

Annex GG

Composite of Complainant's Selected Media Appearances

Cover Story

The Righthaven Experiment: A Journalist Wonders If a Copyright Troll Was Right to Sue Him

Posted May 1, 2012 5:20 AM CDT
By Eriq Gardner

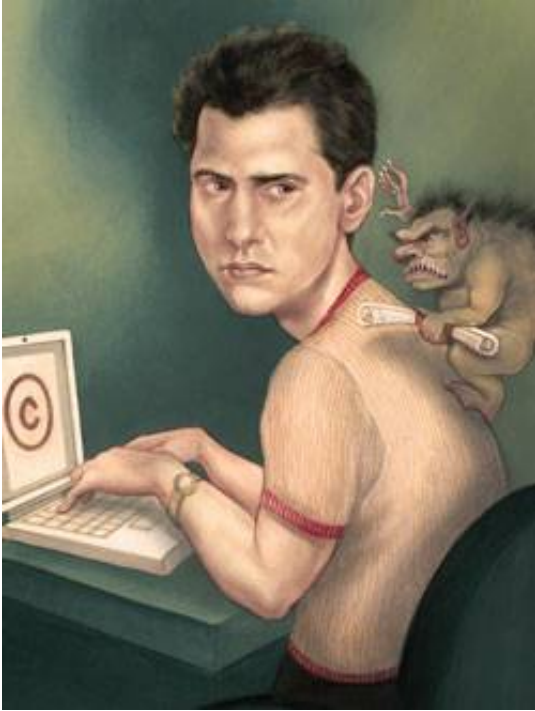


Illustration by Anita Kunz

Almost anyone who uses the Internet and is slightly curious about their own digital existence has, over the past decade, had what might be termed a Google moment. These are times, as you type your name into the search engine box, that you realize you don't have control, that whatever you've done in your life is free to be appropriated and contextualized in all sorts of ways. We have identities, and then we have digital identities; and it's not hard, when you're looking through the digital looking glass of a Google ego surf, to wonder which is more important.

My strangest Google moment came one day last year when Google's search engine monkeys led me to an article in the *Las Vegas Sun* revealing that I had just been sued. The plaintiff in the lawsuit was Righthaven, a company founded in early 2010 with the express purpose of suing copyright infringers on the Internet.

I've written about this company just once before, in a December 2010 article for *Ars Technica* that revealed that the company had picked a new target—the *Drudge Report*. My article included an image from Righthaven's legal papers of a picture the company claimed to own. For this copy of a copy of a copy, I became Righthaven's latest mark.

From there, Righthaven's ambitions quickly unraveled. A few days later, facing a PR maelstrom for suing a journalist who had written about the company, Righthaven was forced to admit that the filing was "an internal error," a "clerical mistake," something that had happened because the machinery of mass suing lacked a decent check against a reporter's fair use. The lawsuit against me was soon dismissed with prejudice.

Within a couple of months of suing me, Righthaven announced that it had suspended filing new lawsuits.

But the knocks kept coming for the company: court decisions that let defendants use substantial portions of the company's material without penalty, judges who questioned whether Righthaven was properly assigned its claimed copyrighted material, media partners withdrawing their support, and more court decisions that ordered the company to pay legal fees to successful defendants.

By last September, Righthaven had told one Nevada federal judge it was considering filing for bankruptcy. Soon the

company’s domain name was seized and, rather embarrassingly, auctioned off to satisfy debts.

Now the company’s leaders—copyright attorneys responsible for launching more than 250 lawsuits in an amazing 18-month flurry—are being investigated by the State Bar of Nevada for their actions.

And despite all of this, Righthaven CEO Steven Gibson, a partner at Dickinson Wright in Las Vegas, is not only unapologetic about everything that’s happened but also still believes the Righthaven experiment will ultimately prove successful.

“Righthaven remains the vehicle for dealing with infringements on the Internet,” Gibson told me recently. “Those who write poems, those who create movies, those who want to publish need to have a sense of protectability. If you want to have newspapers survive, protected from aggregators on the Internet, you’ve got to think about the vehicle through which that protection can occur. I don’t think anyone besides Righthaven has thought about that.”

SEARCHING FOR SALVATION

For the past decade, a number of content studios have been experiencing their own Google moments.

They look out and, besides seeing pesky pirates and annoying aggregators, they’re bedeviled by a confluence of other factors diminishing the value of being in the content business.

Take the *New York Times*. A decade ago, according to one study by Business Insider, the newspaper had \$540 million of operating profit. Today, even as its online operations take in more revenue than ever before, that figure has shrunk to just \$61 million. Crunching the numbers, the authors of the study concluded that the newspaper’s digital business will eventually be able to support a newsroom that’s only one-third to one-half its current size.



Graphics by Kelly Hume

And so big content businesses, recognizing ongoing distribution and pricing troubles, have been searching for salvation.

For many, that’s meant an attempt to broaden legal protections for content owners. Last winter, Hollywood led an effort to get lawmakers to pass new legislation intended to crack down on foreign “rogue” sites devoted to piracy. The Stop Online Piracy Act and the Protect-IP Act would have allowed the Justice Department and private copyright owners to go to court and, after getting judicial blessing, required U.S.-based websites to make efforts like blocking access to these foreign sites, cutting off support from advertisement and payment processing networks, and eliminating the presence of these foreign sites on search engines. Reaction to the controversial plan slowly escalated until the crescendo of cries reached from all corners of the Internet: Lawmakers were intent on damaging free speech protections and threatening innovation on the Web.

Meanwhile, as some content owners look outward for help, others are attempting to figure out whether there’s a more economical way to bolster the old media regime. For many, that includes adapting to the times and coming up with new or better business models. But for a few content owners, in a more agitated state of mind, it’s meant taking the existing copyright regime and doing whatever is necessary to survive.

That’s where Righthaven comes in.

Formed in 2010, the company signed agreements with Stephens Media, publisher of 75 newspapers, including the *Las Vegas Review-Journal*; WEHCO Media, publisher of 10 newspapers; and MediaNews Group, publisher of 56 newspapers, including the *Denver Post* and the *San Jose Mercury News*. Righthaven was assigned limited rights to the copyrights of articles and photographs from these newspapers. In return, Righthaven agreed to share 50 percent of the proceeds from any lawsuit winnings after the deduction of legal costs.

Litigation can be an expensive proposition, however, so Righthaven’s legal campaign required some game-planning about the types of targets the company would pursue. Righthaven decided it would be best to ignore both foreign pirates and any large media company that might engage in copyright infringement. Instigating a lengthy court battle or dealing with the vagaries of foreign jurisdictions would not be worth it. Instead, the company appeared to go after small proprietors such as mom-and-pop Web publishers who perhaps were a tad too aggressive in their copying-and-pasting and might bend quickly to a settlement demand.

Just a few months after it was formed, Righthaven was responsible for a tidal wave of copyright infringement lawsuits in the court system. The defendants made good stories, such as a chronically ill, autistic blogger who was slapped with a lawsuit for posting an image from the *Denver Post* of a TSA agent doing an airline security pat-down. (This was the same image that would later bite me.)

Along with the lawsuits came settle-or-else demand letters. Righthaven told its defendants that \$6,000 would need to be handed over to quash a lawsuit. Many, including the Drudge Report, paid up so as to avoid the hassle. Some defendants pleaded poverty. And a few hired lawyers to put up a defense.

Some of those lawyers registered distaste about what was happening and felt compelled to stand up to a bully in their midst.

“Practical lawyering in an area of law I actually like often disgusts me now,” wrote one of those attorneys, Ron Coleman, on his blog.



MASS MEDIA LITIGATION

I’ve been covering media and law for nearly a decade. In that time, I’ve written about some of the key efforts to use the court system to protect intellectual property from the intrusions of the new digital vanguard.

The Digital Millennium Copyright Act, signed into law by President Bill Clinton in 1998, established protections for digital content, and lawsuits in the aftermath have shaped liability for Internet service providers who host, often unwittingly, copyright infringing material. By now, it’s well-established that websites have to respond expeditiously when informed by a copyright holder of misappropriated content, but the reach of the law has had limited effect on the spread of pirated work. Infringements taken down in one spot are often put up in another, and often on foreign websites free of strong statutory obligations.

In reaction to this situation, the content business keeps flirting with the idea that the only way to really make a dent against piracy is to teach the pirates themselves a hard legal lesson by making them pay for their bad acts.

The Righthaven experiment was not the first to go after pirates on a massive scale. From 2003 to 2008, the Recording Industry Association of America took legal action against an estimated 30,000 individuals for sharing music on peer-to-peer platforms like Grokster and Kazaa. The industry group eventually backed down because of the public relations fallout and the enormous expense of the nationwide litigation.

But the idea that mass suing represents a solution to online piracy hasn’t died with the RIAA’s retreat. Far from it. I know.

In the early months of 2010, an enterprising law firm based in Washington, D.C., began a new effort to sue individuals who had engaged in copyright theft via “torrent websites”—sites that use BitTorrent technology for file sharing. What made the efforts of this firm calling itself the US Copyright Group so unique were its tactics: On behalf of its indie film clients, the firm joined thousands of “John Does” as defendants into a single lawsuit, then got a judge to subpoena ISPs for identifying information. Afterward, the alleged pirates, once revealed, would get a settle-or-else demand.

In March 2010, I wrote an article for *The Hollywood Reporter* describing this new legal campaign.

In the months that followed, the mass-joinder litigation started to gather national press attention. Large ISPs like

Time Warner Cable resisted subpoenas. Public advocacy groups like the Electronic Frontier Foundation made it a priority to fight the “trolling” threat. And already overburdened judges struggled with the resulting storm of lawsuits.

Other companies soon adopted the tactics of the US Copyright Group, including big book publishers like John Wiley & Sons. The porn industry was able to put its own spin on the litigation with the implicit threat of revealing legal targets who refused to settle as enjoying gay porn, bestiality or other potentially embarrassing entertainments.

By February 2011, less than a year after my story came out about the US Copyright Group, more than 100,000 people in the United States were facing allegations of copyright infringement. Five years ago, during the height of the RIAA’s litigation campaign, fewer than 6,000 copyright cases were pending in the courts.



'ARROGANCE BEYOND BELIEF'

Though the business of mass suing seems black and white for “copyright maximalists” (those who favor laws conferring broad rights and protections to content creators) and “copyfighters” (those who prefer looser protections in the name of technological innovation), the ethics of enforcement is a topic that generates some surprising opinions.

Consider [Marc Randazza](#), who is probably the lawyer who has done the most to destroy Righthaven: His court-ordered legal fees for vigorously defending a Righthaven target forced the company to sell its own domain name. (It was purchased by a Switzerland-based company that promised to offer Web-hosting services with “a little more backbone” against legal threats.) Randazza, whose multistate practice is based in Las Vegas, calls what Righthaven did “arrogance beyond belief.”

Yet Randazza maintains he is a supporter of the general principles behind SOPA. He says that the research he started a few years ago for a paper attacking the RIAA’s mass-suing campaign led him to an opposite conclusion. “I have complete respect for what the RIAA did,” he says.

Or take Thomas M. Dunlap, the D.C.-based leader of the US Copyright Group, whose mass-joinder litigation efforts against individual pirates became a legal phenomenon. One might expect him to have sympathy for what Righthaven went through, but he’s no fan of the company either. Dunlap says the “biggest mistake they made was not doing their copyright homework.”

He’s not alone in that feeling.

Righthaven’s Gibson tells me that he believes the efforts against his company were led by those whose agenda was to weaken copyright laws. “The same folks battling SOPA were battling Righthaven,” Gibson says.

But Robert Levine, author of *Free Ride: How Digital Parasites Are Destroying the Culture Business, and How the Culture Business Can Fight Back*, says he believes that Righthaven messed up “a lot of stuff, including the basic idea of giving small players a mechanism to enforce their rights.”

What are perceived as Righthaven’s failings can be put into two categories: a disregard for the notion of fair use and its own lack of standing.

Fair use is the legal doctrine that holds that people should be permitted to make use of copyrighted material so long as they limit themselves to using only what is necessary to their message. Even copyright holders believe that this kind of sampling adds to the progress of culture or our understanding of society without harming the market for their

work.

Indeed, Righthaven seemed to have been caught off guard when judges wouldn't fault bloggers for reposting photographs or quoting articles. In one of the most famous Righthaven cases, a federal judge found that Vietnam veteran Wayne Hoehn, who had posted all 19 paragraphs of a *Las Vegas Review-Journal* editorial, was within his fair use right to do so.

The issue is one of the main reasons why Randazza decided to take on the company. "It irritated me that the company filed all those cases without any regard to fair use," he says.

Righthaven's inability to anticipate and prevail on these fair use challenges has alarmed some trade groups in the content industry, including the RIAA and the Association of American Publishers, which filed an amicus brief last December at the 9th U.S. Circuit Court of Appeals at San Francisco in the Hoehn case. They argued that Righthaven lacked standing to pursue its copyright claims and shouldn't be allowed to usher in "sweeping fair use pronouncements" that would imperil real copyright owners.

That leads to Righthaven's second failing, which doesn't get quite so under the skin of its critics but is equally significant.

The idea that Righthaven lacked standing derives from successful challenges at the district court level to the way it was assigned copyrights by its media partners in the first place. One judge ruled that only plaintiffs who have actual control over copyrights can sue. Righthaven was merely given the right to sue in its "strategic alliance agreement" with Stephens Media, and the judge said that wasn't enough.

No topic arouses more anger from Gibson than this particular decision. He thinks it was a flawed one, emanating from a judge who was influenced by "personally vicious, unfounded, disreputable attacks" on Righthaven.

Critics like Dunlap aren't so sure. "If Righthaven had filed [its cases] in the name of the rights-holder like Stephens Media, then I don't think their cases would have been dismissed," he says. "I'm not sure why they didn't."

Gibson could have easily represented Stephens Media as its outside counsel. Instead, he chose to step outside the lawyer's typical role and create a shell company whose sole purpose was to sue. Why?

Righthaven observers have all sorts of theories on this. Some believe Righthaven's *raison d'être* was greed, plain and simple. As lawyer-executives of such a company, they could grab a larger share of the potential settlements and judgments than they could as mere litigators. Others believe the media companies that held the copyrights wished to create a "firewall" between their operations and any potential adverse judgments and negative PR from the litigation campaign.

Gibson wouldn't speak to this mystery directly, perhaps because it's likely a subject of the probe by the State Bar of Nevada, which confirmed in January that it was investigating Gibson and two other Righthaven lawyers without giving any details. But during our conversation, Gibson did offer some hints.



THE RESULTS

I contacted Gibson 10 months after I had been sued by his company.

I emailed him to see if he'd talk, and I told him truthfully that I harbored no hard feelings about the experience. I also expressed my interest in doing a fuller story on his company, beyond merely piling on to all the negative words that had already been said. I wanted to know what we could learn from the Righthaven experiment. I pointed out that I was not only the subject of a copyright lawsuit and a reporter covering copyright litigation, but also a producer of copyrighted content. I, too, worry about what the future will mean for those who get paid to write in an era where controlling distribution and battling misappropriation becomes tougher and tougher.

When I eventually spoke to Gibson, I allowed him to suggest where I should take this article. His answer definitely surprised me.

"One of the questions for the article is why is it so difficult for copyright owners to hire competent copyright litigation counsel?" he said. "There's not a lot across the country. Definitely not like personal injury lawyers. You can't go into

the phone book and find a listing. Why is it this difficult? Why isn't there more copyright litigation?"

That's a pretty provocative statement. Is there really a lack of good copyright attorneys in the United States? What if someone decided to steal this article? Would I be able to find an attorney to represent me if I decided to file a lawsuit?

"In writing this story, you should go out and interview attorneys out there," he responded. "It'd be fantastic to go through real-life examples and ask 'What would be the retainer? What would be the legal fees?'"

I'm beginning to see where this is heading. Does Gibson really believe that copyright litigation is an underserved market? Seems so.

At another point in our interview, he proposed that the "economic structures of law firms may not lend themselves" to picking up copyright plaintiffs. And whether that's because of inadequate laws or because the incentives aren't worth the spoils for media companies and their legal representation, clearly Righthaven was the vehicle that in his mind at least was attempting to solve the issue.

I put these theories to others. Stephen Zralek, a partner at Bone McAllester Norton in Nashville, Tenn., has defended a case against Righthaven and chairs the ABA's Copyright Litigation Committee in the Section of Intellectual Property Law. He wasn't buying it.

"There are times when worthy plaintiffs can't afford an hourly rate and can't convince a lawyer to take it on contingency," Zralek says. "But it's true that so many areas of the law are out of the reach of average Americans. I think that for someone who has a valuable work and there's clear infringement—and they have ability to pay and they would lose more money than not litigating—the answer is simple."

On the other hand, others like *Free Ride* author Levine aren't ready to summarily dismiss Gibson's observations. Even though Levine believes that the solution can't be a company like Righthaven that "aggregates rights to beat people over the head," he thinks that the cost of suing is so high and the prospect of winning statutory damages from poor bloggers is so minimal that copyright has essentially become useless. "If you are a newspaper," he asks, "what good is it to have a right if, effectively, there is no mechanism to enforce that right?"

Assuming that's true, and that copyright is on weary legs as a platform supporting the promotion and creation of new works, where to go from here? Some big content studios say that sweeping new copyright legislation is in order to prevent access to pirate facilitators. Others, particularly those who rallied against SOPA this past winter, believe that enforcement misses the point; they say media businesses need to embrace technological innovation, adapt their revenue models, and figure out new reasons for consumers and advertisers to buy in. And yet some in the community, stretching across some of the divides that have opened up since the DMCA was enacted, are slowly getting behind the idea that the economics of law need to be discussed. In particular, many are following discussions under way at the U.S. Copyright Office about a small claims circuit for copyright claims.

How about you, dear reader? When you have your Google moment and see something out there on the Web that seems to be stolen from you, what should happen? Is there an ethical way to handle the situation that's both financially reasonable and sure to be effective? Or must you acknowledge that control is out of your hands these days and there's really no recourse?

Tough questions, surely. Don't sue me for asking.

Eriq Gardner is a freelance writer in New York City.

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Call off the attacks

Instead of trying to muzzle others, try acting more civil

Tuesday, March 13, 2012

Under other circumstances, Gloria Allred would probably find it patronizing and condescending toward women – the fact that an antiquated Florida law makes it a crime to question a woman’s chastity.

But in this case, the celebrity lawyer wants to use the hopelessly out-of-date and unconstitutional statute as a bludgeon to punish and perhaps silence conservative talker Rush Limbaugh.

Allred knows, or should know, that the state law is highly questionable constitutionally. She also knows, or should know, that Limbaugh’s ill-considered opinion that a Georgetown University contraception activist was a slut or prostitute – since apologized for – was commentary protected by the First Amendment.

She also knows, or should know, that what Limbaugh said, however shameful, pales in comparison to what liberal commentator Bill Maher and comedian Louis C.K. have said about Sarah Palin.

Since folks such as Allred and fellow liberals Jane Fonda and Gloria Steinem – the latter two of which want Limbaugh silenced – have now made this a First Amendment issue, you should know what Louis C.K. said about Palin’s reproductive anatomy – that it is a “(bleeping) retard-making ----,” using a profanity for “woman” that is so vile we won’t even feed you the first letter.

So how does Limbaugh’s speech rate so much more dire consequences? Because it comes from a certain political perspective that the cool kids in the mainstream media don’t agree with.

So they want it silenced.

They want advertisers to do it, or radio networks or the Federal Communications Commission or the Palm Beach, Fla., prosecutor’s office. They’re trying it all.

Any educated citizen, much less an attorney, should know that can’t be allowed to happen under the First Amendment.

“I despise Rush Limbaugh,” First Amendment lawyer Marc J. Randazza writes at CNN.com, in an article headlined, “It’s un-American to silence Limbaugh.”

“I despise almost everything I have ever heard him say. I wish that he were no longer on the air. That is why I write today to defend him against those who call for him to be silenced.

“Far too frequently, Americans find offense in another’s art, music or other expression, and then they call for censorship. This is intolerable.”

Good for him.

How dangerous for the republic to have people such as Allred, Fonda and Steinem seeking to silence speech they find offensive.

Here’s a thought: Instead of trying to silence each other, why don’t we first stop attacking each other?

Limbaugh and others conservatives ought to lead the way and set a more civil standard.

It’s a quaint notion these days, certainly. But it’s also true: One need not demonize a political or cultural opponent in order to disagree with him or her.

Limbaugh was guilty of doing that. So are people on the other end of the political spectrum.

We needn’t try to silence each other. Rather, let’s just have it out in the marketplace of ideas and let viewers and listeners and readers decide for themselves who is right.

Limbaugh’s incivility was punished, swiftly and surely. He lost advertisers, and likely a few listeners, and felt obliged to apologize. What if other cases of rank incivility were met with similar repercussions – regardless of one’s political persuasion?

Instead, in some cases the incivility gets rewarded. Louis C.K., until the Limbaugh incident brought attention to his obscene hatred, was scheduled to be the headliner at the Radio & TV Correspondents' Association dinner. He withdrew after a call by Fox talker Greta Van Susteren to boycott the dinner.

This free speech thing is hard. It's a whole lot harder when we act like children.

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22-Year-Old Sells Virginity Online -- and Feds Can't Do a Thing to Stop Her

Published January 15, 2009 FoxNews.com



22-year-old Natalie Dylan is selling her virginity in an online auction and has reportedly received over 10,000 bids.



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A 22-year-old woman is selling her virginity online — offering her body to bidders nationwide in an auction that reportedly has netted a \$3.7 million offer — and the law isn't doing a thing to stop her.

The FBI isn't interested. The U.S. attorney doesn't care. Everything is fine by local police, and she isn't breaking any laws.

That's because Natalie Dylan, a made-up name for a real 22-year-old California college grad, is marketing her maidenhead in Nevada, where prostitution is legal.

But some religious legal groups are objecting to the sexual sale, saying they are concerned that its influence may reach beyond the borders of the "Battle Born" bordello state.

"It does seem crazy," said Mathew Staver, director of the Liberty Center for Law and Policy. "The rest of the country has an interest in stopping that kind of activity from spreading from Nevada to their home state."

Staver said because the bidding was being conducted online, federal law could be applied to stop the auction from going through.

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"Nevada has been out of step with the rest of the country for many years with regards to prostitution, and that's why I think it's important for federal prosecutors to look into this, so that Nevada does not dictate the morals and moral decency for the rest of the nation," Staver told FOXNews.com.



But federal authorities said there wasn't much they could do about the case, and deflected attention toward local statutes.

"Being that prostitution is legal in the area that she's listing from, and she's over 18 and it's consensual, I would defer it to local police authorities," said David Staretz, a spokesman for the FBI's Las Vegas field office.

The Postal Inspection Service, which monitors the Internet for some illegal transactions, is "currently unaware of any specific fed prohibition against this activity," said spokesman Al Weissman.

The office of the U.S. attorney in Nevada said that it has prosecuted over 200 cases in the last six years involving the solicitation of minors online, but it had never worked on a case like this involving adults.

The Moonlite Bunny Ranch, the brothel that is arranging and hosting the deal, sounded especially gung-ho about Dylan.

"Natalie is a virgin and would like to sell this priceless and rare commodity in a very exclusive and private setting," says the Bunny Ranch Web site.

While the commodity's rarity may be debatable, more than 10,000 bidders have come forth to put a price tag on Dylan's purity. And if the Bunny Ranch's owner is to be believed, someone has offered \$3.7 million, a price far above rubies.

"One time only she will appear at the bunny ranch and give up her virginity to the highest bidder," says the brothel's Web site in a needlessly repetitive statement. Dylan says she is trying to finance graduate studies for her sister and herself.

Some legal experts say they're well within their rights to make the sale.

"It's a First Amendment issue. You can advertise goods or services that are illegal where they're advertised but legal where they're performed," said Marc Randazza, an attorney specializing in first amendment law. "What's she's advertising is as legal as toast with the crust cut off where she is."

Randazza said some prosecutors might be eager to jump on the case, but that this "commercial speech" is protected.

"If this is legal where it's being advertised" — in Nevada — "the government can't say you can't advertise it here," he told FOXNews.com.



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Online criticism sparks real world defamation lawsuit

By [Todd Ruger](#)

todd.ruger@heraldtribune.com

Published: Sunday, December 18, 2011 at 4:06 p.m.

Last April, a customer of Sarasota computer graphics company Razworks went online and began to rant about a dispute with the company owner.

Since then, a one-star review on Yelp.com shows up first when you search the company, and it calls owner Michael Rassel a "scam liar and complete weirdo."

So this month, Rassel filed a defamation lawsuit against the customer, Roy Gonzales, bringing to Sarasota a growing threat that a critical review can land disgruntled customers in court.

More and more people are using the Internet to research companies and to post reviews — praise or grievances, justly or unjustly — that can reach potential customers on a wide scale.

But few realize it could cost them, as more businesses use lawsuits to fight back, says Marc Randazza, a Las Vegas attorney who defends online defamation cases in Florida and across the nation.

"The day you get served with a defamation suit, whether you're right or wrong, you just lost \$20,000 minimum," Randazza said. "Most defamation defendants are blindsided by it."

Defamation suits to silence online critics have increased in Florida since 2008, when a Florida Supreme Court ruling and a lack of a law protecting consumers makes suits harder and more costly to defend, Randazza said.

In the Sarasota case, Rassel says the rants against him are flat out wrong, an attempt from the customer to pressure him into doing extra work for free.

But Rassel also says the one man's reviews are killing business for him — a 70 percent drop in income.

"They see something like this on the first page of Google, they're gone, they're not even going to give me a second thought," Rassel said.

And there is another entry on ripoffreport.com from the same disgruntled customer, calling Rassel a "low-life cheat" and implores readers not to hire him.

The impact was immediate, Rassel says. Potential clients started disappearing, clients that were lined up prior to the rant suddenly changed their mind.

"My business has been violated," Rassel said. "I've spent 10 years building this



STAFF PHOTO / THOMAS BENDER

Razworks owner Michael Rassel says the one man's reviews are killing business for him — a 70 percent drop in income.

business locally, for someone like this to just come along and post something that sounds like a drunken sailor."

Gonzales could not be reached for comment on his comments or the lawsuits. His Yelp.com profile shows he has written hyper-critical reviews of two other companies, a Fort Myers car dealership and an insurance company. Each time he begs readers to stay away.

Gonzales does have one positive review, however, saying his wife likes the salads at Rico's Pizza in Sarasota.

To be defamation in Florida, the review must not be an opinion, but include facts that are untrue and damaging to someone's reputation, said Sarasota attorney Robert Turffs, who is representing Rassel.

"You can say I didn't like him, he did a lousy job, you can say that all day long," Turffs said. "Once you say this guy took money from me and didn't perform, that's a lie."

Companies like Yelp are protected from lawsuits because they are providing a platform. It is the reviewer who is responsible for what is said, attorneys say.

Yelp asks reviewers to write honestly and stand behind their reviews, and tells businesses to engage constructively with customers who have not had a positive experience.

A Yelp spokesperson said the company expects "users to feel free to air their opinions, but not to exaggerate or misrepresent their experiences."

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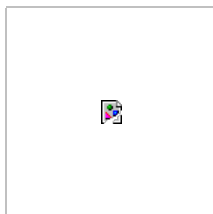
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Media lawyers don't generally have groupies, but then again, most don't have the opportunity to teach Fox's Glenn Beck a lesson in the First Amendment.

[Marc Randazza](http://randazza.wordpress.com/about-me/) (<http://randazza.wordpress.com/about-me/>) is the attorney who represented Isaac Eiland-Hall in an attack by Beck over a satirical website called glennbeckrapedandmurderedayounggirlin1990.com. In September, Randazza [filed a remarkable response](http://www.thresq.com/2009/09/glenn-beck-raped-murdered-girl-website.html) (<http://www.thresq.com/2009/09/glenn-beck-raped-murdered-girl-website.html>) in a WIPO administrative action defending Eiland-Hall against claims the website was registered in bad faith. [Randazza won](http://www.thresq.com/2009/11/glenn-beck-raped-murdered-girl-1990-decision.html) (<http://www.thresq.com/2009/11/glenn-beck-raped-murdered-girl-1990-decision.html>).

His efforts were noticed by Christopher Jorgensen, who runs a website that trades in a different form of satire. Jorgensen [writes over-the-top letters to celebrities and brands](#)



(</images/old/6a00d83451d69069e201287580f909970c-pi.jpg>)

(<http://www.jackassletters.com/index.php/asking/about/>), pretending to be a huge fan and requesting autographed pictures.

"I loved how you took Glenn Beck to task and exposed him for the idiot he is," wrote Jorgensen. "You must send me an autographed photo for my shrine. I know this must be a common request for most lawyers, what with their adoring legions of fans and all, but for you it is a requirement."

Randazza wrote back, starting [his letter](#) (http://www.jackassletters.com/index.php/asking/marc_i_randazza/) this way: "Thank you for recognizing my awesomeness."

The lawyer promised not to disappoint the founding member of the "Randazza Society." And told his fan not to worry about being sued by Glenn Beck. "He is an asshat, and by the time you get this letter, he will probably have already self-destructed like Morton Downy Junior."

Randazza included a signed autograph over a picture of Gary Coleman. Which, in our book, is pretty much the definition of awesomeness.

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L.A. NOW

SOUTHERN CALIFORNIA -- THIS JUST IN

Condoms in porn: Moving industry out of state could be difficult

January 19, 2012 | 7:12 am



Threats by porn firms to [leave](#) California after the L.A. City Council voted to mandate condom use in porn films could be difficult because such filming is legal in just two states -- California and New Hampshire.

A ruling by the California Supreme Court effectively [legalized](#) the making of adult films in a landmark 1988 case, which came just as VCRs allowed people to watch explicit movies at home.

New Hampshire's highest court made a similar ruling only recently, in 2008.

The California ruling is a key reason why L.A. became the capital of the multibillion-dollar porn business. The justices defended the right of film producers to recruit people to act in sexually explicit movies, making it impossible for police and district attorneys to prosecute producers of pornography on charges of soliciting people to engage in prostitution.

The California [case](#) stemmed from the conviction in 1985 of Harold Freeman, who had faced a possible prison term for hiring actresses for up to \$800 a day to perform explicit sex acts in a movie called "Caught from Behind II," according to Times coverage at the time.

The court dismissed prosecutors' argument that the porn performers were prostitutes. Rather, the justices ruled they were being paid to act for the purposes of making a film, and not to sexually arouse or gratify the film producer, which is an element of prostitution.

Meanwhile, the New Hampshire Supreme Court in 2008 said a person who was recruiting talent for a porn film should not have been prosecuted under anti-prostitution laws.

Those court rulings are one reason why the president of the AIDS Healthcare Foundation, Michael Weinstein, said he finds it unlikely that the porn companies will move out of California.

But attorney Marc J. Randazza of Las Vegas, whose clients include a porn firm, said he finds it entirely possible that adult film companies in L.A. could relocate to Nevada.

Randazza said he would find it hard to believe that a district attorney in Nevada would target porn producers in a state that permits legalized prostitution in some areas.

But if many porn productions did move to Sin City, the AIDS Healthcare Foundation promised to take the condoms-in-porn issue there.

"When the industry says, 'We'll go to Nevada,' we vowed we will follow them," said foundation spokesman Ged Kenslea.

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-- Rong-Gong Lin II

Photo: An editor works on a video at porn firm Vivid's headquarters in 2007. Credit: Ken Hively / Los Angeles Times

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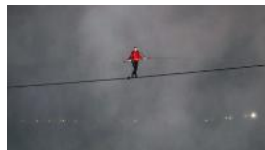
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Marc Randazza

First Amendment attorney

Interview conducted by KRISTY TOTTEN

IN HIS QUEST to defend freedom of expression, lawyer Marc Randazza has backed porn stars and battled big names such as Glenn Beck and Righthaven. Last week he was sworn into the Nevada Bar at the AVN awards. Here he talks about his mischievous college days, a law Nevada needs and how porn can be enlightening.

XBIZ adult industry news named you one of its Top 50 newsmakers in 2012. How did you become a porn lawyer?

You mean how did I become a *First Amendment* lawyer. (Laughs.) No, that's a completely fair way to characterize it. My history with this goes all the way back to my undergraduate days. I was a student at the University of Massachusetts, going to journalism school. I think I picked journalism because I thought, "This is going to be great. I can be a mixture of Hemingway and Hunter S. Thompson." Journalism seemed like a great career for someone who likes to make their own hours so that they can drink a lot. The first three years I majored in drinking and chasing girls. Unfortunately you can't get any credit for that, not even in the journalism school. So I flunked out three times, and after a brief stint in the Army and some time driving a taxi, I go back to college and beg them to let me back in. I just randomly took a class called Journalism and Law with Professor Karen List. That was when I heard the voice calling me to be a First Amendment attorney. I first started reading some of the language in *New York Times vs. Sullivan*, I realized this is really the jewel in the crown of what America is. This protection of wide open and robust debate. This protection of all views in the marketplace of ideas. I was just deeply inspired.

Of course, I was still enjoying my old hijinks, so I did still end up doing very poorly on my first exam, and Professor List grabbed me in the hallway. She's this small, tiny woman, she couldn't have weighed more than 95 pounds, grabs me and throws me against the wall in her office and says, "You are the smartest person in my class and you just got a 37 on my exam. I don't know what the hell's wrong with you, but you're gonna get your shit together, you're gonna get As on the next two exams, you're gonna get an A in the course, and you're going to do well. That was a second lightning bolt that hit me in her class.

So, you got an A in the class?

I did get an A in the class. I got in A in that class and every one I took with her from then on. I graduated, drifted around a little bit, did some writing, worked on a oil tanker, freighters in the Caribbean, and didn't really find my focus again until I sat one day and said, "Geez, wasn't I supposed to be a First Amendment lawyer?" I ended up going to Georgetown Law School, and while there, I started to get a little seduced by the big law thing. But while I was there, a little event reminded me of my calling. I was running for student government, just as a gag. While out at a bar one night, I was flipping through an alternative weekly that had a story about penile implants gone wrong. There was a picture of this guy with a quote "You could hit my penis with a sledgehammer, and I wouldn't even feel it -- unsatisfied penile implant customer." I tore off that picture and quote and wrote, "Vote Randazza -- 100 percent real, no insensitive dick" underneath it, and that was my campaign poster. The Women's Legal Alliance got all in a huff about it, took down the



PHOTO: JEFERSON APPLIGATE
Marc Randazza

posters, and complained to the administration. I was sitting there in the dean's office, and they were giving me this lecture about how it was offensive. For a few seconds I thought, "I'll just apologize and let it go away -- go along to get along so that I can get that big law job one day -- it's just stupid student government." But then, I heard that voice in my head. I thought, "What the hell am I doing here if I let them get away with this?" Whether they like the speech or not, it was political speech -- the most sacred form of speech. I shot right back at them that suppressing political speech because someone found it offensive was intolerable, and I'd bring the fight to the press if they insisted. They relented. The posters went back up, and I won the election to boot. I guess my own campaign was my first First Amendment client.

After law school, I wound up taking a job with a firm that did real estate work, and it didn't do anything for me -- working at the big corporate firm, the really big paychecks, and working on little pieces of big cases. They may have great financial rewards, but they didn't satisfy that calling. So after about a year of that, I went back and looked back at all my notes from Professor List and all the cases I wished I had worked on and I went and found lawyers who had worked on cases like that. Fortunately, there was one not too far away from where I was at the time, and I said, "Hey Larry, I want to work for you." I caught him at a moment of weakness because he needed somebody, and I started working for him. While at that firm, I found the lofty news media cases had all really been done. *NYT vs. Sullivan* has been done. The newspapers have all been bought by General Electric and other companies. The mainstream press has been so corporatized that it is no longer the vanguard of the First Amendment that they were back in the '60s. Today, that vanguard is the adult entertainment industry.

When people in the adult entertainment industry get prosecuted for obscenity, what's happening to them? That's a producer of films being threatened with prison because the government doesn't like the content of that film. There is no civilized first-world society that should tolerate that. People like Larry Flynt and John Stagliano and Max Hardcore, when they fight these cases, they risk -- and frankly, they do go to jail for it -- when people risk that, when they don't plea out, when they say they're going to stand up for the First Amendment, these people are doing more for your liberty and my liberty than anybody in the military. And yet, we have tributes to them before every football game. My heroes are people like that, people who risk their very freedom for all of our liberty.

Will they ever get recognition?

No. That's what makes them really true heroes. Larry Flynt has gotten some recognition, but I think it'll be a hell of a long time before we see a Larry Flynt square in Washington, D.C., or a monument to Max Hardcore or John Stagliano. But you know, by all rights, there should be. However, I recognize them. That's why I chose to be sworn in to the Nevada Bar while onstage at an adult entertainment conference. It was not an irreverent act at all. It was a statement to that industry that I believe in them, and I am here to protect them. But it was also a statement to the bar, that I took that oath with the greatest degree of reverence for my responsibility to uphold and defend the Constitution.

You're a big Righthaven opponent. If Righthaven was wrong, how do people protect their content?

Where free expression and intellectual property meet is an area of law that fascinates me. If you're going to protect free expression, it doesn't make much sense to protect something just to have it stolen. I deeply sympathize with content producers who want to protect their right to make a profit. The Constitution doesn't just protect your rights under the First Amendment. The copyright clause was in the constitution even before the First Amendment. So I'm not a copyright minimalist where I don't think people have a right to protect their work. That said, I do have a problem with maximization of copyright to absurd limits. I think that copyright should have a limited duration, and the current duration is ridiculous. I also think that fair use should receive far greater protection than it does.

My grievance with Righthaven was that it really took the concept of copyright, as being a thing to protect creative expression, and simply turned it into a money-generating machine, and more offensively, it did so without regard for fair use. As a First Amendment attorney, the most important part of the Copyright Act, to me, is Section 107 that protects fair use. You must have fair use in order to have free speech. Otherwise, you can simply use copyright to privately stifle that which the government never could. I found it objectionable that Righthaven was suing people for what was clear fair use with no regard for it whatsoever.

So, how do you do it? How do you protect copyright? You do it ethically. You don't do trying to create a futures market in lawsuits. And you don't do it without caring about whether the defendant is engaged in fair use. I have not and will not bring a lawsuit on the behalf of a client for copyright infringement unless we give great consideration to that.

Nevada does not have an Anti-SLAPP law that prevents the well-heeled from using costly lawsuits to silence their critics. What does it mean for the state?

SLAPP [Strategic Lawsuits Against Public Participation] suits are brought by people who know very well that they will never prevail in the case. Bringing the case is their punishment of those who criticize them. You do not really have freedom of expression without an anti-SLAPP law on the books in your state. There are some states, which I call civilized states, that have anti-SLAPP laws. And there are some states, which will never have them, which I call uncivilized states.

And here are states where they're just not at that level of enlightenment yet. Nevada is in the middle category. We're just not there yet.

Nevada really needs this protection. Any state that wants to commit itself to free expression needs it. These don't prohibit defamation cases. Some people think they're problematic because they deny people the right to access to the courts, and that's simply a lie. It's not even a mistake. It's a bald-faced lie. In California and Oregon, and under every SLAPP law I've looked at, if you can show you have a viable case, you get past that and roll on to the defendant.

You mentioned that people should fight to protect pornography, even if they despise it. Why?

I think we all need to remember that the First Amendment is there for speech that we don't like. Otherwise, who needs it? You don't need it to be there for noncontroversial speech, speech that doesn't press the outer limits of the marketplace of ideas. The way we reach enlightenment is through the free exchange of ideas and testing those ideas and debating them. If we say, "That idea is bad, and we can't allow it to be exposed to the light," then how can we really ever achieve anything?

When you think about speech that really, really offends you -- whether its the Westboro Baptist Church and their "God hates fags" campaign, or whether it's Nazis or the KKK, or Christianity or Mormonism, or anything you can think of that's the most offensive speech possible -- that is the speech you should fight the hardest to protect. Many people are uncomfortable with pornography, but that is precisely why it should be protected. The government can't be in the business of deciding who opens a stall in the marketplace of ideas.

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AIR

It's un-American to silence Limbaugh

March 11, 2012 | By Marc. J. Randazza, Special to CNN

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I despise Rush Limbaugh. I despise almost everything I have ever heard him say. I wish that he were no longer on the air. That is why I write today to defend him against those who call for him to be silenced.

Far too frequently, Americans find offense in another's art, music or other expression, and then they call for censorship. This is intolerable.

The First Amendment stands for principles like that espoused by the Supreme Court in *West Virginia v. Barnette*: "Of there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion or force citizens to confess by word or act their faith therein."

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Marc Randazza says the only thing worse than having to listen to Limbaugh is the idea of using the government to silence him.

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Or that wisdom given to us by *New York Times v. Sullivan*, "Debate on public issues ... [should be] ... uninhibited, robust, and wide-open."

The First Amendment requires neither tact nor politeness. It requires that we permit all views to set up stalls in the marketplace of ideas, and we let that marketplace decide which ideas prevail.

Rush Limbaugh has a right to his views. Just as important, his fans have a right to hear him. Those of us who disagree with him have a right to fight him, but we must do so on our own. Using the government to support our view is constitutionally intolerable. Trying to bully him off the air is wrong.

Some call for the Federal Communications Commission to pull Clear Channel's broadcast licenses if they keep Limbaugh on the air, because they believe that Rush Limbaugh does not "serve the public interest." This is inaccurate and not permissible under the Constitution.

It is a terrifying prospect that the government might review the political and social positions of a broadcaster when deciding who gets access to the airwaves. Should the government censor books that it finds to be unpopular or offensive?

Opinion: FCC should clear Limbaugh from airwaves

There is the argument that with a limited number of radio frequencies available, broadcasters should use them in the "public interest." But how would these would-be censors expect the FCC to make that determination? Should there be a "politeness test?" Would this ban programming featuring George Carlin, Bill Maher, Lenny Bruce or Snooki?

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It's un-American to silence Limbaugh

March 11, 2012 | By Marc. J. Randazza, Special to CNN

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These would-be-censors want Limbaugh off the air because he does not serve their interests. That doesn't mean he doesn't serve a "public interest." There is no clearer "public interest" than the dissemination of political speech. Limbaugh brings together millions of listeners who share his views. If that is not the "public interest," then what is?

Another way to get Limbaugh off the air is to try and pressure his syndicator or his advertisers -- gathering people of like mind to use their collective economic power to force Limbaugh off the air. This is constitutionally tolerable, but morally wrong. If you disagree with someone who is on stage, it is wrong to stand up and yell to drown out his voice. This improperly interferes with your fellow citizens' right to receive information.

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Limbaugh's audience has a right to hear him. Drowning out his voice by organized bullying is no way to pay tribute to our most cherished liberty. It may be your right to do so, but it doesn't make it the right thing to do. Should the marketplace of ideas lose a stall because someone in it said some "naughty words?"

Justice Oliver Wendell Holmes Jr. wrote: "When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That at any rate is the theory of our Constitution."

The challenge in this view is that it requires hard work on the part of those who wish to beat Limbaugh. It requires us to place our ideas into competition with Limbaugh's.

I despise Limbaugh not because he uttered one or two nasty words, but because his views are truly evil. I debate those who agree with him. I place my ideas into the marketplace, and I believe that ideas like mine will win out.

I realize that my work is difficult, and I may not even live to see Limbaugh's ideas repudiated. But my commitment to free expression requires me to engage his ideas, to parry them and to let my beliefs stand on their own -- without using the government or other improper means to tip the scales.

Free speech means tolerating views that you despise. Otherwise, one day, it will be your views that someone doesn't like.

If you don't stand up for Limbaugh's liberty today, someone may come for yours tomorrow. Discredit him, but don't silence him.

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Article published Mar 13, 2012

Hushing Rush isn't a good idea

Dianne Williamson

dwilliamson@telegram.com

Rush Limbaugh, of course, would call them FemiNazis. They're the trio of famous feminists who last week called on the government to silence the bombastic radio host by removing him from the airwaves.

Writing as co-founders of the Women's Media Center, Jane Fonda, Gloria Steinem and Robin Morgan are urging the Federal Communications Commission to essentially yank Limbaugh's license.

"Limbaugh doesn't just call people names," the women wrote, in a column for CNN.com. "He promotes language that deliberately dehumanizes his targets."

They may be right about Limbaugh, but they're wrong about what should be done with him, because censorship is rarely the answer to offensive speech.

After Limbaugh called a law student a "slut" for supporting greater access to birth control, a rather wonderful thing happened. Largely egged on by an outraged public, advertisers have been fleeing his program, as many as 140 by one count. That resulted in the rarest of spectacles, a pseudo-apology from Limbaugh. Still, sponsors continue to bail.

The First Amendment supports Limbaugh's right to be an obnoxious bigot, which is why Fonda and friends are misguided in urging the government to interfere. I don't like Limbaugh, but I like even less an attempt to censor someone for controversial views.

But there's nothing wrong in a free society when people speak up, and sponsors act in their best interests. So I don't understand the opposition to the advertisers' exodus, and neither does local defense lawyer Michael Wilcox.

Like Wilcox, I watched talk show host Bill Maher defend Limbaugh on his show last week, framing the criticism as an attack on free speech.

"I don't like it that people are made to disappear when they say something, or people try to make them disappear, when they say something you don't like," said Maher. "That's America. Sometimes you're made to feel uncomfortable, OK?"

Absolutely. I, too, have been known on occasion to make people uncomfortable. In my job it's practically required; in my personal life, I tend to apologize a lot. And Maher is likely sensitive because his own show was once canceled due to controversial statements.

But others are joining Maher in his defense of Limbaugh, including Marc J. Randazza, a Las Vegas-based First Amendment lawyer, who said that he despises Limbaugh but believes that it's "morally wrong" for people to "pressure" his sponsors.

"If you disagree with someone who is on stage, it is wrong to stand up and yell to drown out his voice," Randazza wrote in a column. "Drowning out his voice by organized bullying is no way to pay tribute to our most cherished liberty."

But why should only radio hosts have the right to free speech? Don't regular Americans enjoy that right, also? Can't we bring the free market to bear? When a sponsor decides to disassociate itself from Limbaugh's misogyny and hate-mongering, that seems awfully moral to me.

"That's crazy to say it's morally wrong," said Wilcox, a lawyer and Shrewsbury resident. "This is one of the purest forms of democracy. If I don't like the widgets you make, I don't buy them. His show is commercial speech, and we have every right to

contact his sponsors.”

In a blog, Wilcox addressed the radio host: “You have every right to call women names, and to demand that they surrender 100 years of social progress so that you can have some sense of order in the fantasy world you want to live in. That is your right. Conversely, I can tell your boss that I will never, ever buy a Sleep Number bed as long as they support your right to express your divisive and highly un-American thoughts.”

Limbaugh adores the free market. Let’s put it to the test and see if the love affair lasts.

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The Geek-Kings of Smut

After once being the best thing that ever happened to porn, the Internet is now wreaking havoc: destroying some fortunes, making bigger ones, and serving as a stimulus plan, in more ways than one.

By Benjamin Wallace Published Jan 30, 2011



For one brief moment here at the 2011 Adult Video Awards in Las Vegas, America's porn performers can forget about the Golden Decade of the Teen Wanker and remember when they were stars. Tonight, all of them, the whole porn carnival, are vamping down the red carpet at the Palms Casino. There are actual midgets. There is self-styled fakir Murrugun the Mystic, who has been nominated for Most Outrageous Sex Scene: swallowing a sword "while she swallows my sword," as he puts it. There are the Oscar-ishly glammed-up ladies with titanic breasts and twitchy Restylane smiles. There is—yes, here he comes—Ron "The Hedgehog" Jeremy: The starriest living male porn star ambles along the carpet in a sad, grubby collar and with an air of existential depletion. And now, the announcer is introducing Joslyn James as "Tiger Woods's ex-girlfriend," fresh from her appearance in the scandal-milking *The Eleventh Hole*.

Maybe you've seen it. Did you pay for it? This evening, if only for a few hours, the industry is doing its best to ignore the explosion of free porn online that has made the early-21st century such a bonanza for masturbators. It's difficult. The Adult Entertainment Expo taking place simultaneously at the Sands has scaled back dramatically; Vivid and Adam & Eve, two of the best-known companies in the business, didn't even have booths on the main floor this year. There are no Jenna Jamesons on this red carpet, and even the idea of a porn A-list seems dated. Performers are making less money, working harder for it, getting fewer jobs. "It doesn't affect me that much—well, I guess less work—but my friends with companies are being put out of business," Ron Jeremy says, pausing before the media gauntlet. He mentions one who has been forced to diversify into "cookies, penis pills, and a blender."

Drowning in Porn

- 1. Online Porn's Explosion
- 2. Porn and Junior-High Culture
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- **Also:** Emily Nussbaum on *Skins* and NC-17 TV

For a decade or so, to the porn industry, the Internet looked like the best thing ever invented—a distribution chute liberating it from the trench-coat ghetto of brown paper wrappers and seedy adult bookstores, an E-Z Pass to a vast untapped bedroom audience. If it was equally apparent that the web would prove as destabilizing as it has for other media, the money was so good that the industry could ignore the warning signs. Now the reckoning has arrived.

The chief culprits in the eyes of the porn Establishment are the “tube sites,” YouTube-like repositories of content that is often free, and often pirated. “Tubes are going to destroy our industry,” says Sunny Leone, 29, an Indian-American knockout who is celebrating eight nominations this evening. “Fans don’t understand that if they don’t pay for porn, we can’t make a living. They’ll have to watch crazy European porn.”

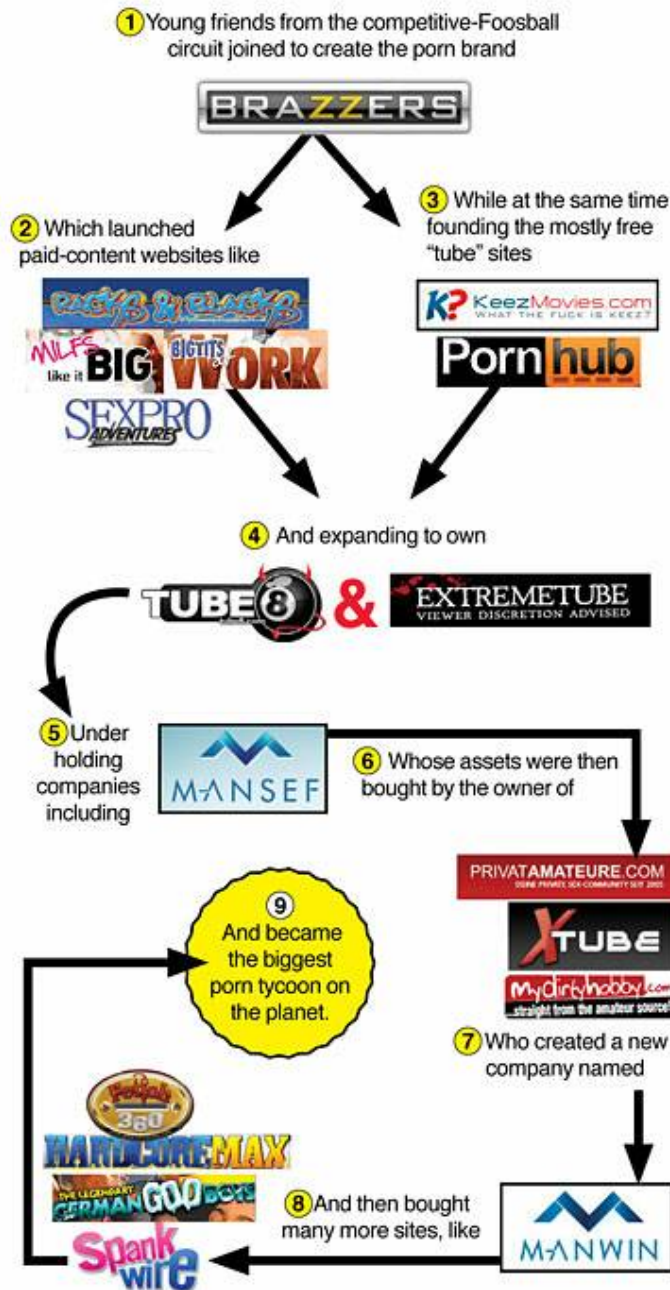
Farther along the red carpet, as the porn parade navigates the throng of gawkers to enter the Pearl Theater, actor James Bartholet shouts to the onlookers, “Buy your porn, don’t download it illegally!” During the impressively slick ceremony, piracy is an anxious leitmotif. “Thank you for paying for porn,” says Joanna Angel, accepting the award for Best Porn Star Website. Then, with a less-carrot-more-stick approach, an anti-piracy PSA plays on the big screen, ending with the admonition: “Buy the fucking movies.”

The audience erupts in cheers.

There you are, Porn Surfer, Googling your way to a little adult material—you know, a little plain-vanilla, middle-of-the-road *grown-up content*—when, wham, you’ve dropped acid and been astrally projected into a triple-X pachinko parlor. One minute you’re trawling for a simple NSFW divertissement, and the next you’re in free fall through this insane, cross-linking wilderness-of-mirrors chaos of pop-ups and pop-unders and portals and paysites. And, wait, why is someone named Jasmin talking to you in that browser window that just opened, as if you’d accidentally paid for a live cam show? Even after you figure out that she’s a canned come-on for a streaming site, you’re still befuddled. You click on an image, only to find yourself being shuttled from one site to another, unsure of what’s free and what’s not, what’s a destination and what’s merely a billboard for one, who’s an amateur and who’s a pro, who owns what and how it’s all connected. You start to nurse a deep suspicion that there’s more going on here than you can see—that there is some intricate, invisible web of revenue-sharing and traffic-trading and content-licensing at work. Which, of course, there is.

Until the invention of the tubes, online porn was relatively simple to watch and lucrative to sell. With very little money and a *For Dummies*-level understanding of HTML code, anyone could put up a web page featuring a list of text links to other porn websites. If a surfer clicked on one of the links, he would be

directed to a paysite; the paysite would pay the referring site a tiny amount for the traffic, and kick back a more substantial amount if the surfer ended up subscribing to the site. Over time, link collections evolved to the more visual formats of “thumbnail-gallery pages” and “movie-gallery pages,” where instead of a list of text links, you’d see a mosaic of snapshot links or, say, eight-second movie-clip links. TGPs, as they were called, drew more traffic than link collections and “converted” better—that is, a higher percentage of surfers signed up for billed memberships. MGPs were more effective still. The paysites would supply these “affiliates” with the snapshots and clips for free, and the online porn universe came to consist of a relatively small number of paysites surrounded by many thousands of affiliates.



Evolution of an Empire

It was inevitable, once YouTube launched in 2005, that someone would start a porn equivalent. Sure enough, over two months in the summer of 2006, three different sites launched that would become major adult-only tubes: PornoTube, RedTube, and YouPorn. Like YouTube, the porn tubes were flooded with free content—some of it licensed for pennies from older companies that didn't understand the web, much of it pirated from paid sites. The tubes had a new business model: They made most of their money by keeping surfers on their sites and selling banner ads, though they also put some content behind a paywall. Porn surfers migrated en masse from the old TGPs and eight-second MGPs to free movies on tube sites that could run upwards of 30 minutes. Traffic to the affiliates and conversions to paysites both plummeted. The proliferation of cam sites (where you can video-chat with a live model), together with the waning popularity of DVDs, compounded the industry's problems. Steven Hirsch, president of Vivid Entertainment—who five years ago was called “The Porn King” by *Forbes*—says his company's online revenue projections are off 50 percent. Other companies report declines closer to 80 percent.

When the old porn companies complained that the tube sites were stealing their content, the tubes claimed, as YouTube did, that the “safe harbor” provision of the Digital Millennium Copyright Act absolved them of responsibility for “user-uploaded” content. Never mind that industry consensus was that the sites were doing the uploading themselves. (How else to explain tube sites full of content from day one?) The sites could simply deny it—or point to YouTube, which had launched using a similarly shady business model and was now owned by Google.

Content thieves “will not steal it and get away with it,” Brazzer declared.
“Their days are counted!”

The furor over the tubes began to dominate discussions on GoFuckYourself.com (GFY), the main online industry forum, and finally someone took action. In December 2007, nine months after Viacom sued YouTube for copyright infringement, Vivid sued PornoTube. Around the same time, an anti-tubes diatribe

was posted on GFY by Ouissam Youssef, a co-founder of Brazzers, one of the most successful new companies producing and branding online content. In a thread on piracy earlier that year, “Brazzer,” as Youssef called himself on GFY, declared that content thieves “will not steal it and get away with it, their days are counted!”

In fact, Youssef had already helped launch a tube site of his own. In January 2007, Matt Keezer, another of Brazzers’ creators, had bought the domain name pornhub.com for \$2,750 from a speculator Keezer had met the previous year at the Playboy Mansion. PornHub went online as a tube site in early 2007. It was owned by a separate company called Interhub, but the Brazzers group were silent partners. Brazzers and the tube sites were owned by the same people and run out of the same office.

The Brazzers founders had gotten their start in the industry four years earlier, as 22-year-old Montreal techies bonding over a bar game. Youssef and Stephane Manos, friends at Concordia University, had met Keezer on, of all places, the competitive-Foosball circuit. Keezer was the best player and biggest enthusiast—he had helped stream live Foosball-training sessions online, and drawn praise for his wicked push shot—but all three liked to play, and Keezer and Youssef traveled across the States to compete. In 2003, while still students, Keezer, Manos, and Youssef, along with Youssef’s brother and another friend from Concordia, started some TGP and MGP sites including Jugg World, Ass Listing, KeezMovies, and XXX Rated Chicks. At first, they focused on busty women, “because the big-tits niche was so cheap,” explains Feras Antoon, the company’s current CEO. Then “they saw, wow, that tit niche is huge. Then they realized that the MILF niche—the older-woman niche—is even bigger. And they became the masters of the big-tit-MILF niche.”

They were making good, easy money, and they rapidly expanded, creating their own affiliate network (Jugg Cash) and their own paysite, Brazzers. Several of the founders were of Middle Eastern extraction, and the name was their private joke, a throaty immigrant-Arabonics version of “brothers.” They contracted with producers in Los Angeles, and later Las Vegas and Miami, to create content (which they charged for), and Brazzers drew notice for its high-quality productions. “They changed the face of porn,” says Lux Alptraum, editor of Fleshbot, who ascribes the resurgence of breast implants in the industry to the Brazzers signature look.

“They never imagined they would grow that big,” Antoon says. “Who would have?” Soon Brazzers was rolling out more sites: JugFuckers, DoctorAdventures, RacksAndBlacks ... Eventually, in addition to the Brazzers paysites, the company would build a second network, Mofos, featuring lesser-known girls doing more-extreme things. They slept in the office, worked weekends, bought houses near each other in the Montreal suburb of Laval. As their need for manpower exploded, they hired friends, neighbors, classmates—loyalists who could learn on the fly and pitch in as needed (Antoon, for instance, is Manos’s brother-in-law). Every year, the company nearly doubled in size. They had 80 employees in 2007, 150 in 2008, 250 in 2009. Youssef was the business visionary, Manos the salesman and motivator, Keezer the savant of search-engine optimization. “He’s a master,” Antoon says. “By far the best in the world, in my opinion. Who can get ‘porn’ and ‘sex’ to be No. 1? We’re the No. 1 result [for each]. You know how hard that is?” (In a recent search, Pornhub.com came up as the No. 2 Google result for “sex” and No. 3 for “porn.”)



AlphaHarlot (real name: Liz) on xTube.

In December 2007, the same month that Vivid sued PornoTube, rumors began to circulate in the industry that Brazzers also owned the increasingly successful and much-loathed PornHub. When GFY's amateur sleuths turned up connections between domain names and corporate registrations that suggested common ownership, "Brazzer" (a.k.a. Youssef) responded vaguely that he had been "approached" about starting a tube site but had "refused" because "it would be 100 percent against the core interests of our business." This answer did nothing to dispel suspicions, and Brazzers quickly came to be viewed by its many industry critics as an almost *The Firm*-like criminal corporation. On GFY, the founders were scorned as "thieves," "a cancer," and "foosball faggots." At trade shows they kept a low profile. "They'd probably get their asses

beat,” says Jason Quinlan, from LordsOfPorn.com, who says traffic to his company’s paysites has declined 40 percent in the last four years.

But the Brazzers crew, who were adding other tube sites to their portfolio (Tube8, ExtremeTube), took it all in stride. And plenty of companies did do business with PornHub, unable to resist the lure of its traffic. “We call them keyboard warriors,” Antoon says of the GFY trash talkers. “When we see them, they buy us drinks.”

The woman on my MacBook screen, whose username is xTattooSurprisex, has punky two-tone hair and wears a scoop-neck top that reveals her ample chest and a clavicle tattoo reading BEAUTIFUL DISASTER. I chose xTattooSurprisex for my “private chat” because she looked American. (Most of the girls on LiveJasmin.com, the biggest cam site, seem to be from Russia.) When I tell her I’m a journalist and just want to talk, Roxy, as she introduces herself, immediately types that she is camming “not by choice.”

Roxy moved to New Mexico from Washington State to get away from her alcoholic mother, who, she says, was stalking her and caused her to lose her job at the Cheesecake Factory. She’s 20, and has been doing this since July. She says that she was going to lose her house if she didn’t get a job, and the money’s not bad. I’m paying LiveJasmin \$1.99 per minute, of which Roxy receives about 70 cents. She tells me she might make \$1,200 a month. She doesn’t want to do this forever, but at times it can be fun, most of the guys are nice, and she just ignores the mean ones. Some of her orgasms are fake, she says, and some are real.

Unlike recorded porn, live cams are immune to piracy, which has made them especially successful as a business proposition. In this sense, the cams function as anti-tubes, but the two technologies have together opened up an entirely new frottage industry, so to speak: a grassroots, DIY porn democracy where anyone with a bedroom, a cam, and a web connection can set up as a one-woman or -man operation. LiveJasmin has some 40,000 registered cammers. “Today,” porn distributor Farrell Timlake says, “cams are the closest thing to amateur.”

“Amateur” is a semantically slippery term, as Timlake will tell you. A graduate of the Kent School in Connecticut, he spent a good deal of the early nineties submitting his own home sex tapes to Homegrown Video, which functioned as a kind of VHS video exchange for swingers. In 1992, he and his brother Moffitt (Exeter and Stanford), bankrolled by their mother, bought out the company, which they run together and which has, so they plausibly claim, the largest library of amateur videos in the world. Since then, Farrell and Moffitt have watched “amateur” move from almost a fringe fetish to one of pornography’s most popular aesthetics—and, as such, one co-opted by the pros.

Pretty much all the porn labeled “gonzo” and “reality” these days is a put-on, Timlake insists. In the Dancing Bear series, a male stripper wearing an enormous bear head performs for a bachelorette party until several fairly respectable-looking women suddenly lose control and start fellating him. “That stuff looks pretty real,” he says. “It takes a minute, but where are there roomfuls of women willing to have sex with a guy?” Watch a few of them, and you’ll notice the same women reappearing. Another series, Dare

Dorm, claims to pay real college kids for tapes of campus orgies, but Timlake isn't buying it. "I can always tell, because most college kids can't afford as many tattoos as those people have." Occasionally, as in *Fuck Team Five* and *Fuck a Fan*, a series will be a pro-am hybrid, in which porn stars have sex with civilians (though even they are likely cast). A recent vogue for "ex-girlfriend porn"—purportedly uploaded by vengeful former boyfriends—democratizes the celebrity sex tape but is also phony (actual unauthorized home videos would pose legal risks to the hosting websites).

If you expand the idea of amateur, though, to encompass a whole new set of outsiders for whom cam sites and tubes have provided a cheap, almost barrierless way to make, distribute, and sell videos of themselves having sex, well, then, we're living in a grand age of micro-smut, a burgeoning empire of lemonade-stand porn. xTube, for instance, offers a mix of straight and gay movies, some of which are free, others pay-per-view. The majority of xTube's content was made by a professional studio, but the site's "amateur" section allows any of its visitors to upload content. A frequent uploader with the username Tnhotbtm has been on the site for six months. "I enjoyed the videos I was viewing personally, so I decided to add my own," says Tnhotbtm, whose real name is Rob. "I never really liked mainstream porn. I always like guys that look like you could walk up and talk to them in a club, not the perfect shaved guys that never give you the time of day." Rob had dabbled in shooting his own, self-starring movies, and for the last ten years he had sold them as DVDs through his website atticmen.com or streamed through video-on-demand companies. Then he lost his job as a corporate auditor and started trying to use the tubes to do this full-time. Rob lives in a "small, small town" in the Bible Belt, and when people ask him what he does, he says he shoots wedding and special-event videos. ("If they only knew how special ...")

On xTube, he puts up free previews meant to lure viewers to his pay-per-view content, which he sells for 50 cents a minute. Rob says the average viewer watches ten minutes; of that \$5, he gets to keep 50 percent, minus a small processing charge. A video he uploaded the week before we speak has been viewed 2,470 times, but a lot of the viewers watched only the free preview, so he has made just \$125 from it. But he says he's earning around \$1,500 every two weeks from xTube, more than he was making in his corporate gig. "The key is keeping new stuff up and answering your friend requests and private messages," he says. "It's good to know just how much they like my stuff, and what they would like to see in the future."

If Rob is just getting started on xTube, a Boston male couple who go by the names Cole Maverick and Hunter are its Tila Tequilas. Cole, a former welder who got his masters in psychology, met Hunter, who had grown up in a devout Mormon family, when he was a college freshman. They've been together for ten years. Cole had always been a compulsive picture-taker, and four years ago, on a whim, he uploaded a few snapshots to xTube, followed by some movie clips and, later, movies featuring them with other men, often fans. They weren't prepared for the enormous popularity that has ensued. Their videos have been viewed more than 90 million times on xTube, where they are currently the "most favorited" submitter. "I remember the first time we posted one and got our first check. I said, 'Why doesn't everyone do this?'" Cole says. They now film full-time and clear "a nice six-figure income," according to Hunter.

"Our main goal," Cole says, "was to take gay sex out of the dark, leathery guilt-ridden realm, into fun sex, in the sun, in an honest, open relationship. We get so many inspiring messages from guys and girls who

love what we're doing.”

Paradoxically, as Cole and Hunter have thrived on the tubes, they have experienced the underbelly as well, increasingly finding their films pirated on tube sites, including xTube and PornHub. “They're big thieves,” Cole says of the tubes.

In October 2009, the U.S. Secret Service's Organized Fraud Task Force in Atlanta seized about \$6.4 million in funds from two Fidelity bank accounts controlled by Mansef, the Brazzers holding company. By this point, the company was already experiencing internal troubles. Matt Keezer had left earlier that year; his brother Phil then joined as CEO, only to leave within a few months. At least some of the founders had grown concerned for their safety and hired security guards, who for several months patrolled their neighborhood 24 hours a day in SUVs with tinted windows.

In response to the asset seizure, Mansef claimed that it had opened the Fidelity accounts simply to ease payment processing in the U.S., but the Feds said that more than \$9 million had been wired into the two accounts over a three-month period from banks in Israel and other countries on financial-fraud watch lists. The founders decided it was time to sell the company and get out of the industry altogether, and within a few months, the auteurs behind TeensLikeItBig and InGangWeBang had receded into a search-engine-optimized fog of web spam and redundant social-media profiles. One of Ouissam Youssef's LinkedIn appearances states that he obtained his M.B.A. from the Wharton School of Business and is a special consultant at Accenture Plus Limited in Monaco. (Wharton has no record of his attendance, Accenture Plus Limited doesn't exist, and plain old Accenture says he has never worked for the firm.) Only near the bottom of page three of Stephane Manos's well-scrubbed Google results does one glimpse his connection to Brazzers. Meanwhile, you wouldn't believe how philanthropic these guys are. Youssef hopes to build “a foundation that will help impoverished children play organized sports,” his website announces. Manos, per his blog, is a “charity contributor.” As for Matt Keezer, he “strongly believes in our children of the world and supports UNICEF's Canadian programs.”

Mansef's and Interhub's assets were sold to a German named Fabian Thylmann. One of the less heralded aspects of the migration of the world's skin flicks online has been a sociological shift among those who make and distribute them. Unlike the gold-chain-wearers of yesteryear—the *Boogie Nights*-style performers turned directors and photographers turned producers—the new pornographers are as likely to be software engineers: masters of affiliate marketing, search-engine optimization, and traffic-conversion ratios. The Brazzers founders were hardly lady-killers. (According to Antoon, not one ever set foot on a porn set.) And Thylmann is blunt when talking about how he got into the business: “I was a geek,” he says, from his home in Aachen, Germany.

Thylmann has been programming since he was 17. He began writing software to collect Internet-traffic statistics, and because porn was generating most of the web's traffic, he ended up getting work writing code for adult websites. In the early aughts, he wrote an affiliate-tracking software package called NATS that came to dominate the industry. By late 2006, he had cashed out of the company he had co-founded and started looking around for other companies to buy.

His first purchase was PrivatAmateure, a micro-smut site that “was doing tube-ish logic, it just wasn't

free.” He found that by making some simple tweaks he was able to double profits within three months. “That’s basically where I figured out that it seems to be an awfully good thing to buy adult websites in the current climate, because you can get things cheap, and there are obvious ways to improve what they’re doing.” In the last few years, Thylmann has been on an acquisitions tear. He bought another European amateur site (MyDirtyHobby), a cam site (Webcams.com), and xTube. By March 2010, he owned both Mansef’s and Interhub’s assets, too, including the Brazzers and Mofos paysite networks and four tube sites. GFYers gossiped that he spent \$140 million on the purchase, which Thylmann confirms is “close enough.”

“I get excited making videos. xTube gave me another outlet for my sexual energy, so I stopped slutting around in real life.”

Since then, the company has been making a strong bid for respectability. Right away, Thylmann changed the corporate name to Manwin and sponsored a safe-sex campaign, “Get Rubber,” featuring porn-star PSAs and a billboard in Times Square. He spent \$1 million to license nonexclusive content, buying 22,000 DVDs containing 100,000 scenes, and adopted anti-piracy digital-fingerprinting software.

Between December 2009 and December 2010, Manwin says, its pretax earnings increased more than 40 percent. The tube sites are responsible for half of that growth—and now for half of the company’s bottom line. But Manwin is also diversifying, from a Fleshbot-style industry blog called ZZ Insider to more mainstream fare. In June, Manwin launched Videobash.com, a Funny or Die knockoff, and in November it rolled out TMZ-like Celebs.com. The company is also one of the two leaders in mobile-phone porn in North America, handling 4.5 million visitors a day. And Thylmann has continued to make acquisitions, both within the Manwin corporate umbrella (a tube site named Spankwire) and without (a company called Eurorevenue, with a network of European paysites). Thylmann now has 500 employees, including 324 in the Manwin office in Montreal. He owns four of the ten most trafficked tube sites. His Brazzers and Mofos brands shoot around 120 scenes a month. At 32, he is likely the biggest porn tycoon on the planet.

“It’s a huge misconception that the industry is doing badly,” Feras Antoon tells me over rib eye and lobster tail at Delmonico, the Emeril Lagasse steakhouse at the Venetian in Las Vegas. “It’s moved on. It’s as simple as that.” And he insists that the tubes haven’t cannibalized paid content: People who consume only free porn, he argues, are people who, in the past, would not have consumed any. The people who paid for porn then will still pay for it now. Plus the tube sites have so vastly enlarged the total universe of porn consumers that the number of those who pay has ballooned along with it. Ten years ago, total daily adult-site traffic averaged less than 1 million unique visitors—on the entire Internet; today Manwin’s tube sites alone get 42 million daily uniques. “I personally have one or two memberships,” Antoon says jovially, “and I still go to the tubes. I get my appetizer on the tubes, my main course on one of the sites.”

This line of reasoning makes sense to Farrell Timlake, who uploads sponsored clips to PornHub and credits the brand exposure with a 50 percent increase in “organic” traffic—the desirable, high-converting surfers who start by typing a paysite’s name into a Google search box—and a 100 percent increase in video submittals to Homegrown. “One thing is for sure,” he says. “‘Free porn’ has not killed the industry. It has

killed those unwilling to realize that it was just as easy to jerk off for free to the TGP-MGP stuff.”

But this is hardly the consensus opinion. Allie Chase, operator of solo-site NaughtyAllie.com, takes issue even with the five-minute trailers that plenty of producers deliberately upload to tube sites in the hope of whetting appetites. “Do you honestly think that your average guy watching a five-minute porn, or several of them, won’t be able to get off? Of course he will. And once he’s shot his load all over his keyboard after watching my free five-minute video, he certainly isn’t going to be pulling out a credit card to join my site.” Manwin, in fact, has studied the question of optimal clip length. “We tested one minute, three minutes, five minutes,” Antoon says. “The best converting for the content owner is three minutes. The best for the tube sites—for the surfer to come back and back—is five minutes. So we always ask for three to five. We don’t mind if they send us seven to nine.”

It’s also unclear whether piracy can ever be contained. Besides tube sites, the industry must contend with torrent sites and cyberlockers. And for every tube that goes legit, a hundred new rogue ones pop up. Vivid’s Steven Hirsch sees it as a cat-and-mouse game. Under the DMCA, the onus is on piracy victims to monitor tube sites and send takedown notices. Hirsch has nothing bad to say about Manwin (“My dealings with them have been very fair, and our stuff isn’t up on PornHub, so I take them at their word,” he says), but even if the sites are good about complying, the content can be reuploaded minutes later. Hirsch holds out hope for legislation, passed by a Senate panel in November, that would allow victims to get pirate sites shut down entirely.

Marc Randazza, a San Diego-based First Amendment lawyer who represents porn companies and sued Manwin in November, citing pirated content on Spankwire, remains unconvinced by Manwin’s conversion to solid corporate citizen. “I guess they’re trying to come to the surface,” he says, “but I still think they have a toxic business model.” We are sitting at a cluster of slot machines in the Venetian and discussing the woes of Porn Valley, as the traditional bricks-and-mortar, L.A.-based industry is known. For all the work-from-home opportunities afforded by the new universe of micro-smut, professional porn continues to hold an allure. A few minutes into our conversation, a middle-aged guy in a plaid shirt walks hesitantly toward us, leering at our trade-show lanyards printed with the logo bang bros. Almost shyly, he asks, “How would I get into that?”

“You mean become a performer?” Randazza asks.

The man nods.

Randazza looks at him wearily, like he gets this all the time. “Honestly,” Randazza says, “the gay side’s where all the money is. There might be 30 straight guys who can make a living at it, but if you’re willing to get fucked in the ass, I can get you five grand right now.”

The man’s smile quavers, and he backs away.

However the industry ultimately reshapes itself to accommodate the twin threats of free and stolen content, the broader legacy of the tubes may have little to do with the high-gloss, professionally made porn that they have imperiled. More than anything, the tubes have the potential to change the

viewer's relationship to erotica itself. On some tubes, gigabytes of home movies are being uploaded and streamed without any money changing hands. There, consumers can also be producers. Posting can be as arousing as watching. We are all porn stars, if we want to be. Maybe porn isn't even really the right word for it anymore, as it evolves from something made to be watched to something made to be shared.

On xTube, of the videos submitted to the amateur portion of the site, only 20 percent are pay-per-view; the other 80 percent are evidently uploaded for kicks. Consider AlphaHarlot, a regular contributor to the site. Her real name is Liz. She's 30 and lives in Clifton, New Jersey, where by day she works as an accountant. Two years ago, she started uploading videos to xTube, which her boyfriend at the time had done. "When I joined I was in kind of a weird place," she says, "dating that guy plus a bunch of others that were more like one-night stands than relationships. And xTube gave me another outlet for that sexual energy, so I stopped slutting around in real life. xTube made me feel better about myself."

She eased into it, starting with photos. After loving the response she got, she moved to faceless videos, and ultimately to showing her face. She now has over 4,000 "friends" following her on xTube. She has been recognized twice in public, once in the Bath & Body Works at the Garden State Plaza. Some of the nearly 150 videos she has posted show her with a woman or with a man—she lives "a polyamorous lifestyle"—but most show her alone, masturbating or performing a fetish at the request of one of her fans.

Liz has never sought to make money from her videos. "I get excited making them, posting them, and seeing how people react," she says. She fears it would be less fun—more like a job—if she charged. "xTube is my family. It has completely altered how I see people. It's made me realize there are people out there who understand there's more to the world than black-and-white sexuality, that everyone fits in somewhere."

Still, even Liz, who lets people watch her videos for free, doesn't like to see her content show up on other websites. A few times a month, one of her vigilant xTube fans will alert her to an instance of piracy. Usually, after she contacts a site, they'll remove the video; sometimes they argue. "You want control of where your stuff appears," she says. "Stolen porn irks the hell out of me." She tries, at least once a month, to buy a DVD from an adult video store, "so I feel like I'm giving back a little."

Note: This article has been updated with the following correction. Vivid Entertainment's online revenue projections are off 50 percent, not its online revenues.

NEW YORK

The Geek-Kings of Smut

After once being the best thing that ever happened to porn, the Internet is now wreaking havoc: destroying some fortunes, making bigger ones, and serving as a stimulus plan, in more ways than one.

By Benjamin Wallace Published Jan 30, 2011



For one brief moment here at the 2011 Adult Video Awards in Las Vegas, America's porn performers can forget about the Golden Decade of the Teen Wanker and remember when they were stars. Tonight, all of them, the whole porn carnival, are vamping down the red carpet at the Palms Casino. There are actual midgets. There is self-styled fakir Murrugun the Mystic, who has been nominated for Most Outrageous Sex Scene: swallowing a sword "while she swallows my sword," as he puts it. There are the Oscar-ishly glammed-up ladies with titanic breasts and twitchy Restylane smiles. There is—yes, here he comes—Ron "The Hedgehog" Jeremy: The starriest living male porn star ambles along the carpet in a sad, grubby collar and with an air of existential depletion. And now, the announcer is introducing Joslyn James as "Tiger Woods's ex-girlfriend," fresh from her appearance in the scandal-milking *The Eleventh Hole*.

Maybe you've seen it. Did you pay for it? This evening, if only for a few hours, the industry is doing its best to ignore the explosion of free porn online that has made the early-21st century such a bonanza for masturbators. It's difficult. The Adult Entertainment Expo taking place simultaneously at the Sands has scaled back dramatically; Vivid and Adam & Eve, two of the best-known companies in the business, didn't even have booths on the main floor this year. There are no Jenna Jamesons on this red carpet, and even the idea of a porn A-list seems dated. Performers are making less money, working harder for it, getting fewer jobs. "It doesn't affect me that much—well, I guess less work—but my friends with companies are being put out of business," Ron Jeremy says, pausing before the media gauntlet. He mentions one who has been forced to diversify into "cookies, penis pills, and a blender."

Drowning in Porn

- 1. Online Porn's Explosion
- 2. Porn and Junior-High Culture
- 3. The Vanishing Male Libido
- **Also:** Emily Nussbaum on *Skins* and NC-17 TV

For a decade or so, to the porn industry, the Internet looked like the best thing ever invented—a distribution chute liberating it from the trench-coat ghetto of brown paper wrappers and seedy adult bookstores, an E-Z Pass to a vast untapped bedroom audience. If it was equally apparent that the web would prove as destabilizing as it has for other media, the money was so good that the industry could ignore the warning signs. Now the reckoning has arrived.

The chief culprits in the eyes of the porn Establishment are the “tube sites,” YouTube-like repositories of content that is often free, and often pirated. “Tubes are going to destroy our industry,” says Sunny Leone, 29, an Indian-American knockout who is celebrating eight nominations this evening. “Fans don’t understand that if they don’t pay for porn, we can’t make a living. They’ll have to watch crazy European porn.”

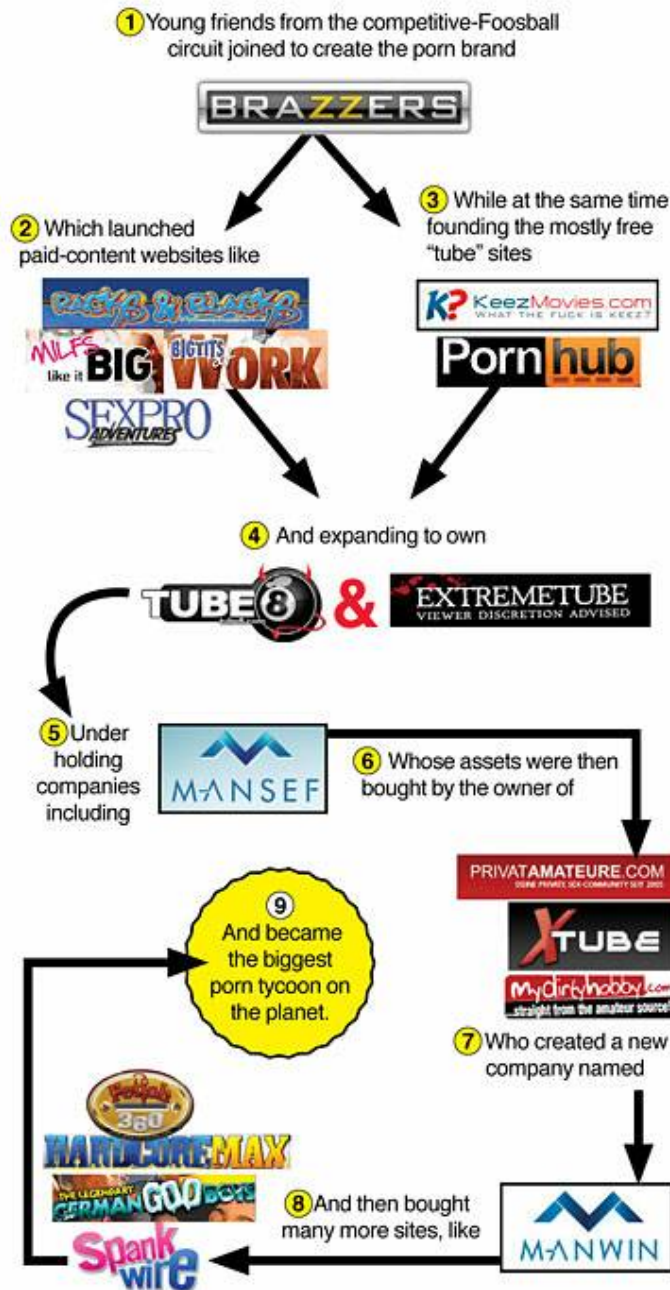
Farther along the red carpet, as the porn parade navigates the throng of gawkers to enter the Pearl Theater, actor James Bartholet shouts to the onlookers, “Buy your porn, don’t download it illegally!” During the impressively slick ceremony, piracy is an anxious leitmotif. “Thank you for paying for porn,” says Joanna Angel, accepting the award for Best Porn Star Website. Then, with a less-carrot-more-stick approach, an anti-piracy PSA plays on the big screen, ending with the admonition: “Buy the fucking movies.”

The audience erupts in cheers.

There you are, Porn Surfer, Googling your way to a little adult material—you know, a little plain-vanilla, middle-of-the-road *grown-up content*—when, wham, you’ve dropped acid and been astrally projected into a triple-X pachinko parlor. One minute you’re trawling for a simple NSFW divertissement, and the next you’re in free fall through this insane, cross-linking wilderness-of-mirrors chaos of pop-ups and pop-unders and portals and paysites. And, wait, why is someone named Jasmin talking to you in that browser window that just opened, as if you’d accidentally paid for a live cam show? Even after you figure out that she’s a canned come-on for a streaming site, you’re still befuddled. You click on an image, only to find yourself being shuttled from one site to another, unsure of what’s free and what’s not, what’s a destination and what’s merely a billboard for one, who’s an amateur and who’s a pro, who owns what and how it’s all connected. You start to nurse a deep suspicion that there’s more going on here than you can see—that there is some intricate, invisible web of revenue-sharing and traffic-trading and content-licensing at work. Which, of course, there is.

Until the invention of the tubes, online porn was relatively simple to watch and lucrative to sell. With very little money and a *For Dummies*-level understanding of HTML code, anyone could put up a web page featuring a list of text links to other porn websites. If a surfer clicked on one of the links, he would be

directed to a paysite; the paysite would pay the referring site a tiny amount for the traffic, and kick back a more substantial amount if the surfer ended up subscribing to the site. Over time, link collections evolved to the more visual formats of “thumbnail-gallery pages” and “movie-gallery pages,” where instead of a list of text links, you’d see a mosaic of snapshot links or, say, eight-second movie-clip links. TGPs, as they were called, drew more traffic than link collections and “converted” better—that is, a higher percentage of surfers signed up for billed memberships. MGPs were more effective still. The paysites would supply these “affiliates” with the snapshots and clips for free, and the online porn universe came to consist of a relatively small number of paysites surrounded by many thousands of affiliates.



Evolution of an Empire

It was inevitable, once YouTube launched in 2005, that someone would start a porn equivalent. Sure enough, over two months in the summer of 2006, three different sites launched that would become major adult-only tubes: PornoTube, RedTube, and YouPorn. Like YouTube, the porn tubes were flooded with free content—some of it licensed for pennies from older companies that didn't understand the web, much of it pirated from paid sites. The tubes had a new business model: They made most of their money by keeping surfers on their sites and selling banner ads, though they also put some content behind a paywall. Porn surfers migrated en masse from the old TGPs and eight-second MGPs to free movies on tube sites that could run upwards of 30 minutes. Traffic to the affiliates and conversions to paysites both plummeted. The proliferation of cam sites (where you can video-chat with a live model), together with the waning popularity of DVDs, compounded the industry's problems. Steven Hirsch, president of Vivid Entertainment—who five years ago was called “The Porn King” by *Forbes*—says his company's online revenue projections are off 50 percent. Other companies report declines closer to 80 percent.

When the old porn companies complained that the tube sites were stealing their content, the tubes claimed, as YouTube did, that the “safe harbor” provision of the Digital Millennium Copyright Act absolved them of responsibility for “user-uploaded” content. Never mind that industry consensus was that the sites were doing the uploading themselves. (How else to explain tube sites full of content from day one?) The sites could simply deny it—or point to YouTube, which had launched using a similarly shady business model and was now owned by Google.

Content thieves “will not steal it and get away with it,” Brazzer declared.
“Their days are counted!”

The furor over the tubes began to dominate discussions on GoFuckYourself.com (GFY), the main online industry forum, and finally someone took action. In December 2007, nine months after Viacom sued YouTube for copyright infringement, Vivid sued PornoTube. Around the same time, an anti-tubes diatribe

was posted on GFY by Ouissam Youssef, a co-founder of Brazzers, one of the most successful new companies producing and branding online content. In a thread on piracy earlier that year, “Brazzer,” as Youssef called himself on GFY, declared that content thieves “will not steal it and get away with it, their days are counted!”

In fact, Youssef had already helped launch a tube site of his own. In January 2007, Matt Keezer, another of Brazzers’ creators, had bought the domain name pornhub.com for \$2,750 from a speculator Keezer had met the previous year at the Playboy Mansion. PornHub went online as a tube site in early 2007. It was owned by a separate company called Interhub, but the Brazzers group were silent partners. Brazzers and the tube sites were owned by the same people and run out of the same office.

The Brazzers founders had gotten their start in the industry four years earlier, as 22-year-old Montreal techies bonding over a bar game. Youssef and Stephane Manos, friends at Concordia University, had met Keezer on, of all places, the competitive-Foosball circuit. Keezer was the best player and biggest enthusiast—he had helped stream live Foosball-training sessions online, and drawn praise for his wicked push shot—but all three liked to play, and Keezer and Youssef traveled across the States to compete. In 2003, while still students, Keezer, Manos, and Youssef, along with Youssef’s brother and another friend from Concordia, started some TGP and MGP sites including Jugg World, Ass Listing, KeezMovies, and XXX Rated Chicks. At first, they focused on busty women, “because the big-tits niche was so cheap,” explains Feras Antoon, the company’s current CEO. Then “they saw, wow, that tit niche is huge. Then they realized that the MILF niche—the older-woman niche—is even bigger. And they became the masters of the big-tit-MILF niche.”

They were making good, easy money, and they rapidly expanded, creating their own affiliate network (Jugg Cash) and their own paysite, Brazzers. Several of the founders were of Middle Eastern extraction, and the name was their private joke, a throaty immigrant-Arabonics version of “brothers.” They contracted with producers in Los Angeles, and later Las Vegas and Miami, to create content (which they charged for), and Brazzers drew notice for its high-quality productions. “They changed the face of porn,” says Lux Alptraum, editor of Fleshbot, who ascribes the resurgence of breast implants in the industry to the Brazzers signature look.

“They never imagined they would grow that big,” Antoon says. “Who would have?” Soon Brazzers was rolling out more sites: JugFuckers, DoctorAdventures, RacksAndBlacks ... Eventually, in addition to the Brazzers paysites, the company would build a second network, Mofos, featuring lesser-known girls doing more-extreme things. They slept in the office, worked weekends, bought houses near each other in the Montreal suburb of Laval. As their need for manpower exploded, they hired friends, neighbors, classmates—loyalists who could learn on the fly and pitch in as needed (Antoon, for instance, is Manos’s brother-in-law). Every year, the company nearly doubled in size. They had 80 employees in 2007, 150 in 2008, 250 in 2009. Youssef was the business visionary, Manos the salesman and motivator, Keezer the savant of search-engine optimization. “He’s a master,” Antoon says. “By far the best in the world, in my opinion. Who can get ‘porn’ and ‘sex’ to be No. 1? We’re the No. 1 result [for each]. You know how hard that is?” (In a recent search, Pornhub.com came up as the No. 2 Google result for “sex” and No. 3 for “porn.”)



AlphaHarlot (real name: Liz) on xTube.

In December 2007, the same month that Vivid sued PornoTube, rumors began to circulate in the industry that Brazzers also owned the increasingly successful and much-loathed PornHub. When GFY's amateur sleuths turned up connections between domain names and corporate registrations that suggested common ownership, "Brazzer" (a.k.a. Youssef) responded vaguely that he had been "approached" about starting a tube site but had "refused" because "it would be 100 percent against the core interests of our business." This answer did nothing to dispel suspicions, and Brazzers quickly came to be viewed by its many industry critics as an almost *The Firm*-like criminal corporation. On GFY, the founders were scorned as "thieves," "a cancer," and "foosball faggots." At trade shows they kept a low profile. "They'd probably get their asses

beat,” says Jason Quinlan, from LordsOfPorn.com, who says traffic to his company’s paysites has declined 40 percent in the last four years.

But the Brazzers crew, who were adding other tube sites to their portfolio (Tube8, ExtremeTube), took it all in stride. And plenty of companies did do business with Pornhub, unable to resist the lure of its traffic. “We call them keyboard warriors,” Antoon says of the GFY trash talkers. “When we see them, they buy us drinks.”

The woman on my MacBook screen, whose username is xTattooSurprisex, has punky two-tone hair and wears a scoop-neck top that reveals her ample chest and a clavicle tattoo reading BEAUTIFUL DISASTER. I chose xTattooSurprisex for my “private chat” because she looked American. (Most of the girls on LiveJasmin.com, the biggest cam site, seem to be from Russia.) When I tell her I’m a journalist and just want to talk, Roxy, as she introduces herself, immediately types that she is camming “not by choice.”

Roxy moved to New Mexico from Washington State to get away from her alcoholic mother, who, she says, was stalking her and caused her to lose her job at the Cheesecake Factory. She’s 20, and has been doing this since July. She says that she was going to lose her house if she didn’t get a job, and the money’s not bad. I’m paying LiveJasmin \$1.99 per minute, of which Roxy receives about 70 cents. She tells me she might make \$1,200 a month. She doesn’t want to do this forever, but at times it can be fun, most of the guys are nice, and she just ignores the mean ones. Some of her orgasms are fake, she says, and some are real.

Unlike recorded porn, live cams are immune to piracy, which has made them especially successful as a business proposition. In this sense, the cams function as anti-tubes, but the two technologies have together opened up an entirely new frottage industry, so to speak: a grassroots, DIY porn democracy where anyone with a bedroom, a cam, and a web connection can set up as a one-woman or -man operation. LiveJasmin has some 40,000 registered cammers. “Today,” porn distributor Farrell Timlake says, “cams are the closest thing to amateur.”

“Amateur” is a semantically slippery term, as Timlake will tell you. A graduate of the Kent School in Connecticut, he spent a good deal of the early nineties submitting his own home sex tapes to Homegrown Video, which functioned as a kind of VHS video exchange for swingers. In 1992, he and his brother Moffitt (Exeter and Stanford), bankrolled by their mother, bought out the company, which they run together and which has, so they plausibly claim, the largest library of amateur videos in the world. Since then, Farrell and Moffitt have watched “amateur” move from almost a fringe fetish to one of pornography’s most popular aesthetics—and, as such, one co-opted by the pros.

Pretty much all the porn labeled “gonzo” and “reality” these days is a put-on, Timlake insists. In the Dancing Bear series, a male stripper wearing an enormous bear head performs for a bachelorette party until several fairly respectable-looking women suddenly lose control and start fellating him. “That stuff looks pretty real,” he says. “It takes a minute, but where are there roomfuls of women willing to have sex with a guy?” Watch a few of them, and you’ll notice the same women reappearing. Another series, Dare

Dorm, claims to pay real college kids for tapes of campus orgies, but Timlake isn't buying it. "I can always tell, because most college kids can't afford as many tattoos as those people have." Occasionally, as in *Fuck Team Five* and *Fuck a Fan*, a series will be a pro-am hybrid, in which porn stars have sex with civilians (though even they are likely cast). A recent vogue for "ex-girlfriend porn"—purportedly uploaded by vengeful former boyfriends—democratizes the celebrity sex tape but is also phony (actual unauthorized home videos would pose legal risks to the hosting websites).

If you expand the idea of amateur, though, to encompass a whole new set of outsiders for whom cam sites and tubes have provided a cheap, almost barrierless way to make, distribute, and sell videos of themselves having sex, well, then, we're living in a grand age of micro-smut, a burgeoning empire of lemonade-stand porn. xTube, for instance, offers a mix of straight and gay movies, some of which are free, others pay-per-view. The majority of xTube's content was made by a professional studio, but the site's "amateur" section allows any of its visitors to upload content. A frequent uploader with the username Tnhotbtm has been on the site for six months. "I enjoyed the videos I was viewing personally, so I decided to add my own," says Tnhotbtm, whose real name is Rob. "I never really liked mainstream porn. I always like guys that look like you could walk up and talk to them in a club, not the perfect shaved guys that never give you the time of day." Rob had dabbled in shooting his own, self-starring movies, and for the last ten years he had sold them as DVDs through his website atticmen.com or streamed through video-on-demand companies. Then he lost his job as a corporate auditor and started trying to use the tubes to do this full-time. Rob lives in a "small, small town" in the Bible Belt, and when people ask him what he does, he says he shoots wedding and special-event videos. ("If they only knew how special ...")

On xTube, he puts up free previews meant to lure viewers to his pay-per-view content, which he sells for 50 cents a minute. Rob says the average viewer watches ten minutes; of that \$5, he gets to keep 50 percent, minus a small processing charge. A video he uploaded the week before we speak has been viewed 2,470 times, but a lot of the viewers watched only the free preview, so he has made just \$125 from it. But he says he's earning around \$1,500 every two weeks from xTube, more than he was making in his corporate gig. "The key is keeping new stuff up and answering your friend requests and private messages," he says. "It's good to know just how much they like my stuff, and what they would like to see in the future."

If Rob is just getting started on xTube, a Boston male couple who go by the names Cole Maverick and Hunter are its Tila Tequilas. Cole, a former welder who got his masters in psychology, met Hunter, who had grown up in a devout Mormon family, when he was a college freshman. They've been together for ten years. Cole had always been a compulsive picture-taker, and four years ago, on a whim, he uploaded a few snapshots to xTube, followed by some movie clips and, later, movies featuring them with other men, often fans. They weren't prepared for the enormous popularity that has ensued. Their videos have been viewed more than 90 million times on xTube, where they are currently the "most favorited" submitter. "I remember the first time we posted one and got our first check. I said, 'Why doesn't everyone do this?'" Cole says. They now film full-time and clear "a nice six-figure income," according to Hunter.

"Our main goal," Cole says, "was to take gay sex out of the dark, leathery guilt-ridden realm, into fun sex, in the sun, in an honest, open relationship. We get so many inspiring messages from guys and girls who

love what we're doing.”

Paradoxically, as Cole and Hunter have thrived on the tubes, they have experienced the underbelly as well, increasingly finding their films pirated on tube sites, including xTube and PornHub. “They're big thieves,” Cole says of the tubes.

In October 2009, the U.S. Secret Service's Organized Fraud Task Force in Atlanta seized about \$6.4 million in funds from two Fidelity bank accounts controlled by Mansef, the Brazzers holding company. By this point, the company was already experiencing internal troubles. Matt Keezer had left earlier that year; his brother Phil then joined as CEO, only to leave within a few months. At least some of the founders had grown concerned for their safety and hired security guards, who for several months patrolled their neighborhood 24 hours a day in SUVs with tinted windows.

In response to the asset seizure, Mansef claimed that it had opened the Fidelity accounts simply to ease payment processing in the U.S., but the Feds said that more than \$9 million had been wired into the two accounts over a three-month period from banks in Israel and other countries on financial-fraud watch lists. The founders decided it was time to sell the company and get out of the industry altogether, and within a few months, the auteurs behind TeensLikeItBig and InGangWeBang had receded into a search-engine-optimized fog of web spam and redundant social-media profiles. One of Ouissam Youssef's LinkedIn appearances states that he obtained his M.B.A. from the Wharton School of Business and is a special consultant at Accenture Plus Limited in Monaco. (Wharton has no record of his attendance, Accenture Plus Limited doesn't exist, and plain old Accenture says he has never worked for the firm.) Only near the bottom of page three of Stephane Manos's well-scrubbed Google results does one glimpse his connection to Brazzers. Meanwhile, you wouldn't believe how philanthropic these guys are. Youssef hopes to build “a foundation that will help impoverished children play organized sports,” his website announces. Manos, per his blog, is a “charity contributor.” As for Matt Keezer, he “strongly believes in our children of the world and supports UNICEF's Canadian programs.”

Mansef's and Interhub's assets were sold to a German named Fabian Thylmann. One of the less heralded aspects of the migration of the world's skin flicks online has been a sociological shift among those who make and distribute them. Unlike the gold-chain-wearers of yesteryear—the *Boogie Nights*-style performers turned directors and photographers turned producers—the new pornographers are as likely to be software engineers: masters of affiliate marketing, search-engine optimization, and traffic-conversion ratios. The Brazzers founders were hardly lady-killers. (According to Antoon, not one ever set foot on a porn set.) And Thylmann is blunt when talking about how he got into the business: “I was a geek,” he says, from his home in Aachen, Germany.

Thylmann has been programming since he was 17. He began writing software to collect Internet-traffic statistics, and because porn was generating most of the web's traffic, he ended up getting work writing code for adult websites. In the early aughts, he wrote an affiliate-tracking software package called NATS that came to dominate the industry. By late 2006, he had cashed out of the company he had co-founded and started looking around for other companies to buy.

His first purchase was PrivatAmateure, a micro-smut site that “was doing tube-ish logic, it just wasn't

free.” He found that by making some simple tweaks he was able to double profits within three months. “That’s basically where I figured out that it seems to be an awfully good thing to buy adult websites in the current climate, because you can get things cheap, and there are obvious ways to improve what they’re doing.” In the last few years, Thylmann has been on an acquisitions tear. He bought another European amateur site (MyDirtyHobby), a cam site (Webcams.com), and xTube. By March 2010, he owned both Mansef’s and Interhub’s assets, too, including the Brazzers and Mofos paysite networks and four tube sites. GFYers gossiped that he spent \$140 million on the purchase, which Thylmann confirms is “close enough.”

“I get excited making videos. xTube gave me another outlet for my sexual energy, so I stopped slutting around in real life.”

Since then, the company has been making a strong bid for respectability. Right away, Thylmann changed the corporate name to Manwin and sponsored a safe-sex campaign, “Get Rubber,” featuring porn-star PSAs and a billboard in Times Square. He spent \$1 million to license nonexclusive content, buying 22,000 DVDs containing 100,000 scenes, and adopted anti-piracy digital-fingerprinting software.

Between December 2009 and December 2010, Manwin says, its pretax earnings increased more than 40 percent. The tube sites are responsible for half of that growth—and now for half of the company’s bottom line. But Manwin is also diversifying, from a Fleshbot-style industry blog called ZZ Insider to more mainstream fare. In June, Manwin launched Videobash.com, a Funny or Die knockoff, and in November it rolled out TMZ-like Celebs.com. The company is also one of the two leaders in mobile-phone porn in North America, handling 4.5 million visitors a day. And Thylmann has continued to make acquisitions, both within the Manwin corporate umbrella (a tube site named Spankwire) and without (a company called Eurorevenue, with a network of European paysites). Thylmann now has 500 employees, including 324 in the Manwin office in Montreal. He owns four of the ten most trafficked tube sites. His Brazzers and Mofos brands shoot around 120 scenes a month. At 32, he is likely the biggest porn tycoon on the planet.

“It’s a huge misconception that the industry is doing badly,” Feras Antoon tells me over rib eye and lobster tail at Delmonico, the Emeril Lagasse steakhouse at the Venetian in Las Vegas. “It’s moved on. It’s as simple as that.” And he insists that the tubes haven’t cannibalized paid content: People who consume only free porn, he argues, are people who, in the past, would not have consumed any. The people who paid for porn then will still pay for it now. Plus the tube sites have so vastly enlarged the total universe of porn consumers that the number of those who pay has ballooned along with it. Ten years ago, total daily adult-site traffic averaged less than 1 million unique visitors—on the entire Internet; today Manwin’s tube sites alone get 42 million daily uniques. “I personally have one or two memberships,” Antoon says jovially, “and I still go to the tubes. I get my appetizer on the tubes, my main course on one of the sites.”

This line of reasoning makes sense to Farrell Timlake, who uploads sponsored clips to PornHub and credits the brand exposure with a 50 percent increase in “organic” traffic—the desirable, high-converting surfers who start by typing a paysite’s name into a Google search box—and a 100 percent increase in video submittals to Homegrown. “One thing is for sure,” he says. “‘Free porn’ has not killed the industry. It has

killed those unwilling to realize that it was just as easy to jerk off for free to the TGP-MGP stuff.”

But this is hardly the consensus opinion. Allie Chase, operator of solo-site NaughtyAllie.com, takes issue even with the five-minute trailers that plenty of producers deliberately upload to tube sites in the hope of whetting appetites. “Do you honestly think that your average guy watching a five-minute porn, or several of them, won’t be able to get off? Of course he will. And once he’s shot his load all over his keyboard after watching my free five-minute video, he certainly isn’t going to be pulling out a credit card to join my site.” Manwin, in fact, has studied the question of optimal clip length. “We tested one minute, three minutes, five minutes,” Antoon says. “The best converting for the content owner is three minutes. The best for the tube sites—for the surfer to come back and back—is five minutes. So we always ask for three to five. We don’t mind if they send us seven to nine.”

It’s also unclear whether piracy can ever be contained. Besides tube sites, the industry must contend with torrent sites and cyberlockers. And for every tube that goes legit, a hundred new rogue ones pop up. Vivid’s Steven Hirsch sees it as a cat-and-mouse game. Under the DMCA, the onus is on piracy victims to monitor tube sites and send takedown notices. Hirsch has nothing bad to say about Manwin (“My dealings with them have been very fair, and our stuff isn’t up on PornHub, so I take them at their word,” he says), but even if the sites are good about complying, the content can be reuploaded minutes later. Hirsch holds out hope for legislation, passed by a Senate panel in November, that would allow victims to get pirate sites shut down entirely.

Marc Randazza, a San Diego-based First Amendment lawyer who represents porn companies and sued Manwin in November, citing pirated content on Spankwire, remains unconvinced by Manwin’s conversion to solid corporate citizen. “I guess they’re trying to come to the surface,” he says, “but I still think they have a toxic business model.” We are sitting at a cluster of slot machines in the Venetian and discussing the woes of Porn Valley, as the traditional bricks-and-mortar, L.A.-based industry is known. For all the work-from-home opportunities afforded by the new universe of micro-smut, professional porn continues to hold an allure. A few minutes into our conversation, a middle-aged guy in a plaid shirt walks hesitantly toward us, leering at our trade-show lanyards printed with the logo bang bros. Almost shyly, he asks, “How would I get into that?”

“You mean become a performer?” Randazza asks.

The man nods.

Randazza looks at him wearily, like he gets this all the time. “Honestly,” Randazza says, “the gay side’s where all the money is. There might be 30 straight guys who can make a living at it, but if you’re willing to get fucked in the ass, I can get you five grand right now.”

The man’s smile quavers, and he backs away.

However the industry ultimately reshapes itself to accommodate the twin threats of free and stolen content, the broader legacy of the tubes may have little to do with the high-gloss, professionally made porn that they have imperiled. More than anything, the tubes have the potential to change the

viewer's relationship to erotica itself. On some tubes, gigabytes of home movies are being uploaded and streamed without any money changing hands. There, consumers can also be producers. Posting can be as arousing as watching. We are all porn stars, if we want to be. Maybe porn isn't even really the right word for it anymore, as it evolves from something made to be watched to something made to be shared.

On xTube, of the videos submitted to the amateur portion of the site, only 20 percent are pay-per-view; the other 80 percent are evidently uploaded for kicks. Consider AlphaHarlot, a regular contributor to the site. Her real name is Liz. She's 30 and lives in Clifton, New Jersey, where by day she works as an accountant. Two years ago, she started uploading videos to xTube, which her boyfriend at the time had done. "When I joined I was in kind of a weird place," she says, "dating that guy plus a bunch of others that were more like one-night stands than relationships. And xTube gave me another outlet for that sexual energy, so I stopped slutting around in real life. xTube made me feel better about myself."

She eased into it, starting with photos. After loving the response she got, she moved to faceless videos, and ultimately to showing her face. She now has over 4,000 "friends" following her on xTube. She has been recognized twice in public, once in the Bath & Body Works at the Garden State Plaza. Some of the nearly 150 videos she has posted show her with a woman or with a man—she lives "a polyamorous lifestyle"—but most show her alone, masturbating or performing a fetish at the request of one of her fans.

Liz has never sought to make money from her videos. "I get excited making them, posting them, and seeing how people react," she says. She fears it would be less fun—more like a job—if she charged. "xTube is my family. It has completely altered how I see people. It's made me realize there are people out there who understand there's more to the world than black-and-white sexuality, that everyone fits in somewhere."

Still, even Liz, who lets people watch her videos for free, doesn't like to see her content show up on other websites. A few times a month, one of her vigilant xTube fans will alert her to an instance of piracy. Usually, after she contacts a site, they'll remove the video; sometimes they argue. "You want control of where your stuff appears," she says. "Stolen porn irks the hell out of me." She tries, at least once a month, to buy a DVD from an adult video store, "so I feel like I'm giving back a little."

Note: This article has been updated with the following correction. Vivid Entertainment's online revenue projections are off 50 percent, not its online revenues.

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May 31, 2010

Venting Online, Consumers Can Find Themselves in Court

By DAN FROSCH

After a towing company hauled Justin Kurtz's car from his apartment complex parking lot, despite his permit to park there, Mr. Kurtz, 21, a college student in Kalamazoo, Mich., went to the Internet for revenge.

Outraged at having to pay \$118 to get his car back, Mr. Kurtz created a [Facebook](#) page called "Kalamazoo Residents against T&J Towing." Within two days, 800 people had joined the group, some posting comments about their own maddening experiences with the company.

T&J filed a defamation suit against Mr. Kurtz, claiming the site was hurting business and seeking \$750,000 in damages.

Web sites like Facebook, [Twitter](#) and [Yelp](#) have given individuals a global platform on which to air their grievances with companies. But legal experts say the soaring popularity of such sites has also given rise to more cases like Mr. Kurtz's, in which a business sues an individual for posting critical comments online.

The towing company's lawyer said that it was justified in removing Mr. Kurtz's car because the permit was not visible, and that the Facebook page was costing it business and had unfairly damaged its reputation.

Some First Amendment lawyers see the case differently. They consider the lawsuit an example of the latest incarnation of a decades-old legal maneuver known as a strategic lawsuit against public participation, or Slapp.

The label has traditionally referred to meritless defamation suits filed by businesses or government officials against citizens who speak out against them. The plaintiffs are not

necessarily expecting to succeed — most do not — but rather to intimidate cri

"I didn't do anything wrong," said Mr. Kurtz, who recently finished his junior Michigan University. "The only thing I posted is what happened to me."



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Many states have anti-Slapp laws, and Congress is considering legislation to make it harder to file such a suit. The bill, sponsored by Representatives Steve Cohen of Tennessee and Charlie Gonzalez of Texas, both Democrats, would create a federal anti-Slapp law, modeled largely on California's statute.

Because state laws vary in scope, many suits are still filed every year, according to legal experts. Now, with people musing publicly online and businesses feeling defenseless against these critics, the debate over the suits is shifting to the Web.

"We are beyond the low-tech era of people getting Slapped because of letters they wrote to politicians or testimony they gave at a City Council meeting," said [George W. Pring](#), a University of Denver law professor who co-wrote the 1996 book "Slapps: Getting Sued For Speaking Out."

Marc Randazza, a First Amendment lawyer who has defended clients against suits stemming from online comments, said he helped one client, Thomas Alascio, avoid a lawsuit last year after he posted negative remarks about a Florida car dealership on his Twitter account.

"There is not a worse dealership on the planet," read one post, which also named the dealership.

The dealership [threatened to sue](#) Mr. Alascio if he did not remove the posts. Mr. Randazza [responded in a letter](#) that although Mr. Alascio admitted that the dealership might not be the worst in the world, his comments constituted protected speech because they were his opinion.

While the dealership did not sue, that outcome is unusual, said Mr. Randazza, who conceded that sometimes the most pragmatic approach for a Slapp defendant is to take back the offending comments in lieu of a lawsuit.

In the past, Mr. Randazza said, if you criticized a business while standing around in a bar, it went "no further than the sound of your voice."

Now, however, "there's a potentially permanent record of it as soon as you hit 'publish' on the computer," he said. "It goes global within minutes."

Laurence Wilson, general counsel for the user review site Yelp, said a handful of lawsuits in recent years had been filed against people who posted critical reviews on the site, including a San Francisco chiropractor who sued a former patient in 2008 over a negative review about a billing dispute. The suit was settled before going to court.

"Businesses, unfortunately, have a greater incentive to remove a negative review than the

reviewer has in writing the review in the first place,” Mr. Wilson said.

Recognizing that lawsuits can bring more unwanted attention, one organization has taken a different tack. The group [Medical Justice](#), which helps protect doctors from meritless malpractice suits, advises its members to have patients sign an agreement that gives doctors more control over what patients post online.

Dr. Jeffrey Segal, chief executive of Medical Justice, said about half of the group’s 2,500 members use the agreement.

“I, like everyone else, like to hear two sides of the story,” he said. “The problem is that physicians are foreclosed from ever responding because of state and federal privacy laws. In the rare circumstance that a posting is false, fictional or fraudulent, the doctor now has the tool to get that post taken down.”

The federal bill, in the House Subcommittee on Courts and Competition Policy, would enable a defendant who believes he is being sued for speaking out or petitioning on a public matter to seek to have the suit dismissed.

“Just as petition and free speech rights are so important that they require specific constitutional protections, they are also important enough to justify uniform national protections against Slapps,” said Mark Goldowitz, director of the [California Anti-Slapp Project](#), which helped draft the bill.

Under the proposed federal law, if a case is dismissed for being a Slapp, the plaintiff would have to pay the defendant’s legal fees. Mr. Randazza would not disclose specifics on the legal fees he has charged his clients, but he said the cost of defending a single Slapp suit “could easily wipe out the average person’s savings before the case is half done.”

Currently, 27 states have anti-Slapp laws, and in two, Colorado and West Virginia, the judiciary has adopted a system to protect against such suits. But the federal bill would create a law in states that do not have one and offer additional protections in those that do, Mr. Goldowitz said.

In Michigan, which does not have an anti-Slapp measure, Mr. Kurtz’s legal battle has made him a local celebrity. His Facebook page has now grown to more than 12,000 members.

“This case raises interesting questions,” said the towing company’s lawyer, Richard Burnham. “What are the rights to free speech? And even if what he said is false, which I am convinced, is his conduct the proximate cause of our loss?”

On April 30, Mr. Kurtz and his lawyers asked a judge to dismiss the suit by T&J, which has received a failing grade from the local Better Business Bureau for complaints over towing legally parked cars. Mr. Kurtz is also countersuing, claiming that T&J is abusing the legal process.

“There’s no reason I should have to shut up because some guy doesn’t want his dirty laundry out,” Mr. Kurtz said. “It’s the power of the Internet, man.”

Invasion of the body searchers

By Peter Huck

5:30 AM Saturday Oct 1, 2011



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Amy Alkon blogged that the airport pat-down of her was government-sanctioned sexual assault. Photo / Supplied

Amy Alkon was in the United Airlines terminal at Los Angeles International Airport when she had her run-in with the officers who operate electronic body scanners, or conduct hands-on "pat-downs" of passengers about to board flights.

Alkon, a feisty blogger known as The Advice Goddess, is a tall, striking redhead with very fair skin.

Given a family history of melanoma, she is wary of scanners and opted for a pat-down by a US Transportation Security Administration officer.

What happened next was either the basis for a defamation claim against Alkon, or a gross violation of her Fourth Amendment rights against being searched without probable cause – reasonable suspicion you've committed a crime.

Alkon calls the incident "government-sanctioned sexual assault".

She says the TSA agent, Thedala Magee, "groped" her breasts and "touched my most private parts", a claim she detailed on her blog in April.

"She stuck the side of her gloved hand INTO my vagina, through my pants. Between my labia. She really got up there. I was shocked."

Alkon yelled at Magee: "You raped me!"

She believes Magee's pat-down was "punitive". After learning that a sexual assault charge was "probably a non-starter", Alkon blogged about the incident and named Magee.

The TSA officer engaged a lawyer, Vicki Roberts, who wrote to Alkon in July to say her claim of rape was false and that Magee – who "followed proper procedure" in Alkon's pat-down – had been defamed.

Roberts demanded a written apology, compensation, and that blog postings be taken down.

"It's a little disconcerting," says Alkon, "to get a letter demanding US\$500,000 from someone who stuck her hand up your private parts."

She found a lawyer. "Your client aggressively pushed her fingers into my client's vulva," Marc Randazza wrote in response.

"I am certain that she did not expect to find a bomb there. She did this to humiliate my client, to punish her for exercising her rights ... It was absolutely a sexual assault, perpetrated in order to exercise power over the victim."

As the lawyers quibble about what constitutes rape and free speech, the TSA has said the dispute doesn't concern the agency because the pat-down was "handled appropriately".

On the other side of the continent, Aaron Tobey, an architectural student, also experienced problems with the TSA. But this episode may evolve into a legal test case.

Subject to a pat-down at the Richmond, Virginia, airport last December as he waited to board a Wisconsin-bound plane for his grandmother's funeral, Tobey stripped to his running shorts to reveal a message inked on his torso: "Amendment 4: The right of the people to be secure against unreasonable searches and seizures shall not be violated."

Tobey said he was exercising his constitutional rights. Nonetheless, he was handcuffed, subject to 90 minutes of questioning by FBI agents, and issued with a summons for disorderly conduct before being let go.

A few days later a judge dismissed the charge.

But the incident didn't end there. "We shouldn't have to give up our civil liberties [to fly]," said Tobey.

He sued Homeland Security chief Janet Napolitano and TSA head John Pistole, claiming his First and Fourth Amendment rights were infringed.

"On August 30 a federal judge ruled in our favour," says John Whitehead, Tobey's counsel and head of Richmond's Rutherford Institute.

The judge dismissed the case against Napolitano and Pistole, but allowed the suit to proceed against the TSA officer and the police who arrested Tobey.

While Whitehead says the disorderly conduct charge was absurd, the constitutional issues – Tobey's First Amendment right to exercise free speech and expression [the message on his torso] and the Fourth Amendment provision against illegal searches – are real.

"Should the government be able to do this to an American citizen? We're arguing that it's wrong. It violated his constitutional rights."

It is an issue some Americans take very seriously.

"What women object to is the TSA touching their breasts and genital area. Touching of the body. That's what Aaron Tobey objected to. And the use of the full-body scanner, which shows you nude."

He says that scanners don't pick up "what's in body cavities". Could this explain invasive body searches? "In my opinion intrusive searches of women are because they refuse to go through scanners. They're basically punitive."

What makes Tobey's case different, says Whitehead, is that it is the first he knows of that includes the First Amendment argument, a development that may make it a test case to challenge airport security measures.

A tentative trial date is set for January.

"The Obama Justice Department is very aggressive in such cases," says Whitehead. "They don't like them. So

they seek dismissal."

To civil libertarians this stance is part of an alarming erosion of constitutional rights dating from the September 11 terrorist attacks and draconian laws like the Patriot Act.

Many passengers take umbrage with the body scanners, with the American Civil Liberties Union receiving around 1800 complains, says legislative counsel Christopher Calabrese. Pilots with FBI clearance fought for, and won, exemption.

"There was significant concern about them [the scanners]," says Calabrese, "because they're naked scanners; you can see through people's clothes. It's a straightforward privacy issue." At the same time, he says, the pat-down process has become "much more invasive", touching breasts, plus genitalia on both sexes. "I call it groping."

He says the TSA has made some changes. The agency has pulled back from invasive pat-downs of children – a notorious March 2009 episode saw a 4-year-old forced to remove his leg braces and struggle unassisted through a metal detector in Philadelphia.

There is a sense the pat-downs, and other intrusive government behaviour, has crept up on both US citizens and visitors, as the US shirks its responsibility to define where the line should be drawn between the government's duty to protect its citizens, and its obligation to respect their constitutional rights.

It is no easy task.

BOMB SCARE THE TRIGGER

The United States authorities began to roll out airport body scanners in 2007, stepping up their policy after the abortive 2009 Christmas Day bombing, when Northwest Airlines passenger Umar Farouk Abdulmutallab failed to detonate a plastic explosive device hidden in his underwear.

Scanners now operate at some 1000 American airports.

Besides privacy and civil rights disputes, passengers fear profiling, radiation risks – especially in infants and pregnant women – and risks to personal data after Florida officials failed to delete 35,000 nude scans.

The TSA says its pat-down procedures, conducted by officers of the same gender as the passenger, date to November last year.

Lisa Farbstein, a TSA spokeswoman, says pat-downs are "not an unreasonable search under the Fourth Amendment" and are "primarily used to resolve alarms that occur at a walk-through metal detector, if a passenger opts out of advanced imaging technology screening or the walk-through metal detector, or if an anomaly is detected".

Passengers can ask for a pat-down in private.

But when Farbstein was asked to outline the pat-down rules – could they probe a passenger's genitals for instance? – she declined to answer as this would supposedly compromise security.

The agency has yet to catch a single airport terrorist.

By Peter Huck

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Chick-fil-A and free speech

By **Marc J. Randazza**, Special to CNN
updated 5:38 AM EDT, Tue July 31, 2012



Mayor Thomas Menino has objected to Chick-fil-A locating in Boston because of its CEO's views on same-sex marriage.

STORY HIGHLIGHTS

Marc J. Randazza: Dustup over Chick-fil-A shows confusion over First Amendment

After CEO's remarks on same-sex marriage, some politicians said business unwelcome

Randazza: Politicians can't deny permits to block free speech but have other recourse

He says pols should have and express opinions but can't give them the force of law

Editor's note: *Marc J. Randazza is a Las Vegas-based First Amendment attorney. He is licensed to practice in Arizona, California, Florida, Massachusetts and Nevada. He is the editor of the law blog, [The Legal Satyricon](#).*

(CNN) -- Dan Cathy, the CEO of Chick-fil-A, proudly proclaimed his opposition to marriage equality and drew flak from politicians and citizens nationwide, who said Cathy's position made the chain unwelcome on their turf. Some of the condemnation crossed the line, offending the First Amendment. Some did not. Many don't understand where the line is, and now a population already sharply divided over same-sex marriage is collectively less informed about the First Amendment.

The First Amendment protects you from government action suppressing your right to free speech. It does not protect you from private individuals' negative reaction to your speech. As an extreme example: In my younger and more impulsive days, I punched out a guy who offended my then-girlfriend (now wife). He said he was exercising his First Amendment rights. I agreed and told him that I would defend him if the government messed with him, but the First Amendment didn't protect him from a private punch. I broke a few laws that day, but I didn't violate the First Amendment.

Similarly, the First Amendment does not protect you from criticism. Sarah Palin infamously took us all back a few steps by ignorantly criticizing the media for its negative commenting on her views. She said, "I don't know what the future of our country would be in terms of First Amendment rights and our ability to ask questions without fear of attacks by the mainstream media." This statement is utterly wrong. The First Amendment does not protect you from scrutiny or criticism by the media or others.

[Christian groups allege threats to religious freedom in anti-Chick-fil-A campaigns](#)

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Romney did Obama a huge favor

updated 11:30 AM EDT, Mon August 13, 2012



In picking Ryan, Romney gave conservatives what they wanted -- more ideology in his campaign. But he also gave the Obama campaign what it wanted -- a debate on Medicare

Get ready for more extreme heat and droughts

updated 5:24 PM EDT, Mon August 13, 2012



Michael Roberts says U.S. consumers will see food prices go up in 2013, but long term all of us have to deal with a warming world

London Olympics have redefined how Britain sees itself

updated 12:33 PM EDT, Sat August 11, 2012



London's Olympics have been an unexpected triumph, says Alastair Campbell -- the challenge will be to build on the Games' success to create a lasting legacy

Why Ryan pick won't help Romney

updated 8:48 AM EDT, Mon August 13, 2012



Ilyse Hogue says tapping a running mate who's budget plan is a blueprint for dismantling the middle class will not help Mitt Romney make his case to voters

My life with schizophrenia

updated 10:56 AM EDT, Sun August 12, 2012



Marc J. Randazza

Therefore, those claiming that the private calls to boycott Chick-fil-A have any First Amendment implications are wrong. Cathy put his thoughts into the marketplace of ideas, where they may be bought or rejected. He has no First Amendment right to our approval, or to our money for his sandwiches.

But can cities use zoning to combat unpopular speech?

Unfortunately, when we chip away at the First Amendment, unpleasant unintended consequences are not far behind. In [Barnes v. Glen Theatre Inc.](#), the Supreme Court allowed municipalities to use zoning to regulate strip clubs and adult bookstores to combat their "adverse secondary effects."



Blocking construction of Chick-fil-A



Chick-fil-A gets the boot



Chick-fil-A faces gay marriage backlash

In other words, a city can't ban adult bookstores because it doesn't like the books it sells. The city can effectively ban them by claiming it is doing so to prevent litter, traffic, lowered property values or other secondary effects it claims the business may cause (and needs scant evidence to support the regulation).

Over the years, courts expanded the doctrine to be virtually limitless. Now a city need only mouth the words "adverse secondary effects" when enacting a regulation, and for the most part, courts will uphold it -- even though everyone knows the real reason is that the city doesn't like the books and movies that the store sells.

[Eatocracy: Why I'm celebrating Chick-fil-Gay Appreciation Day](#)

When municipalities are told for years they can make up zoning or other regulatory issues to make an end run around the First Amendment, is it any surprise that they would look to zoning obstacles to stop Chick-fil-A from coming into town because they don't like the CEO's views on same-sex marriage?

Some cities responded to Cathy's statements with proper deference to the First Amendment, but others [have not](#). Boston Mayor Thomas Menino initially said, "If they need licenses in the city, it will be very difficult. ..." After considering the issue, though -- and probably talking with his attorneys -- [Menino acknowledged](#) he did not have the power to block the chain from operating in Boston.

In contrast, Chicago Alderman Joe Moreno [went further](#), saying he would work to block any Chick-fil-A in his ward. Moreno defended his view by saying, "You have the right to say what you want to say, but zoning is not a right." He then took a page out of the "adverse secondary effects" doctrine playbook by saying he had concerns about increased traffic in the area. So far, Moreno has not backed down.

[Chick-fil-A wades into a fast-food fight over same-sex marriage rights](#)

These statements clearly raise First Amendment issues. A city can't deny permits because it disapproves of the owner's exercise of his First Amendment rights. Both Menino and Moreno were dead wrong even to claim they would do so. That crosses the line between simply speaking out and abusing government power.

Menino's critics are right about his initial misuse of zoning law being a violation of the First Amendment, but after backing down on his threats, the mayor maintained he did not welcome Chick-fil-A in Boston.

He was within his rights to do so -- expressing his own opinion, both



Elyn Saks spent hundreds of days in psychiatric hospitals and could have ended up living most of her life on a back ward, but things turned out quite differently

Why Paul Ryan?

updated 8:10 AM EDT, Mon August 13, 2012



William Bennett says Paul Ryan, a student of the federal budget, is the right choice given the need to confront America's mounting debt

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James Bond on Her Majesty's Secret Service

updated 10:01 AM EDT, Mon August 13, 2012



On the 50th anniversary of James Bond films and the 60th of Queen Elizabeth's reign, the two met memorably at the Olympics, says Bob Greene

Paul Ryan and Gen X GOP

updated 12:17 PM EDT, Sun August 12, 2012



Alex Castellanos says Romney didn't pick a running mate to help him make the political "sale" but a vice president to help him fix the economy.

Execution of man with IQ of 61 violates Constitution

updated 3:48 PM EDT, Wed August 8, 2012



Laura Moya says Texas executed a man Tuesday with a mind of a 7-year-old and the Supreme Court didn't stop it, despite its own ruling 10 years ago.

Will Ryan pick end silly season?

updated 10:17 PM EDT, Sat August 11, 2012



Ed Morrissey says Mitt Romney's selection of the Wisconsin Congressman is a signal that he plans to tackle the long-term debt problem with definitive solutions

Ryan pick will steer Romney campaign to treacherous waters

updated 5:18 AM EDT, Mon August 13, 2012



Thomas Holbrook says the selection of Ryan may not swing Wisconsin for Romney and it shifts focus to politically risky policy ideas.

Paul Ryan will shift the campaign dynamic

personally and as mayor. In a letter to the chain, he wrote: "When Massachusetts became the first state in the country to recognize equal marriage rights, I personally stood on City Hall Plaza to greet same-sex couples coming here to be married," he added. "It would be an insult to them and to our city's long history of expanding freedom to have a Chick-fil-A across the street from that spot."

As mayor of Boston, Menino has a First Amendment right, and perhaps even a duty, to express his views, as all political figures do. They have a position that gives them a platform to speak out, and be heard, on matters of public concern. Rick Santorum had a right to say that a mosque shouldn't be built in Lower Manhattan.

A mayor in a less enlightened city has a right to say that Chick-fil-A is especially welcome, just as he might want to say that Starbucks is not welcome because it gives benefits to same-sex couples. A city council member has a right to say that "my district doesn't want an adult bookstore," and Menino has a right to say that [Boston does not welcome a business run by someone who is prejudiced](#). As long as they do not then try and give their views the force of law, they are within bounds.

And if their constituents disagree with their views, then they use the political process to cure the problem.

Politicians' rights, however, do not bleed over into using their official power to deny a business its fair due because of its, or its CEO's, exercise of our cherished First Amendment rights.

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