case: it established an exception for “personal use” within the crime of child pornography, considering that the legislation could limit freedom of speech in specific circumstances.

According to the workgroup report that analyzes the decision, two young people who had legal sexual relations and that consent to any kind of register of their sexual activity can keep these recordings strictly for their personal use -- the material continues to be considered child pornography but this strict authorization for possession subsists. However, any sort of use of the material that extrapolates the personal use would then be framed by the child pornography laws. The members of the group, therefore, found themselves before two main issues. The first one would be the preoccupation before the possible extension of the interpretation of *R. v. Sharpe* to other cases without a larger control and study, minimizing the protection of the victim. The second one relies on the fact the most adolescents that are brought before the authorities for dissemination or possession of intimate images are older⁷², and that the police indeed does not treat these cases as typical child pornography cases.

Therefore, according to the group, it would be desirable to approve a new law for the cases of young people and older adolescents, since the “old” legislation would carry an inadequate stigma to the situation.

In **Australia** there seems to be a similar concern: in the state of New South Wales, the law establishes that a minor infractor cannot be accused without the acceptance of a competent authority. In Queensland, there are orientations for the police to try dialogue and alternative forms of notice at the moment of accusation of a minor, especially in situations when there has not been an actual dissemination, as addressed in item 2.2.2.

In a report published by the **Danish**⁷³ Ministry of Justice, it is estimated that victims of NCII in the country generally have between 15 and 35 years of age, and the most affected group,

⁷¹ In the Brazilian case, the issue of stigma did not appear in the analysis of the enforcement of the anti-child pornography law (Law n. 8069/1990 - The Child and Adolescent Statute). The lack of protection of the underage victim appeared due to a very strict interpretation of what is considered child pornography, as follows: (i) the mandatory exposure of genitals, (ii) scenes of explicit sex. In cases that did not fulfill these requirements, the intent was removed, which resulted in the non-enforcement of the law or acquittal. Check Chapter 2 by Valente et al (2016).

⁷² The report does not specify at what age an adolescent would be considered “older”.

⁷³ Danish Government. Ministry of Justice. Report on sexual harassment. *Skærpet indsats mod digitale sexkrænkelser*. Available at http://justitsministeriet.dk/sites/default/files/media/Pressemeddelelser/pdf/digitale_sexkraenkelse_r_u_dspil.pdf <Accessed on 17/04/2018>

according to the national police, is of young people between the ages of 15 and 24. There, it was determined that 53% of young people between 15 and 30-years-old received intimate images and 38% have already sent images. It also indicated that usually, victim and perpetrator are within the same age group (in addition to knowing each other and being in some sort of relationship). The document highlights that, although it is necessary to have a legal response to the cases of dissemination, “sexting” between older adolescents should not be criminalized on its own: the mere criminalization of sexting could leave victims more vulnerable and without protection given the resistance to the enforcement of anti-child pornography laws in several cases. Moreover, the report points that sexting can be an important part of expressing sexuality and affection between young people and that what should be fought, in the first place, is the stigma and the negative values imposed mainly to girls and women who share intimate content. In this way, beyond the criminal reform, several plans of action are also provisioned to address the subject different government levels and at schools with the purpose of encouraging a change of mentality -- as we have mentioned in item 2.4.

3.3 Other issues (III): the criminalization of pornography/conservative regulation

The study of the different types of regulation reveals that its existence per se cannot be taken as a positive indicator regarding the fight against gender based violence. The existence of anti-obscenity laws in Malawi, Uganda, and Japan, or of an anti-pornography bill that understands that sexting between minors should be prohibited in the United Kingdom, raise questions about the risk of increasing the vulnerability of the victims that may end-up being punished instead of protected: what happens is the criminalization of certain types of expressions of sexuality.

As we have indicated in items 2.2.13 and 2.2.18, in Malawi and Uganda victims can be liable for producing pornographic content by denouncing an exposure of intimacy. In Japan, the disclosure of obscene/pornographic material in media outlets is prohibited. In its turn, in the United Kingdom the problem is distinct but with similar consequences: the country’s health secretary proposed, in November 2016, for technology companies to create mechanisms so that sexting could be banished through parental control, for instance⁷⁴. This would imply that companies should create some sort of algorithm that could automatically identify content with any kind of nudity on the web or devices of minors, a measure that can be rather invasive to the privacy and freedom of speech of adolescents.

⁷⁴ *Jeremy hunt proposes ban on sexting for under 18s*. The Guardian, November 29th 2016. Available at <https://www.theguardian.com/society/2016/nov/29/jeremy-hunt-proposes-ban-on-sexting-for-under-18s>. <Accessed on 17/04/2018>

At last, we have to consider that stigma seems to be a common element in extremely conservative societies and even more liberal ones: cases of suicide of girls and women due to the dissemination of non-consensual intimate images are regular in India or Canada.

3.4 Other issues (IV): legislation opposing gender violence

To the exception of the wording of general laws and even specific laws, it is possible to identify the diagnosis that the conduct of revenge porn is considered as a gender problem in reports of non-governmental organizations, official government documents and scientific articles.

Keeping this diagnosis in mind, if we regard the juridical framing, we may observe a similar debate to the one happening in the Brazilian context involving the insertion or not of this NCII in a law for fighting domestic violence in **South Africa**.

In **Argentina** and **Malawi**, revenge porn can also be encompassed in the scope of their laws against gender based violence (both countries have laws for the protection of the victim of domestic and family violence).

Concerning a bill in **Mexico** and a law in **Spain**, we observed that -- although it is not framed in the “domestic violence” key -- there is the possibility of aggravating the penalty in case the dissemination has been made by a spouse.

In conclusion, it draws our attention that in **Israel**, the law that was amended in order to provision the crime of revenge porn (Law of Sexual Harassment of 1998) has as a goal the reduction of inequalities between men and women in the country, which seems to expose the diagnosis that we are before a type of gender based violence. (ORIT, 2005)

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