

EXHIBIT B

The price of free journalism



Nick Denton
6/12/15 9:52am

The free press is prized in theory, constitutionally protected in this country and elsewhere because of its value to society — and unpopular with public figures who are exposed or embarrassed by its work. As a business, media carries the usual risks, vulnerable to recession and changes in technology, and a special danger, which Gawker Media is now facing.

The Hogan lawsuit — which concerns a true but embarrassing story published by Gawker in 2012, and a swingers' circle in the wrestler's home town a few years before — is actually coming to trial, probably on July 6th. We win the argument eventually, but in the first round, the celebrity has a home-court advantage.



Why Hulk Hogan Is Likely to Lose Sex Tape Lawsuit Against Gawker (Analysis)

The former wrestler and TV reality star hasn't shown off any good legal moves in this case.

As I said to Peter Sterne of Capital: *I have a simple editorial litmus test, which is: is it true, and is it interesting? The interest in is in proportion to the gap between the story that a brand or a celebrity brand is telling and the reality. The more the gap, the more interesting it is. Here, there was a gap between [Hogan's] rather boastful sexual persona that was on display in these radio interviews and elsewhere and the real story, which made it interesting.*



Gawker in the fight of its life with Hulk Hogan sex-tape suit

These cases are almost always settled, even if the law and the truth are on the side of the journalist as they are in this instance. To confirm the primacy of the First Amendment can take years and millions of dollars. Even the outside chance of a defeat in the first round is an unbearable risk.

I should make it clear: we would have settled too, in the interest of fighting another day, if Hogan's demands were reasonable and the story flawed in any way. But now that the trial is on, we intend to fight it as far as we need to and we can.

I told the company all-hands last week, in an average year, the chance of disaster, some conjunction of events that would compromise the company's independence and journalistic purpose, is about 1 in 50. I'm going to reuse a phrase from that meeting. We are currently at *heightened risk levels*. If you want a number: internally, we reckon about 1 in 10.

Being a tight community of free writers, independent as a company and committed to putting out the real story, Gawker Media can bear a higher level of uncertainty than most. I believe it's more likely than not we emerge tested and stronger, clear in our responsibility to readers and the values of our writers' profession. Without someone actually having the gumption to fight these cases, journalists might as well resign themselves to a role as liaisons for PR people and stenographers for celebrities.

In the interview in Capital New York, which went up this morning, Heather Dietrick of Gawker said: *“Once you see that that topic is a matter of public concern, the law does not allow a judge or the plaintiff or the subject of the story to come along with a red pen and say, ‘I didn’t really like the way you said it here. I didn’t like the way you added this source material. I would’ve done this part differently.’ You don’t get a line item veto, basically. The journalist has freedom and the organization has freedom to write about that topic as they see fit.*

This is an opportunity to tell our own story, our own real story, to a wider group of people. They may not be familiar with us. They may have preconceptions about New York media or the internet in general. On the other hand, there’s widespread distrust of the spin put out by celebrities, publicists, and the media they largely control — and an appetite for the real story, the story behind the story, which is Gawker’s specialty.

Heather Dietrick, Gawker’s President and General Counsel, says: *I think as a common-sense matter, they’re going to see that, see what he’s talked about in the past. He’s talked about really, really graphic details of his sex life, again and again and again, including on the shock jock’s show. These are practical people. I think they’re going to see through him and say, ‘Give me a break. Take responsibility for what you did here.’*

Above all, this is an opportunity to reaffirm the legal protection for free expression and the free press, in an age of ubiquitous marketing and spin. I didn’t really want to be this generation’s Larry Flynt, but the law is made by stories like this and cases like this.

This story was not the Pentagon Papers. Most stories aren’t. But it was true and interesting, and clearly within the law. As I told Capital: *The story was a real sober take on a version of events that [Hogan] had been talking about. If you don’t defend that, then what do you defend? You might as well just take the First Amendment and tear it up.*



Graby Sauce · Nick Denton
6/12/15 11:05am

This is the first that I’ve heard Gawker’s rationale that you posted the sex tape because Hogan had talked about his sex life publicly before. I don’t believe the court will buy that argument. We talk about sex, bowel movements, and menstrual cycles, too, but most people don’t think talking about these private acts publicly opens the door to having film of us in our bathrooms on the toilet taking care of business.

‘Give me a break. Take responsibility for what you did here.’


What he did here? He had consensual sex. Does Gawker think he’s Hester Prynne and needs to wear a scarlet letter “A” on his forehead? When did Gawker become adult sex shamers?

You probably will eventually win this case, but as I said then, having the *right* to do something doesn’t mean you *should* do something. Hulk Hogan is a pretty innocuous part of American culture. He didn’t hurt anyone by having consensual sex with a willing adult. He didn’t rape a child. He isn’t a politician trying to take away the right of other consenting adults to have sex. There really was no journalistic reason, no “truth” to out by posting this sex tape.



TheLongtimeLurker · Graby Sauce
6/12/15 11:18am

Excellent points, I never really got their rationale for posting it. Particularly considering Gawker’s subsequent position on the leaked celebrity iCloud pics, I’m not really sure how this adds up.

 MichaelJeter · Graby Sauce
6/12/15 11:21am

*You probably will eventually win this case, but as I said then, having the *right* to do something doesn't mean you *should* do something.*


The purpose of our justice system isn't to determine whether one *should* do something, it's precisely to determine whether one has the *right* to do it. Gawker will win eventually, but if the cost of an appeal forces it to irrevocably alter its business structure, that will be a deep injustice, much graver than any Hulk Fucking Hogan can claim.

Also, you left out an absolutely crucial part of Gawker's rationale (from the Capital story, emphasis mine):

*With the sex tape, though, Gawker did expose some lies. After the video had been recorded in 2006, but before Gawker published its post in 2012, **Hogan had said in an interview that he would never sleep with Clem.** Once screenshots of the video were published in early 2012, **many speculated online that Bubba had set up the cameras in order to catch Hogan and Clem cheating.** Gawker's publication of excerpts of the sex tape, which revealed that Bubba had encouraged Hogan and Clem to have sex, **refuted both of these false narratives.***

Despite the fact that it centers on a pro wrestler's sex tape, this is clearly journalism protected by the first amendment. It exposes the truth about a public conflict between two public figures. Figures who had themselves discussed the dispute publicly.


However tawdry, there was indisputably "truth" to out by posting this sex tape.

 mahones22 · MichaelJeter
6/12/15 11:30am

One would expect some of that rationale to have been part of the original post though, right? But it wasn't. Here's the original post:


"Because the internet has made it easier for all of us to be shameless voyeurs and deviants, we love to watch famous people have sex. We watch this footage because it's something we're not supposed to see (sometimes) but we come away satisfied that when famous people have sex it's closer to the sex we as civilians have from time to time. Meaning: it's hardly ever sexy the way we expect it to be sexy, even when the participants are ostensibly more attractive than the majority of our sex partners will be."

The idea that Gawker was trying to "out some truth" by posting this sounds like ex post facto bullshit that was cooked up when they got sued. Not that I think Hulk Hogan should win this lawsuit, but I have a hard time believing AJ Daulerio originally posted this to undermine Hulk Hogan's prior comments about his sexual prowess. As opposed to, you know, watching Hulk Hogan fuck.

 Graby Sauce · MichaelJeter
6/12/15 11:37am


When it was posted, Gawker didn't claim the "lies" were the rationale for posting the video. The rationale was, "OOOOH!! WE FOUND A HULK HOGAN SEX TAPE!!!" Speculation about how it all came together happened after they had the tape.

Again, I'm not disputing whether they have the right to post the tape. I simply don't think it was necessary to harm someone who 1) engaged in consensual, adult sex, and 2) had no idea he was being filmed.

 **MichaelJeter** · mahones22
6/12/15 11:40am


That's fair, and you're right that I don't presume that Daulerio had any high-minded purpose for posting the video.

But that still doesn't make Gawker's current position in the lawsuit "ex post facto bullshit," in my mind at least, because the rationale isn't to explain why it was published, but rather why Gawker, as media outlet, had and has *a right* to publish it. And it should be noted that Hogan didn't just challenge the publication of the video, but also Daulerio's written description of the video, which is even more clearly bullshit, as explained better than I could here.

 **gramercypolice** · Graby Sauce
6/12/15 12:10pm


They don't have to make that claim in the original post. The law doesn't say you can only exercise free speech if you explain why you're doing it at that time, in a manner that satisfies the aggrieved. By that yardstick, a lot of publications would be sued by a lot of people, and those people would win. I'm not even sure how you can make that assertion with a straight Kinja. It's wildly flawed on its face.

I simply don't think it was necessary to harm someone who 1) engaged in consensual, adult sex, and 2) had no idea he was being filmed. It wasn't 'necessary'. In Gawker's estimation, though, it was newsworthy.


 **Fuzzy Dunlop** · gramercypolice
6/12/15 12:24pm

Graby Sauce has repeatedly stated that she is not disputing that Gawker had the legal right to post the tape, she is only questioning the morality of that decision.

That you and others keep responding to her by saying "it was legal" misses the point, and demonstrates that you are incapable of mustering any defense for Gawker on the moral issue.

 **mahones22** · MichaelJeter
6/12/15 12:31pm

I agree that it's about why they have a right to post it (which they did), and I agree that nobody is required to have a legal rationale for publishing included in the original post. But this notion that Gawker was somehow speaking truth to power or breaking some critical story ("Hulk Hogan said he wouldn't fuck his friend's wife, but he did and here's the proof!") by publishing this video? I don't have time to find a GIF of a chimpanzee masturbating, but that would accurately convey my thoughts on that claimed rationale.

 **gramercypolice** · Fuzzy Dunlop
6/12/15 12:37pm

Nobody says it was 'necessary'. That's her yardstick. Necessary. The fact that you're not reading the comments all the way through isn't my fault. This is a lawsuit. A lawsuit. It's not an argument over what constitutes good taste in the mind of Fuzzy Dunlop. It's not determined by what someone 'should have'

done to placate your or Graby Sauce. You're welcome to your opinion, but don't conflate 'necessary' and this case. Everyone else is saying that what you think is 'necessary' is fascinating to you and you alone, but completely irrelevant in this case and the legal proceedings. If you want to concede that you're just mad because you didn't like the post, that's fine. Do that. But don't start acting as if the people discussing the issues surrounding a lawsuit are somehow missing the moral issue, or that you hold some moral high ground.

The moral issue is, what does the Constitution require and what does it protect? Gawker has explained its position and its motivations. You don't like that? Fine. Just say that. Debating whether someone 'should have' posted something years ago is not the best use of your time or anyone else's. It's done. The question now is not, can we go back in time and make you happy? We can't. You're going to have to be unhappy and live with that. The question now is, however, what are the legal implications of this case? Most people are talking about that. The fact that you would rather lecture me on what you think is acceptable and newsworthy holds very little interest for me. Look, I'm not thrilled they keep posting shit about 'Aloha'. What I don't do is waste my time lecturing the writers for doing that.



Fuzzy Dunlop · gramercypolice
6/12/15 12:43pm

This is a lawsuit. A lawsuit. It's not an argument over what constitutes good taste in the mind of Fuzzy Dunlop. It's not determined by what someone 'should have' done to placate your or Graby Sauce.

Again, you are ignoring that Graby Sauce's initial post, which is what we are responding to, *was not talking about the lawsuit*. None of us are talking about the lawsuit except for you! We are talking about whether Gawker was *right* — morally, not legally — to post the video! Guess what — we are free to discuss that! It is a free country!

You are insisting that we can only talk about the legalities, when none of us are disputing the legalities! It is quite annoying.



gramercypolice · Fuzzy Dunlop
6/12/15 12:51pm

"I don't believe the court will buy that argument."

Gosh, I'm sorry. That sounds like someone talking about a legal matter. Silly me.

Here's a tip: Read first. Then reply. Or don't reply at all. But either way, read first.



Fuzzy Dunlop · gramercypolice
6/12/15 12:59pm


"I don't believe the court will buy that argument."

Gosh, I'm sorry. That sounds like someone talking about a legal matter. Silly me.

Why don't you read on a little bit.

"When did Gawker become adult sex shamers? You probably will eventually win this case, but as I said then, having the *right* to do something doesn't mean you *should* do something. . . . There really was no journalistic reason, no "truth" to out by posting this sex tape."


This is the part that some of us are trying to discuss, despite your confusing insistence on changing the subject.

 JohninLA · Graby Sauce
6/12/15 1:24pm

*having the *right* to do something doesn't mean you *should* do something.*


We're debating the First Amendment here. I don't think you're advocating that the law ought to prescribe in the language of "shoulds," yet I can't fathom any other reason why you'd write what you did.

Don't get me wrong, I thought posting the video was in poor taste too. But thankfully, we generally don't legislate based on subjective matters of taste.


 JohninLA · Graby Sauce
6/12/15 1:37pm

When it was posted, Gawker didn't claim the "lies" were the rationale for posting the video. The rationale was, "OOOOH!! WE FOUND A HULK HOGAN SEX TAPE!!!"

I'm not sure what your media diet's composed of, but outlets generally don't post their rationale for running a story alongside the story itself. You don't see the NY Times editors appending pieces with "we felt this was newsworthy because..." excepting the occasional response to the public editor in the wake of something controversial.


 Bronze Helmet · Fuzzy Dunlop
6/12/15 3:31pm

People are confusing criminal and civil law.

 Fuzzy Dunlop · Bronze Helmet
6/12/15 3:47pm


Actually you're mistaken here. The First Amendment is a defense to civil "right of publicity" claims. There is a large, disparate body of case law on it and there is no way to sum it all up in one sentence, but essentially if the use of someone's image is sufficiently newsworthy/expressive/etc. etc. (and the bar is not very high) it trumps that person's right to restrict the use of their image.

Long story short, it's not a sure thing, but Gawker has a pretty darn good legal defense. Morally not so much.

 Conservatarian · Nick Denton
6/12/15 11:38am

Take responsibility for what you did here.

Hilarious. Take responsibility. For what? Having sex and having his shit blown up all over the internet? Hogan's a tool, but I hope they award him every last dollar. Also - you're not Larry Flynt. And you seem to have an odd recollection of what Flynt actually did.

 DennyCrane · Nick Denton
6/12/15 1:19pm

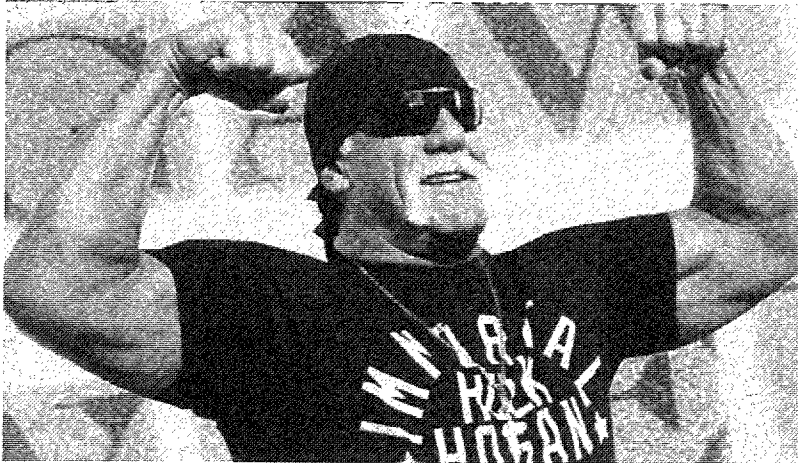
If you haven't already, go read the Capital NY story. The stakes are very high here, folks.



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Gawker in the fight of its life with Hulk Hogan sex-tape suit



Hulk Hogan. (Evan Agostini/Invision/AP)

By Peter Sterne 9:00 a.m. | Jun. 12, 2015 22

Nick Denton is preparing for the biggest fight of his life. The Gawker Media founder and C.E.O.'s opponent: celebrated professional wrestler Hulk Hogan (real name: Terry Bollea), who sued Denton and Gawker in 2012 after the gossip blog published a supercut of his sex tape and refused to take it down. The case has seen numerous twists and turns over the past three years, but it's finally set to come to trial in Pinellas County, Fla.—where Hogan lives—on July 6.

Denton faces a judge and jury who are skeptical of, if not outright hostile to, his blog empire and philosophy of reporting the “story behind the story,” and some inside Gawker say that they expect the company to lose the case. A loss, and an award of even a fraction of the \$100 million Hogan’s attorneys are seeking, could empty the company’s coffers, forcing Denton to either sell the company outright or to hand much of its equity over to deep-pocketed investors.

Denton was frank about the situation in a tense all-hands editorial meeting on June 4 in Gawker’s Nolita headquarters. Denton was his usual charming and irreverent self as he addressed a number of customary challenges facing the company—including issues with the company’s content platform, Kinja, and soft display advertising sales. But he was at turns apologetic and defiant when it came time to discuss the lawsuit. Denton warned staff that the legal battle posed a threat to the company’s fundamental operating principles: its longstanding independence from the demands of venture capitalists and big-media ownership.

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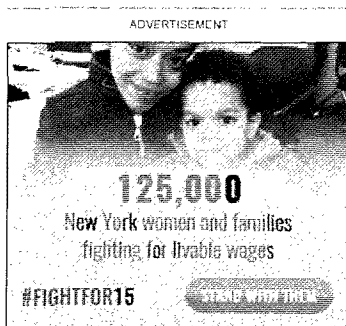
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“I have way, way less money than people think!” Denton told his staff. “... I don’t have hundreds of millions of dollars to kind of bail the company out. If we are in an environment with higher business risk and higher legal risk, then the company is going to need somebody with deeper pockets and hopefully principles in order to keep it both commercially viable and editorially viable.”

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The case has its roots in an Oct. 4, 2012 post written by Gawker’s then-editor A.J. Daulerio about Hogan’s 2006 sex tape. By the time Daulerio published the post, it had been seven months since TMZ broke the news about the existence of the sex tape and more than five months since gossip website The Dirty had published grainy screenshots from the video.

The video shows Hogan having sex with Heather Clem—then the wife of his close friend, the shock jock Bubba the Love Sponge Clem—in Bubba’s house. The video also shows Bubba giving his blessing for Hogan and Clem to have sex.

Gawker received a DVD of the 30-minute video and decided to edit it down to a “highlights reel” about a minute and a half long, and published that along with a long post by Daulerio

commenting on the tape and the nature of celebrity sex tapes in general. Hogan had already threatened to sue a number of other websites if they posted the sex tape, and he sued Gawker in federal court on Oct. 15, 2012.

The history of the case is convoluted, to say the least. Hogan initially sued Gawker in federal court, but after a federal judge **denied his motion** for a preliminary injunction (which would have forced Gawker to immediately take down the post while the case was argued in the courts), he dropped the federal case. In December 2012, he added Gawker as a defendant in the state court case that he had already filed against Heather Clem and Bubba Clem. Gawker argued that Hogan was court-shopping and tried to remove the case back to federal court, but a federal judge remanded it back to the state court in March 2013.

In April 2013, a state judge—Judge Pamela Campbell—granted Hogan’s motion for a preliminary injunction, forcing Gawker to take down both the video and Daulerio’s commentary. Gawker took down the video, but not the commentary, and **wrote a post** about the ruling. Gawker also appealed the injunction order and a state appeals court **reversed the injunction** in January 2014 on First Amendment grounds. Gawker then filed a motion to dismiss the case, which was denied, and a motion for summary judgment, which was also denied. Since those motions were denied, the case is set to be argued before a jury in state court later this summer.

There’s a very real possibility that Gawker will lose the jury trial. The jury, drawn from Hogan’s hometown, will likely be more sympathetic to the wrestler than to a Manhattan media gossip blog. Gawker, Denton said, writes for open-minded, media-savvy millennials. The Pinellas County, Fla. jury is not the site’s target audience.

Some among Gawker's leadership find it easy to imagine how Hogan's legal team could portray the case – the all-American hero and local celebrity who's just trying to protect his privacy versus the gay European founder of a Manhattan media gossip blog that published pornography for pageviews.

"I hope that somehow we can be charming enough in our writing and on the stand so that they recognize that we might be mean, bitchy Gawker bloggers, run by someone who will probably be portrayed as a New York pornographer and foreigner, but I hope that beyond that, we can make it clear that we're fighting for the truth to hold elites accountable ... whether that light exposes a Florida celebrity having a swingers party invited by the host to have sex with his wife—whether it's that or whether it's the fact that the system is rigged and people can't make it," Denton said during last week's editorial meeting.

Heather Dietrick, Gawker's president and general counsel, presented a more hopeful view of the case to Capital, and suggested that the Florida jury would be moved by their argument that Hogan had turned his own sex life into a public spectacle long before Gawker published this tape.

"I think as a common-sense matter, they're going to see that, see what he's talked about in the past. He's talked about really, really graphic details of his sex life, again and again and again, including on the shock jock's show," she said. "These are practical people. I think they're going to see through him and say, 'Give me a break. Take responsibility for what you did here.'"

"It will be difficult to sell Gawker to them, but also I think he's going to have a really hard time selling his version of the story to them," she added.

Hogan is certainly a very public person, having written two memoirs and starred in the reality show, "Hogan Knows Best." He has been particularly open about his sex life. During various appearances on both Bubba's radio show and Howard Stern's radio show, he has discussed: his erection, the size of his penis, where he prefers to ejaculate during sex, how he uses his mustache during sex, the way his wife pleases him in the car, his penchant for rough sex, and more.

If Gawker does lose the jury trial, it is likely to win on appeal. The appeals court, after all, reversed the lower court's preliminary injunction back in January 2014, ruling that both the video and Daulerio's commentary about it were protected by the First Amendment. The problem for Gawker is that it could already be broke by the time the appeals court overturns the jury's decision.

"The \$100 million, obviously—we don't have enough cash on hand, I don't think anybody does, in order to deal with an outcome as extreme as him picking a number out of the air without any particular basis, doing one of those headline-grabbing lawsuits," Denton told Capital.

Florida law generally requires a party that wants to appeal a monetary judgment to post a bond equal to the judgment plus two years' interest. If the jury found that Hogan was entitled to \$100 million in damages and Gawker was required to post a bond of at least that amount, the company would not be able to do so without selling itself to a larger company or bringing on outside investors. Even if the jury only awarded Hogan a fraction of that (and Florida courts are known to give high awards) the results for the company would be disastrous.

Denton said that he estimates there's a roughly 1-in-10 chance that Gawker will face "disaster"—meaning that they lose the trial, the jury awards Hogan a large amount in damages, and Gawker is required to put up a bond for the full amount while it appeals the ruling.

For perspective, Denton said that most years, there's a roughly 1-in-50 chance that Gawker will face a similar sort of disaster. Gawker tolerates a certain level of risk, he said, which lets it do things—like publish the Hogan video and then fight the case instead of settling—that other media companies will not.

"The way I look at the whole spectrum, you can't just focus on the worst-case scenario. If you did that, you'd be a coward like most of these media companies that settle, that actually don't exercise their constitutional rights as members of the free press," he said.

One of the main questions at issue in the trial is whether or not Hogan's sex tape was a newsworthy matter of "public concern." Among other things, Hogan is claiming that Gawker violated the tort of "publication of private facts," which prohibits people from publishing private facts about others, even if they are true, unless the facts are related to matters of "public concern."

In their opposition to Gawker's motion for summary judgment, Hogan's legal team argues that the actual sex tape—described in court documents as "footage of Mr. Bollea naked, aroused, and having sex in multiple positions"—is not a matter of public concern, even though Hogan's sex life and infidelity are matters of public concern. They quote a "journalism expert"—Mike Foley, a journalism professor at the University of Florida—who labels Gawker's practices "pornography" and "not journalism." And they argue that there's a crucial distinction between writing about the existence of Hogan's sex tape and actually publishing uncensored excerpts from the tape:

"All those media outlets that covered Mr. Bollea's sex life, including even the *National Enquirer*, at least had the decency not to broadcast the Sex Video or any part of it. All of them understood that while the information relating to the romantic and sexual lives of celebrities may be matters of public concern, the act of publishing secretly-recorded footage of a celebrity naked and having sex in a private bedroom is not a matter of public concern."

Gawker's lawyers, though, argue that the courts do not have the power to decide how Gawker covers the sex tape story. If the topic is newsworthy, then a story about it—even one that includes nude photos or videos—is newsworthy. Dietrick said that courts have ruled this way in the past.

"Once you see that that topic is a matter of public concern," Dietrick said, "the law does not allow a judge or the plaintiff or the subject of the story to come along with a red pen and say, 'I didn't really like the way you said it here. I didn't like the way you added this source material. I would've done this part differently.' You don't get a line item veto, basically. The journalist has freedom and the organization has freedom to write about that topic as they see fit."

Hogan's lawyers warn that Gawker's interpretation of the law will lead to a dire future in which no one has any privacy and everyone's sex tapes and nude photos are published on Gawker. This is an actual quote from their opposition to Gawker's motion for summary judgment:

“If it were up to the Gawker Defendants, there would be no privacy in America—everyone’s secrets would be exposed, the intimate details of their lives would be fully published—and everyone would gather at Gawker to mock, ridicule, and gawk at what previously was confined to private conversations and closed bedroom doors. In other words, if it were up to Gawker, all walls would become windows, and no privacy would exist anywhere.”

Denton and Dietrick say that this is not true, and that Gawker’s journalists make decisions every day about what is newsworthy and what is not.

“I have a simple editorial litmus test, which is: is it true, and is it interesting?” Denton said. “The interest in is in proportion to the gap between the story that a brand or a celebrity brand is telling and the reality. The more the gap, the more interesting it is. Here, there was a gap between [Hogan’s] rather boastful sexual persona that was on display in these radio interviews and elsewhere and the real story, which made it interesting.”

As a counter-example, Denton mentioned the nude photos of Jennifer Lawrence and other celebrities that leaked last year, which Gawker did not publish.


“When the Jennifer Lawrence photographs were leaked, was that true that it was her? I think she confirmed it, so yes it was true,” he said. “Was it interesting? Was there any lie being exposed there? ... That wouldn’t satisfy, to my mind, the test of being both true and interesting.”

With the sex tape, though, Gawker did expose some lies. After the video had been recorded in 2006, but before Gawker published its post in 2012, Hogan had said in an interview that he would never sleep with Clem. Once screenshots of the video were published in early 2012, many speculated online that Bubba had set up the cameras in order to catch Hogan and Clem cheating. Gawker’s publication of excerpts of the sex tape, which revealed that Bubba had encouraged Hogan and Clem to have sex, refuted both of these false narratives.

Denton is proud of publishing the video taken from Hogan’s sex tape. He sees it as a quintessential Gawker story—entirely true, about a celebrity who peddled a false narrative but brought public attention upon himself, and involving sex. The suit, he said, has actually strengthened the company, since all of Gawker’s different divisions—tech, operations, sales, and editorial—are united behind the company’s decision to publish the post and defend it in court.

“The story was a real sober take on a version of events that [Hogan] had been talking about,” he said. “If you don’t defend that, then what do you defend? You might as well just take the First Amendment and tear it up.”

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Max012 · 4 days ago

Whatcha gonna do Gawker when Hulkmania destroys you?

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Peter885 · 7 days ago

"As a counter-example, Denton mentioned the nude photos of Jennifer Lawrence and other celebrities that leaked last year, which Gawker did not publish."

The only thing the Jennifer Lawrence example proves is Gawker's hypocrisy. When nude pics of Lawrence and other female celebrities were leaked last year, Gawker was up in arms over it with one of their blogs calling it a "sex crime".

But when the celebrity involved is male, Gawker's position changes entirely. Not only was there the Hogan tape, but there was also another example ironically involving another pro wrestler. WWE's Seth Rollins had nude pics leaked on the internet without his permission and Gawker not only published them, they did so with a headline that read something like "Come Look At Seth Rollins' D--k". Which they later changed because it looked so hypocritical.

Denton's own "is it interesting?" test completely falls apart here because comparatively Rollins is a much lesser known celebrity than Jennifer Lawrence. There is going to be far less interest in his photos or the story surrounding them. Yet Gawker still saw fit to publish them anyway.

The sole reason the pics of Lawrence and other female celebrities weren't published on Gawker is because they cater to progressive feminists and it would have angered both their readership and members of their staff. They have don't have to worry about that when the celebrity is male and they've already demonstrated a clear double standard.

That Gawker is trying to turn around and use that double standard as a defense in the Hogan matter is nothing short of laughable.

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Hendrik Vanderstijn · Peter885 · 7 hours ago

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MEDIA

Gawker's Moment of Truth

By JONATHAN MAHLER JUNE 12, 2015

"I'm pretty sure we have a revolution coming," said Nick Denton, founder and chief executive of Gawker Media. "It's not 100 percent guaranteed, but the existing corporate structure is looking pretty hollow."

It was a mild spring evening, and Mr. Denton, who is 48, was standing on the fire escape of his SoHo loft in a long-sleeve T-shirt and jeans, smoking a joint and drinking a glass of red wine with his husband, Derrence Washington; Tommy Craggs, the executive editor of his media empire; and me.

As Mr. Denton eased into his soliloquy — "Look at those Midtown towers: What are those people doing all day?" — Mr. Craggs started cracking up.

"What?" Mr. Denton asked.

"You just wrote the lead of his story," Mr. Craggs said, nodding toward me. "'Midway through his first joint, Nick Denton said a revolution was coming.'"

"He can't use that," Mr. Denton replied. "You can't use that — I mean, realistically, in *The New York Times*."

Mr. Craggs insisted that I could, and I would. They ended their argument with a bet.

Go collect your \$50, Mr. Craggs.

Mr. Denton should have known better. After all, he has probably done more than any individual to loosen up the mainstream media. His various websites have stood for nothing if not the proposition that decorum should never stand in the way of entertaining readers. By Gawker's definition, if it's interesting, it's news. As Mr. Denton himself has put it, what journalists put in their stories is inherently less interesting than what they say after work.

Like when they're standing on a fire escape, in a haze of pot smoke.

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Mr. Denton started Gawker Media 12 years ago in his living room. It was initially just two blogs, the snarky — though the term was not yet in popular usage — media gossip site Gawker, and a technology blog, Gizmodo. The company had two freelance bloggers who were paid \$12 per post.

Today, Gawker Media encompasses seven sites with 260 full-time employees. There's the sports blog Deadspin — noteworthy journalistic coups include an investigative article revealing that the football star Manti Te'o had an imaginary girlfriend and the publication of photos said to show Brett Favre's penis — and the feminist site Jezebel. For technology, there's Gizmodo. For video gamers, there's Kotaku. Mr. Denton's personal favorite is Lifehacker, Gawker's take on self-help.

By most measures, the company is doing fine. Gawker Media says it generated about \$45 million in advertising revenue last year, and was profitable, earning about \$7 million. It has outgrown the walk-up on Elizabeth Street that has been its home since 2008, and will move this summer into a vastly larger space in a proper office building in the Flatiron district. In a show of confidence about Gawker's future, Mr. Denton signed a 10-year lease that will cost Gawker about \$280,000 a month.

At the same time, Gawker is going through something of an existential crisis. In a sense, Mr. Denton has been overtaken by the populist digital revolution he helped spur. The original new-media insurgent is now confronting the same challenges as a lot of establishment media companies. Like them, it has to distinguish itself in a crowded, frenetic ecosystem, and decide how much, if at all, to tailor its content to the various social media platforms that increasingly determine what people read and watch.

And unlike some of its competitors — BuzzFeed, Vice, Vox — Gawker doesn't have tens of millions of dollars in venture-capital money at its disposal. Until now, Mr. Denton has refused to bring in outside investors; he and his family own about 68 percent of the company, with the balance held by employees or former employees. But in the face of this new reality, he told me he's thinking about selling a minority stake in the company.

Gawker is also confronting a more immediate threat, one in the form of an angry, litigious 6-foot-7, 300-plus-pound ex-wrestler named Terry Bollea, a.k.a. Hulk Hogan. A few years ago, Gawker got its hands on a video of Mr. Bollea having sex with a woman who was then the wife of a friend — a radio D.J. named Bubba the Love Sponge — and posted a one-minute 40-second edit of it. Mr. Bollea forced Gawker to

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take the video down, and is now suing Gawker Media and Mr. Denton for violating his privacy. He is asking a Florida state court for \$100 million in damages.

Gawker has been sued plenty of times before; indeed, at any given moment, it's fighting at least a few lawsuits. But every other case was either dismissed or settled. Gawker has not been able to reach an agreement with Mr. Bollea. And the judge has denied Gawker's motion to dismiss. The trial is scheduled to begin on July 6 before a jury in St. Petersburg, close to Hulk Hogan's hometown.

People at Gawker tend to talk about "the Hogan case" in apocalyptic terms, suggesting that it could very well bring down Mr. Denton's entire empire. Of course, hyperbole is baked into the company's identity. The goal has always been to draw notice, which means framing everything in the most extreme manner possible. Even when the subject is the future of Gawker.

"It's a \$100 million lawsuit," Mr. Denton said when I asked later in the evening how concerned he was about the Hogan case. "We don't keep \$100 million in the bank, no."

On a rainy afternoon in late March, Mr. Denton, who is tall and thin, with close-cropped gray hair, gave me a tour of Gawker's offices. Employees in sales, technology and the newsroom sat in tight rows at long tables. Above the receptionist's desk on the third floor was the "big board," a large screen displaying the company's best-performing posts, which at that moment included a piece about a team of scientists who had put a common household product to an unlikely purpose — "Glow-in-the-Dark Tampons Are Being Used to Fix Broken Sewers" — and an investigation into whether the actress Katie Holmes had a secret entrance to her local Manhattan Whole Foods to avoid the paparazzi back in 2012.

"The Katie Holmes story was a total classic," Mr. Denton said. "Come with me as I investigate this urban legend."

Mr. Denton grew up in the upscale London neighborhood of Hampstead. His mother, a Hungarian Jew who survived the Nazis and escaped the Soviet occupation at 18, was a psychotherapist, his father a professor of economics. Mr. Denton's own career in journalism started conventionally. At Oxford, he edited the campus magazine and did internships at Tatler and The Evening Standard.

After working as a stringer overseas, he covered the banking industry for The Financial Times in London. "In my day, people used to go parties to get stories," Mr. Denton told me at one point, complaining that his writers don't get out enough. "They

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used to have to be charming to get a story — trade some information, do some dirty dealing.”

Mr. Denton soon became enamored of technology. In 1998, after a stint in San Francisco with The Financial Times, he created First Tuesday, a networking group for members of the tech industry. Two years later, he and his three partners sold the company for millions of dollars. In 2002, he started Gawker Media.

Gawker has evolved since its early days as tormentor of the Manhattan media elite. But Mr. Denton sees a thread through the years, and across Gawker's disparate network of blogs. “Whatever information we have, whatever insight we have, whatever knowledge we have, our impulse is to share it as quickly as possible, and sometimes with as little thought as possible,” he told me after we had settled into a small conference room. “Before you can think about it too much, just put it out there, just share it out there. I think that's the essence of who we are.”

There has been another constant through Gawker's history: an indiscriminate solicitation of clicks. Mr. Denton has long posted the number of page views alongside each item published on Gawker's sites. If pride — or shame — did not provide a powerful enough incentive for writers to cater to the tastes of Internet surfers, they were paid bonuses based on how much traffic they generated.

But in recent months, Mr. Denton's once-straightforward relationship with traffic has grown more complicated. It seems to have occurred to him that the quest for eyeballs doesn't always produce the highest-quality content.

“A lot of our traffic last year came from stories that we weren't ultimately proud of,” Mr. Denton said. He cited Gawker Media's biggest traffic sensation in 2014, a video compilation of people messing up the Ice Bucket Challenge that has attracted more than 16 million views. “You're going to get a spike from a story like that, but at the end of the year, what does it say about your brand, and are you measuring that?” Mr. Denton would prefer to see his brand associated with the Manti T'eo story, or Gizmodo's iPhone 4 scoop (in 2010, it bought a prototype of the as-yet-unreleased phone), or the 2013 post by a Gawker writer who had watched a cellphone video of Rob Ford, the mayor of Toronto at the time, smoking crack.

Late last year, Mr. Denton put some of his thoughts about the traffic chase into a Jerry Maguire-style memo to his staff. In excess of 4,000 words, it made the case that in its zeal for growth, Gawker had lost sight of its mission to put truths on the Internet. “Editorial traffic was lifted, but often by viral stories that we would rather

mock," he wrote. Above all, he bemoaned his company's dependence on Facebook, which is responsible for about 25 percent of Gawker's traffic. "We — the freest journalists on the planet — were slaves to the Facebook algorithm."

Facebook poses a dilemma for just about every ambitious publisher. All of them are desperate for the traffic that comes with being featured on a social media network with more than a billion users, but at least some are wary of publishing articles on a platform that they don't control. They fear losing journalistic independence, not to mention ad revenue, and worry about the compromises that might be necessary to ensure that a post is given prominent play in Facebook's news feed.

It's an especially pertinent issue for Gawker, a company whose identity is bound up in a particular voice and worldview. You can call it an unwavering commitment to truth-telling — or, less generously, a relentless cynicism. Either way, the Gawker sensibility that helped set the tone for an earlier generation of Internet journalism no longer really squares with the prevailing spirit of positivity on social media networks like Facebook. The Gawker writer Tom Scocca called this ethos "smarm" in a withering essay in late 2013: "Smarm aspires to smother opposition or criticism, to cover everything over with an artificial, oily gloss."

To understand the irreconcilability of these two impulses, consider a helmet-cam video two years ago of a fireman in Fresno, Calif., saving a kitten trapped inside a smoke-filled home. It was sure to be a viral sensation. The only problem was that the kitten ultimately died of smoke inhalation, which would make the post a lot less shareable on Facebook. An internal debate ensued at Gawker about whether or not to include this inconvenient fact. (It ultimately did: "This Cat Rescue Video Will Make You Very Happy, Then Really, Really Sad.")

Mr. Denton was an early proselytizer for Facebook, urging writers to join and promoting stories on his personal page. A couple of years ago, a former Gawker employee and viral Internet guru, Neetzan Zimmerman, gave an in-house seminar on how to tailor posts and headlines to maximize Facebook traffic.

But Mr. Denton says he's done with all of that. "If the newspaper industry wants to give up hundreds of years of passion and history and make themselves slaves to some 20-something in Silicon Valley who did the latest hot social network, well, that's up to them," he told me. "We choose not to."

Mr. Denton knows that Facebook is too powerful to ignore completely. He's not planning to shut down Gawker's Facebook page, for instance. But he says he will

never allow Facebook to host content — something The Times has experimented with — rather than directing readers to a Gawker external site. More generally, he says he will no longer allow Facebook or any other social media site to influence Gawker's newsroom direction.

To prove the point, Mr. Denton put Mr. Craggs, the former editor of Deadspin and a widely respected journalist, in charge of all news content for Gawker Media. One of Mr. Craggs's first moves was to change the bonus structure; writers are now rewarded not for clicks, but for what editors judge to be the quality of their posts.

Instead of handing over articles and the ensuing discussions to Facebook, Mr. Denton wants to bring the conversation to Gawker by creating communities around its various sites. It's an anachronistic idea: Between the rise of the smartphone and social media, many publishers are abandoning the idea of being destination sites. It's also much easier said than done. Mr. Denton has already spent millions of dollars trying to build an internal social media platform, Kinja, with mixed results at best.

He is fighting not only the larger trends in media but also the inclinations of many of his writers, who aren't accustomed to engaging with readers and don't necessarily want to start now, especially given the hostile nature of the comments section on many of Gawker's sites.

When Mr. Denton articulated his vision for "communities built around the shared enthusiasms of writers and readers" at a recent staff meeting, a skeptical Gawker writer interrupted him.

"We've had about 10 years of this acrimonious relationship — this reputation for snark — and then it's, like, oh yeah, have a civil conversation with people who are coming into the fold, ready to attack anything," the writer said. "And so civil conversation is by and large impossible, given those commenters and our reputation."

Earlier this month, the newsroom employees at Gawker Media became the first at a major digital media company to vote to unionize. The general idea was to give employees a voice in what many see as the company's often arbitrary decision-making process (with Mr. Denton as the often arbitrary decision maker).

Transparency is a compulsion at Gawker; in characteristic fashion, employees wrote posts about how they planned to vote and why. Responses ranged from unusually sincere — "I think we have a moral responsibility to make online media a fairer and more just place for its workers" — to dismissive ("i'm voting no. unions suck.").

For his part, Mr. Denton says he doesn't see much point in unionization in a "competitive marketplace" like the news media. In keeping to his theme of revolution, he thinks it would make more sense for Internet writers to align themselves with the owners of digital media platforms "against the old business structure, against the old intermediaries." Having said that, Mr. Denton has been respectful and supportive of his staff's wish to unionize.

People who know Mr. Denton say he would have reacted very differently 10, or even five, years ago. Mr. Denton has a history of firing employees without what many unions would define as just cause. And while he pays writers reasonably well now, it wasn't so long ago that Gawker Media was a virtual sweatshop for freelance bloggers. Mr. Denton also recently reorganized the company's leadership, empowering, in theory anyway, a group of executives to share authority with him. These may not be purely strategic decisions. We might be witnessing the mellowing of Nick Denton. Mr. Craggs calls it the "Great Unclenching," and traces it to the beginning of Mr. Denton's relationship with Mr. Washington, a performer.

The two met at a party at Mr. Denton's loft in 2011, moved in together the following year, and were married last summer at the American Museum of Natural History in a black-tie event chronicled at length in this paper's Vows column. (The same Vows column that Gawker has mocked relentlessly.)

"For a long time, Nick almost felt a little unlovable just by virtue of this person he felt he needed to be — the monster media mogul who was out to ruin people's lives on the Internet," said A. J. Daulerio, a former editor in chief of Gawker. "And he embraced that role."

"He's very warm now," said Choire Sicha, another former Gawker editor. "Whereas he was this weird, cold, alien beast."

When I asked Mr. Denton about the Great Unclenching, he chalked it up to a variety of factors including therapy, meditation, marijuana and, above all, Mr. Washington. "It's a pretty powerful force," he said, "when you go from complete dependence on professional achievement for any sense of accomplishment to having a purpose, a meaning in life."

No one who knows Mr. Denton doubts the sincerity of his transformation, but few believe that he will stay "unclenched" forever. "I don't think Nick is done working out his psychodrama with the company," Mr. Sicha said.

Gawker's vote to unionize generated a fair bit of attention in the news media, but internally, at least, the news was quickly overshadowed by a post on Kinja by Joel Johnson, whom Mr. Denton removed as Gawker's editorial director late last year.

Mr. Johnson was writing, ostensibly, to congratulate Gawker's staff. But his post quickly morphed into a bleak assessment of the company's prospects and a scathing indictment of Mr. Denton's leadership. Mr. Johnson wrote that Mr. Denton — “a comically inept product visionary, manager and technical mind” — had wasted as much as \$20 million trying to build Kinja, which, by Mr. Johnson's telling, “was mostly a bulwark against needing to pay writers to create content.”

“This is the Denton you're toiling for today: a man who wants to be better than he was before, both as a businessman, leader and (presumably) a human being, but who is fundamentally pessimistic about trusting other people,” Mr. Johnson wrote.

After seeing the post, Mr. Denton called a companywide meeting to address some of the issues Mr. Johnson had raised. He assured his staff, which had packed into the fourth floor of Gawker's offices, that the company was financially healthy, and defended his vision for Gawker's future as a virtual salon for writers and readers.

Inevitably, the conversation turned to the Hulk Hogan case. Mr. Denton told his staff that the jury might be inclined to see them as “mean, bitchy Gawker bloggers run by someone who will probably be portrayed as a New York pornographer,” but that hopefully it would recognize that “we're fighting for the truth.”

When someone asked if employees should be prepared for layoffs, Mr. Denton said the risk was difficult to quantify, in part because cases like this are almost always settled or dismissed long before they reach a jury. He put the chances of a “disaster” — that he would need to sell a controlling interest in Gawker to keep it afloat — at one in 10. (Heather Dietrick, Gawker's president and general counsel, told me later that the company had exceeded the cap on its insurance in the Hogan case and was now paying out of pocket for it.)

Setting aside the lurid details, the Hogan case is actually pretty straightforward. Mr. Bollea's lawyers are arguing that their client's sex life is not a newsworthy subject, and thus the decision to publish the tape constitutes an invasion of his right to privacy.

Gawker's answer to this claim is that Mr. Bollea — or Hulk Hogan — has made his sexual proclivities a matter of public interest by talking about them in “exceedingly graphic” terms on his reality TV show, in his two memoirs and

elsewhere, including Howard Stern's radio show. (As for the lurid details, the filings are public, but read them at your own risk; among other things, you will never see Hulk Hogan's trademark mustache the same way again.)

It's surprising that the suit has gone this far, given the wide berth that judges have historically granted the news media when it comes to covering the lives of public figures. "It's in many respects a dangerous First Amendment precedent for the court to let a case like this go to a jury," said Charles D. Tobin, an entertainment and media lawyer at Holland & Knight. "Newsworthiness should be decided by people who choose to look at Gawker or not look at Gawker, not by a jury."

Most executives would not consider commenting on a pending lawsuit. But Mr. Denton actually suggested that I ask him about the Hogan case that night on his fire escape.

He told me that his first impulse had been to settle. "If it had been a reasonable amount, we would absolutely have tried to make this thing go away," he said. But with the case now going to trial, Mr. Denton is clearly taking some pleasure in the opportunity to cast himself as a champion of the First Amendment.

"We're talking about a central issue of our time, which is the proliferation of marketing," he told me. "We are being bombarded by marketing all of the time — marketing and self-promoters, people who wake up in the morning and get into character, whether they are Captain America or Hulk Hogan. If you want to be in the marketing haze, then be in the haze. But the Internet does give you the ability right now to go to Gawker and to find out what really happened."

If you believe the First Amendment is a sacred doctrine in our self-governing society, it's pretty much impossible to side against Gawker. But Mr. Denton is engaging in some spin of his own here. What "really happened" is that Hulk Hogan was secretly videotaped having sex, and that Gawker leapt at the chance to publish the footage in 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." There was some accompanying text that tried to put the video into a larger context: "We watch this footage because it's something we're not supposed to see (sometimes) but we come away satisfied that when famous people have sex it's closer to the sex we as civilians have from time to time." But let's be clear: This post was less about piercing a marketing haze than it was about tapping into the timeless appeal of celebrity voyeurism, the more prurient the better.

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Whatever the jury decides, the public has already voted with its eyeballs on the post's newsworthiness. It has generated more than five million clicks.

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