

Pornography, Privacy, Copyright Law and Consent

By

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This paper looks at the fairness, morality and impact on public order of using copyright laws to incentivize the production of pornography, given the risks that the production is harmful to the performers, is nonconsensual “forced filming” and/or “revenge” pornography, and imposes harsh burdens upon victims of human trafficking. It considers the privacy desires and concerns of people who appear in pornography; those who produce and distribute pornography, and those who purchase and consumer pornography. It then explains the ways in which copyright laws can prevent or abridge effective privacy screens for everyone associated with pornography.

People who perform in pornography, and/or produce and distribute it, assert rights to personal privacy. They may not want their real names revealed. They would likely prefer to avoid unexpected face to face encounters with overzealous fans and critics, or with stalkers generally regardless of motivation. They may not want their pornography production related activities to be readily connectable to their other spheres of life. All of those desires are understandable, but very difficult to realize, especially for pornography performers in an age of image search, facial recognition technologies, and the widespread technological impediments to retaining anonymity on the Internet.

Pornographers have tried desperately to avoid obligations to verify the ages of the people who perform in pornography, citing privacy as well as free speech concerns. At the same time, producers of pornography have been quick to threaten to disclose the names and contact information of people they accuse of infringingly downloading or accessing their copyright pornographic works. Although they may publicly decry the social stigmas associated with pornography, many pornographers have been quick to leverage the shame and fear of disclosure that some pornography users feel for financial gain, using copyright law as their hammers.