

Online Dating Safety: The Shortcomings of State Law Reform

by Rachel Cocalis*

***Editor's Note:** Rachel Cocalis sheds light upon the ever-increasing apprehension that women feel towards the dangers associated with online dating. Although such fears have been partially addressed through new laws, such as New Jersey's Internet Dating Safety Act of 2008 which requires background checks on internet dating sites, Ms. Cocalis notes such checks can provide a false sense of security. This is made clear by the author's report of a fatal stabbing of a woman by a man possessing a clean criminal record linked to his Match.com profile.*

Today, 25% of dating relationships begin online, making the Internet the second most common way couples meet.¹ Clearly, people believe there are benefits to online dating. At the same time, the anonymous nature of the Internet creates safety risks for its users. This article will explore the progress and problems presented by state law reforms that address online dating safety.

State laws on online dating have been much more successful at addressing romance scams than safety issues. This is because states have longstanding consumer protection laws to prohibit fraud and protect citizens financially.² It was not until 2008, however, when New Jersey passed the first Internet Dating Safety Act, that a law was designed to address the physical safety risks associated with online dating.³ Following New Jersey's lead, several other states (Illinois, New York, Texas) passed similar laws requiring online dating

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¹ Drew Hendricks, "Background Checks Increasingly Common in Online Dating," Nat'l Edition Tech Cocktail, Jan. 7, 2014. Available at <http://tech.co/background-checks-increasingly-common-online-dating-2014-01>.

² Phyllis Coleman, "Online Dating: Murderers, Rapists and Con Artists, Oh My," 13 *Appalachian J.L.* 147, 184 (2014).

³ *Id.* at 184-85.

sites to disclose whether they conduct background checks, and, if so, what those checks cover.⁴ These laws also require dating sites to provide safety tips to their users. At the same time, California's Attorney General, Kamala Harris, came to a legally nonbinding agreement with three major online dating sites that is similar to the other states' laws.⁵ Despite the need for such protections, these reforms have been met with considerable criticism.

The debate surrounding the recent Illinois Internet Dating Safety Act of 2013 is illustrative of this controversy. The new law, similar to the others, requires Internet dating services to disclose whether they conduct criminal

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background checks. Sites that do perform checks must also inform users that these screenings are not foolproof.⁶ When the legislation was first proposed, the Internet Alliance, representing the biggest online dating sites, like Match.com and E-harmony, argued that background checks would be too "burdensome" and costly.⁷

Illinois State Representative

Jim Sacia expressed another criticism when claiming his "greatest fear" was that users would gain "a false sense of security" because sites were not as experienced as law enforcement with the intricacies of background checks.⁸

Further, law enforcement efforts might be incomplete because "[a] wide disparity exists among the states in allowing these inquiries in the type of data that providers can legally obtain. Felony and sex offender databases often contain inaccurate and incomplete information," on which consumers would depend.⁹ Also, these checks are inadequate because sexual predators and other criminals may not have criminal records. For example, a man who met one of his partners on Match.com and stabbed her repeatedly, and who later killed another woman before killing himself, did not have a criminal record.¹⁰

⁴ Hendricks, *supra* note 1; *see also* 815 Ill. Comp. Stat. 518/1; N.Y. Gen. Bus. Law § 394-cc; V.T.C.A. Bus. & C. §§ 106.001-106.008.

⁵ Torey Van Oot & Kamala Harris, "Online Dating Sites Agree to Security Measures," *The Sacramento Bee*, Mar. 20, 2012. Available at <http://blogs.sacbee.com/capitolalert/latest/2012/03/kamala-harrisannounces-settlement-with-online-dating-sites.html>.

⁶ Internet Dating, Internet Child Care, Internet Senior Care, and Internet Home Care Safety Act, 815 ILCS 518.

⁷ Hendricks, *supra* note 1.

⁸ *Id.*

⁹ Coleman, *supra* note 2, at 186-87.

¹⁰ Kat Stoeffel, "Online Dating: More Dangerous Than Other Dating?" *N.Y. Magazine*, Jan. 25, 2013. Available at <http://nymag.com/thecut/2013/01/online-dating-more-dangerous-than-other-dating.html>.

Thus, state law reform on dating safety has been a stalled movement. Few states regulate dating safety, and those that do only require consumer *notification* regarding whether companies search criminal records. Further, background checks, themselves, are ineffective. Thus, state law reform leaves considerable room for improvement.

Another risk posed by the Internet for dating partners is “revenge porn,” which has also been the target of recent state law reform. Revenge porn is the publication of sexual photos without the subject’s consent; it is often intended to humiliate the victim, and sometimes to enlist others to harass the victim. This form of harassment is often associated with separation abuse. As one commentator explains:

In numerous cases, abusers have threatened to disclose intimate images of their partners when victims attempt to leave the relationship. Abusers use the threat of disclosure to keep their partners under their control, making good on the threat once their partners find the courage to leave.¹¹

Previously, state and federal law have failed to address this practice adequately.¹² This is because criminal harassment and stalking laws require *repeated* harassing acts or a “course of conduct.” Some state harassment laws apply only if the abuse is communicated directly to victims themselves. Additionally, police have not been very responsive to victims’ complaints.

Recent state law reform has begun to address the gap. Since 2013, 13 states have addressed revenge porn by criminalizing the practice.¹³ For example, the California legislature made it a misdemeanor to post identifiable nude pictures online without permission with the intent to cause distress or humiliation, subject to a punishment of up to six months in jail and a \$1,000 fine. Cal. Penal Code § 653.2. This law, however, has a serious shortcoming: It does not apply in the majority of cases when the victim herself took her photo, and shared it with the partner who later posted it on the Internet. Maryland, the most recent state to pass a criminal law in October 2014 (Md. Crim. Law Code Ann. § 3-809), improves on some previous laws by allowing the ban to operate when the victim took the photo and by enhancing the penalty to a maximum of two years imprisonment or a fine not exceeding \$5,000 or both.

New Jersey’s 2004 invasion of privacy law (N.J. Stat. Ann. § 2C:14–9c), prohibiting the publication of sexual recordings or sexual photos without the subject’s consent, illustrates another reform method. Alaska and Texas also take this approach.¹⁴

¹¹ Danielle Keats Citron & Mary Anne Franks, “Criminalizing Revenge Porn,” 49 Wake Forest L. Rev. 345, 351 (2014).

¹² *Id.* at 365–66.

¹³ Rebecca Leber, “Is Revenge Porn Legal in Your State,” The New Republic, Sept. 3, 2014. Available at <http://www.newrepublic.com/article/119295/revenge-porn-laws-state-map-shows-theyre-rare-us>.

¹⁴ *Id.*

A novel approach is the use of federal lawsuits for copyright infringement. A law firm in Pittsburgh, Pennsylvania (K & L Gates) recently launched an initiative, the Cyber Civil Rights Legal Project, to file civil lawsuits in federal court on behalf of victims who seek damages for violations of federal copyright laws for the posting of sexually explicit videos and photos without

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consent and for causing emotional distress. Lawyers use the copyright laws to demand that websites remove the sexually explicit images or else risk being sued along with the perpetrators.¹⁵ To bring a federal copyright lawsuit, however,

the victim must first register the images to be protected with the U.S. Copyright Office—a paradoxical strategy for victims who want to avoid disclosure of the images in the first place. Thus, both state and federal law reform are limited in their ability to protect or provide relief to the victim.

In the face of these reforms' shortcomings, consumers and entrepreneurs have stepped up to address online dating safety. Many consumers are engaging in self-help. The Pew Research Center reveals that 29% of daters researched information on their prospective dates themselves in 2013; more than double the number of daters in 2005.¹⁶ Additionally, consumers are hiring private firms to research potential dating partners. U.S. Census Data supports private investigators' claims that the business of background checks has recently "boomed," partly because of the "legions of examples of online daters embellishing their profiles, and of scammers using dating sites."¹⁷ The consumers' personal initiative suggests that people are increasingly worried about the risks associated with online dating, and they are willing to pay for background checks.

Another recent movement by private citizens to address harassment and stalking is named "The Feminist Tinder-Creep-Busting Web Vigilante" by *The Atlantic*. These "vigilantes" created sites dedicated to posting the offensive messages women receive while dating online.¹⁸ For example, an Instagram account created this past October, Bye Felipe, has already posted 130

¹⁵ Matthew Goldstein, "Law Firm Finds Project to Fight 'Revenge Porn,'" *The N.Y. Times*, Jan. 30, 2015, at B1, B5.

¹⁶ Aaron Smith & Maeve Duggan, "Online Dating & Relationships, Pew Research Center," Oct. 21, 2013. Available at <http://www.pewinternet.org/2013/10/21/online-datingrelationships/>

¹⁷ Joe Palazzolo, "Web Sends Lovers Flocking to Private Eyes to Find Out Truth: Background Checks for Deal-Breaking Secrets and Habits Surge in Recent Years," *Washington Post*, Jan. 16, 2015. Available at <http://www.wsj.com/articles/web-sends-lovers-flocking-to-private-eyes-to-find-out-the-truth-1421436350>.

¹⁸ Olga Khazan, "Rise of the Feminist Tinder-Creep-Busting Web Vigilante," *The Atlantic*, Oct. 27, 2014. Available at <http://www.theatlantic.com/health/archive/2014/10/rise-of-the-feminist-creep-busting-web-vigilante/381809/>.

violent, harassing, or sexually inappropriate texts, and has nearly 300,000 followers.¹⁹ Moreover, there are similar sites such as, Straight White Boys Texting, Dudes of Tinder, and others that are dedicated to displaying the messages directed at Asian women, since they receive a large number of the inappropriate messages.²⁰

At least six new dating apps that are designed to keep women safe from stalking and harassment have been developed within the last year.²¹ This surge of new apps “has come to a head as users, particularly women, have started publicizing complaints of unsolicited sexual advances online.”²² These sites approach the issue in a number of novel ways. For example, Mesh uses technology to screen out messages that contain harassing or threatening language, and sexually inappropriate materials. Mesh’s technology, unlike the reporting systems employed by traditional dating sites that only review messages after a user has flagged them as inappropriate, “prevents” the messages from ever reaching the user.²³ Other apps, like Wyldfire, Siren, and Hinge, have some variation on a vouching component, which usually requires a friend to vouch for a potential dater before they are able to see a dating profile.²⁴ Lastly, bTru, an app that launched in August 2014 “allows singles to not only call their date from within the app without divulging their phone number but also run an employment level background check on them.”²⁵ These entrepreneurs are taking advantage of an unmet need by giving women the power to control who they are exposed to online while dating.²⁶

In conclusion, while these creative self-help methods by those in the private sector are critical to protecting online daters, they should also serve as a signal to lawmakers that there is a real desire and need for laws addressing the dangers posed by online dating.

¹⁹ ByeFelipe, *Instagram*, <http://instagram.com/byefelipe> (last visited Jan. 30, 2014).

²⁰ Khazan, *supra* note 18.

²¹ See Sarah LeTrent, “Siren Dating App Lets Women Call the Shots,” CNN, Jan. 2, 2015. Available at <http://edition.cnn.com/2014/08/19/living/siren-dating-app-for-women-relate/index.html>. See also Caitlin Dewey, “A Wave of New Dating Sites Attempts the Impossible: Getting Rid of All the Creeps,” Washington Post, Sept. 30, 2014. Available at <http://www.washingtonpost.com/news/the-intersect/wp/2014/09/30/awave-of-new-dating-sites-attempts-the-impossible-getting-rid-of-all-the-creeps/>.

²² LeTrent, *supra* note 21.

²³ Dewey, *supra* note 21.

²⁴ LeTrent, *supra* note 21.

²⁵ Hoffman, Four Ways Online Dating Isn’t So Scary, Huffington Post, Jan. 14, 2015.

²⁶ *Id.*; Dewey, *supra* note 21.



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