

# EXHIBIT 1

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**PUBLISHER DEFENDANTS' MOTION *IN LIMINE*  
TO PRECLUDE PLAINTIFF FROM CALLING GAWKER'S  
GENERAL COUNSEL AS A TRIAL WITNESS**

# Hulk Hogan sex tape trial could destroy Gawker



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By Tom Kludt @tomkludt



A lurid sex tape. A bombastic cultural icon. An upcoming court battle that could reveal even more salacious details.

It sounds like the type of story that Gawker might cover with gusto. This time, however, the gossip site finds itself a central player in the tawdry tale.

For more than a decade, Gawker.com has proudly courted controversy with unmerciful coverage of Hollywood celebrities and New York media elites.

But a \$100 million lawsuit, set for trial next month in Florida, is enough to make anyone a bit nervous, even Nick Denton, the swashbuckling Gawker Media founder.

Three years ago, a former Gawker editor-in-chief published a post headlined, "Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway." A 30-minute DVD had come from an anonymous source and what appeared online was edited down by Gawker to about a minute-and-a-half.

The tape, which was recorded in 2006, showed Hulk Hogan (real name: Terry Bollea) having sex with Heather Clem, who was married at that time to radio host "Bubba the Love Sponge Clem." Another man's voice, which many people believe is Bubba, can be heard in the recording. Hogan and Bubba were close friends before the sex tape leaked and the two men had a falling out.

After legal wrangling, Gawker was forced to remove the video. But Gawker refused to delete an article accompanying the footage and the story still exists on the site today (it has racked up more than 5 million clicks). Gawker's bid to get the case tossed failed and a jury trial is now set to begin July 6 in St. Petersburg.

Charles Harder, who is Hogan's lead trial counsel, said that Denton had received two cease and desist demands the day after the video was published. "Denton ignored those demands, and allowed the video to continue playing," Harder told CNNMoney. "Denton has only himself to blame."

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**What each side is saying:** There is one central question that the jury will have to answer: Was the sex tape newsworthy? Florida law permits the publication of private material if it pertains to a matter of "legitimate public concern."

"Despite all attempts by the Gawker Defendants to obscure it, the law is clear that pornographic footage taken from sex tapes is the quintessential example of speech that is not a matter of legitimate public concern," Harder wrote in a recently filed brief.

Gawker counters that Hogan made his sexual exploits a public matter, noting his appearances on Howard Stern's radio program and elsewhere during which he delved into lurid details from his personal life.

During a 2011 interview with Stern, Hogan said flatly that he would never have sex with Heather Clem. "Man law, brother," Hogan told Stern. "Even if they were divorced for 10 years." In the same interview, Hogan opened up about the sexual chemistry with his wife.

Gawker is also highlighting the fact that the existence of the sex tape had been the subject of several news reports before it was posted on the site in 2012.

"It's difficult to think of a huge news story about a celebrity or a politician or someone people care about that didn't involve some information that that person did not want disclosed," Gawker president and general counsel Heather Dietrick told CNNMoney. "That's the job of a journalist."



ANDREW HARRIS/REUTERS

**The stakes:** Hogan is seeking \$100 million in damages, a penalty that could bring Gawker to its knees. Denton has been characteristically candid about the threat against the company, telling The New York Times, "We don't keep \$100 million in the bank, no."

If it were to lose in court and have to pay in full, Gawker might be forced to do something it has managed to avoid throughout its existence: rely on outside investors to keep the company humming.

The case could also hold implications for the First Amendment, with some in the legal community leery over the idea of a story's news value being determined by jurors, not editors.

But Harder, Hogan's attorney, asserts that the case poses "no potential danger whatsoever to the First Amendment."

"The First Amendment has limitations," Harder said. "In Florida, it is a crime of video voyeurism to film someone naked without their permission, or to publish that footage. Doing so is against the law and not protected by the First Amendment."

**Outlook:** Denton isn't ruling out a "disaster" scenario for the site. He has acknowledged that the jury, plucked from the Florida community that Hogan calls home, might well be unsympathetic to a sensationalist digital tabloid based in Manhattan and built on snark.

CNNMoney (New York) June 18, 2015: 2:34 PM ET

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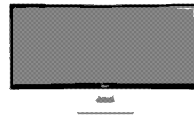
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