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Panel today in DC on "The Legal Underpinnings of Digitally Exposed Private Images and What Congress Needs to Know"

By David Post
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The Advisory Committee to the Congressional Internet Caucus – which is not, as you might think, an actual Congressional "caucus" but rather a private sector, public interest group that sponsors debates and discussions about critical Internet policy issues for Congress, Congressional staff, and the public – is holding a panel discussion today (at which I'll be one of the panelists) on the question of what (if anything) is to be done about the Internet distribution of private, sexually-revealing photographs or information. It's open to the public, at noon in Room 2237 of the Rayburn House Office Building on Capitol Hill. From the description:

"Hunger Games" Actress Jennifer Lawrence stated in November's Vanity Fair that exposure of her personal nude photos was a "sex crime." Was it? If not, what kind of legal recourse does Jennifer Lawrence — or an everyday American citizen like you — have against hackers and web sites that peddle such photos? Today's digitized era raises new, complicated questions regarding non-consensually shared private photos. What are the legal and social underpinnings in scenarios spanning from hacked private photos and revenge porn, to "upskirt" photos taken in public areas? Should American citizens hold certain privacy expectations and if so, what are they? Our panel will look into these questions and more. Please join us.

It sounds more sensationalized than it is likely to be – I expect a pretty sober discussion and a sober crowd. At least I hope so, because behind the sensationalizing, there are really some very important legal issues here that I hope we get to touch on: the first being whether, even if Congress were of a mind to regulate activities like this, it could do so in a manner that would survive First Amendment scrutiny (which previous Congressional attempts at Internet pornography regulation have not succeeded in doing).

And second – and in a sense, more pressing, because much more likely to survive any kind of constitutional challenge: Should the operators websites or other online facilities who make this stuff available lose their immunity from tort liability that they currently enjoy under section 230 of the Communications Decency Act? [My own position on that is a very definite "No they should not . . ." Sec. 230, enacted in 1996, has proven to be a truly remarkable legislative achievement; it is impossible to image the spectacular growth in "user-generated content" sites and services, from Facebook to Tumblr to YouTube to Reddit to Craigslist to Twitter to . . ., in

its absence, given the risk of potentially crushing tort liability that would result from allowing millions of users each day to upload content of their choosing. Tinkering with it will open the floodgates of exceptions and exemptions, and would be a very bad idea . . .]

If you're in the neighborhood, drop by -

David Post taught intellectual property and Internet law at Georgetown Law Center and Temple University Law School until his recent retirement. He is the author of "In Search of Jeffersons Moose: Notes on the State of Cyberspace" (Oxford, 2009), a Fellow at the Center for Democracy and Technology, and an Adjunct Scholar at the Cato Institute.