

EXHIBIT A

Plaintiff's Trial Exhibit 367



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



Hulk Hogan - AP Photo/Justin Sullivan

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

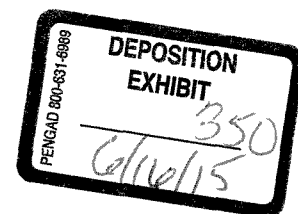
Nick Denton is preparing for the biggest fight of his life. The Gawker Media founder and C.E.O.'s opponent: celebrated professional wrestler Hulk Hogan (real name: Terry Bollea), who sued Denton and Gawker in 2012 after the gossip blog published a supercut of his sex tape and refused to take it down. 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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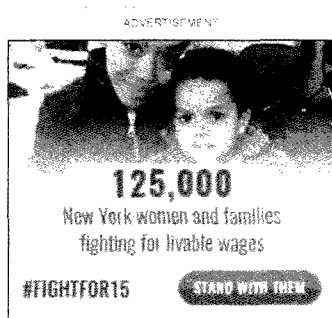


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"I have way, way less money than people think!" Denton told his staff. "... I don't have hundreds of millions of dollars to kind of bail the company out. If we are in an environment with higher business risk and higher legal risk, then the company 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.

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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:

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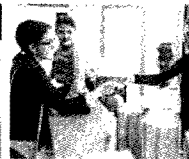
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"As a counter-example, Denton mentioned the nude photos of Jennifer Lawrence and other celebrities that leaked last year, which Gawker did not publish "

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.

Hendrik Vanderstijn

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Plaintiff's Trial Exhibit 368



The New York Times <http://nyti.ms/1SbecAf>

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."

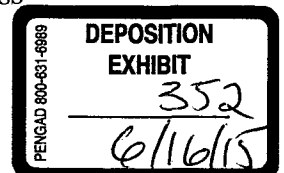
"He can't use that," Mr. Denton replied. "You can't use that — I mean, realistically, in The New York Times."

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

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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.").

BOLLEA 006887

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.

BOLLEA 006888

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

BOLLEA 006889

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.

BOLLEA 006890

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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Hulk Hogan Taking Gawker Media to Court Over Sex Tape

Jun 19, 2015, 12:16 PM ET

By ABC NEWS via GOOD MORNING AMERICA

25

43

24 Comments



AUTO START: ON OFF

Hulk Hogan has filed a \$100 million lawsuit against Gawker Media for publishing his sex tape, and the two sides will face off in court next month.

"We're seeking monetary damages and a permanent injunction against the video," Charles Harder, Hogan's attorney, told ABC News.

In 2012, Gawker published video depicting Hogan having sex with the then-wife of his friend, a disc jockey nicknamed Bubba the Love Sponge.

Hulk Hogan Reveals He Could Be Villain in 'Expendables 4'

Hulk Hogan, John Cena Get 'GMA' Pumped for 'Wrestlemania'

Heather Dietrick, Gawker's president and general counsel, argued that publishing the tape was an issue of newsworthiness. After all, she said, Hogan often spoke of his sex life during interviews.

"Months before Gawker ever published, this was a giant story in the news," she told ABC News.

Legal analyst Dan Abrams said on "Good Morning America" that Gawker has a "very strong argument," though the trick will be getting a Florida jury to look at the matter from a legal standpoint and not to act as media critics.

Still, "this has worked its way up through the federal courts on separate questions and, just about every time, Gawker has ended up winning," he said. "Certainly, in the end, Gawker has won as a legal matter, and I think that as a legal matter they're going to end up winning again."

25

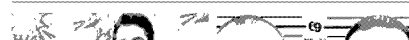
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Plaintiff's Trial Exhibit 382

Hulk Hogan sex tape trial could destroy Gawker

✉ f t in ... Recommend 913

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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Hulk Hogan, aka Hulk Hogan, stands beside his attorneys during a 2012 press conference to discuss legal action brought against Gawker Media.

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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 VIA GETTY IMAGES

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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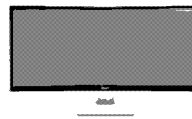
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DarthStewie 3 days ago

Wasn't Gawker in some fashion involved in the iPhone that was stolen/leaked/whatever a few years back? The story where they claimed they found the phone in a bar and that wasn't actually the case. Or was that a different site?

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brianmyers 3 days ago

If the site/company was based outside US-jurisdiction it would be harder to sue and collect. Why people launch these controversial sites within US borders is beyond me.

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Fernando Chiguavita 4 days ago

Uncensored video: hulkhoganvideo.blogspot.com

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@Fernando Chiguavita They took the blog down already. Have another link?

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DieselPower_ 4 days ago

Good luck to Gawker. They'll need it to try and beat Hogan in Florida. They'll be totally in his favor.

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radiofan54 5 days ago

I'd love to live in a world without Gawker

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Tj Khan 5 days ago

"That's the job of a journalist."

What a lying hypocrite. This from the man who threatened to fire/BLACKLIST journalists to prevent them from reporting on a MEDIA SCANDAL which Gawker was directly involved in.

<http://www.pxtthis.com/2014/12/ny-times-staffer-continues-to-harass-threaten-author/>

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Toby Brace 5 days ago

Dirty Denton goes broke. Please please please please.

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Carl Spears 5 days ago

Nick Denton is a money guzzling slime ball, I hope he loses everything.

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Jacob Snell 5 days ago

Gawker is going to lose; especially after they were up in arms themselves about the so called 'The Fappening'. Good luck explaining the difference between the two to a jury.

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pcseller001 5 days ago

@Jacob Snell Exactly...Hogan won't get \$100m but it will be enough to hurt.

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NekoMouser 5 days ago

His lawyer looks like a native of the uncanny valley region.

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Igor Schmidlapp 4 days ago

@NekoMouser That lawyer looks like Nikki Lauda.. after the accident

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ice'oad9 5 days ago

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Do what everyone else does, declare bankruptcy. Let them take the company assets which are probably a couple of servers years old. Go across the street and call your self the new GM.

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Dcoronata 6 days ago

Yes, and this headline is no better than they are for generating irrational sensationalism.

"Could" destroy them; could also get them so much publicity that they can easily weather whatever weak settlement they come up with.

When is the last time any media company was successfully sued for 7 figures let alone 9.

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ProfNekko 5 days ago

@Dcoronata Well it's pretty safe to assume they're in trouble if they lose. Gawker's been under a pretty massive boycott campaign and has been hemorrhaging money for months, ad services have been pulling out left and right, If they lose the case here not only are they out a ton of money but a lot of companies see them as "toxic goods" and finding outside help may prove difficult

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NoTimeForTha 6 days ago

What'cha gonna do when this twenty-four inch python comes gunnin' for you, brother!?

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Kitkat123 5 days ago

@NoTimeForTha say COME HOME TO MOMMA DADDY !

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1 Like Reply



ga1bn7t 6 days ago

I have no idea if he's right or not, but I would enjoy the schadenfreude of seeing Gawker ruined. They've certainly done their part to further the race to the bottom in news quality and objectivity, not that the more prestigious outlets are that much better nowadays.

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Plaintiff's Trial Exhibit 383

BUSINESS INSIDER

Gawker lawyers don't think the journalist Hulk Hogan pays \$350 an hour is an 'expert'



CELENA CHONG

JUN. 19, 2015, 11:26 AM

We know that Nick Denton is pretty self-assured in his \$100 million war with Hulk Hogan, but it looks like Hogan is flexing his muscle for some help from an "expert journalist."

Many news sites had speculated up to seven months beforehand that Hogan's sex tape featuring himself and Heather Clem — his friends' ex wife — was floating around.

In October 2012, Gawker published parts of the tape accompanied with some cheeky text under the headline that said "Even for a minute, watching Hulk Hogan have sex in a canopy bed is not safe for work, but watch it anyway."

The professional wrestler has dished out an estimated \$15,000 to University of Florida journalism professor Mike Foley to help his case. Foley expressed concerns that Gawker was in it for the money at the deposition: "I think that's why Gawker publishes nude photographs," he said. "I believe it publishes rumors and half truths without regard for their veracity. I think that there is total disregard for privacy."

However, Gawker's attorneys questioned Foley's status as an expert witness, as both of the cases he's previously consulted never made it to trial. They also questioned the legitimacy of Foley's testimony last month, calling it "pure opinion" while Florida law mandates sufficient facts and data.

Foley, a journalist with over four decades of experience under his belt, has reportedly spent 60 hours working on the case already. Hogan is paying Foley \$250 an hour during the March 20 deposition, according to Capital New York, and 15 to 20 hours were spent picking apart the posts on Gawker. Foley will be paid \$350 an hour for testifying at the trial.

If the case is lost on Gawker's end, however, the company could need to turn to "somebody with deeper pockets," Denton said. A Gawker insider told Capital New York that they expect the company to lose the case.

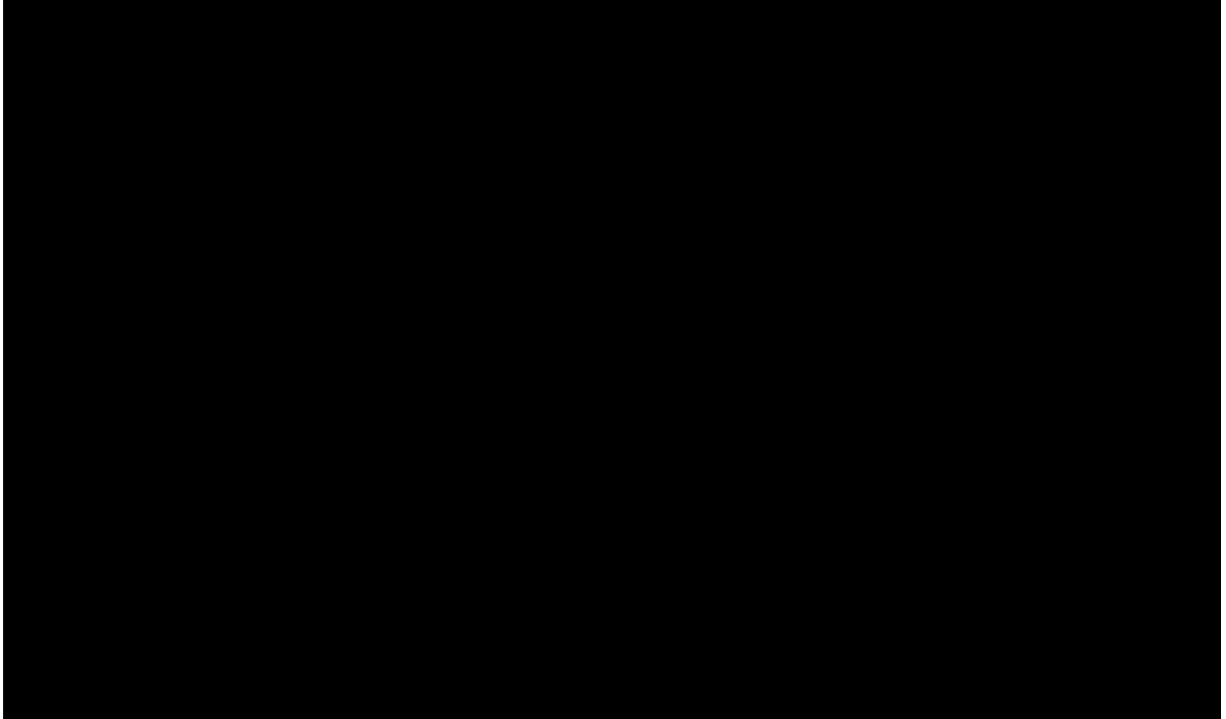
Gawker President and General Counsel Heather Dietrick reached out with a statement: "We think that a jury will understand that it's the journalist's role to clarify when misinformation exists about a widely reported topic and to close the gap between a celebrity's marketed version of a story and reality."



REUTERS/Kevin Kolczynski

Hulk Hogan.

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IN COURT

Hulk Hogan, Gawker prepare to head to trial over sex tape

By **Blanche Johnson**

15 128 8

Published June 19, 2015

FoxNews.com



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Hulk Hogan returns to the ring

Never autoplay videos

Terry "Hulk Hogan" Bollea is in final preparations to take the gossip website Gawker to court over a leaked sex tape. The trial, set for July 6 in Florida, is unprecedented, since it will be the first time a celebrity suing over a leaked sex tape is getting his or her case to a jury.

Bollea is suing Gawker for \$100 million after a 2006 video of him having sex with Heather Clem, then-wife of radio host and his friend "Bubba the Love Sponge" Clem, was posted on Gawker.com. Gawker's founder Nick Denton claimed the tape, which garnered over 2.5 million views, was newsworthy.

Bollea disagrees. His attorney Charles Harder says publishing the video violated his client's right to privacy, especially since Bollea claims he was not aware he was being filmed.

"He has the right to be naked in a private bedroom without the world being permitted to watch," Harder told FOX411. "The First Amendment does not allow cameras into private [bedrooms] when the subject is not aware of it and does not consent to it—as happened to Mr. Bollea. Gawker and Denton do not have the right to turn bedroom walls into windows."

According to court documents, Bollea, 61, has suffered "injury, damage, loss, harm, anxiety, embarrassment, humiliation, shame and severe emotional distress." Another lawyer for Bollea, David Houston, says they want to teach Gawker a lesson about decency and privacy.

BOLLEA 006948

"We have fought them and will continue to fight them to protect the basic values we all hold so important," Houston said. "It is time to put an end to the immoral bullies hiding behind the First Amendment."

But President and General Counsel for Gawker Heather Dietrick says the site is just doing its job.

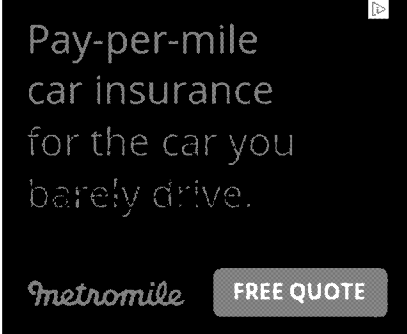
"Here is this tape of this guy having sex with another man's wife, with his blessings. No judgment from us," Dietrick told FOX411 with a chuckle. "Gawker doesn't care what you do in regard to that. But people should be able to know and make their own decisions as to what is going on in the whole world."

Dietrick acknowledged that Gawker faces some serious hurdles, but says they have the First Amendment on their side.

"We are facing a trial in Hulk Hogan's hometown, which is obviously difficult, like them having a home court advantage, but I think that we will be able to tell our story in a persuasive way," she told us. "I don't think you have to be a First Amendment scholar to understand the importance of the story, whether or not it's about a sex tape or some other piece of leaked info – it is important for a reporter to tell a real story in the face of misinformation out there."

Entertainment lawyer Julian Chan, who doesn't represent either side, says the case could go either way, depending primarily on how Gawker obtained the video.

"If it was obtained illegally, it will fall on the side of Hogan," Chan said. "If it was properly received—or even if it was obtained from someone else who stole it— as long as Gawker did not encourage them in wrongdoing, then they have a good chance to prevail."



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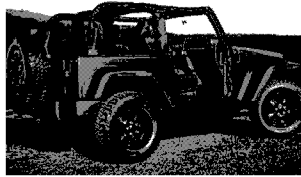
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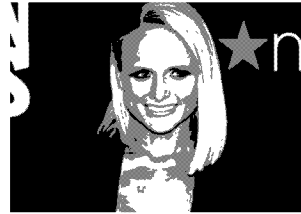
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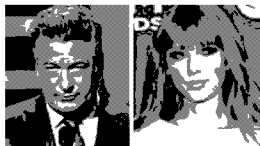
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BeckettBeagle 4 days ago

Too bad, he was an icon when I was a kid...what a thing to be remembered by. I could care less about him pulling some leg, remember when he body slammed Andre the Giant?!!

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Foxers should not watch this.....too much for them.

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Watch the uncensored tape here hulkhoganvideo.blogspot.com

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@JuliaCasimiro thanks pal!

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i want to watch that video

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bgerald 4 days ago

"We have fought them and will continue to fight them to protect the basic values we all hold so important," Houston said. "It is time to put an end to the immoral bullies hiding behind the First Amendment."

I don't know how people live with themselves and try to claim the above statement after sleeping with another man's wife. Here is what that says, I want everyone else to live by a moral code but I don't have to.

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SunTzuR 4 days ago

@bgerald The other man, and the wife were in support of the sexual activity. How is that immoral? I'm sure you are placing your morals on other people, but that's not how it works in a country of laws. The lawyer's statement is neither untrue, nor promoting immoral behavior.

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bgerald 3 days ago
@SunTzuR @bgerald The laws in this country are based on a set of morals. Shesh you liberal are all the same

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Plaintiff's Trial Exhibit 385

Wolff: Gawker should pay for free speech

Michael Wolff, USA TODAY 6:33 p.m. EDT June 18, 2015



(Photo: Andrew Harrer, Bloomberg via Getty Images)

The free speech discussion is often one in which the highest principles are used to defend the lowest aims. No matter how meretricious, if the low is not protected, that could open the way to restricting the true and important. And, after all, sometimes the low actually becomes true and important.

This is a workable argument in part because most calumny, cruelty and vileness have traditionally had to overcome high hurdles before being published, with legal departments, distribution costs, and ritual and propriety in its way. In other words, the lowest of the low is not actually freely allowed.

Until, that is, the Internet, which is able to operate without responsibility or costs. Neither Google nor Facebook, regarded as more like telephone lines than publishers, are legally accountable for their invasions and defamations. And the cruelest and vilest words are usually uttered by people who don't have enough money to make it worth suing them.

But Gawker Media, with its flagship site *Gawker*, the news, gossip and bile blog, has made quite a success out of gratuitous and ad hominem attacks. And now it is in tenacious litigation (<http://www.hollywoodreporter.com/thr-esq/hulk-hogan-gawker-sex-tape-802999>) with wrestler and reality TV personality Hulk Hogan for violating his privacy over a sex tape that *Gawker* edited and posted. While this suit is the kind that will likely be defeated on constitutional grounds, it is also true that you need to be richer than *Gawker* to adequately defend against a plaintiff like Hogan, who is righteous enough and stubborn enough not to settle.

In a sense, it is a perfect example of the checks and balances that, arguably, make free speech possible: If you have something to lose, the system encourages at least minimum levels of prudence. *Gawker*, on the other hand, keeping pace with the ever-greater scabrousness of the Internet, has established new levels of unrestrained and seemingly unsupervised calumny, cruelty and vileness.

Not surprisingly, faced with the Hogan suit, *Gawker* has now launched a public campaign to position itself as a defender of free speech: If it is silenced by the costs of litigation, free people everywhere will suffer.

That position has overshadowed a very reasonable contrary argument: absent the meaningful threat of litigation and oversight of vigilant legal departments, the Internet, with *Gawker* as a good example, has become the ultimate no-recourse medium for defamation, incitement, blackmail, criminal solicitation and threats — all forms of speech generally not protected by the First Amendment.

Jon Ronson's book, *So You've Been Publicly Shamed*, which includes a particularly vivid example of *Gawker* virulence, is quite a definitive study in the brutishness and mob incitements of Internet speech.

Gawker is arguably the richest and most established company in this new genre of casual defamation and hate speech (and, arguably, blackmail and threat — if you cross them they'll vilify you), and, so, a logical target to sue.



Hulk Hogan (Photo: Evan Agostini, Invision, AP)

Free speech and an onerous burden on proving libel exist, in one sense, because most people can't imagine the circumstance in which they would be notable enough to be libeled and attacked by the press. But that is surely less true now. A new, broader sympathy for media victims, combined with distaste for the media, is one more reason why *Gawker* might lose in a jury trial. *Gawker* pursues almost anyone, famous or not, who it conceives to be its political, moral, temperamental, philosophic, generational or stylistic enemy. (I, like many others with a frequent byline, have not been spared — and anticipate great and bilious wrath for this article.) Its vileness and calumnies, I am sure it would say, are democratic — everybody's a fair target.

But while its cruelties might be broadly spread, they can also be understood as bigotry directed at anybody who *Gawker* writers believe is insufficiently like them.

It's possible to defend this as a cogent world view: *Gawker* writers see society as full of self-satisfied phonies deserving of injurious abuse. That would hardly be unique. What is unique, arguably, is a publishing organization this successful that is yet so incautious and flamboyant in its attacks. *Gawker*, as a product of new technology, finds itself with almost no restraints and its targets find themselves with almost no protections and recourse. (And any effort at recourse, is met by further punishments.)

Curiously, such unrestrained and abusive speech means that *Gawker* writers establish a record for themselves that might well make them unhireable in the larger world (or only hireable by other menacing outlets). They are trapped in a cycle of abuse. Several weeks ago, the *Gawker* staff elected to start a union in order to protect their jobs and their editorial freedom (including the freedom to abuse). *Gawker's* founder and owner, Nick Denton, professes to be proud of his staff and sanguine about its union. At the same time, he has said he's assumed a less active management role in the company, perhaps in acknowledgement that the monster he's created has gotten beyond his control.

In the past, it has not been that difficult to make a distinction between free speech, which, however immoderate, needs to be tolerated and protected, and feral speech, the wild, subverbal, bonkers-tilting stuff. The publishing marketplace has modestly encouraged the former, and rather sternly limited and marginalized the latter (with always a struggle in the middle). Now, the latter has grown in ways that would once hardly have been imaginable.

But yes, if you do not protect the worst, you threaten the best.

Still, if Hulk Hogan were to win his suit before the Florida jury, demonstrating the financial risks of indiscriminate speech, and that decision is eventually reversed by a higher court, reaffirming the ultimate principle of free expression, that might offer a sort of balance, albeit sacrificing *Gawker*, but to the regret of few.

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GAWKER DEATHMATCH?

Hulk Hogan is fighting for the privacy of the world's sex tapes

by Kashmir Hill | June 16, 2015 2:22 PM

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Gawker is, according to *Capital New York*, in the “fight of its life.” Next month in a court in Florida, Gawker will have to defend its 2012 decision to publish excerpts from a surreptitiously-taken video of Terry Bollea having sex. Bollea, better known as Hulk Hogan, has sued Gawker for \$100 million, and Gawker’s CEO Nick Denton has told the *New York Times* the company doesn’t have the money to pay if it loses. So *Capital New York* is saying this might be a deathmatch for the decade-old blog — which is terrible if true, because legal experts say Gawker needs to lose to preserve the privacy of the world’s other (and future) sex tapes.

“Right now there’s an ‘anything goes’ mentality when it comes to publishing information about celebrities. If Gawker loses, we might begin to see some rethinking of that mentality,” says Eric Goldman, co-director of Santa Clara University’s High Tech Law Institute. “If Gawker wins, I think it will further embolden online publishers that anything related to celebrities is fair game. That could be used to justify publication of unredacted photos from

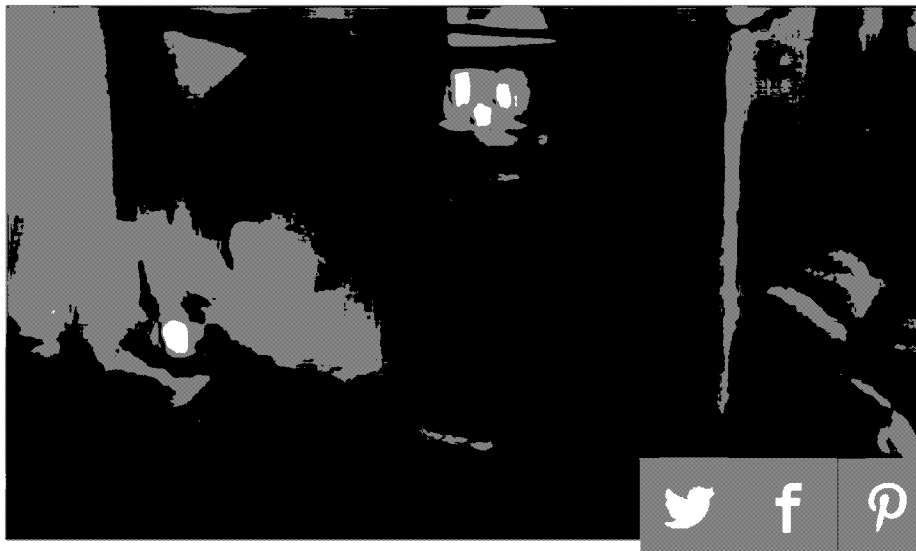
could be used to justify publication of unredacted photos from the Fappening, for example.”

Three years ago, we didn't have a broadly-accepted term for the category of sex tape Hulk Hogan was featured in. Today we would call it “revenge porn” or “involuntary porn:” intimate evidence of a sexual nature released without his consent. Worse, according to Bollea, it was also *made* without his consent – by Bubba the Love Sponge, a Tampa radio personality and then-friend whose wife Bollea was having sex with. Before Gawker got its DVD anonymously in the mail, another gossip blog called The Dirty had published stills from the video. So people knew it existed. But Gawker decided to up the ante and publish a minute's worth of excerpts from the 30-minute tape in a post titled, “Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway.” The author, former editor A.J. Daulerio, describes what happens in the tape in detail and justifies the publication of the video excerpt by saying, essentially, “Look, celebs have sex just like we do.”



Even for a Minute, Watching Hulk Hogan Have Sex in a Canopy Bed is Not Safe For Work but Watch it Anyway

 A.J. Daulerio



According to Capital New York, Denton told his staff that the company will argue 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.” Hogan has sued over “publication of private facts,” and Gawker’s general counsel told Capital New York that the company will argue that Hogan’s sex life was in fact no longer “private” because “he’s talked about really, really graphic details of his sex life, again and again and again, including on [Howard Stern]’s show.”

When I questioned the idea that seeing Bollea pin an opponent in the bedroom “held elites accountable,” Denton told me, by Twitter, “Hulk and Bubba are Tampa celebrities and buddies, united by ‘man code,’ passing women around and boasting on air. That’s a story.”

Gawker could have told the story and described the video (as it did, in great detail, which you can still read, even though the video has been taken down due to the litigation) without actually publishing the video. “Of course, journalists can write that it was made but the video itself isn’t newsworthy. We don’t need to see the video. It’s a sacred invasion of privacy and humiliating and exposing,” says University of Maryland law professor Danielle Citron, author of the book *Hate Crimes in Cyberspace*. “It was a big mistake and [Gawker is] sticking by it because they made it.”

While privacy advocates may be rooting for Gawker to lose, few are rooting for Gawker to be sued out of existence. Citron called the potential \$100 million loss “the craziest highball estimate.” “I doubt it would come close to that,” she said. The jury would decide how much the former wrestler’s exposure and humiliation are valued at. “Ideally, Hogan will win, but he’ll get \$20,000,” says Citron.

If Gawker does lose, though, it will certainly appeal to a court that has previously ruled against Bollea and signaled a pro-“sex video

publication as free speech" bent. Citron fears that if Gawker ultimately wins, it opens the door for other "newsworthy" sex videos to be published. "If Hulk Hogan is newsworthy, then a case of an unconscious women being raped is too and some media might publish that saying we should be seeing it," she says. "It would be chilling for people who are in the public eye. Everything is newsworthy once people are interested."

If sex videos are ruled fair game, it could make the already aggressive paparazzi even worse. "Think about people breaking the law to get those videos," says Citron. "If an outlet can run it and not fear the public disclosure tort, it would incentivize people getting it. It puts incentives in troubling places."

Citron says that sexuality and intimacy remain in the small, protected zone of privacy that even celebrities enjoy. "The argument that, 'he talked about his sex life and put it in public eye,' was the same one rejected in the Pamela Anderson case," she says. "They also argued she trafficked in sexuality, because she ran around *Baywatch* in her bathing suit and talked about her sex life."

After their now-famous sex tape was stolen in the 90s, Pamela Anderson and Tommy Lee sued Penthouse unsuccessfully for invasion of privacy for publishing a story about it, but they won a lawsuit against the company that published and sold the video. The first case was thrown out, while the second resulted in a default judgment against Internet Entertainment Group for its commercial sale of the tape. Anderson and Lee were awarded nearly a million dollars each (far short of the \$100 million that Bollea is asking for). Of course, Gawker wasn't selling Bollea's tape, it was reporting about it.* Media advocates worry a Gawker loss will be chilling for the news media, creating a slippery slope for when they're allowed to report news of a sexual nature.

"It's in many respects a dangerous First Amendment precedent for the court to let a case like this go to a jury," media lawyer Charles D. Tobin told the *New York Times*. "Newsworthiness should be decided by people who choose to look at Gawker or not look at Gawker, not by a jury."

Citron says that a sex tape is a special category, uniquely deserving of privacy, and that, if Gawker did lose, it would not chill the media's ability to, for example, report on and publish bulge-filled photos a mayoral candidate sent to women via Twitter while running for office — the oft-referenced "Weiner example." "A Gawker loss won't be chilling because this case is so unique," she says. "I think we have a societal consensus that sex tapes are unique and not newsworthy."

If Gawker does lose, its appeal would go to a court that previously ruled against Bollea, saying that Gawker's excerpts of the sex tape "address matters of public concern." And of course, there's always the possibility that at the last minute, before the trial starts on July 6, Hulk Hogan will decide against trying to body slam Gawker in court, and instead take the settlement the company has reportedly offered, leaving the question of the media's right to publish sex tapes unresolved.

** Corrections: Penthouse published stolen Polaroids of Pamela Anderson and Tommy Lee but no stills from the video, only a description and transcriptions of their conversations. A parenthetical about Gawker monetizing the tape "through the ads around it" was removed, as Gawker 'doesn't put ads on NSFW' posts.*

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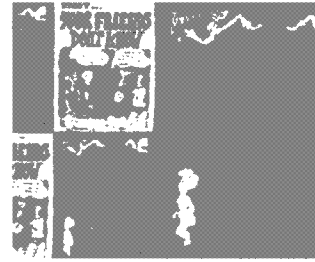
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Tj Khan

"... we're fighting for the truth to hold elites accountable..."

What a lying hypocrite. This from the man who threatened to fire/BLACKLIST journalists to prevent them from reporting on a MEDIA SCANDAL which Gawker was directly involved in.
<http://www.pjthis.com/2015/05/ongoing-harassment-of-author-by-new-york-times-staffers-now-via-gmail/>

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I so hope Gawker loses... they have to be one of the slimiest media outlet out there...

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It is fascinating to think that this could be the next big "free speech" case.

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