

The psychology of nonconsensual porn: Understanding and addressing a growing form of sexual violence

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Abstract

As of 2020, legal protections for victims of image-based sexual abuse in the U.S. remain inadequate. For example, no federal law yet criminalizes the sharing of sexually-intimate material without a person's consent (i.e., nonconsensual porn), and existing state laws are patchy and problematic. Part of the reason for this problem may be that U.S. lawmakers and the general public have yet to grasp that nonconsensual porn is a form of sexual abuse, with many of the same devastating, recurring, and lifelong consequences for victims. This review of psychological research on nonconsensual porn includes frameworks for understating this image-based sexual abuse, correlates and consequences of victimization, victim blame, and the nature of perpetration. Then, we analyze U.S. laws on nonconsensual porn in light of this review, and argue for comprehensive legislative solutions.

Key words:

Nonconsensual porn; revenge porn; image-based sexual abuse; intimate partner violence; sexting; gender roles; sexual scripts

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Psychological science suggests U.S. laws criminalizing nonconsensual porn (“revenge porn”) fail to recognize its harms to victims. The U.S. must enact a comprehensive federal law protecting sexual privacy.

Highlights

- Psychology research characterizes nonconsensual pornography (NCP) as a form of gender-based violence and/or sexual abuse.
- NCP's harms to victims, as psychology research shows, are serious and long-lasting, including psychological, physical, economic, and social harms.

- According to research, motives to perpetrate NCP are varied and complex, including amusement and ‘status-building’ among men, sexual gratification, and causing distress.
- Many U.S. states have criminalized NCP, but these provisions largely fail to address the nature and harms of NCP: for example by requiring proof of motives to cause harm, and making the offence only a misdemeanour. No U.S. federal law criminalizes NCP.
- Legislation at the federal level covering the nonconsensual distribution of intimate material would provide essential protection and redress to victims of this growing form of sexual abuse.
- An ideal legal approach is to enact a federal law that protects sexual privacy in all its guises, including the non-consensual taking or sharing of intimate images, threats to share, voyeurism, upskirting, deepfakes, and sextortion.

The psychology of nonconsensual porn: Understanding and addressing a growing form of sexual violence

Image-based sexual abuse (IBSA) is defined as the nonconsensual creation and/or distribution of nude or sexual images and threats to distribute such images (McGlynn & Rackley, 2017). It takes many forms, from voyeurism and ‘upskirting’ (taking images up someone’s skirt without consent), to sexual extortion (‘sextortion’), to the nonconsensual distribution of sexual images, to the creation of ‘deep fakes’ (videos altered using AI technology),’ all of which are theorized to exist on a continuum with other forms of sexual violence (McGlynn, Rackley, & Houghton, 2017). All forms of IBSA are growing in prevalence globally (Henry et al., 2020), sounding alarms for human rights scholars and practitioners. Despite this, the U.S. does not yet have a federal law criminalizing all forms of IBSA, and some states offer victims no recourse whatsoever for behaviors like the nonconsensual sharing of sexual images (Cyber Civil Rights Initiative, 2020).

This paper aims to shed light on the psychology of nonconsensual porn (NCP), a common (Ruvalcaba & Eaton, 2019) and highly public (Heard, 2019) form of IBSA, for the purpose of recommending legal reform. The term ‘nonconsensual porn’ here refers to the sharing of nude or sexual images without a person’s consent (Citron & Franks, 2014), including threats to share without consent, but excluding commercially distributed pornography. Nonconsensual porn is an umbrella term that includes ‘revenge porn’ (a problematic media-generated label focusing on the paradigmatic case of a malicious ex-partner distributing images without consent), as well as the nonconsensual distribution of sexually explicit images for any other reason, such as profit, humor, or sexual gratification.

To support our recommendations, we first review psychological research on NCP, including frameworks for understating this form of abuse, correlates and consequences of

victimization, victim blame, and the nature of perpetration. Then, we review federal and international laws on NCP, and argue for comprehensive legislative solutions. Throughout, this paper aims to highlight the complex lived experiences of victim-survivors. In doing so, we hope to inspire politicians and practitioners to move beyond a unidimensional view of NCP victimization, to appreciate the full range of harms it causes (McGlynn et al., 2020) and move to enact comprehensive legislative solutions for this growing form of sexual violence.

Review of Psychology Literature on Nonconsensual Porn

To review the psychological literature on NCP, we used the multidisciplinary research database “ProQuest” to locate articles. We searched for peer-reviewed, English-language journal articles published as of May 1, 2020 used the following search string in ProQuest: "revenge porn*" or "nonconsensual porn*" or "non-consensual porn*" or "image-based sexual abuse" or "image based sexual abuse" or "image-based sexual assault" or "image based sexual assault" or "image-based sexual violence" or "image based sexual violence." This search generated 246 results.

The database of 246 articles was reviewed by hand to remove duplicates and items that were not peer-reviewed journal articles (e.g., book reviews, books, conference presentations, news articles), reducing the set to 158 articles. This set was cross-referenced with articles located in the PsychInfo database, which searches psychology literature. A PsychInfo search using the same search string and search limitations produced 23 results as of May 1, 2020, all of which were already included in our database.

These 158 journal articles were then coded for discipline, to locate those specifically using psychology theory and methods to understand NCP. Articles were initially categorized based on the self-described discipline(s) of the journal in which they were published. Most

journals fell into the category of law/criminology, consistent with findings from the systematic review of NCP knowledge by Walker and Sleath (2017). Very few articles were published in journals focused exclusively on psychology ($n = 7$ journals). Recognizing that psychology research is frequently published in interdisciplinary and topical journals, we moved to code each individual article for whether the article content was primarily psychological in nature. To do so, we used the American Psychological Association's definition of psychology as a "scientific discipline" that studies "the mind and behavior" (APA, 2020). We included empirical, theoretical, and review articles, as long as the primary level of analysis was the scientific study of human mind and behavior.

Using the above criteria, the first author reviewed all article titles and abstracts for a primary focus on using psychology to understand NCP. A second coder independently coded the articles using the same criteria. The coders agreed at an 88% rate, and all discrepancies were resolved through discussion. A total of 32 articles, published between 2014 and 2020, were coded as being (a) primarily psychological in nature and (b) with information on NCP. These 32 articles were used to inform the review below, and are noted in the references section with asterixis.

Names for and Prevalence of Nonconsensual Pornography

As noted by Maddocks (2018), research on NCP uses varying terms and typologies. In the current database of psychology articles, nonconsensual porn was described as a type of technology facilitated sexual violence (Pina, Holland, & James, 2017), image-based sexual abuse (Powell, Henry, Flynn, & Scott, 2019), sexual cyberbullying (Ehman & Gross, 2019), cyber abuse behaviour (O'Connor, Drouin, Davis, & Thompson, 2018), cyber-sexual violence (Cripps & Stermac, 2018), online sexual abuse (Lageson, McElrath, & Palmer, 2019) and more. The

specific act of nonconsensually distributing sexually-intimate images was referred to as nonconsensual pornography (e.g., Uhl, Rhyner, Terrance, & Lugo, 2018) as well as revenge porn (e.g., Gavin & Scott, 2019; Lageson, McElrath, & Palmer, 2019).

In terms of prevalence, in a study of 3,044 online U.S. adults, 1 in 12 (8%) reported having been victims of NCP at some point in their lives, and 1 in 20 (5%) reported having perpetrated NCP (Ruvalcaba & Eaton, 2019). When examining individuals who had ever been threatened or victimized with NCP, that number was even higher, at 1 in 8 (12.8%). This is consistent with research published in Australia, which found that nearly 1 in 10 Australians had a sexual or nude image of themselves distributed without consent (Henry, Powell, & Flynn, 2017).

Most research in our database reported higher rates of NCP victimization among women than men (Branch et al., 2017; O'Connor, Drouin, Davis, & Thompson, 2018; Ruvalcaba & Eaton, 2019) (for an exception, see Powell & Henry, 2019). Meanwhile, men were found to have higher rates of nonconsensual pornography perpetration than women (Dardis & Gidycz, 2017; Powell et al., 2019). Emerging adults (age 18-29; Powell & Henry, 2019), sexual minorities (Ruvalcaba & Eaton, 2019), those who sexted to multiple recipients (Englander & McCoy, 2017), and those who were pressured into sexting (Englander & McCoy, 2017), were also found to be at a heightened risk for NCP victimization. In a meta-analysis on emerging adults, for example, 15% reported having participated in the nonconsensual forwarding of sexts (Mori et al., 2020).

Psychological Frameworks for Understanding Nonconsensual Pornography

Included in our dataset was a systematic review of the broader literature on NCP, including legal, theory, and psychology papers (Walker & Sleath, 2017). This review recognized NCP as a form of gender-based violence that should be considered on a continuum of sexual

abuse (Walker & Sleath, 2017). Consistent with this depiction, one psychological framework used to understand NCP was the Power and Control Wheel (Eaton et al., 2020), which describes tactics abusers employ to maintain power and control over victims. In an analysis of 5 years of published U.S. news articles on NCP, Eaton and colleagues (2020) concluded that NCP has been perpetrated in intimate relationships using all eight of the abuse metatactics in the Power and Control Wheel, with the three most common being emotional abuse, coercion and threats, and denial/blame/minimization. This work established that NCP in intimate relationships can be characterized as IPV (intimate partner violence). However, while NCP appears to most commonly occur in current or former romantic relationships (Branch et al., 2017), that is not always the case, perhaps especially for children and adolescents who may send intimate images to friends or people they declined to date (e.g., Englander & McCoy, 2017; Kopecký & Szotkowski, 2018).

Other psychological frameworks used to describe or examine NCP included gender roles and sexual scripts (Hall & Hearn, 2019; Henry & Flynn, 2019; Scott & Gavin, 2018; van Oosten & Vandenbosch, 2020), relational aggression (Faucher, Jackson, & Cassidy, 2014), social norms theory (Ehman & Gross, 2019), objectification theory (Uhl et al., 2018), and individual difference theories that hypothesized empathy deficits among perpetrators (Faucher et al., 2014; Pina et al., 2017). Gender role and sexual scripting theories were the most commonly used frameworks, consistent with the characterization of NCP as a gendered form of sexual violence. However, there was also evidence for non-gendered approaches to NCP. In a review of cyberbullying among university students, for example, Faucher and colleagues (2014) noted some same-gender targeting of behaviors like NCP, lending preliminary support to a relational aggression perspective in which the purpose of NCP can be to disrupt inclusion or social status.

Additional psychological theories may be fruitful in understanding NCP perpetration and victimization, such as cultivation theory (Gerbner & Gross, 1976), social learning theory (Bandura, 1977), and intersectionality theory (Cole, 2009; hooks, 1984). While multiple theories are likely required to fully understand the nature of NCP, the present set of papers made it clear that nonconsensual use of sexual images must be conceptualized as a separate phenomenon from sexting (Krieger, 2017). Further, authors in our database argued that continued theoretical development and testing is key to NCP prevention and response efforts (Backe et al., 2018; Starr & Lavis, 2018).

Correlates and Consequences of Victimization

According to the papers in our dataset, NCP can be emotionally, socially, economically, and physically traumatic for victims (Backe et al., 2018; Powell & Henry, 2019). Though not causal proof, NCP victims have worse mental and physical health than non-victims (Ruvalcaba & Eaton, 2019) and report PTSD symptomology (Bates, 2017). In 75 interviews with victims, they report social rupture, constancy (i.e., “a level of permanence which affects everything”), existential threat, isolation, and constrained liberty; threats to share images without consent are particularly identified as paralyzing and potentially life-threatening (McGlynn et al, in press). In another study with 64 (mostly women) participants who experienced “online revenge porn,” half used self-harm to alleviate negative feelings or thoughts related to their victimization (Short et al., 2017). These participants also reported feeling distant and cut off from others as a result of their victimization (40%) and indicated that it had damaged their relationships (38%).

The threat of the abuse re-emerging also causes victims to report constant apprehension across time and space (McGlynn et al., in press). As one victim noted “[It’s] having this continuing threat that the images could be re-shared, or re-emerge online, that new people could

see these intimate images. ... And I think it's the unknowing; that not knowing aspect that you have to deal with every day" (McGlynn et al., in press). Victims describe that this leads them to be hyper-vigilant in online and offline interactions, overanalyzing social interactions, checking the internet and their social media obsessively, etc.

Importantly, the studies in our dataset relating NCP victimization to health and well-being are either qualitative (e.g., Bates, 2018) or cross-sectional (e.g., Ruvalcaba & Eaton, 2019), meaning that caution should be taken when inferring causality. It may be, for example, that poor health makes individuals more vulnerable to NCP victimization by way of abusers targeting afflicted individuals. Alternatively, some third variable (e.g., verbal coercion in intimate relationships) may be causing victims to both have poor health and to be subject to NCP victimization. Some of the studies in our dataset attempted to partly address this issue with methodological devices, though none enabled the causal confidence of randomized controlled experiments. For example, Ruvalcaba and Eaton's cross-sectional survey (2019) asked participants about their health status before asking about their experience with NCP to guard against the possibility of memories of NCP victimization affecting perceptions and reports of well-being.

Victim Blame

Victim blame and minimization were common themes in the psychological literature on nonconsensual porn (Krieger, 2017). Law enforcement, the general public, and the media reportedly stigmatize and blame victims of NCP for their own victimization (Gavin & Scott, 2019) saying, for example, that the victim should never have taken or sent the intimate image(s) in the first place (Arora & Scheiber, 2017). Indeed, in interviews with 70 Canadian police

officers and two focus groups, police often did not view non-consensual intimate image sharing as sexual violence (Dodge & Spencer, 2018).

Additional research finds that victims are more often blamed when their images originated in a short-term (vs. longer-term) relationship (Starr & Lavis, 2018), while others find no relationship between victim blame and relationship length (Bothamley & Tully, 2018). Males (Bothamley & Tully, 2018) and individuals without sexting experience (Scott & Gavin, 2017) tend to blame female victims of NCP more. Males also favor criminalization of NCP less than women do (Lageson, McElrath, & Palmer, 2019). Finally, qualitative research finds that third-party viewers of nonconsensual porn are unlikely to advocate for victims even when they are aware the images are nonconsensual (Harder, 2020); instead, they manage their conflicting emotions by “surface acting,” or altering their expression of their uncomfortable feelings to implicitly support the person sharing the NCP (Harder, 2020).

Because of the stigma associated with being seen in the nude, semi-nude, or in sexual situations, especially for women and young people, victims tend not to seek help (e.g., Ruvalcaba & Eaton, 2019; Thomas, 2018). NCP victims can internalize the blame that society places on them for their own abuse, leading to self-blame (Bates, 2017). This can further inhibit help-seeking and exit from abusive relationships.

The Nature of Perpetration

Motivations for nonconsensual pornography perpetration vary. NCP can be distributed as a form of punishment or control by a partner (Uhl et al., 2018). For example, in an analysis of men’s electronic texts accompanying their posting of explicit images on MyEx.com, the male perpetrators justified posting NCP for reasons such as the partner’s committing infidelity,

passing on an STD, stealing money or children, etc., constructing the act as a legitimate form of interpersonal revenge (Hall & Hearn, 2019).

In another study of perpetrators, high levels of the Dark Triad traits (with Machiavellianism, narcissism, and psychopathy analyzed separately) and ambivalent sexism (with hostile and “benevolent” sexism analyzed together as a single construct) are positively linked with the behavioral propensity to perpetrate NCP (Pina et al., 2017). Another motive for NCP, as seen in research on 77 high-volume online websites, was sexual gratification and proving masculinity to a peer network, rather than revenge against the person depicted in the image (Henry & Flynn, 2019). Pornography use and instrumental attitudes toward sex were also significant predictors of adolescent boys’ willingness to perpetrate nonconsensual porn (van Oosten & Vandenbosch, 2020).

In sum, these psychology papers positioned NCP as a form of violence or sexual abuse. However, public discourse on NCP does not always do the same (Wells, 2019), downplaying the potential harm NCP causes to victims. The majority of papers also supported the conceptualization of NCP as a form of gender-based violence, most often perpetrated by men on women, and most often in the context of a current or former intimate partner relationship. Like other forms of gender-based violence, women victims were blamed for their victimization, and men took NCP less seriously than women. The harms reported by victims described in our database were serious and long-lasting, including psychological, physical, economic, and social harms. Threats to share images without consent were identified as potentially life-threatening and deeply harmful. Motives for perpetration varied considerably across and within studies, from sexual gratification, to amusement and status-building, to intent to punish the victim.

Criminalizing Nonconsensual Porn

Due to the activism of victims and their supporters in naming these harms, raising awareness, and demanding action, over the past few years many countries have introduced criminal laws targeting some forms of NCP (Neris et al., 2015; Nigam, 2018). This turn to the criminal law is due to its powerful, expressive role. The criminal law can send a clear message of condemnation, act as a deterrent, punish demonstrably harmful behavior; provide a sense of justice and redress for some victims; and it can provide the foundation for educative and preventative action (Citron, 2019; Citron & Franks, 2014; McGlynn & Rackley, 2017). It can also send a positive message, one that recognizes rights to sexual autonomy and sexual expression (Citron & Penney, 2019). In this way, the criminal law provides a vital foundation for any strategy to combat NCP.

Nonetheless, criminalization comes with risks. There are dangers, for example, that victims' experiences may be co-opted in the service of other, more concerning state aims involving censorship or curbing political activism, a particular concern when regulating 'deepfakes' (Chesney & Citron, 2019). Enforcement has challenges; for example in Uganda, criminal laws ostensibly protecting women against NCP have been turned against them in a move to repress women's sexual expression (Prudence, 2019). Elsewhere, including the U.K. and U.S., where disproportionately high numbers of men from marginalized communities and ethnic and racial minority groups are incarcerated (National Research Council, 2014), care must be taken that laws seeking to challenge the abuse of women are not used to exacerbate existing inequalities.

While such cautions must be borne in mind, it remains the case that a comprehensive, coherent and effective criminal law – informed by victims' experiences – provides the most

effective foundation for challenging NCP. As Franks has argued, the “benefits in criminalizing nonconsensual pornography outweigh the costs” (Franks, 2017, p. 1308).

US criminal laws

Accordingly, over recent years, an increasing number of U.S. states have enacted specific criminal laws targeting some forms of NCP; to date, 46 states, the District of Columbia, and one territory (Cyber Civil Rights Initiative, 2020). Despite these welcome measures, there remain many gaps in provision and inconsistencies across states (Citron, 2019). Further, there is no federal provision directly covering NCP.

Cole and colleagues’ study of NCP legislation in the US identified the many differences and inconsistencies between state laws, including considerable divergence on definitions of consent (Cole et al., 2020). Other states limit protection to only those whose images were taken without consent; thus excluding images that were originally shared consensually and selfies (Cole et al., 2020; see also Najdowski 2017). This writes victim-blaming into the law and fails to focus on the nature of the offence which is the breach of privacy through non-consensual *sharing*.

There are also considerable differences in definitions of sexual or intimate image, leading to considerable variations in the scope of the laws. Problematically, over two-thirds of statutes examined required the victim to be identifiable in the images or recordings, with some such as Illinois permitting the identification to be from information displayed in connection with the image (Cole et al., 2020). Without this caveat of connecting information, such an identification requirement considerably limits the scope of such measures and fails to recognise that being unidentifiable to a stranger does not reduce the harm. Where images are distributed across the internet, for example, the harm is amplified, as victims in psychology research say, each viewing

can be experienced as abuse (Bates, 2017; McGlynn et al., in press); it matters little that the strangers viewing these images are unaware of the particular identity of the victim. Conversely, some state laws fail to understand that the harms are not only perpetrated online, with Maryland, for example, only including material posted on the internet, thus excluding distribution via emails or texts (Citron, 2019). Indeed, psychology research finds that text message is the most common way that NCP is disseminated (Eaton, Ruvalcaba, & Jacobs, 2017).

Of further concern is that just over half of current laws require proof of a perpetrator motive to cause harm, variously defined as including intentions to humiliate, degrade, offend, harass, intimidate, terrify, etc. (Cole et al., 2020). These motivation requirements impose a high threshold on prosecutions, with research from countries with similar provisions such as the UK finding that this hinders prosecutions (McGlynn et al., 2019), as well as adding a level of confusion regarding the interpretation of the different motive requirements (Franks, 2017). They are out of line with other criminal laws which in general do not require proof of particular motives, and out of step with the psychology literature, which finds a variety of motives undergird the perpetration of NCP (Henry & Flynn, 2019). Further, they mischaracterize the offence as one of harassment, rather than breach of privacy (Franks, 2017; Citron, 2019). Some laws also require proof of specific harms being caused to victims: North Dakota, for example, requires proof that the non-consensual distribution results in ‘actual emotional distress or harm’ (Najdowski, 2017, p. 159). Such a prerequisite not only further invades the privacy of a victim, by requiring proof of particular conditions, but also sends a normative message that there is only one appropriate response from victims to this behaviour (Gavey & Farley, 2020).

Cole and colleagues conclude that current U.S. laws “vary drastically across states” (Cole et al., 2020, p. 11). The different framings of these provisions, such as forms of harassment or

breaches of privacy, is potentially confusing to victims and criminal justice personnel (Najdowski, 2017). Some provisions risk blaming victims for the harms (Cole et al. 2020). This gives further legitimacy to the consistent victim-blaming shown in our review of psychology literature (e.g., Gavin & Scott, 2019), with implications for victims' help-seeking (e.g., Ruvalcaba & Eaton, 2019). Further, there are also significant gaps in coverage, particularly around the growing problem of deepfakes (Citron, 2019) and threats to distribute images without consent.

Towards a Comprehensive criminal law response

While reforms to individual state laws are necessary and urgent, action at the federal level is required in order to recognize properly the growing evidence base on the harms and impacts of NCP. Two particular approaches merit attention: first, a federal law criminalising all forms of nonconsensual distribution of intimate images (Franks 2017); and, secondly, a broader approach covering all breaches of sexual privacy (Citron, 2019).

In relation to U.S. federal legislation, bills have been proposed in both the Senate and the House of Representatives that would criminalize the disclosure of intimate images without consent (Franks 2017; Citron 2019). The proposed SHIELD Act recognizes the right to privacy regarding sexual information, criminalizing the non-consensual disclosure of sexually explicit material, with exceptions for lawful purposes and disclosures in the public interest. The legislation would address the unnecessarily high thresholds and limited scope of many of the existing state laws, as well as providing greater clarity (Franks, 2017). Further, even if all state laws were more effective, there would still be a need for a federal law to provide a “single, clear articulation of the relevant elements of the crime” (Franks, 2017, p. 1293).

While federal legislation criminalizing the nonconsensual *distribution* of intimate material would represent a considerable step forward, a more comprehensive approach is to protect sexual privacy in all its guises, covering all forms of the non-consensual taking or sharing of intimate images including nonconsensual porn, voyeurism, upskirting, deepfakes and sextortion (Citron, 2019). Instead of the current ad hoc approach, only tackling these harms in isolation, this more comprehensive approach could help to future-proof the law, being flexible to adapt to the ways that technology will be used to harm and abuse in the future. In terms of framing and understanding these behaviours, introducing a law protecting *sexual* privacy would also be better attuned to victims' experiences who report experiencing these harms as forms of sexual assault, with some countries recognising this offending as a sexual offence. Any potential law reform must also address the common use of threats to distribute intimate images without consent, experienced as a significant harm.

Beyond the criminal law

While the criminal law is a vital foundation for action, it is only ever the first step. Victims should also be able to access a range of legal options, including civil laws enabling them to hold perpetrators and internet companies to account. Many existing laws have been used to provide redress, from compensation, to getting images taken down, to preventing distribution without consent and innovative use of copyright laws. Also, some countries and states, when enacting new criminal laws, are also taking the positive step of including civil law actions, including in New York (Prudenti, 2019), Illinois (Cox, 2019) and some Canadian states (Bartlett, 2018). Beyond the law, support for victims, particularly in getting images removed from the internet, is vital. Many non-profit organizations provide such advice and support, with some

governments going further and providing funded organisations tasked with providing these services, such as the eSafety Commission in Australia (McGlynn et al., 2019).

Conclusions

While recent legislative action by many states represents a welcome first step in tackling NCP, current laws fail to recognize the empirically-demonstrated nature and seriousness of the harms, nor provide victims or criminal justice personnel with clarity and consistency of approach. As a wealth of psychological literature now demonstrates, the prevalence, harms and motivations for NCP must be recognized in legal responses. A comprehensive approach, criminalizing all forms of the nonconsensual creation and distribution of intimate images, including threats to distribute and altered, ‘deepfake’ images, is essential. Such action would provide a foundation for bespoke support responses, as well as carefully-crafted educational and prevention programs. Finally, as the evidence grows of ever-rising levels of online abuse, extortion, and harassment in the light of COVID-19 (e.g., Federal Bureau of Investigations, 2020), it has never been more urgent to take federal measures to challenge and tackle NCP and its pernicious harms.

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