

EXHIBIT Q

Nick Denton

# 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.



The Noble Renard · Nick Denton  
6/12/15 12:11pm

I'm sorry, but there is no clear distinction between posting the Hogan sex tape and posting pictures taken The Fappening. Both were pictures stolen from their sources, of intimate sexual moments, and posted expressly against the wishes of the participants in them. Arguably the Hogan tapes were even worse, because he was apparently even unaware that he was being taped at the time, as opposed to the pictures and videos taken by the celebrities included in the latter event.

Justifying the posting of *the entire tape* on the basis of Hogan having publicly denied saying that he had had sex with this woman is not morally defensible now. I understand that times were different back then, and *almost all* the internet publications out there gleefully posted stolen nudes all the time (TMZ did it, Perez Hilton did it, etc...), but that still doesn't make it justified. If the newsworthy aspect of the story was that Hogan had lied, you could have posted a single still from the video that wasn't explicit.

Ethically speaking, I have yet to see a single solid reason for why posting the Hogan video was different from posting Jennifer Lawrence's videos. She had said she was single during previous interviews, so should it have been ethical under your view to post nudes she sent to another person to prove she was "lying"? No. Same as it wasn't ethical to post pictures of Jennifer Lawrence stolen from her, it wasn't ethical to post videos of Hulk Hogan that were taken without his consent or knowledge.

Look at the Pamela and Tommy Lee tape: that was actually *physically stolen* from a safe in their house when they were robbed, and they went to extreme lengths to stop its distribution once they found out that the thief had been shopping it around. If that happened recently and Gawker had obtained the tape, would it have felt justified to publish it in 2012 because the two of them had tried to portray themselves differently than their private sexual life showed? Maybe. In 2015, post-Fappening? I don't think you would anymore.

I understand from a legal standpoint that you almost certainly will win the lawsuit, and I understand that you are being cagey now because of that, because if you come out and admit you were wrong it could have serious impact on the case. But I sincerely hope after you win, there will be a *mea culpa* coming down the hatch.



WTFWhyTheFace · The Noble Renard  
6/12/15 12:40pm

Yea there is some next level cognitive dissonance going on in this article. They want to be the sleazy edgy blog but then chastise others for the same behavior. Can't have it both ways.

Not to mention the whole "well he talked about his sex life so its fair game" sounds dangerously close to "she was asking for it".



StorminMike2000 · The Noble Renard  
6/12/15 1:02pm

This is never getting out of the greys, but it should.



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.



Juben ▸ Nick Denton

6/12/15 12:04pm

Okay Gawker/Jezebel kept the Hulk Hogan's sex tape up and pictures from that but celebrity hacked photos \*gasp the horror\* unless it is also LeBron James (Deadspin right now), it is also okay. Love the website, tired of yall taking articles from other sites then giving your opinion on those sites' article, other than that, I kind of want you guys to lose here or at least settle and apologize to the Hulkster/Hulkester and Hulkomania (sorry grew up as a kid in 80s so love me some Hulkomania, my bias is showing, I know).



nopenotathing ▸ Juben

6/12/15 12:18pm

Wait was LeBron James hacked? Or are you talking about Deadspin pointing out video, recorded with his consent and with full understanding that it would be publicly distributed, of James uncovering and adjusting his dick? Because although that's in poor taste, it's not comparable to distributing sexual nude images obtained by hacking the phones of the people in them.



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.



Billington ▸ Nick Denton

6/12/15 11:59am

Well hey, if this is the case, better re-up those Fapping pics then.



StorminMike2000 ▸ Billington

6/12/15 1:18pm

Mental gymnastics needed to support their stance:



The Hulk is a SWM, not a member of an objectified or marginalized group.  
Therefore, this is “punching-up” which is always acceptable.