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# Internet Defamation as Profit Center: The Monetization of Online Harassment

Ann Bartow

*University of New Hampshire School of Law*, [ann.bartow@law.unh.edu](mailto:ann.bartow@law.unh.edu)

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# INTERNET DEFAMATION AS PROFIT CENTER: THE MONETIZATION OF ONLINE HARASSMENT

ANN BARTOW<sup>1</sup>

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<sup>1</sup> Professor of Law, University of South Carolina School of Law. The author thanks the courageous women and men who respond to Internet harassment not by bullying others downstream, and using their victimization to self-aggrandize or justify their own acts of abuse, but by consistently standing against sexist harassment whatever the source, and regardless of who is being targeted.

## INTRODUCTION

A woman who is aggressively sexually harassed while walking in a public place can turn to the police. A woman who is sexually harassed on the job can turn to the Equal Employment Opportunity Commission or hire a lawyer and file suit. Neither of these women may ultimately receive justice, but there are at least government actors who are charged with offering assistance to women in these situations. When sexual harassment occurs on the Internet, however, they are on their own, as far as government actors are concerned, especially if the identities of the harassers are unknown. Victims feel exposed, vulnerable, and helpless.<sup>2</sup> Private entities are seeking to take advantage of this void by marketing online “reputation defense” services, which purportedly allow clients to manage and manipulate the information about them on the Internet. The companies cannot prevent online sexual harassment, but they claim an ability to help clients hide bad things that have happened by burying the abhorrent websites deep within search engine results or having objectionable words and images removed from websites altogether.<sup>3</sup>

The Internet harassment storms directed at tech blogger Kathy Sierra<sup>4</sup> and at the law students targeted by posters on the AutoAdmit message board<sup>5</sup> have been widely reported and discussed. Kathy Sierra, a technology expert who received a torrent of online threats and abuse, used to run a tech website called Creating Passionate Users.<sup>6</sup> In the spring of 2007, she was subjected to verbal abuse in the comments section of her own blog, where she could delete those abusive comments, and other blogs, where she could not. The comments included posts like “fuck off you boring slut . . . i hope someone

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<sup>2</sup> See generally Mary Anne Franks, *Unwilling Avatars: Sexual Harassment in Cyberspace* (May 22, 2009) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1374533](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1374533); Nancy S. Kim, *Website Proprietorship and Cyber Harassment 1, 3* (Mar. 6, 2009) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1354466](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1354466).

<sup>3</sup> See *infra* notes 198–206 and accompanying text.

<sup>4</sup> E.g., *Blog Death Threats Spark Debate*, BBC NEWS, Mar. 27, 2007, <http://news.bbc.co.uk/1/hi/technology/6499095.stm>; see also Posting of Dan Fost to The Tech Chronicles, [http://www.sfgate.com/cgi-bin/blogs/sfgate/detail?blogid=19&entry\\_id=14783](http://www.sfgate.com/cgi-bin/blogs/sfgate/detail?blogid=19&entry_id=14783) (Mar. 27, 2007, 12:40 PDT).

<sup>5</sup> E.g., Posting of Dan Slater to Law Blog, <http://blogs.wsj.com/law/2008/03/05/ciollisues-yale-law-students-in-autoadmit-scandal> (Mar. 5, 2008, 14:25 EST) (reporting that lawsuits have been filed against and on behalf of anonymous posters of AutoAdmit); see also Danielle Keats Citron, *Cyber Civil Rights*, 89 B.U. L. REV. 61, 71–75 (2009) (providing a detailed overview of the AutoAdmit story); Ryan Singel, *Yale Students' Lawsuit Unmasks Anonymous Trolls, Opens Pandora's Box*, WIRED, July 30, 2008, <http://www.wired.com/politics/law/news/2008/07/autoadmit>; Posting of Maggie to Broad Recognition: Feminist Responses to Sexism at Yale, <http://broadrecognition.blogspot.com/2007/04/online-misogyny-does-internet-make.html> (Apr. 5, 2007).

<sup>6</sup> Creating Passionate Users, <http://headrush.typepad.com> (last visited Apr. 17, 2009).

slits your throat and cums down your gob.”<sup>7</sup> On a blog specifically established, at least in part, to make fun of Sierra, someone posted a photo of a noose next to Sierra’s head, which drew the comment “the only thing Kathy has to offer me is that noose in her neck size.”<sup>8</sup> One journalist observed with some understatement that the “rhetoric hurled in the blogosphere . . . [went] over the top in this incident,” noting, “[m]uch of the discussion [was] heated, as some people suggest Sierra has overreacted by calling the police, and some even say the death threats should be protected speech.”<sup>9</sup> Sierra shut down her tech blog and stopped making public appearances,<sup>10</sup> writing:

As for the future of this blog, I know I cannot just return to business as usual—whatever absurd reasons have led to this much hatred for me (and for what I write here) will continue, so there is no reason to think the same things wouldn’t happen again . . . and probably soon. That includes anything that raises (or maintains) my visibility, so I will not be doing speaking engagements—especially at public events.<sup>11</sup>

The harassment fear she experienced drove her from her online life and affected the way she lived offline as well.<sup>12</sup> The only actual choice she had was to surrender, or to stand and fight. If she had chosen the latter, all she would likely have gotten for her trouble is additional ridicule, hostility, suspicion, and threats of bodily harm. And as she noted, she was “simply one of a gazillion examples about what’s happening today both on and offline.”<sup>13</sup> Her experience elicited a lot of complicated reactions from other women who had experienced Internet harassment. For example, Joan Walsh, an editor for Salon.com, explained:

Ever since Salon automated its letters, it’s been hard to ignore that the criticisms of women writers are much more brutal and vicious than those about men—sometimes nakedly sexist, sometimes less obviously so; sometimes sexually and/or personally degrading. But I’ve never admitted the toll our letters can sometimes take on women writers at Salon, myself included, because admitting it would be giving misogynist losers—and these are the posters I’m

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<sup>7</sup> Joan Walsh, *Men Who Hate Women on the Web*, SALON, Mar. 31, 2007, <http://www.salon.com/opinion/feature/2007/03/31/sierra> (quoting posting of anonymous user on Sierra’s website).

<sup>8</sup> *Id.*

<sup>9</sup> Posting of Dan Fost, *supra* note 4 (hyperlink omitted).

<sup>10</sup> Rafe Needleman, *Blogosphere Amplifies the Bad (and Good) Parts of Humanity*, CNET NEWS, Mar. 27, 2007, [http://news.cnet.com/8301-17939\\_109-9701697-2.html](http://news.cnet.com/8301-17939_109-9701697-2.html).

<sup>11</sup> Posting of Kathy Sierra to Creating Passionate Users, [http://headrush.typepad.com/creating\\_passionate\\_users/2007/04/my\\_favorite\\_gra.html](http://headrush.typepad.com/creating_passionate_users/2007/04/my_favorite_gra.html) (Apr. 6, 2007).

<sup>12</sup> *Id.*

<sup>13</sup> Posting of Kathy Sierra to Creating Passionate Users, [http://headrush.typepad.com/creating\\_passionate\\_users/2007/04/updatejoint\\_sta.html](http://headrush.typepad.com/creating_passionate_users/2007/04/updatejoint_sta.html) (Apr. 2, 2007).

talking about—power. Still, I’ve come to think that denying it gives them another kind of power, and I’m trying to sort that out by thinking about the Kathy Sierra mess in all its complexity.<sup>14</sup>

AutoAdmit<sup>15</sup> is “a widely read message board that ostensibly provides information about law schools and law firms;” however, “the nature of much of the message board’s content is . . . racist, misogynistic, or otherwise obscene.”<sup>16</sup> Hostility toward women generally, and feminists in particular, is rampant.<sup>17</sup> Women are identified by name or photo or both, and then savaged.<sup>18</sup> Most of the law students targeted by AutoAdmit posters were neither bloggers nor members of any lecture circuit and did not have the option of disappearing from the Internet. The activities of their tormenters brought them firmly into the cyber limelight, and have kept them there, by continually publishing negative information in ways that visibly link to their names.<sup>19</sup>

The targeted law students were apparently initially ridiculed on AutoAdmit by people they knew in real space, as evidenced by personal information that was disclosed, such as the style or color of clothing they wore at a particular location.<sup>20</sup> But once the women were contextually

<sup>14</sup> Walsh, *supra* note 7.

<sup>15</sup> AutoAdmit, <http://www.xoxoth.com> (last visited Apr. 17, 2009).

<sup>16</sup> *Online Discussion Board Targets Female Law Students*, VA. L. WKLY, Mar. 16, 2007, at 1, available at [http://www.lawweekly.org/pdf\\_archives/20070316.pdf](http://www.lawweekly.org/pdf_archives/20070316.pdf).

<sup>17</sup> See, e.g., Posting of Gougeaway to AutoAdmit, [http://www.autoadmit.com/thread.php?thread\\_id=238857&forum\\_id=2#3574884](http://www.autoadmit.com/thread.php?thread_id=238857&forum_id=2#3574884) (Aug. 12, 2005, 20:42 EST) (“Dear Feminists, You are ungrateful bitches. We males would be delighted to be trophy husbands. We wish you wanted us only for sex. We wish we weren’t the smart and strong sex compelled to provide sustenance while you take the kids to the zoo. Stop trying to be male, you will never succeed.”).

<sup>18</sup> See, e.g., Posting of Fergie, Duchess of Fork to AutoAdmit, [http://www.autoadmit.com/thread.php?forum\\_id=2&thread\\_id=939534&PHPSESSID=edf1a5bf75d27e0bc67db42200bb9677#10989164](http://www.autoadmit.com/thread.php?forum_id=2&thread_id=939534&PHPSESSID=edf1a5bf75d27e0bc67db42200bb9677#10989164) (Feb. 24, 2009, 20:54 EST) (posting a photo of a woman to introduce a thread criticizing her appearance); Posting of YourlocalDJ to AutoAdmit, [http://www.autoadmit.com/thread.php?thread\\_id=643233&forum\\_id=1](http://www.autoadmit.com/thread.php?thread_id=643233&forum_id=1) (June 10, 2007, 12:52 EST) (responding to an article about a woman from a low-income background, saying “[w]hat a bitch, I know a bunch of poors who don’t act like shit fucks. She should killself”).

<sup>19</sup> See generally Elizabeth Wurtzel, *Trash Talk*, WALL ST. J., Mar. 19, 2007, at A12 (reporting that “[t]he descriptions of [the targeted law students]—sluts and whores—and the suggestions about what might be done to them—rape and sodomy—were showing up on Google searches of their names, and had prevented at least one of them from securing employment”).

<sup>20</sup> Plaintiffs’ Memorandum of Law in Support of Opposition to John Doe21’s Motion to Quash Plaintiff’s Subpoena at 4, *Doe I v. Individuals*, 561 F. Supp. 2d 249 (D. Conn. 2008) (No. 3:07CV00909) (noting that one commenter described the clothing a student wore to the law school gymnasium). See Posting of Betsy McKensie to Out of the Jungle, <http://outofthejungle.blogspot.com/2007/03/cyberbullying-or-virtual-rape.html> (Mar. 27, 2007, 12:28), which explained that “[t]he women attacked both on Second Life and on the AutoAdmit chat have said they felt demeaned, devalued and threatened. Women law students who have been the subject of AutoAdmit attacks have said they felt they could no longer go to the gym, and had trouble attending class. They felt violated and threatened.” See also Ellen Nakashima, *Harsh Words Die Hard on the Web; Law Stu-*

framed as people who deserved to be mocked and punished (mostly because they objected to the ill treatment) online strangers mobbed and besieged them as well.<sup>21</sup>

The attacks on Kathy Sierra and the students targeted by AutoAdmit took place against a context of widespread misogyny online. These stories were widely covered by mainstream media sources and a host of blogs, sometimes conterminously. A less commonly known episode that is representative of the ubiquitous presence of online sexual harassment and misogyny involved a long string of vulgar comments left on the YouTube trailer<sup>22</sup> for the documentary *Girls Rock!*<sup>23</sup> about a rock and roll camp for girls between the ages of eight and eighteen.<sup>24</sup> Within *twelve hours* of the video appearing, the following posts were made:

Girls cant play guitar. . . . .

are you a lesbian? if you are thats ok. I'm a lesbian too; in the way that I like women.

if girls want be respected as good rock musicians, maybe they should actually put out a good album.

WHINY WHORES!!! FUUUUCK!

girls are going too wild. . . .seriously. . . .get a life

Without men there would be no children and the women with their P.M.S. would nuke each other until there was no world left.

Girls lose.

Shouldn't they be teaching girls more useful things, such as how to make sandwiches??

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*dents Feel Lasting Effects of Anonymous Attacks*, WASH. POST, Mar. 7, 2007, at A1. Nakashima explains this problem in more detail:

Another Yale law student learned a month ago that her photographs were posted in an AutoAdmit chat that included her name and graphic discussion about her breasts. She was also featured in a separate contest site—with links posted on AutoAdmit chats—to select the “hottest” female law student at “Top 14” law schools, which nearly crashed because of heavy traffic. Eventually her photos and comments about her and other contestants were posted on more than a dozen chat threads, many of which were accessible through Google searches. “I felt completely objectified,” that woman said. It was, she said, “as if they’re stealing part of my character from me.” The woman, a Fulbright scholar who graduated summa cum laude, said she now fears going to the gym because people on the site encouraged classmates to take cellphone pictures of her.

*Id.*

<sup>21</sup> See Nakashima, *supra* note 20.

<sup>22</sup> C.K. Kelly Martin, *Open Season on Women on the Web*, THE TORONTO STAR, July 12, 2007, at AA8 (describing the deluge of comments on the trailer and the response to them by the film’s directors).

<sup>23</sup> GIRLS ROCK! (Shadow Distribution 2007).

<sup>24</sup> About GIRLS ROCK!, <http://www.girlsrockmovie.com/about.html> (last visited Apr. 17, 2009).

I think its cool if girls are in bands, but do you have to look like a dude / really butch. . . .ugh thats nasty.

There are 2 things a woman should never go near: a) a car b) an electric guitar

want to read something funny. . . “WOMANS RIGHTS”

When they try to rock they just end up looking like morons, stick to the dolls ladys. It’s like a guy trying to be a? super model, you just dont do that, unless you want to look like a retard.

Just another lame Self-empowerment video for women, they say they’re so strong, why do they NEED these videos/programs. . .? It is completely stupid.

Yes, the best way for progression is to poorly imitate what males have already done.

girls do rock, well hott ones atleast

im assuming your a female so i probably would fuck you but then your probably fat so i wouldn’t

This is trash. So the girls shouldnt be concerned about being fat and become some alternative crappy emo singers instead? What kind of logic is that? Why cant she join a gym?

girls need too learn too suck dick better fuck these whores

you should not have been featured because males are the dominant gender period, and im a girl [RICHIE [AUTHOR OF BLOG POST]: THIS USER’S PROFILE IDENTIFIES THEM AS A 27 YEAR OLD MAN CALLED JOHN]<sup>25</sup>

ill those girls in the video were fugly

theres is a shortage of goodlooking girls in the video<sup>26</sup>

These comments and many more like them were listed within a critical blog post sarcastically entitled, “THEY ARE DROWNING OUT MALE VOICES WITH THEIR EVIL MOVIE TRAILER.”<sup>27</sup> Richie, the author of this blog post, observed, “[c]onsidering the average age of the pro-segrega-

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<sup>25</sup> Here, Richie, the author of this Criticism blog post, inserted information about the age and gender of the original commenter who claimed he was a girl but who had identified himself on the site as a twenty-seven year old man.

<sup>26</sup> Posting of Richie to Criticism, <http://criticism.wordpress.com/2007/05/22/they-are-drowning-out-male-voices-with-their-evil-movie-trailer> (May 22, 2007, 00:20) (listing comments made by various posters to the YouTube trailer of *GIRLS ROCK!*).

<sup>27</sup> *Id.*

tion feminazis girls involved was about fourteen, they're not likely to weather coordinated cyberbullying terribly well."<sup>28</sup>

Richie's post about the horrifying comments thread drew the attention of people associated with the actual movie. One of them, Arne Johnson, responded:

I'm actually the co-director of the film *Girls Rock!*, and was likewise blown away by the deluge of horrid comments. We quickly put an "Approve First" filter on it because of exactly what Richie is saying about the ability of these young girls to fight off cyberbullying. We did, however, decide to let the less personal and stupidly ugly comments ("Dyke slags", that sort of stuff) remain so folks like you could see what was out there and talk about it. A heartening amount of women and men fought back in the comments and that was worth showing too. Funny thing is, the comments were evenly divided between "Girls can't rock, only men can play the guitar, they shouldn't try" and male panic comments like "Why do you need a special camp to separate girls out, they have the same opportunities as men now!" Amazing no-one realized the two canceled each other out.<sup>29</sup>

As noted, the comments reprinted above are actually the edited version; the really ugly, harshly personal comments were deleted.<sup>30</sup> These quotes and others like them were allowed to remain, and I repeated some of them in this article to inform the public about just some of the misogyny that girls face online. This episode represents only one of many angry, sexist diatribes that occur on the Internet every single day.<sup>31</sup> Aggressive and personally abusive discourse found in various spheres of the Internet is disproportionately directed at women and girls.<sup>32</sup>

Neither civil nor criminal laws offer effective tools to prevent, address, or punish online speech, which is viewed by many as being vested with very broad First Amendment protections.<sup>33</sup> Current Internet norms may foster ci-

<sup>28</sup> Posting of Richie to Crimitism, <http://critisism.wordpress.com/2007/05/22/they-are-drowning-out-male-voices-with-their-evil-movie-trailer/#comment-324> (May 22, 2007, 18:42).

<sup>29</sup> Posting of Arne to Crimitism, <http://critisism.wordpress.com/2007/05/22/they-are-drowning-out-male-voices-with-their-evil-movie-trailer/#comment-347> (May 25, 2007, 09:08).

<sup>30</sup> *Id.*

<sup>31</sup> See *supra* note 13 (Kathy Sierra explained, "But these stories should not be about me . . . I am simply one of a gazillion examples about what's happening today both on and offline."); see also Kathy Sierra & Chris Locke, *Coordinated Statements on the Recent Events*, RAGEBOY, Apr. 1, 2007, <http://www.rageboy.com/statements-sierra-locke.html>.

<sup>32</sup> See *infra* notes 46, 55–59 and accompanying text.

<sup>33</sup> See, e.g., Eugene Volokh, *Cheap Speech and What It Will Do*, 104 YALE L.J. 1805 (1995); Jacqui Chang, *Appeals Court: First Amendment Protects Forum Trolls Too*, ARS TECHNICA, Feb. 7, 2008, <http://arstechnica.com/tech-policy/news/2008/02/appeals-court-first-amendment-protects-forum-trolls-too.ars>.



vity in some specific contexts,<sup>34</sup> but, as a general matter, gender based harassment is broadly permitted online.<sup>35</sup> Thirteen years ago, computer scientist Ellen Spertus wrote an article entitled *Social and Technical Means for Fighting On-Line Harassment* in which she described social and technical responses she believed could be used to reduce the occurrence and impact of online sexual harassment.<sup>36</sup> She wrote:

In many ways, women are better protected from unwanted speech on-line than off-line. For example, there is no way in the off-line world for a woman to ensure that she not hear certain insulting terms, which could be used by her co-workers or yelled at her on the street. On-line, tools such as Net Nanny ensure that we do not see unwanted words. Developing technologies will allow the on-line implementation of standard social mechanisms such as reputations (good and bad), introductions, and social pressure to behave civilly (however that is defined). More basically, the same freedom of speech that allows someone to send us an offensive message allows us to call it to the attention of others, however this might embarrass the sender.<sup>37</sup>

Retrospectively, her optimism seems misplaced, to put it lightly. In fairness, the Internet was structured very differently in 1996, and the opportunities for anonymous harassment of women outside of community structures were far fewer, as blogs and online discussion boards as currently structured did not exist.<sup>38</sup> Furthermore, the power of the Communications Decency Act's<sup>39</sup> ("CDA") § 230 Internet Service Provider ("ISP") immunity was not yet known. It was not until the 1997 decision of *Zeran v. America Online, Inc.*,<sup>40</sup> that the Fourth Circuit Court of Appeals determined ISPs were exempt from liability.<sup>41</sup>

<sup>34</sup> See, e.g., Posting of Jack Balkin to Balkinization, <http://balkin.blogspot.com/2007/03/autoadmit-controversy-some-notes-about.html> (Mar. 9, 2007, 08:55) (suggesting, for example, that "people should put moral pressure on the site administrators of Autoadmit to denounce bad behavior on the site and to change the code on the site to encourage good behavior and to limit comments that harass and invade people's privacy").

<sup>35</sup> See generally Mattathias Schwartz, *Malwebolence*, N.Y. TIMES, Aug. 3, 2008, § 6 (Magazine), at 24.

<sup>36</sup> Ellen Spertus, *Social and Technical Means for Fighting On-line Harassment*, May 5, 1996, <http://people.mills.edu/spertus/Gender/glc/glc.html>.

<sup>37</sup> *Id.*

<sup>38</sup> See Praveen Kumarii, *The Beginning of Blogs and Blogging*, ARTICLESBASE, Aug. 12, 2008, <http://www.articlesbase.com/seo-articles/the-beginning-of-blogs-and-blogging-518717.html>. The author notes that blogging sites first appeared in 1998, though blogging did not really take off until 2001. *Id.*

<sup>39</sup> The Communications Decency Act, Title V of the Telecommunications Act, is codified at 47 U.S.C. § 230 (2006). Section 230(c)(1) provides: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

<sup>40</sup> 129 F.3d 327 (4th Cir. 1997).

<sup>41</sup> *Id.* (explaining that this liability was based on CDA § 230).

Efforts to decrease the sexist aspects of online fora have been largely ineffective, and in some instances seemingly counterproductive, in the sense that they have provoked even greater amounts of abuse and harassment with a gendered aspect.<sup>42</sup> And so, in the wake of a series of high profile episodes of cyber sexual harassment, and a grotesque abundance of low profile ones, a new business model was launched. Promising to clean up and monitor online information to defuse the visible impact of coordinated harassment campaigns, a number of entities began to market themselves as knights in cyber shining armor,<sup>43</sup> ready to defend otherwise defenseless people whose reputations have been sullied on the Internet.<sup>44</sup> Of course these companies charge a fee and place particular emphasis on women who they recognize as potential clients.<sup>45</sup> This article raises three concerns about these businesses. First, these companies have economic incentives to foster conditions online that perpetuate acts of online harassment, as the more harassment there is online, the greater the number of potential clients. These companies are also incentivized to create fora with hostile climates and to stir up trouble them-

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<sup>42</sup> See Posting of Cameron Sorden to Random Battle, <http://random-battle.com/2008/02/12/opening-a-dialog-about-sexism-in-games-can-we-not> (Feb. 12, 2008). Sorden comments on this phenomenon, writing:

I've been active in the blogosphere and news circuit for just about two years now. First as a reader, and then as a writer and journalist. In that small span of time, I've seen the topic of "gender in gaming," "sexism in games," and "the hostile environment of gaming and the internet" pop up and take the community by storm about four or five times. It's always a popular topic, and it always flares up in a big way and then dies out without really accomplishing anything except getting some tempers heated and pulling some harsh words out. A recent WoW Insider post once again brought up the topic of sexism in games because of a World of Warcraft forum post on the same topic that Nethaera shut down. That was a smart move for her, in my opinion. If we're going to have an intelligent discussion about sexism in Warcraft, it's not going to happen on the WoW forums, where a simple suggestion or question is often met with cries of "STFU n00b" or "TLDR." The Massively post continues the silenced discussion by asking, "Just like racism, sexism should not be tolerated, but how do you address it without making the problem worse?" They already have five pages of comments (and presumably, it's growing). Like I said, here we go flaring up.

*Id.*

<sup>43</sup> See *infra* text accompanying notes 122–132 for a discussion of one prominent company, ReputationDefender. Other companies include: Internet Reputation Management, <http://www.internet-reputation-management.com> (last visited Apr. 17, 2009); Net-smartz Online Reputation Management, <http://www.net-smartz.net/e-marketing/reputation-management/reputation-management-services-program.html> (last visited Apr. 17, 2009); Reputation Hawk, <http://www.reputationhawk.com> (last visited Mar. 9, 2009); and ReputationDr, <http://www.reputationdr.com> (last visited Apr. 17, 2009).

<sup>44</sup> See Posting of Ann Bartow to Feminist Law Professors, <http://feministlawprofessors.com/?p=1671> (Apr. 8, 2007, 17:47 EST).

<sup>45</sup> For some examples of the women-targeted advertising ReputationDefender uses, see, for example, ReputationDefender, Press Room, Gossip Gone Wild, [http://www.reputationdefender.com/viewPress?press\\_id=245](http://www.reputationdefender.com/viewPress?press_id=245) (last visited Apr. 17, 2009); ReputationDefender, Press Room, Mike & Juliet Morning Show, [http://www.reputationdefender.com/viewPress?press\\_id=189](http://www.reputationdefender.com/viewPress?press_id=189) (last visited Apr. 17, 2009); and ReputationDefender, Press Room, Revenge Porn, [http://www.reputationdefender.com/viewPress?press\\_id=310](http://www.reputationdefender.com/viewPress?press_id=310) (last visited Apr. 17, 2009).

selves. Second, these companies have economic incentives to oppose legal reforms that might enable online defamation and harassment victims to seek recourse from law enforcement agencies or through the courts. And finally, though they cloak themselves in the mantle of protectors of the innocent, their real agenda is to sell their services to wealthy corporations and individuals for far more nefarious purposes: to help bad actors hide negative information about themselves. This practice creates information asymmetries that can harm anyone who detrimentally relies on what they incorrectly assume to be the best available information and can lead to increases in the sorts of financial losses and personal vulnerability that access to un-manipulated Internet search results might otherwise reduce.

I. THE INTERNET CAN BE A HOSTILE ENVIRONMENT FOR WOMEN AND THAT HOSTILITY FOSTERS AN EXTENSIVE MARKET FOR REPUTATION DEFENSE SERVICES

A female freelance writer who blogged about the pornography industry was threatened with rape. A single mother who blogged about “the daily ins and outs of being a mom” was threatened by a cyber-stalker who claimed that she beat her son and that he had her under surveillance. Kathy Sierra, who won a large following by blogging about designing software that makes people happy, became a target of anonymous online attacks that included photos of her with a noose around her neck and a muzzle over her mouth.

As women gain visibility in the blogosphere, they are targets of sexual harassment and threats. Men are harassed too, and lack of civility is an abiding problem on the Web. But women, who make up about half the online community, are singled out in more starkly sexually threatening terms—a trend that was first evident in chat rooms in the early 1990s and is now moving to the blogosphere, experts and bloggers said.<sup>46</sup>

Anyone who spends time online has at least seen, if not experienced, some form of Internet harassment. Pitched arguments that turn ugly can break out in the comments section of any website or blog over topics as seemingly mundane (at least to unimpassioned outside observers) as how much arch support a particular brand of athletic shoe offers runners, which the reader can confirm by perusing the customer reviews of sneakers at any typical online running shoe sales venue.<sup>47</sup> One wonders: do runners really

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<sup>46</sup> Ellen Nakashima, *Sexual Threats Stifle Some Female Bloggers*, WASH. POST, Apr. 30, 2007, at A1.

<sup>47</sup> The author prefers not to highlight any particular online sneaker outlet in this article, but the reader can confirm these statements by perusing the customer reviews of sneakers at any typical online running shoe sales venue.

care about others' opinions of sneakers that much? Or is one company hiding behind anonymity to trash a competitor's latest offering, while the competitor is simultaneously attempting image burnishing and damage control, similarly cloaked in pseudonyms? It's generally impossible to tell. But where everyone involved is anonymous, and the topic is a series of subjective views about inanimate objects, it does not seem like much harm is being done with the angry insults,<sup>48</sup> as long as readers are cognizant of the fact that ostensibly neutral product-reviewing commenters may be deceptively attempting to manipulate the readers' purchasing decisions.<sup>49</sup>

When the targets of opprobrium are people rather than sneakers, disputes become more personal. Kathy Sierra expressed confusion about why people seemed to hate her and her tech blog so much that they would literally threaten her life.<sup>50</sup> Many other lower profile bloggers have been just as perplexed by the occurrence of similar episodes.<sup>51</sup> Unless the culprits are identified and questioned, which rarely happens, the motivations and triggers underlying Internet abuse storms can only be guessed at. One journalist wrote:

Have you ever participated in an online forum where an anonymous someone turns really ugly on you and starts saying every disgusting thing under the sun for no apparent reason?

You never forget the feeling.

It's creepy. It's violent. It violates you even though it's "just words." It makes you feel powerless because there's virtually nothing you can do to stop it. Even worse, if the forum isn't moderated, the words and posts will remain there forever to haunt you . . . and smear you in the eyes of potential employers, clients, even boyfriends who google your name.<sup>52</sup>

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<sup>48</sup> Knitting is another seemingly peaceful topic turned ugly online. Since knitting is stereotypically the hobby of older women who are expected to be gentle and helpful, the prospect of knitters flaming each other over issues like yarn preferences or needle width is cast as humorously improbable. However, one blogger has posted a lengthy anecdote to her own blog, "the Knitting Curmudgeon," in which she describes getting kicked off of a knitting listserv for coining the term "KnitDweeb." Posting of Marilyn to The Knitting Curmudgeon, [http://www.knittingcurmudgeon.com/archives/2003\\_01\\_01\\_archive.html](http://www.knittingcurmudgeon.com/archives/2003_01_01_archive.html) (Jan. 30, 2003, 10:31); *see also, e.g.*, Posting of Maryh to MetaFilter, <http://www.metafilter.com/54869/Knitting-Zombies#1437034> (Sept. 18, 2006, 23:43 EST) ("I love this stuff. I want to say 'Great thread!' too, but I don't want to get into some kind of flame war with the embroidery folks.").

<sup>49</sup> *See generally* NationMaster.com, Astroturfing, <http://www.nationmaster.com/encyclopedia/Astroturfing> (last visited Apr. 17, 2009).

<sup>50</sup> *See supra* notes 11–12.

<sup>51</sup> I hesitate to name them here for fear of directing any new abuse in their directions. Many, like Sierra, ended their blogs.

<sup>52</sup> Linda Lowen, *Unmasking Trolls to End Online Harassment—Lawsuit to Name Real Identity of Posters*, ABOUT.COM, Aug. 5, 2008, <http://womensissues.about.com/b/2008/08/05/unmasking-trolls-to-end-online-harassment-lawsuit-to-name-real-identity-of-posters.htm>.

Self-identifying as a woman online can substantially increase the risk of Internet harassment.<sup>53</sup> Some people initially had hopes that gender would become less important online. As one commentator noted:

One of the great early hopes for the internet was that it would erase sexism. Once we couldn't see gender, we'd be judged on the quality of our ideas and not our sex. And now huge sectors of the internet are porn sites and games where female avatars look like porn stars with fantasy metal bits instead of genitalia. And that's only where it's smack-you-over-the-head obvious how fully sexism thrives online. Sexism may well be worse online.<sup>54</sup>

A 2005 study by the Pew Internet & American Life Project found that the proportion of Internet users who took part in chats and discussion groups plunged from twenty-eight percent in 2000 to seventeen percent in 2005.<sup>55</sup> The decrease was entirely due to an enormous exodus of women.<sup>56</sup> In 2006, a study assessing the threat of attacks associated with the chat medium IRC (Internet Relay Chat) found that users with female identifiers were "far more

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<sup>53</sup> See John Hawkins, *Blogging While Female: 5 Conservative Women Bloggers Talk About Gender Issues and the Blogosphere*, RIGHT WING NEWS, Mar. 4, 2008, [http://www.rightwingnews.com/mt331/2008/03/blogging\\_while\\_female\\_5\\_conser.php](http://www.rightwingnews.com/mt331/2008/03/blogging_while_female_5_conser.php); Posting of Lainad to Blogger: The Community for Women Who Blog, <http://www.blogger.com/consequences-blogging-while-female-opinion> (Dec. 4, 2008, 17:15); Posting of Amanda Marcotte to Blogging Feminism: (Web)sites of Resistance, <http://bloggingfeminism.blogspot.com/2007/05/blogging-while-female-in-male-dominated.html> (May 2, 2007, 13:31); see also Posting of Kate Harding to Shapely Prose, <http://kateharding.net/2007/04/14/on-being-a-no-name-blogger-using-her-real-name> (Apr. 14, 2007). Harding comments on the trials of self-identifying on the Internet, and specifically addresses the fact that men also experience harassment:

The only person I know who's suffered serious harassment as a result of expressing opinions on the internet is my very large boyfriend. When it was happening, he felt frightened and powerless, which was the harassers' secondary goal—the primary one being to make him shut up forever. They didn't succeed at the primary goal, and this is all well in the past. But when I met him, not quite a year ago, and Googled him, as you do, I instantly found a site devoted entirely to explaining why and how my soon-to-be-boyfriend was a pathetic bitchass vile fuckwad who sat around in his parents' basement trying to abridge people's freedom of speech and had the i.q. of a fencepost and smelled like a monkey and deserved to be killed slowly and painfully and didn't know shit about shit BUT OH HE WOULD LEARN WHEN TEH [sic] INTERNETS ROSE UP AGAINST HIM which was totally forthcoming and also he'd never seen a naked woman in his life.

*Id.*

<sup>54</sup> Posting of Nancy Baym to Online Fandom: News and Perspectives on Fan Communications and Online Social Life, <http://www.onlinefandom.com/archives/does-the-internet-make-it-easier-to-be-a-female-music-fan> (June 26, 2007, 06:02).

<sup>55</sup> DEBORAH FALLOWS, PEW INTERNET & AMERICAN LIFE PROJECT, HOW WOMEN AND MEN USE THE INTERNET 14 (2005), available at [http://www.pewinternet.org/~media/Files/Reports/2005/PIP\\_Women\\_and\\_Men\\_online.pdf](http://www.pewinternet.org/~media/Files/Reports/2005/PIP_Women_and_Men_online.pdf).

<sup>56</sup> *Id.*

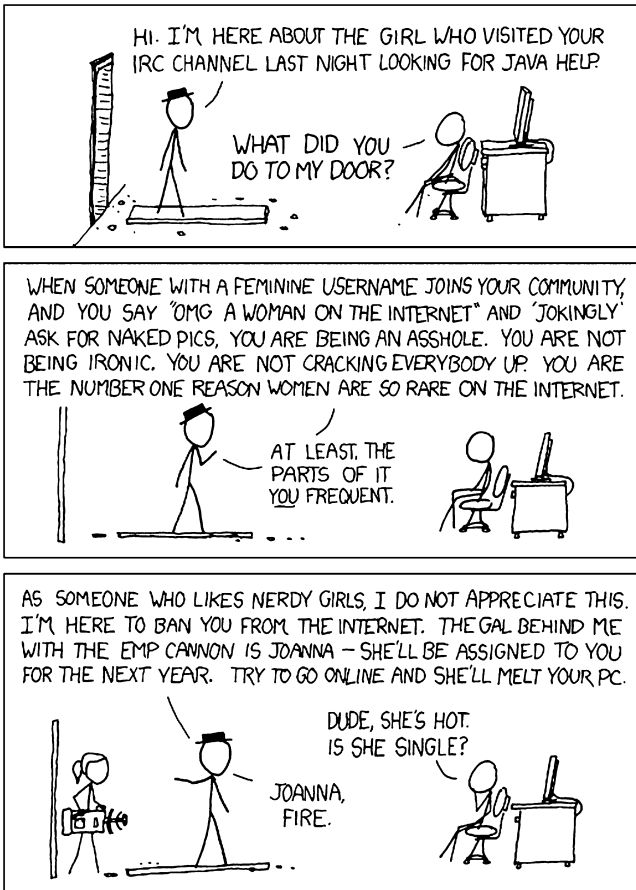
likely” to receive malicious private messages.<sup>57</sup> Users with ambiguous names were less likely to receive malicious private messages than female users, but more likely to receive them than male users.<sup>58</sup> These results indicated that attacks came from anonymous human chat-users selecting their targets, rather than from automated scripts indiscriminately sending attacks to all users.<sup>59</sup> This study replicated earlier findings documenting the hostility and harassment expressed in gendered and sexually threatening terms toward women who identify as female online.<sup>60</sup> One high profile woman blogger

<sup>57</sup> ROBERT MEYER & MICHEL CUKIER, *ASSESSING THE ATTACK THREAT DUE TO IRC CHANNELS 5* (2006), available at <http://www.enre.umd.edu/content/rmeyer-assessing.pdf>.

<sup>58</sup> *Id.* at 4–6.

<sup>59</sup> *Id.* at 5.

<sup>60</sup> See Julian Dibble, *A Rape In Cyberspace: Or TINYSOCIETY, and How to Make One*, in *MY TINY LIFE* 11, 15–18 (1998) (describing an online sexual attack against several women in a particular cyber setting); Rebecca K. Lee, *Romantic and Electronic Stalking in a College Context*, 4 *WM. & MARY J. WOMEN & L.* 373, 405–06 (1998).



Randall Munroe, *XKCD: A Webcomic of Romance, Sarcasm, Math and Language*, <http://xkcd.com/322> (last visited Apr. 17, 2009).

theorized that Kathy Sierra's attackers "want women out of their worlds," observing, "[w]hen someone goes this far, to make death imagery and maintain a 24/7 hate blog, we're not talking about a lack of social skills, we're talking about a desire to destroy."<sup>61</sup> Research also suggests that women who violate prescriptive gender roles are disproportionately targeted for harassment.<sup>62</sup> Simply having an online presence or expressing confident opinions on male-identified topics may be viewed as unwomanly or outside the norm and therefore worthy of censure.<sup>63</sup> This condemnation will generally take the form of disparaging sexual references, which fit into one of two interrelated categories: it's bad to be a pussy, and it's bad to have a pussy.

A study by psychologists at Nottingham Trent University found that seventy percent of women chose to construct male characters when given the option by online games, in part to avoid the sexism and sexual harassment that they are subjected to online when they identify as women.<sup>64</sup> In one illustration of the kind of treatment women may seek to avoid, when Ailin Graef attempted to take part in an online three-dimensional interview to discuss her successes in the "Second Life" virtual world, hackers attacked her cyber-character with an onslaught of flying pink penises.<sup>65</sup>

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<sup>61</sup> Violet Blue, *When a Man Hates a Woman: The Ugly Side of Sex and the Web*, SF GATE, Mar. 29, 2007, <http://www.sfgate.com/cgi-bin/article.cgi?f=/g/a/2007/03/29/violetblue.DTL>.

<sup>62</sup> See Heather Cassel, *Study Spotlights Sexual Harassment of Women Who Defy Gender Stereotypes*, BAY AREA REP., May 31, 2007, <http://www.ebar.com/news/article.php?sec=news&article=1875>.

<sup>63</sup> See Saabira Chaudhury, *Sexist, Sexist, and More Sexist: DIGG Responds to Fast Company's Women in Web 2.0*, FAST COMPANY, Nov. 14, 2008, [http://www.fastcompany.com/blog/saabira-chaudhuri/itinerant-mind/sexist-stupid-and-downright-offensive-digg-community-responds-; Posting of Jen Nedau to Women's Rights, http://womensrights.change.org/blog/view/is\\_digg\\_sexist](http://www.fastcompany.com/blog/saabira-chaudhuri/itinerant-mind/sexist-stupid-and-downright-offensive-digg-community-responds-; Posting of Jen Nedau to Women's Rights, http://womensrights.change.org/blog/view/is_digg_sexist) (Dec. 22, 2008, 10:15 PST).

<sup>64</sup> Zaheer Hussain & Mark D. Griffiths, *Gender Swapping and Socializing in Cyberspace: An Exploratory Study*, 11 CYBERPSYCHOL. & BEHAV. 47, 52 (2007). As Hussain and Griffiths report:

The present study also attempted to explain why gamers engage in gender swapping and whether this has an effect on video game stimulation. Previous research has not considered the reasons people gender swap. Overall, 57% of the sample said they had gender swapped their character (similar to findings of Griffiths et al., who reported 60% gender swapping in their sample). Significantly more females than males had gender swapped their character. This can be explained by the reasons provided by Participant 39 (Extract 22), who gender swapped in order to prevent unsolicited male approaches on her female characters. Participant 117 (see Extract 26) appeared to gender swap out of interest and found that she was treated differently by male gamers when she was playing a male character. However, for Participant 49 (Extract 23), playing a female character meant that male gamers treated him far better. This provides support for the findings of Griffiths et al. that suggests the female persona has a number of positive social attributes in a male-oriented environment.

*Id.*

<sup>65</sup> *Pink Penis Attack on Second Life Chat Show*, METRO.CO.UK, Dec. 22, 2006, [http://www.metro.co.uk/news/article.html?in\\_article\\_id=30420&in\\_page\\_id=34](http://www.metro.co.uk/news/article.html?in_article_id=30420&in_page_id=34); cf. David Becker, *Professor Reveals EverQuest's 'Inherent Sexism'*, ZDNET.CO.UK, June 24, 2003, <http://news.zdnet.co.uk/internet/0,1000000097,2136466,00.htm> (stating, "even though

There is no feasible way to measure the quantity of the harassment that women receive online, but the quality, so often rooted in gender-specific opprobrium, is easy to observe.<sup>66</sup> The insults hurled at women are deeply gendered. If you doubt this, enter any online forum in which men appear to be in the majority and, using a female sounding pseudonym, say something provocative. Some people will respond with an articulation of disagreement on the merits. Others will engage in sexist name-calling or making indirect threats. Even when men are being insulted, the derogatory terms employed will often be references to female body parts, such as pussy, twat, or cunt, or will allude to femaleness or homosexuality in some disparaging way, such as suggesting someone is someone else's bitch or making graphic allusions to oral and anal sex.<sup>67</sup>

All this occurs in the comments sections of very mainstream blogs.<sup>68</sup> One can observe comments threads at purportedly "liberal" political or current events blogs that are drenched in misogyny and functionally indistin-

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everybody knows the person behind the avatar could be either sex, the male avatars tend to be treated as more skilled . . . we've just taken sex roles from Earth and put them into Norrath").

<sup>66</sup> See, e.g., Blue *supra* note 61 (contending "[a]sk any three women who publish online if they're [sic] ever been stalked, sexually threatened or threatened with violence on other blogs or in comments. I don't need to bet money to know you'll get a yes from one of those women. Too busy to ask anyone? That's OK, I'll raise my hand for all three"); see also E. Cabell Hankinson Gathman, *Questioning the Gaming Culture*, STRANGE HORIZONS, May 19, 2008, <http://www.strangehorizons.com/2008/20080519/gathman-c.shtml>. Gathman provides an account of his aversion to online communities from a male perspective:

It seems likely, however, that many gamers don't just take the sexism for granted—they often simply don't see it. I was talking recently with a friend who plays World of Warcraft, and the subject of pick-up groups (PUGs) came up. He doesn't mind them, while I loathe them passionately. He responded that it was interesting I should say so, because his female friends who play WoW all say the same thing, and he wondered why it should be that women in general seem to dislike PUGs. It seemed obvious to me. I hate PUGs largely because they almost always involve interaction with either idiots or assholes. The "idiot" category includes mage tanks, people who repeatedly kill your debuff anchors, and people who run ahead of the group while people are taking an ANNOUNCED bathroom break, aggro, and get everyone killed, so that you return from peeing to the sight of your mangled avatar at the bottom of the screen. The assholes are usually misogynists and/or homophobes. I'm sure some of them are racists, too, but it doesn't come up as much in casual conversation, at least in CoH. Racism is more noticeable in MMOGs most of the time, I think, in the characters people create (ninja school girls) and also in the ones that they don't create (African Americans, American Indians, and so on). This problem is compounded by the game interface itself, which offers little in the way of non-Caucasian or non-Asian features.

<sup>67</sup> See, e.g., Posting of Echidne to Echidne of the Snakes, [http://echidneofthesnakes.blogspot.com/2009\\_03\\_01\\_archive.html#3195337688898046227](http://echidneofthesnakes.blogspot.com/2009_03_01_archive.html#3195337688898046227) (Mar. 23, 2009, 21:04). Echidne notes that when men who post on her blog get angry at each other, they post attacks to each other's female relatives and the sexuality of those female relatives. She explains, "you insult a man by insulting the sexuality of his mother or his sister or his wife. Probably his daughter, too. But you don't insult the sexuality of his father or his brother or his son. Interesting, is it not?"

<sup>68</sup> *Id.*



guishable from some of the conversations that transpired at AutoAdmit or the now shuttered college gossip site JuicyCampus.<sup>69</sup> I have often observed that when a blogger identifies someone as a person deserving of opprobrium, he or she encourages readers to trash that person in comments. The blogger can also incentivize trashing people on other blogs by linking to them approvingly, thereby delivering elevated traffic counts to those linked blogs. That some subset of these people feels justified in expanding the harassment by contacting the employers or e-mailing or phoning threats to the targets of the harassment directly seems of no concern to most bloggers. Most ignore pleas for help from the targeted parties, and perhaps even derive enjoyment from the distress they cause others. Those publishing at highly-trafficked blogs can inflict a lot of misery on fairly small bloggers, but proportionality is of no apparent concern, unlike in real space where significant size disparities between combatants is considered unsporting and unfair. For targeted women, the abuse bloggers can inspire and encourage will often include rape threats.<sup>70</sup> All an attorney can generally do in the short term is advise the target to stop answering her phone or checking her e-mail for a few days, in the hopes that the abuse will crest and then subside as other targets are identified. While I am uncomfortable pointing to specific examples of this harassment, so as not to risk inciting additional abuse toward individuals who have already been traumatized, I have observed and experienced this both as a blogger and as an attorney who has assisted other bloggers with various matters over more than five years.<sup>71</sup>

The harassment of the AutoAdmit victims spread across portions of the Internet in a viral manner. During a discussion of the AutoAdmit lawsuit appended to a post written by Eugene Volokh at the Volokh Conspiracy blog, the following comment about the AutoAdmit victims appeared:

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<sup>69</sup> See Jack Stripling, *Juice Runs Dry*, INSIDE HIGHER ED, Feb. 5, 2009, <http://www.insidehighered.com/news/2009/02/05/juicy>.

<sup>70</sup> See Kathy Miriam, *Response to Incidents of Women Hating*, THE NEW HAMPSHIRE, Dec. 6, 2008, <http://media.www.tnhonline.com/media/storage/paper674/news/2006/12/08/Commentary/Response.To.Incidents.Of.Woman.Hating-2529221.shtml>; see also Posting of Amanda Marcotte to Pandagon, <http://pandagon.blogspot.com/2007/04/12/in-order-to-argue-effectively-against-the-blogger-code-of-conduct-its-imperative-to-say-that-bitches-are-crazy> (Apr. 12, 2007).

<sup>71</sup> For a general sense of what can transpire, see, for example, Posting of Kate Harding to Shapely Prose, <http://kateharding.net/2007/10/22/guest-blogger-sarah-why-the-fat-girl-on-a-bike-blog-is-going-on-hiatus> (Oct. 22, 2007), who explained that the author of the "Fat Girl on a Bike" Blog decided to shut down her blog temporarily because of the repeated degrading posts she received and the emotional toll these posts were taking on her mental and physical health. See also Open Communities, Media, Source, and Standards, <http://reagle.org/joseph/blog/culture/haters-culture> (Mar. 21, 2008) (stating that "the frequent misogynistic attacks by this larger cultural movement on women are offensive, and their methods are contrary to the liberal values of free speech and open discourse"); Posting of womensspace to Women's Space, <http://womensspace.wordpress.com/2007/08/04/blogging-while-female-warning-may-trigger> (Aug. 4, 2007) (sharing a post she received which stated, "In fact, I want to feel you now. I'd like to tie you down, take a knife, and slit your throat. I'd penetrate you over and over in all orifices, and create some of my own to stick myself in").

The poor little girls Paris Hilton themselves around a prestigious law school instead of, you know, studying, flaunt whatever physical attributes they were lucky enough to be born with or acquire through surgery, insult the half of their class with condescension and snobbery, insult the other half with bitchiness and attitude, then go screaming and crying to daddy warbucks when some of the people they spent years denigrating [sic] call them on their inadequacies and laugh at their failures.

What could these little primadonnas who have no business being at YLS expect for their behavior? I think they got off lucky, though truth be told, I am still waiting for some home video to pop up online.<sup>72</sup>

This comment is illustrative of one very common phenomenon: when women complain about harassment, it often escalates.<sup>73</sup> The AutoAdmit administrators seemed to intentionally create a climate that encouraged angry, widespread flaming of anyone who complained about the way they were treated by posters at the AutoAdmit boards.<sup>74</sup> This intensified the harassment, which in turn led to the filing of the lawsuit.<sup>75</sup> Subsequently, seemingly everywhere in cyberspace that the AutoAdmit lawsuit was discussed where anonymous commenting was allowed, attacks on the two women followed.<sup>76</sup>

If the women had passively endured the initial postings, would the harassment have eventually subsided? There is no way to know. Even if it had,

<sup>72</sup> Posting of Too\_Funny to The Volokh Conspiracy, <http://volokh.com/posts/1181709221.shtml#230261> (June 13, 2004, 11:44 EST).

<sup>73</sup> See, e.g., Posting of Cameron Sorden, *supra* note 42.

<sup>74</sup> David Margolick, *Slimed Online*, PORTFOLIO, Mar. 2009, <http://www.portfolio.com/news-markets/national-news/portfolio/2009/02/11/Two-Lawyers-Fight-Cyber-Bullying>. Margolick comments:

Iravani turned next to AutoAdmit. She complained that she couldn't concentrate on her work, was now embarrassed to be seen in public, and had begun therapy. "I can't tell you how much I would appreciate it if you would simply deactivate this thread and make my life go back to normal," she pleaded in an email. "I am a nice person and don't deserve this humiliation." This time, Ciolli, who'd grown impatient with such complaints, snapped back in an AutoAdmit post, writing, "Do not contact me . . . to delete a thread, especially if I have no idea who you are and have never spoken to you in my entire life." If he kept receiving similar requests, he warned, he would just post them all on the message board for everyone to see. The discussion about Iravani then metastasized, appearing on a website (which Cohen and Ciolli were not directly involved with) that linked to AutoAdmit called T14Talent. Without her knowledge, Iravani had been entered in a contest to name the "most appealing women" in the top 14 law schools in the country.

*Id.*

<sup>75</sup> Complaint, Doe v. Ciolli, No. 3:07-cv-00909 (D. Conn. June 8, 2007), available at [http://isites.harvard.edu/fs/docs/icb.topic207170.files/Doe\\_v\\_Ciolli\\_Complaint.pdf](http://isites.harvard.edu/fs/docs/icb.topic207170.files/Doe_v_Ciolli_Complaint.pdf).

<sup>76</sup> See, e.g., Posting of CorporateGuy to WSJ Law Blog, <http://blogs.wsj.com/law/2008/03/05/ciolli-sues-yale-law-students-in-autoadmit-scandal> (Mar. 5, 2008, 18:46 EST).

the victims would have remained apprehensive that the campaigns could be resuscitated by unforeseeable acts or omissions. If they didn't know what actions or events initiated the first angry postings, they could hardly know how to avoid repeating them. Avoiding harassment by remaining invisible or gender-neutral is not always an option. Many people are not seeking the limelight in any way when they become the subjects of Internet harassment. Maybe they got a promotion at work someone else felt s/he had earned. Maybe they broke up with someone or refused to date somebody. Maybe they are very physically attractive and someone wants to see them humbled. Maybe they are not traditionally attractive, so someone decides to make them objects of derision and scorn for not trying harder to be thin and pretty. Maybe their profession requires them to have a personally identifiable presence online.

When someone is trying to become culturally visible, as a writer, entertainer, public intellectual, or in any other capacity, they may have to endure Internet harassment in extremis. As actor Tina Fey recently noted in her Golden Globe acceptance speech: "If you ever feel too good about yourself, they have this thing called 'the Internet.' You can find a lot of people there who don't like you."<sup>77</sup> Entertainers may receive the most scrutiny and criticism. While this is recognized and predictable, it is still an alarming and painful adjunct to the pursuit of widespread fame. In contrast, people who become subjects of Internet discussion because of their occupation or hobbies may be less likely to expect Internet-based attacks, or to have the emotional tools to deal with them as compared to seasoned Internet participants who know the kinds of abuse that can arise.

As legal analyst Dahlia Lithwick notes, one of the reasons online harassment is scary is that it often occurs with a total lack of context.<sup>78</sup> She observed:

Women have accumulated at least some skills in figuring out when face-to-face sexual innuendo or threats are serious, joking, or pathological. True, we are sometimes tragically wrong. But for the most part, we can tell whether Jeff from accounting needs a restraining order or just a stern "no." An anonymous sexual threat on a blog could come from anywhere, and it's virtually impossible to determine whether or not the poster is serious.<sup>79</sup>

People who make an effort to explicitly build norms that oppose harassment often become targets of abuse themselves. After technology blogger

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<sup>77</sup> Olga Boyko, *Tina Fey to Bloggers: You Can Suck It!*, DAILY NEWS, Jan. 12, 2009, [http://www.nydailynews.com/gossip/2009/01/12/2009-01-12\\_tina\\_fey\\_to\\_bloggers\\_you\\_can\\_suck\\_it.html](http://www.nydailynews.com/gossip/2009/01/12/2009-01-12_tina_fey_to_bloggers_you_can_suck_it.html).

<sup>78</sup> Dahlia Lithwick, *Fear of Blogging: Why Women Shouldn't Apologize for Being Afraid of Threats on the Web*, SLATE, May 4, 2007, [http://www.slate.com/id/2165654/pagnum/all/#page\\_start](http://www.slate.com/id/2165654/pagnum/all/#page_start).

<sup>79</sup> *Id.*

Kathy Sierra went public with allegations of online harassment, journalist Tim O'Reilly floated the concept of a "Blogger's Code of Conduct."<sup>80</sup> The online response was "vitriolic," to put it lightly.<sup>81</sup> Markos Moulitsas of Daily Kos wrote that "[c]alls for a 'blogger code of conduct' are stupid" and implied that bloggers who claim to receive death threats are exaggerating or lying.<sup>82</sup> He asserted, "[i]f they can't handle a little heat in their email inbox, then really, they should try another line of work. Because no 'blogger code of conduct' will scare away psycho losers with access to email."<sup>83</sup> A group of bloggers actually founded a new blog specifically to mock the idea of promulgating a voluntary Code of Conduct,<sup>84</sup> and one poster there either blithely or dishonestly alluded generally to unspecified formal remedies:

For the comments threatening sexual assault and death, well . . . a Civility Code isn't going to stop the insane dorkwads who do that shit from doing it. What's more, there are legal remedies in place for that, whether it be on a blog, via phone or with the person scrawling threats on your walls with your dog's blood.<sup>85</sup>

Of course, as anyone who has actually contacted the police about fairly unambiguous online threats knows, this is completely untrue.<sup>86</sup> But the point of the post is not to be accurate, it is to disparage and frighten off anyone who tries to affirmatively build civility norms into online culture. This is a common trope in the blogosphere, where the concept of "blogger ethics" is thoroughly derided whenever it is raised and sometimes even when it isn't.

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<sup>80</sup> Posting of Tim O'Reilly to O'Reilly Radar, <http://radar.oreilly.com/archives/2007/03/call-for-a-blog-1.html> (Mar. 31, 2007); see also *Call for Blogging Code of Conduct*, BBC NEWS, Mar. 28, 2007, <http://news.bbc.co.uk/1/hi/technology/6502643.stm>.

<sup>81</sup> Dan Fost, *Bad Behavior in the Blogosphere: Vitriolic Comments Aimed at Tech Writer Make Some Worry About Downside of Anonymity*, S.F. CHRON., Mar. 29, 2007, at A1; see also Posting of Big Tent Democrat to TalkLeft, <http://www.talkleft.com/story/2007/4/9/114020/6463> (Apr. 9, 2007, 10:40 EST).

<sup>82</sup> Posting of Markos Moulitsas to Daily Kos, <http://www.dailykos.com/story/2007/4/12/22533/9224> (Apr. 11, 2007, 23:45 PDT). Markos Moulitsas Zuniga is the same blogger who had no trouble accepting money from Howard Dean's presidential campaign to write favorable things about Dean at his blog without making full and fair disclosures of his motivations. Chris Suellentrop, *Bloggling for Dollars: Hang Daily Kos, but not for Taking Money from Howard Dean*, SLATE, Jan. 14, 2005, <http://slate.msn.com/id/2112314/>. It is little wonder Markos Moulitsas Zuniga opposes the concept of blogger ethics.

<sup>83</sup> Posting of Markos Moulitsas to Daily Kos, <http://www.dailykos.com/story/2007/4/12/22533/9224> (Apr. 11, 2007, 23:45 PDT).

<sup>84</sup> Posting of NTodd to Online Blogintegrity, [http://www.blogintegrity.net/2007/04/take\\_the\\_pledge.html](http://www.blogintegrity.net/2007/04/take_the_pledge.html) (Apr. 10, 2007, 18:59 EST).

<sup>85</sup> *Id.*

<sup>86</sup> See Nakashima, *supra* note 46 (discussing specific sexual threats against various female bloggers who cannot remedy the situation due to the anonymity of their harassers and discussing failures by the police to help them). Kathy Sierra filed police reports but it is not clear anything came of them. See Posting of Dan Fost, *supra* note 4; see also *supra* text accompanying note 9. I have also contacted numerous law enforcement authorities on behalf of feminist bloggers who were being harassed to no avail.

Blogger Duncan Black frames every link about misbehaving mainstream journalists with a sarcastic gibe along the lines of “time for another blogger ethics panel.”<sup>87</sup> And he is far from the only purportedly progressive blogger who does this.<sup>88</sup> One extremely extant online norm is that calls for civility are met with derision and those who make them are disciplined into silence with aggressive personal attacks.<sup>89</sup> For example, when Zephyr Teachout<sup>90</sup> raised the issue of blogger ethics in the context of disclosing financial relationships to political candidates, a post at Daily Kos in response was entitled “Fuck You Very Much Zephyr Teachout.”<sup>91</sup> Even a moderate response is likely to be an exhortation to harassment victims to “man up” or “sack up,” sack being a reference to testicles. Even established women journalists can receive escalated abusive treatment if they complain about online harassment. Washingtonpost.com turned off the reader comments feature on a feedback blog “after several comments containing personal attacks, profanity and hate speech were posted on an item about Washington Post ombudsman Deborah Howell’s column about the Abramoff scandal.”<sup>92</sup> Howell was thereafter mocked and virulently castigated by a diarist at Daily Kos,<sup>93</sup> by Duncan Black at Eschaton (who called her “little Debbie”),<sup>94</sup> and by Jane Hamsher of Firedoglake (who accused her of “shrieking hysteria” and “unnecessary PMSing”).<sup>95</sup> Hamsher spent a substantial amount of time during a panel discussion accusing the washingtonpost.com people of exag-

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<sup>87</sup> Posting of Duncan Black to Eschaton, [http://www.eschatonblog.com/2006\\_09\\_03\\_archive.html#115773217819521041](http://www.eschatonblog.com/2006_09_03_archive.html#115773217819521041) (Sept. 8, 2006, 12:16 EST).

<sup>88</sup> See, e.g., Posting of Big Tent Democrat to TalkLeft, <http://www.talkleft.com/story/2007/6/21/23353/6059> (Jun 21, 2007, 22:03 EST); Posting of Brian Jackson to Below the Fold, <http://www.below-the-fold.com/index/2009/02/time-for-a-blogger-ethics-panel> (Feb. 17, 2009, 18:05); Posting of Ezra Klein to The American Prospect, [http://www.prospect.org/csnc/blogs/ezraklein\\_archive?month=10&year=2008&base\\_name=some\\_one\\_convene\\_a\\_blogger\\_ethi](http://www.prospect.org/csnc/blogs/ezraklein_archive?month=10&year=2008&base_name=some_one_convene_a_blogger_ethi) (Oct. 2, 2008, 11:33 EST); Posting by Mary to Pacific Views, <http://www.pacificviews.org/weblog/archives/003222.html> (Dec. 1, 2007, 17:33 PDT); Posting by PZ Meyers to Pharyngula, [http://scienceblogs.com/pharyngula/2007/09/time\\_for\\_another\\_blogger\\_ethic.php](http://scienceblogs.com/pharyngula/2007/09/time_for_another_blogger_ethic.php) (Sept. 5, 2007, 18:23); Posting of George Will to Yglesias, [http://yglesias.thinkprogress.org/archives/2009/02/time\\_for\\_a\\_blogger\\_ethics\\_panel\\_3.php](http://yglesias.thinkprogress.org/archives/2009/02/time_for_a_blogger_ethics_panel_3.php) (Jan. 14, 2005, 15:38 PDT).

<sup>89</sup> See, e.g., Posting of pontificator to Daily Kos, <http://www.dailykos.com/story/2005/1/14/183851/174> (Jan. 14, 2005, 15:38 PDT).

<sup>90</sup> See Berkman Center for Internet & Society, Zephyr Teachout, <http://cyber.law.harvard.edu/node/210> (last visited Apr. 17, 2009).

<sup>91</sup> Posting of pontificator to Daily Kos, <http://www.dailykos.com/story/2005/1/14/183851/174> (Jan. 14, 2005, 15:38 PDT).

<sup>92</sup> Jeff Jarvis, Jane Hamsher, Jay Rosen, Glenn Reynolds & Jim Brady, *Panel: Interactivity Ethics*, WASH. POST, Jan. 25, 2006, <http://www.washingtonpost.com/wp-dyn/content/discussion/2006/01/24/DI2006012400817.html>.

<sup>93</sup> Posting of jukeboxgrad to Daily Kos, <http://www.dailykos.com/storyonly/2006/1/27/22034/6577> (Jan. 27, 2006, 19:00 PDT).

<sup>94</sup> Posting of Atrios to Eschaton, <http://www.eschatonblog.com/2006/01/fine.html> (Jan. 27, 2006, 23:51 EST).

<sup>95</sup> Posting of Jane Hamsher to FireDogLake, <http://firedoglake.blogspot.com/2006/01/dont-fuck-with-tech-guy.html> (Jan. 27, 2006, 19:21).

generation and mendacity with respect to the objectionable comments.<sup>96</sup> Hamsher described a subsequent real space meeting where Howell explained the effect that the attacking comments had on her:

[A]fter an hour and a half of listening to Howell and others describe her experience like she was the sole survivor of the Bismark, Matt Stoller grabbed the microphone and said “The antagonism here is coming from you guys . . . . Nothing happened to you!” Aravosis says Stoller went on for a bit more—“You’re fine . . . it’s not like you were hit by a car . . . you’re sitting here, eating a nice meal” or words to that effect.<sup>97</sup>

Any blogger sets the tone for her blog with the content of her posts and by which comments she allows through moderation, as all blogs can be moderated.<sup>98</sup> And anyone with an extensively read blog can use it to draw positive or negative attention to other people. Bloggers affirmatively make choices about whether to allow, or even to encourage and facilitate sexualized insults by deciding whether or not to moderate their blogs and determining the topics for their posts. Sex sells, so bloggers can utilize sexualized commentary to attract readers. Some do it eponymously, while others choose to hide behind pseudonyms. Women’s bodies get treated like public property. Feminist author Jessica Valenti described one appalling instance in which her breasts became the subject of a series of critical blog posts by a blogger apparently determined to use Jessica’s body to drive up her own readership:

Last year I had my own run-in with online sexism when I was invited to a lunch meeting with Bill Clinton, along with a handful of other bloggers. After the meeting, a group photo of the attendees with Clinton was posted on several websites, and it wasn’t long before comments about my appearance (“Who’s the intern?”; “I do like Gray Shirt’s three-quarter pose.”) started popping up.

One website, run by [University of Wisconsin School of Law faculty member] and occasional New York Times columnist Ann Althouse, devoted an entire article to how I was “posing” so as to “make [my] breasts as obvious as possible”. The post, titled “Let’s take a closer look at those breasts,” ended up with over 500 comments. Most were about my body, my perceived whorishness, and how I couldn’t possibly be a good feminist because I had the

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<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

<sup>98</sup> Some notable blogs have reduced or eliminated commenting. See, e.g., Posting of Jack Balkin to Balkanization, <http://balkin.blogspot.com/2009/01/some-additional-notes-on-comments-and.html> (Jan. 29, 2009 10:05); Posting of Chris Bertram to Crooked Timber, <http://crookedtimber.org/2006/07/26/ct-policy-on-trolls-sockpuppets-and-other-pests> (July 26, 2006).

gall to show up to a meeting with my breasts in tow. One commenter even created a limerick about me giving oral sex. Althouse herself said that I should have “worn a beret . . . a blue dress would have been good too.” All this on the basis of a photograph of me in a crew-neck sweater from Gap.

I won't even get into the hundreds of other blogs and websites that linked to the “controversy.” It was, without doubt, the most humiliating experience of my life—all because I dared be photographed with a political figure.<sup>99</sup>

Valenti's breasts unexpectedly became a topic of conversation that embarrassed her, which, as she noted, led to negative commentary about various aspects of her person in many different Internet contexts. Rather than apologize for the discomfort she caused by exploiting her breasts, Althouse's indignant response to Valenti was, in part, as follows:

I still maintain that it was *absolutely justified* to mock that photograph. Distort what I was really saying there all you want, but the fact remains: *Cozying up to Bill Clinton is not something a feminist should be doing*. You have never responded to what I was really writing about. You have instead chosen to attack me, and you're doing it again, and you and your friends have leveraged what was a minor satirical blog post for *your* advantage. You're exploiting it again and going through the whole routine of trying to ruin my reputation again. It's an ugly way you've chosen to try to *build a career as a feminist writer*.

I'd love to see you take some responsibility for what you've done instead of whining that everyone's talking about your breasts. I don't give a damn about your breasts. What I care about is the way feminists sold out feminism to bolster the fortunes of the Democratic Party. But you will never talk about that, because you don't have anything to say there. So it's on and on about *breasts, breasts, breasts, please don't talk about my breasts*.<sup>100</sup>

Then she featured derogatory, sometimes sexualized comments from her readers such as: “Valenti continues to milk her sagging ‘breast controversy’ for all its worth,”<sup>101</sup> egging on her readers to spew a long thread of

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<sup>99</sup> Jessica Valenti, *How the Web Became a Sexists' Paradise*, THE GUARDIAN, Apr. 6, 2007, at 16; Video: This Time It's Personal (Bloggingheads.tv Mar. 24, 2007), <http://bloggingheads.tv/diavlogs/202?in=00:45:47&out=00:56:23>.

<sup>100</sup> Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2007/04/lets-keep-talking-about-breasts.html> (Apr. 6, 2007, 10:07 CST) (emphasis in original); see also Posting of Ron Chusid, <http://liberalvaluesblog.com/?p=1369> (Apr. 6, 2007, 23:10).

<sup>101</sup> Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2007/04/lets-keep-talking-about-breasts.html> (Apr. 6, 2007, 10:07 CST).

aggressively rude comments. She also vehemently asserted that she, rather than Valenti, was the person who had been victimized.<sup>102</sup>

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<sup>102</sup> See, e.g., Interview by \Garance Franke-Ruta with Ann Althouse, University of Wisconsin Law School (Mar. 23, 2006), available at <http://bloggingheads.tv/diavlogs/202?in=&out=>.

Ann Althouse (“AA”): Well, that’s my experience and I know you know some of the people who are especially nasty to me so why don’t you ask them why they treat me so badly and come back and tell me what the problem is. I mean not my problem, what their problem is—‘cause I don’t like them.

Garance Franke-Ruta (“GFA”): Well I think . . . I’m not aware of anything until the whole sort of Jessica Valenti breast controversy. So, I know that there was [sic] some grudges and hostilities that came out of that round of discussion. But I mean . . . that’s the blogosphere, it’s a tough place. Apparently. It’s an extremely tough place and you know one of the best things I . . .

AA: Oh I’m not complaining about the fact that I have to be tough and fight back because I will, I will stand my ground. I don’t accept your . . .

GFA: Yeah I know and you do . . .

AA: Wait a minute. Wait a minute. I don’t accept your saying the “Jessica Valenti breast controversy.” I consider that an insult, I am on the verge of hanging up with you for bringing it up that way.

GFA: Oh really? I’m sorry.

AA: I think it’s nasty and character assassinating to talk about it like that. There’s a whole controversy that could be explained if it was one of our subjects. It could be explained in a way that would make sense to people, but you just throw out a term that’s character assassination toward me and I don’t like it.

GFA: Oh, I didn’t mean to . . .

AA: There’s a whole story there and if you want to talk to me personally about it, why don’t you find out what the story is and raise it in a way that has a factual context that makes sense to people instead of throwing out a term like that that’s just an assault on me? I find it very offensive.

GFA: Oh, well, that was certainly not my intension. I had watched this one segment where you and Glen Reynolds were talking about it and I think it was a phrase that was used within that discussion. So I certainly didn’t mean to . . .

AA: Well you work in a context with people who try to assassinate me on frequent occasions who say the most nasty things about me with no cause or just any context. They take things out of context. It’s a very nasty, ugly thing and, you know, I don’t like it at all. And I don’t like just glancing references to it in a way that makes me look bad like that. It’s not part of what we’re talking about. We haven’t developed the context and to just throw out a label like that, which is the label from the side of the people who attack me in the way I’m trying to talk about, and saying that your side of the blogosphere is ugly . . . you know, I just consider that undermining and against the whole context. We’re trying to have a conversation here.

GFA: I’m sorry I didn’t realize it was such a sensitive topic. ‘Cause really I haven’t followed it that closely. I mean, there was a controversy, right? I mean, we can talk about it, but it sounds like you don’t want to and I, frankly, rather not because . . .

AA: It’s old and it would take a long time to explain. And I don’t even think it’s interesting to listen to.

GFA: No, I don’t think so either.

AA: It’s just a blogosphere flame war in which I’ve been mistreated . . .



Even a feminist legal theory conference can provide blog fodder for someone willing and, maybe even eager, to expose professional colleagues to ridicule by strangers. When Ann Althouse “live blogged”<sup>103</sup> a conference called “Working From the World Up: Equality’s Future,” celebrating the twenty-fifth anniversary of the Feminism and Legal Theory Project,<sup>104</sup> the tone of her posts inspired misogynistic mockery in the comments threads at her eponymous blog.<sup>105</sup> Some of the people at the conference found this fairly alarming.<sup>106</sup>

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GFA: OK, but I mean you were bringing up the context of my colleagues and I was just saying that’s the only controversy I’m aware of.

AA: Wait a minute . . . I’ve been mistreated consistently . . .

GFA: . . . If there’s other ones . . . I don’t follow some of these intrablog controversies as closely.

AA: Right. I don’t like them either and I don’t think they’re appropriate as subjects for Bloggingheads. These are flame wars and what I’m trying to say on the overarching point, is that the left side of the blogosphere is vicious and unfair and nasty to me and I don’t like it. And I’m trying to ask you why that’s the way they treat me when I support most of what they are for. Meanwhile, on the right side of the blogosphere, where there’s much less overlap with what I think, I’m treated in a very warm and connecting kind of a way. And you’re really just undermining my point by bringing that up like that. And I’m not going to try and defend myself about it because it would just bore the listeners. It’s an old blogosphere flame war.

GFA: Yeah, it’s an old story. OK. I’m sorry I brought it up. I didn’t realize it was such a touchy subject because you had talked about it on one of these episodes previously so I thought it was ok to talk about it.

AA: It depends on how you talk about it. I don’t like it being brought up as just a way to undermine me and make me look bad in an out of context way.

*Id.* (author’s transcription, 50:35–54:42).

<sup>103</sup> Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/conference-aims-to-honor.html> (Mar. 13, 2008, 10:57 CST); *see also, e.g.*, Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/so-really-why-wasnt-that-race-and.html> (Mar. 16, 2008, 07:57 CST); Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/transgressive-caregiving-and-view-of.html> (Mar. 15, 2008, 09:20 CST); Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/lawprof-patricia-williams-is-giving.html> (Mar. 14, 2008, 19:38 CST); Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/so-yes-ive-flown-out-of-new-york.html> (Mar. 14, 2008, 16:48 CST).

<sup>104</sup> Conference Overview for “Working From the World Up: Equality’s Future”: A New Legal Realism Conference Celebrating the 25th Anniversary of the Feminism and Legal Theory Project, <http://law.wisc.edu/ils/flt25thconfprogram.html> (last visited Apr. 17, 2009).

<sup>105</sup> *See, e.g.*, Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/transgressive-caregiving-and-view-of.html> (Mar. 15, 2008, 09:20 CST) (“I’m listing [sic] to Utah lawprof Laura Kessler read from a paper about ‘Transgressive Caregiving.’ Transgressive caregiving? It *sounds* alarming.”); Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/so-yes-ive-flown-out-of-new-york.html> (Mar. 14, 2008, 16:48 CST) (“No race-and-feminism conferencing yet for me. I’m too late for the afternoon session. But I will make it to this evening’s keynote speech from Columbia lawprof Patricia Williams. It’s called ‘Moaning in America,’ and I’m expecting multi-layered wordplay and . . . what? Anti-Reaganism? Suffering? Sex?”).

<sup>106</sup> I received communications about this from three conference participants who prefer not to be named.

This example of leveraging sexism for blog hits is deeply personal to me, as many of the people at the conference were my friends. Fellow law professor Eric Muller<sup>107</sup> and I<sup>108</sup> pointed out what was happening by posting about these misogynistic, mocking comments at our respective blogs, only to become targets ourselves after Althouse instrumentally directed the commenters our way. With respect to Muller, Althouse wrote: “Look what Eric Muller said about my commenters. I haven’t read all the comments, but I have a feeling that Eric is missing some of the humor. I’m mainly seeing a reflexive distaste for leftwing academic theorizing more than any real ‘misogynist . . . [n]auseating . . . filth . . . spewing.’”<sup>109</sup> Another post asked: “What self-styled ‘feminist law professor’ is trashing my blog because I’m blogging this conference? Hello? We’re honoring the 25th Anniversary of the Feminism and Legal Theory Project and *you’re not* here.”<sup>110</sup> The comments that followed that post were predictably sexist, noting that “[m]isogyny is the magic word that serves as a condom. Still, we all need feminists. They are, after all, women.”<sup>111</sup> In another comment, a poster colloquially referenced spanking and ejaculating into my hair.<sup>112</sup> Unsurprisingly, given her penchant for encouraging misogyny on her blog, Althouse was not very sympathetic to the AutoAdmit victims.<sup>113</sup>

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<sup>107</sup> Posting by Eric to Is That Legal, [http://www.isthatlegal.org/archives/2008/03/another\\_awesome\\_way\\_to.html](http://www.isthatlegal.org/archives/2008/03/another_awesome_way_to.html) (Mar. 14, 2008, 15:45 EST).

<sup>108</sup> Posting of Ann Bartow to Feminist Law Professors, <http://feministlawprofs.law.sc.edu/?p=3210> (Mar. 15, 2008, 09:41 EST).

<sup>109</sup> Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/this-conference-aims-to-honor.html> (Mar. 13, 2008, 10:57 CST).

<sup>110</sup> Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2008/03/lake-mendota-today-fishing-kiting.html> (Mar. 15, 2008, 15:52 CST) (hyperlink omitted).

<sup>111</sup> Posting of rhardin to Althouse, <http://althouse.blogspot.com/2008/03/lake-mendota-today-fishing-kiting.html> (Mar. 15, 2008, 19:08 CST).

<sup>112</sup> Posting of Mortimer Brezny to Althouse, <http://althouse.blogspot.com/2008/03/this-conference-aims-to-honor.html> (Mar. 14, 2008, 01:00 CST). Brezny commented:

If this comments section were rife with misogynistic comments, people would be leaving comments like “I want to splurt in Ann Bartow’s hair while she spans Eric Muller,” but since no one has left any such comments, Prof. Bartow’s and Eric Muller’s comments are off-base.

*Id.*

<sup>113</sup> See Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2007/03/lets-talk-about-autoadmit.html> (Mar. 16, 2007, 06:36 CST). Althouse explained:

I “really do see” that a “young woman”—that is, a woman with less experience learning how to deal with life’s hard knocks—might be “disturbed.” Being disturbed doesn’t mean you are justified in making causal connections between the things that disturbed you and other problems you are having in life, like not getting the job you wanted. And being disturbed doesn’t mean you ought to have the power to control the things that are disturbing you.

To say that I can understand how something disturbed you doesn’t mean I think you’re better off getting disturbed than laughing it off the way I did. It just means I’m not going to criticize you for not having the ability to laugh it off. But I still do think that you should.

*Id.*; see also Posting of Patterico to Patterico’s Pontifications, <http://patterico.com/2007/06/13/more-thoughts-on-autoadmit-and-on-the-remarkable-thick-skins-of-tenured-law->

Althouse has a fairly widely read blog, and makes a practice of aggressively censuring anyone who dares criticize her.<sup>114</sup> One of my favorite posts documenting this practice was written by Brian Leiter. It was sparked by my criticism of David Lat's penchant for running "hotties" contests at Above the Law,<sup>115</sup> in which the personally identifiable participants were often targeted involuntarily, and then publicly humiliated by having their physical appearances evaluated against their wishes.<sup>116</sup> Leiter wrote:

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professors-with-widely-read-blogs (June 13, 2007, 17:32). Patterico commented on Althouse's position:

I find myself most disturbed by the dismissive attitude of Althouse. Reading through her comments, I see her labeling the women as "imperious" and "sensitive" and running off to government for help by filing a lawsuit. But I see repeated evidence that she is minimizing the gravity of the allegations the women are making. For example, Althouse says in a comment:

"I don't have a problem with claims for defamation and there may be some in amongst the jumble of that complaint."

There "may be"? There most assuredly are.

The impression conveyed here is: I can't be bothered to read the complaint and determine whether there really are valid defamation claims, but I really want to argue for free speech and not be overly concerned with the actual facts at issue. Similarly, she says:

"Even if they believe it, what's to believe? That's [sic] she's really good looking? They can see what she looks like. They might think she has herpes? Why would that matter? That she causes sexual desire in men? They can see that by looking at her too. That there are some idiots on a chat board who type about their sexual desires? It has no relevance."

How about that she committed sexual assault, or slept with an admissions dean to get into Yale? If a hiring partner believed those allegations, would it matter? Of course it would—but Althouse doesn't mention those allegations.

*Id.*; see also Danielle Keats Citron, *Law's Expressive Value in Combating Cyber Gender Harassment*, 108 MICH. L. REV. n.101 (forthcoming 2009) (critiquing a post by Althouse which reads, "Too beautiful to appear in public? Too hot to be hired? Come on! What rational employer would deny you a job because idiots chatted about you online in a way that made it obvious that the only thing you did was look good?" (quoting Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2007/03/for-many-people-internet-has-become.html> (Mar. 7, 2007, 09:37 CST))).

<sup>114</sup> See, e.g., Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2007/04/lets-keep-talking-about-breasts.html> (Apr. 6, 2007, 10:07 CST) ("I'd love to see you take some responsibility for what you've done instead of whining that everyone's talking about your breasts."); see also Posting of Tracy Clark-Flory to Salon.com, <http://www.salon.com/mwt/broadsheet/2006/09/15/breasts> (Sept. 15, 2006, 18:40 PDT).

Althouse seems to be engaging in the oldest form of female-baiting: Reducing other women, especially one's professional competitors, to their appearance and sexuality . . . . Althouse seems to be trying to make the point that feminists shouldn't give Clinton a photo op anyway because of the Lewinsky scandal, but unfortunately, the woman takes most of the blame.

*Id.*

<sup>115</sup> Above the Law is a tabloid covering the legal profession. Above the Law, <http://www.abovethelaw.com> (last visited Apr. 17, 2009).

<sup>116</sup> Posting by David Lat to Above the Law, [http://www.abovethelaw.com/2006/08/above\\_the\\_law\\_hotties\\_erisa\\_la.php#more](http://www.abovethelaw.com/2006/08/above_the_law_hotties_erisa_la.php#more) (Aug. 30, 2006, 12:48 EST). Lat's "contestants" were aggressively humiliated in the appended comments, as the reader can easily verify. *Id.*

Feminist Law Profs [sic] critiques sexist legal humor, while Ann Althouse (Wisconsin) defends it.

UPDATE: A reader points out that Professor Althouse (who, accordingly [sic] to the AALS Directory, is 55 years old) has responded to my merely calling attention to this debate by calling me a “nerd.” Oh goodness. My 5th-grader was also called a “nerd” at school the other day. This will help us bond.

(As members of the Caron Blog Empire know, we get paid by the number of visits, so this Update is admittedly a cynical attempt on my part to get Professor Althouse to link here again.)

AND A FINAL ONE: Thanks to one of my students for pointing out that in the comments Professor Althouse has gone a step further, and called me a “jackass.” Oh goodness, again! A surprising choice of language from someone who, in the past, was quite prissy about the use of such words.<sup>117</sup>

Yet even Althouse has acknowledged that the Internet can be a rough place for women. In an interview on the topic of “Blogging While Female” she said:

In the blogosphere, it’s sort of like the Wild West, and you actually can try to push people out. You can push women out. There’s a way of trying to get women to leave and because it’s a rough world where people are trying to climb to the top, they will use whatever techniques they can, you know? And so I think that makes you vulnerable as a woman, but you don’t have to be. There’s a positive side to it, too, that you can use. You get attention just for being a woman because it’s less common.<sup>118</sup>

Using the Internet to target specific people for abuse or removal is not unique to bloggers. Social networking sites can also be harnessed to facilitate harassment. Students who participated on the university-focused Juicy-Campus’s websites often sought retaliation for bad romantic encounters, or for social slights that happened offline. One pundit described it as “a forum

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<sup>117</sup> Posting of Brian Leiter to Brian Leiter’s Law School Reports, [http://leiterlaw.school.typepad.com/leiter/2006/09/around\\_the\\_law\\_.html](http://leiterlaw.school.typepad.com/leiter/2006/09/around_the_law_.html) (Sept. 7, 2006) (hyperlinks omitted) (referring to Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2006/09/all-of-this-blogging-in-drag-is.html> (Sept. 5, 2006, 06:27 CST); Posting of Ann Althouse to Althouse, <http://althouse.blogspot.com/2006/09/nerd-wants-love.html> (Sept. 10, 2006, 10:04 CST); Posting of Ann Bartow to Feminist Law Professors, <http://feminist.lawprofs.law.sc.edu/?p=941> (Sept. 3, 2006, 15:49 EST); and Posting of Brian Leiter to Leiter Reports: A Philosophy Blog, [http://leiterreports.typepad.com/blog/2004/09/why\\_the\\_selfcon.html](http://leiterreports.typepad.com/blog/2004/09/why_the_selfcon.html) (Sept. 21, 2004, 11:04)).

<sup>118</sup> John Hawkins, *Blogging While Female Part 2: Five Women Bloggers Talk about Gender Issues and the Blogosphere*, RIGHT WING NEWS, Mar. 18, 2008, [http://www.rightwingnews.com/mt331/2008/03/blogging\\_while\\_female\\_part\\_2\\_5\\_1.php](http://www.rightwingnews.com/mt331/2008/03/blogging_while_female_part_2_5_1.php).

for exacting sweet, anonymous revenge.”<sup>119</sup> According to another observer, “If your aim is to build traffic, it’s a fair business plan: create a site for college kids to act like assholes to each other anonymously, wait for the hateful garbage to build up and for the media to cover resulting outrage, and enjoy the resulting hits.”<sup>120</sup> Certainly Vanderbilt’s JuicyCampus site received high traffic when someone posted about one student’s rape, with the assertion that she deserved what happened to her and that he wished he had been the one to rape her, writing, “what could she expect walking around there alone. everyone thinks she’s so sweet but she got what she deserved. wish i had been the homeless guy that f\*\*\*\*\* her.”<sup>121</sup>

Given the poisonous climate in sectors of the Internet, the abject failure of efforts to foster online civility, and the prohibitive logistics of civil litigation, it is not surprising that opportunists would explore ways to lucratively mine the human misery caused by Internet harassment for riches. The highest profile reputation defense service is ReputationDefender.<sup>122</sup> ReputationDefender has energetically exploited online harassment of women to garner extensive national publicity.<sup>123</sup> ReputationDefender management used the suffering of the law students targeted by AutoAdmit to get itself featured in stories in prestigious publications such as the *Washington Post*,<sup>124</sup> and in an article that basically amounted to an unpaid (I assume) commercial on NPR.<sup>125</sup> The ReputationDefender homepage touts this media attention<sup>126</sup> and the company’s “press page” lists additional positive references in other media outlets as well.<sup>127</sup>

The company transparently sought to exploit the suffering of the AutoAdmit targets in its own self-interest. For a while, its website touted a “CAMPAIGN TO DEFEND A WOMAN’S RIGHT TO PRIVACY & HER

<sup>119</sup> See Stripling, *supra* note 69.

<sup>120</sup> Posting of Ken to Popehat, <http://www.popehat.com/2008/03/19/squeezing-the-juice> (Mar. 19, 2008).

<sup>121</sup> See Eamon McNiff & Ann Varney, *College Gossip Crackdown: Chelsea Gorman Speaks Out*, ABC NEWS, May 14, 2008, <http://abcnews.go.com/2020/Story?id=4849927&page=1>.

<sup>122</sup> See ReputationDefender, <http://www.reputationdefender.com> (last visited Feb. 28, 2009).

<sup>123</sup> Julia Ann Simon-Kerr notes that historically, sexual reputation evidence was inadmissible to impeach or impugn the character of a man. Conversely, when the witness at issue was a woman, and especially when she was testifying at a rape or sexual assault trial, courts frequently admitted such reputation testimony. Julia Ann Simon-Kerr, Note, *Unchaste and Incredible: The Use of Gendered Conceptions of Honor in Impeachment*, 117 YALE L.J. 1854, 1875 (2008). That women have special concerns about their reputation is nothing new.

<sup>124</sup> See Ellen Nakashima, *Law School Deans Speak Out on Web Site Content: Yale, Penn Condemn Anonymous Attacks*, WASH. POST, Mar. 10, 2007, at D1.

<sup>125</sup> *Startups Help Clean Up Online Reputations* (NPR radio broadcast Nov. 15, 2006), available at <http://www.npr.org/templates/story/story.php?storyId=6462504>.

<sup>126</sup> See ReputationDefender, *supra* note 122.

<sup>127</sup> ReputationDefender, Press Room, <http://www.reputationdefender.com/press.php> (last visited Apr. 17, 2009).

GOOD NAME!”<sup>128</sup> Chivalry is not dead; it simply requires the payment of monthly fees to a reputation defense service. Here is a button the ReputationDefender website used to feature:



As is discussed in the next section, one could cynically observe that if AutoAdmit didn't exist, ReputationDefender might have been tempted to invent it.

ReputationDefender also aggressively exploited JuicyCampus as a customer recruiting tool.<sup>129</sup> Ultimately the JuicyCampus business model failed when universities debated blocking access to the site on campus, and potential advertisers were repulsed by the bad press the company received.<sup>130</sup> In addition, the Attorneys General of New Jersey and Connecticut initiated legal actions premised on the legal theory that the site violated consumer fraud statutes by not enforcing its own publicized rules about postings.<sup>131</sup> The closure of JuicyCampus may be a positive sign that external pressure can effect positive change on Internet mores. But a lot of harsh words were published before JuicyCampus ended, and its advertisers were probably more sensitive to the threat of boycotts within a university community than they might be in the context of a blog targeting a more generalized audience. And the actions brought by the New Jersey and Connecticut Attorneys General could pre-

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<sup>128</sup> See Posting of Ann Bartow to Feminist Law Professors, <http://feministlawprofessors.com/?p=1671> (Apr. 8, 2007, 17:47 EST) (explaining and analyzing the ReputationDefender's prior campaign once available at [www.reputationdefender.com/campaign\\_petition.php](http://www.reputationdefender.com/campaign_petition.php)).

<sup>129</sup> See, e.g., ReputationDefender, Press Room: The Dark Side of Web Anonymity, [http://www.reputationdefender.com/viewPress?press\\_id=281](http://www.reputationdefender.com/viewPress?press_id=281) (last visited Apr. 17, 2009); ReputationDefender, Press Room: Juicy Campus Gossip Site Under Fire, [http://www.reputationdefender.com/viewPress?press\\_id=251](http://www.reputationdefender.com/viewPress?press_id=251) (last visited Apr. 17, 2009); Posting of Greg to ReputationDefender Blog, <http://www.reputationdefenderblog.com/2009/02/04/juicy-campus-closing> (Feb. 4, 2009); Posting of Rob to ReputationDefender Blog, <http://www.reputationdefenderblog.com/2008/11/21/juicycampus-getting-squeezed-at-tsu> (Nov. 21, 2008).

<sup>130</sup> See Stripling, *supra* note 69.

If there's a silver lining in the story of JuicyCampus, it's the fact that advertisers failed to support it, Dungy said. That outcome isn't all too surprising, she added. "I would think that . . . [advertisers] would not want to be associated with this when they know that parents and administrators and faculty think this site should not exist," she said. "I would think as a marketer it would be very detrimental."

*Id.*; see also *Juicy Campus Beaten to a Pulp*, DAILY CARDINAL, Feb. 10, 2009, <http://www.dailycardinal.com/article/22022> ("Juicy Campus closed not because of alleged links with student suicides or belittling rape victims, but because of decreasing ad revenues in the face of the country's economic meltdown.").

<sup>131</sup> See Martha Neil, *Another State AG Probes JuicyCampus Gossip Website*, ABAJOURNAL.COM, Mar. 25, 2008, [http://www.abajournal.com/news/another\\_state\\_ag\\_probes\\_juicycampus\\_gossip\\_website/](http://www.abajournal.com/news/another_state_ag_probes_juicycampus_gossip_website/); Posting of Walter Olson to Overlawyered, <http://overlawyered.com/2008/04/state-ags-vs-juicycampuscom> (Apr. 1, 2008).

sumably be avoided by successors who use the JuicyCampus model if they decline to post rules or terms of service policies altogether.<sup>132</sup>

## II. THE LEGAL SYSTEM OFFERS LITTLE TO HARASSMENT VICTIMS AND REPUTATION DEFENSE SERVICES WILL PROFIT AND THRIVE BY KEEPING IT THAT WAY

Two of the AutoAdmit victims courageously responded to the harassment by filing a lawsuit,<sup>133</sup> which continues to wend its way through the court system.<sup>134</sup> This provoked one of the original defendants to file suit against them, on a variety of theories.<sup>135</sup> The online harassment targeting the AutoAdmit victims continues still, though in somewhat abated form.<sup>136</sup> Further, the duress, expense, and protractedness of the litigation process probably makes bringing a lawsuit an unlikely option for most people. But even if someone has the time, the money, and a good attorney, there is not a lot of helpful law to work with. And the blowback from at least one lawyer who dislikes the fact that two AutoAdmit victims decided to fight back was striking. Attorney Scott Greenfield asserted that the victims brought the abuse on themselves at his Simple Justice blog, writing:

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<sup>132</sup> In the context of privacy policies, the Federal Trade Commission (“FTC”) has been more inclined to investigate companies that had privacy policies on their websites but did not honor the terms than companies that did not post privacy policies at all. See FTC, Privacy Initiatives, <http://www.ftc.gov/privacy> (last visited Apr. 17, 2009) (stressing that the “Commission guards against unfairness and deception by enforcing companies’ privacy promises about how they collect, use and secure consumers’ personal information”); Press Release, FTC, Internet Service Provider Settles FTC Privacy Charges (Mar. 10, 2005), <http://www3.ftc.gov/opa/2005/03/cartmanager.shtm>; Press Release, FTC, Internet Site Agrees to Settle FTC Charges of Deceptively Collecting Personal Information in Agency’s First Internet Privacy Case (Aug. 13, 1998), <http://www.ftc.gov/opa/1998/08/geocitie.shtm>; see also Steven Hetcher, *The FTC as Internet Privacy Norm Entrepreneur*, 53 VAND. L. REV. 2041, 2042–43 (2000); Chris Jay Hoofnagle, Privacy Practices Below the Lowest Common Denominator: The Federal Trade Commission’s Initial Application of Unfair and Deceptive Trade Practices Authority to Protect Consumer Privacy (1997–2000) (Jan. 1, 2001) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=507582](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=507582); Stephanie Condon, *Congressman, Privacy Groups Challenge FTC Web-ad Policy*, CNET NEWS, Feb. 12, 2009, [http://news.cnet.com/8301-13578\\_3-10163062-38.html](http://news.cnet.com/8301-13578_3-10163062-38.html); Douglas MacMillan, *FTC Online Privacy Guidelines Faulted*, BUSINESSWEEK.COM, Feb. 13, 2009, [http://www.businessweek.com/technology/content/feb2009/tc20090212\\_751694.htm?chan=top+news\\_top+news+index+-+temp\\_technology](http://www.businessweek.com/technology/content/feb2009/tc20090212_751694.htm?chan=top+news_top+news+index+-+temp_technology).

<sup>133</sup> Complaint, *supra* note 75.

<sup>134</sup> Posting of Dennis Cummings to Finding Dulcinea, <http://www.findingdulcinea.com/news/technology/July-August-08/Anonymous-AutoAdmit-Posters-to-be-Revealed-in-Court.html> (Aug. 4, 2008, 09:37 EST); Posting of Amir Efrati to WSJ Law Blog, <http://blogs.wsj.com/law/2007/06/12/students-file-suit-against-autoadmit-director-others> (June 12, 2007, 11:42 EST).

<sup>135</sup> See Complaint at 26–37, *Ciulli v. Iravani*, No. 2:08-cv-02601 (E.D. Pa. Mar. 4, 2008), available at <http://abovethelaw.com/images/IravaniComplaint.pdf>; see also Posting of Dan Slater to WSJ Law Blog, <http://blogs.wsj.com/law/2008/03/05/ciulli-sues-yale-law-students-in-autoadmit-scandal> (Mar. 5, 2008, 14:25 EST).

<sup>136</sup> See, e.g., Margolick, *supra* note 74.

While Heller and Irvani started out as the victims of malicious slurs on the discussion boards, they turned it around and went on the attack. The problem isn't that they stood up for themselves, though many questioned their motives, calling them two elitist, self-centered brats who couldn't bear not being in control of others. Some suggested that it was this demeanor that gave rise to their problems, bringing the ire and disdain of their classmates down on them like a hail of feces. After all, the attacks against these young women appeared to come from the same people they sat with daily. Maybe, just maybe, some of their classmates at Yale Law School didn't think as well of them as they thought of themselves?<sup>137</sup>

According to Greenfield and at least one other attorney, use of the legal process to attempt to hold their attackers accountable for acts that a fact-finder might find tortious, was illegitimate.<sup>138</sup> But not to seek legal recourse would have rendered them powerless. This sets up the kind of double bind in which rape victims can be trapped: physically resisting a rapist may escalate the violence of the sexual assault, but failing to aggressively defend themselves can imply voluntary compliance. The victim risks additional injuries if she fights back, and no justice after the fact if she doesn't.

The Internet offers many intrinsic theories of the First Amendment. At one end of a speech-control continuum is the extreme libertarian belief that people have an absolute right to anonymity, and to say anything they like, in any online forum they choose. Anyone who questions the advisability of complete openness to all is labeled a censor by adherents of this theoretical approach.<sup>139</sup>

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<sup>137</sup> Simple Justice, <http://blog.simplejustice.us/2009/02/17/are-attackers-awesome-to-feminists.aspx> (Feb. 17, 2009, 06:39 EST).

<sup>138</sup> *Id.*; Posting of Mark J. Randazza to the Legal Satyricon, <http://randazza.wordpress.com/2009/02/17/competing-views-on-the-auto-admit-story-define-awesome-2> (Feb. 17, 2009, 20:08 EST) ("I too find nothing 'awesome' about bringing a lawsuit that, perhaps justified against some defendants, was clearly frivolous against others. . . . Worse than that, how they conducted themselves post-suit was clearly worthy of disdain, not praise."); Posting of Mark J. Randazza to the Legal Satyricon, <http://randazza.wordpress.com/2009/02/17/competing-views-on-the-auto-admit-story-define-awesome> (Feb. 17, 2009, 16:58 EST).

<sup>139</sup> *See, e.g.*, Posting by Laurelin to Laurelin in the Rain, <http://laurelin.wordpress.com/2007/04/15/on-censorship> (Apr. 15, 2007, 22:22) ("Censorship is also a term that gets bandied about a lot. If one refuses to publish a comment on one's site, whether because one believes it to be unhelpful, cruel, irrelevant or anything else, one runs the risk of being accused of censorship."); Posting by Rachel Cervantes to Tilting at Windmills, <http://rachelcervantes.wordpress.com/2008/12/14/to-all-the-idiots-who-cry-censorship-when-a-feminist-tells-you-to-piss-off> (Dec. 14, 2008).

"Nothing 'outs' your boring, 'me-too' infantile wails as quickly as charging a feminist with censorship when she curtails your idiotic ranting. The 'censorship' bleating unequivocally exposes your petulance along with your limited intellectual abilities. Ok, children, listen up: Censorship is not what happens when a



The other end of the continuum is less neatly defined, but generally characterized by the view that people should take personal responsibility for their words and actions, and that there are limits upon the kinds of speech people should have to endure.<sup>140</sup> Private actors may be credited with an obligation to limit or prohibit anonymous speech in fora they control, and/or to edit and moderate what is said there.<sup>141</sup> One blogger holding this view opined:

The real “solution” to assholes on the internet is for bloggers, site moderators, etc. to *fuckin’ read and participate in their own comment threads*. If the blogger him- or herself is an asshole, then they’ll allow assholes to comment there. Not much you can do about that: assholes exist, and they, too, can often type. If the blogger isn’t an asshole, they’ll delete, argue with, or shut down asshole comments, according to their personal tastes.<sup>142</sup>

No one seems very interested in having the federal government regulate Internet speech on a wholesale basis. Calls for government control over Internet content have typically been directed at limiting the content or contacts available to children.<sup>143</sup>

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feminist refuses to publish nonsense on her personal blog. . . . Censorship is what happens when an authority suppresses dissenting ideas.”

*Id.*

<sup>140</sup> Rebecca Tushnet, *Copyright as a Model for Free Speech Law: What Copyright has in Common with Anti-pornography Laws, Campaign Finance Reform, and Telecommunications Regulation*, 42 B.C. L. Rev. 1, 71 (2000). Rebecca Tushnet has written (though not specifically in the context of online speech):

As Kent Greenawalt has noted, the democratic aim of promoting courageous citizens, “independent of mind and hardy emotionally,” does not mean that all kinds of hardiness are equally desirable goals for First Amendment jurisprudence. Greenawalt argues that fortitude in the face of serious and imminent threats of violence is not the kind of hardiness that is valuable for democratic citizenship; thus, penalizing such threats does not conflict with the goal of creating robust and vigorous citizen-communicators.

*Id.* at 52. One blogger has expressed her view of appropriate online speech norms as follows:

[I]n a patriarchy one’s intent has little bearing on how one’s fast and loose metaphrasery may be experienced by a member of an oppressed class; the onus is on the privileged to cut it the fuck out, not on the aggrieved to toughen the fuck up.

Posting of Twisty to I Blame The Patriarchy, <http://blog.iblamethepatriarchy.com/2009/02/21/qui-a-coupe-le-fromage> (Feb. 21, 2009, 19:31).

<sup>141</sup> See Brad Stone, *A Call for Manners in the World of Nasty Blogs*, N.Y. TIMES, Apr. 9, 2007, at A1.

<sup>142</sup> Posting of Bitch Ph.D. to Bitch Ph.D., <http://bitchphd.blogspot.com/2007/04/we-dont-need-no-stinkin-badges.html> (Apr. 8, 2007, 20:57 EST).

<sup>143</sup> See, e.g., Children’s Online Protection Act, 47 U.S.C. § 231 (2006); Children’s Online Privacy Protection Act of 1998, 15 U.S.C. §§ 6501–6506 (2006); Children’s Internet Protection Act, 47 U.S.C. § 254 (2006); FCC Consumer Facts, Children’s Internet Protection Act, <http://www.fcc.gov/cgb/consumerfacts/cipa.html> (last visited Apr. 17, 2009). See generally Thomas B. Nachbar, *Paradox and Structure: Relying on Govern-*

Speech has consequences. Lies, implicit or actual, can inflict real monetary and emotional harms.<sup>144</sup> When people are lied about, they typically expect that some legal recourse will be available, but are often sorely disappointed. Defamation and privacy laws, as currently constituted and enforced, offer little in the way of protection from online harassment. By comparison, lying about a company or a product may be a violation of the Lanham Act.<sup>145</sup> Section 2(a) precludes the federal registration of disparaging trademarks.<sup>146</sup> Section 43(a) facilitates civil remedies for false advertising claims.<sup>147</sup> Section 43(c) protects famous marks against tarnishment, a form of trademark dilution.<sup>148</sup> When people are lied about, it seems reasonable for them to expect that some recourse at law will be available, yet legal options for individuals are far more limited than they are for companies seeking to protect the reputation of trademarks. Product signifiers have more reputational protections built into the law than people.

When lies about individuals come from an identifiable real space source, a remedy may at least technically be available. Newspapers and magazines will often offer corrections for misinformation that they have published, though that may seem unsatisfying to someone who has been libeled. If no correction is forthcoming, a civil action can be brought against both speaker and publisher alleging commission of a speech tort such as defamation,<sup>149</sup> although that route is likely to be a lengthy, difficult, and expensive path to justice. Or a victim can allege invasion of privacy and negligent and intentional infliction of emotional distress.<sup>150</sup>

Some of the people involved in running online fora do a lot of policing, seeking to mitigate any harms caused to others by being highly interventionist, correcting falsehoods, and using the moderating function and editing process to promote civility. Many others do not. Their preferred norm is one in which anything can be said, even if it is hurtful, damaging, or false.<sup>151</sup> Those adopting the “anything goes” approach may believe, probably correctly, that few, if any, of the victimized individuals will have the resources necessary to pursue complaints against them when online speech exceeds the boundaries of First Amendment protections.

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*ment Regulation to Preserve the Internet's Unregulated Character*, 85 MINN. L. REV. 215 (2000).

<sup>144</sup> See generally DANIEL J. SOLOVE, *THE FUTURE OF REPUTATION: GOSSIP, RUMOR AND PRIVACY ON THE INTERNET* (2007).

<sup>145</sup> The Lanham Act is codified in scattered sections of Title 15 of the United States Code.

<sup>146</sup> See 15 U.S.C. § 1052(a) (2006).

<sup>147</sup> See *id.* § 1125(a).

<sup>148</sup> See *id.* § 1125(c).

<sup>149</sup> See RESTATEMENT (SECOND) OF TORTS § 577 (1977).

<sup>150</sup> See *id.* § 652.

<sup>151</sup> See, e.g., Stripling, *supra* note 69 (explaining that the now shuttered *www.Juicy-Campus.com* was an unmoderated “forum for exacting sweet, anonymous revenge—a sort of cyber boxing arena where jilted lovers could settle scores, and the Goth set could take the Greeks down a peg”).

Bad actors who are determined to disrupt an Internet gathering can also attempt to exploit the positive values of the relevant online community. Feminism both values and depends on expressive freedom.<sup>152</sup> People who want to disrupt feminist spaces can appeal to the free speech instincts of a given group as a way to gain entry for the purpose of aggressively derailing conversations and fomenting discord. This was documented in a case study of a web based discussion that was targeted for trolling, which found that “feminist . . . online forums are especially vulnerable, in that they must balance inclusive ideals against the need for protection and safety, a tension that can be exploited by disruptive elements to generate intragroup conflict.”<sup>153</sup> Any online community that wants to welcome newcomers and encourage a variety of viewpoints risks having these admirable proclivities used against them by destructive people. When the lies and abuse occur online, the number of alternatives available to victims is even smaller than the rather pathetic tools available for addressing real space lies and abuse. ISPs, who are best positioned to identify malefactors and prevent or repair damage done online with words or pictures,<sup>154</sup> may not feel any obligation to behave in decent or ethical ways. And they are immune from defamation suits, intentional infliction of emotional distress claims, and virtually any other legal approach that might otherwise be available,<sup>155</sup> thanks in part to strong market demands for online pornography, which drove the lobbying efforts that resulted in ISP immunity.<sup>156</sup>

When Internet access went mainstream in the mid-1990s, one of the major things it was used for was the distribution of pornography.<sup>157</sup> Some

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<sup>152</sup> See generally MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 1–14 (2d ed. 2003).

<sup>153</sup> Susan Herring, Kirk Job-Sluder, Rebecca Scheckler & Sasha Barab, *Searching for Safety Online: Managing “Trolling” in a Feminist Forum*, 18 INFO. SOC’Y 371, 371 (2002).

<sup>154</sup> An ISP provides the means over which Internet communications are transmitted. Therefore, ISPs are in possession of the physical power to monitor, change, or deny the transmission of information. See, e.g., Jeff Tyson, *How Internet Infrastructure Works*, <http://computer.howstuffworks.com/internet-infrastructure.htm> (last visited Apr. 17, 2009); *Web Developers Notes, What is an ISP?*, <http://www.webdevelopersnotes.com/basics/what-is-isp.php> (last visited Apr. 17, 2009); see also Miree Kim, *Narrowing the Definition of an Interactive Service Provider under § 230 of the Communications Decency Act*, 2003 B.C. INTEL. PROP. & TECH. F. 33102, pt. IV.c., [http://www.bc.edu/bc\\_org/avp/law/st\\_org/iptf/articles/content/2003033102.html](http://www.bc.edu/bc_org/avp/law/st_org/iptf/articles/content/2003033102.html). James Grimmelmann argues that advances in search engine technology “can help individuals move from being passive consumers of information to active seekers for it” and “catalyze[ ] a virtuous cycle of creativity.” James Grimmelmann, *Don’t Censor Search*, 117 YALE L.J. POCKET PART 48, 50 (2007), <http://thepocketpart.org/2007/09/08/grimmelmann.html>.

<sup>155</sup> See H. Brian Holland, *In Defense of Online Intermediary Immunity: Facilitating Communities of Modified Exceptionalism*, 56 KAN. L. REV. 369, 374–75 (2008).

<sup>156</sup> Ann Bartow, *Pornography, Coercion, and Copyright Law 2.0*, 10 VAND. J. ENT. & TECH. LAW 799, 801 (2008).

<sup>157</sup> Bill Roberts, *Dirty Little Secret*, EDN, July 1, 2006, <http://www.edn.com/article/CA6348057.html> (“Technology helps spread pornography, but the reverse is also true. Porn has played an increasing role as one of the early adopters—along with gambling and gaming—or as a driver of early consumer adoption of the VCR, desktop computers,

citizens complained about this, and Congress responded by passing the Communications Decency Act of 1996, which prohibited posting “indecent” or “patently offensive” materials in a public forum on the Internet.<sup>158</sup> I would guess that very few senators or congressional representatives who signed on actually thought that the censorious provisions of the Act could sustain judicial scrutiny, but it allowed them to project the impression to complaining constituents that they were “doing something.” When the law was predictably struck down on First Amendment grounds,<sup>159</sup> members of Congress could shrug and blame the courts for intervening.<sup>160</sup>

In 1995, an anonymous person advertised t-shirts with “offensive and tasteless slogans” related to the then-recent bombing of the Alfred P. Murrah Federal Building in Oklahoma City.<sup>161</sup> The anonymous perpetrator instructed those interested in purchasing these t-shirts to contact a man named Ken Zeran.<sup>162</sup> Zeran had no role in posting this offensive text and was not even aware of its existence, but that changed quickly because the anonymous poster also provided Zeran’s home phone number.<sup>163</sup> Consequently, “Zeran received a high volume of calls, comprised primarily of angry and derogatory messages, but also including death threats.”<sup>164</sup> Zeran could not, as a practical matter, change his phone number to an unlisted one, “because he relied on its availability to the public in running his business out of his home.”<sup>165</sup> Zeran asked AOL, his ISP, for assistance in taking down the post and identifying the poster.<sup>166</sup> Despite the high number of angry phone calls and death threats directed at him, and AOL’s assurances that the posts would soon be removed, they never were.<sup>167</sup> A lawsuit Zeran later brought against AOL resulted in the Fourth Circuit ruling that § 230 of the Communications Decency Act immunized AOL from liability for any harms its bulletin boards caused Zeran (the “Zeran Doctrine”).<sup>168</sup>

The Zeran Doctrine was further instantiated by later judicial opinions,<sup>169</sup> and remains the law today. Because of the Zeran Doctrine, ISPs, which are

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DVDs, the Internet, Web hosting, e-commerce, viral marketing, online payment, digital rights management, broadband connectivity, cable, satellite and digital TV, Webcams and streaming video . . .”). For more information related to the interplay between technology advancement and pornography, see also Julio Ojeda-Zapata, *Pornographers Embracing iPod*, SEATTLE TIMES, Oct. 27, 2005, at D3.

<sup>158</sup> Center for Democracy and Technology, Communications Decency Act, <http://www.cdt.org/speech/cda> (last visited Apr. 17, 2009).

<sup>159</sup> *Reno v. ACLU*, 521 U.S. 844, 849 (1997).

<sup>160</sup> Ann Bartow, *Open Access, Law, Knowledge, Copyrights, Dominance, and Subordination*, 10 LEWIS & CLARK L. REV. 869, 880–82 (2006).

<sup>161</sup> *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 329 (4th Cir. 1997).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *Id.*

<sup>168</sup> *Id.* at 328.

<sup>169</sup> See, e.g., *Marczeski v. Law*, 122 F. Supp. 2d 315 (D. Conn. 2000); *Blumenthal v. Drudge*, 992 F. Supp. 44 (D.D.C. 1998).

in the best position to control the distribution of harmful postings, have no incentive or obligation to do so. They don't have any recordkeeping duties either,<sup>170</sup> so they were not sanctioned for failing to help Ken Zeran figure out who was posting the advertisements that caused him so much distress. By writing § 230 into law, Congress left Zeran and most other Internet harassment victims vulnerable and helpless,<sup>171</sup> especially if they are not able independently to identify the sources of the abuse, or to acquire forcibly identifying information from an ISP, assuming it had been logged, via the subpoena power of the courts.<sup>172</sup>

This approach contrasts fairly radically with the way that Congress approached the relationship between ISPs and the music and movie industries. In the context of copyright law, ISPs have to remove potentially infringing material upon the request of the copyright holder if they want immunity for having allowed it to be posted in the first place.<sup>173</sup> Established by the so-called "safe harbor" provision of the Digital Millennium Copyright Act ("DMCA"),<sup>174</sup> the procedure is called "notice and take down"; though it is sometimes abused<sup>175</sup> and compromises certain First Amendment values,<sup>176</sup> it works reasonably well at balancing the concerns of copyright holders with the logistical demands that policing content places upon ISPs. Protecting copyrights online has obviously been a governmental priority, unlike shielding online harassment victims.

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<sup>170</sup> See *Zeran v. Am. Online, Inc.*, 958 F. Supp. 1124, 1135 (E.D. Va. 1997).

An Internet provider's content editing policy might well generate a record of subscribers who "notoriously persist" in posting objectionable material. Such a record might well provide the basis for liability if objectionable content from a subscriber known to have posted such content in the past should slip through the editing process. Similarly, an Internet provider maintaining a hot-line or other procedure by which subscribers might report objectionable content in the provider's interactive computer systems would expose itself to actual knowledge of the defamatory nature of certain postings and, thereby, expose itself to liability should the posting remain or reappear. Of course . . . a [sic] Internet provider can easily escape liability on this basis by refraining from blocking or reviewing any online content.

*Id.*; see also Eric J. Sinrod, *Why ISPs Can Breathe Easier After a Porno Decision*, CNET, Jan. 24, 2007, [http://news.cnet.com/Why-ISPs-can-breathe-easier-after-a-porno-decision/2010-1028\\_3-6152830.html](http://news.cnet.com/Why-ISPs-can-breathe-easier-after-a-porno-decision/2010-1028_3-6152830.html).

<sup>171</sup> Nancy Kim, *Website Proprietorship and Cyber Harassment 6* (Mar. 6, 2009) (unpublished manuscript), available at [http://works.bepress.com/nancy\\_kim/2](http://works.bepress.com/nancy_kim/2).

<sup>172</sup> *Id.* at 56–57.

<sup>173</sup> See The Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (1998) (codified as amended in scattered sections of 17 U.S.C.).

<sup>174</sup> The safe harbor provision protects against monetary liability for service providers in compliance with the statute. 17 U.S.C. § 512(c) (2006).

<sup>175</sup> See *Tracking the Trackers: Investigating P2P Copyright Enforcement*, <http://dmca.cs.washington.edu> (last visited Apr. 17, 2009).

<sup>176</sup> See *Posting of Sam Bayard to Citizen Media Law Project*, <http://www.citmedia.law.org/blog/2007/court-rejects-bid-use-dmca-bypass-first-amendment-protection-anonymous-speech> (Dec. 17, 2007).

Periodically, some online situation brings the negative consequences of § 230 immunity into sharp public focus, and the AutoAdmit situation provides one such example. Board topics there included threads of vitriolic commentary about specific individuals referenced by name, who had their photos and contact information posted, and whose requests that these posts be edited or deleted were ignored by board administrators who believed effective legal action was unlikely.<sup>177</sup> It is hard to know exactly why the dean of the University of Pennsylvania Law School chose to refer to the women discussed on AutoAdmit as “defenseless” when he was quoted as saying:

As a matter of law, and under the university’s own policies on speech, we feel we have no basis for disciplinary action against the [AutoAdmit] co-owner, though we have had numerous discussions with him about the board and *its very unfortunate impact when ad hominem attacks are made against defenseless individuals*.<sup>178</sup>

But certainly he was correctly interpreting § 230. The plight of these defenseless individuals provided the launching point for a self-serving publicity juggernaut generated by ReputationDefender.

Every time there is a robbery in my neighborhood, I receive flyers and phone calls from home alarm companies. I don’t believe that alarm company employees are actually committing the robberies, but they do not hesitate to exploit them and the understandable fear that they engender. ReputationDefender and other reputation defense services are doing the same thing. AutoAdmit/XOXOHTH is a board that encourages anonymous commenting, and while some of the commenters likely are law students, my guess is that some of them are not, and instead are people with other agendas. I make no particular accusation against ReputationDefender, as I have no evidence or reason to believe that anyone associated with this company has affirmatively and anonymously participated in online harassment of law students or anybody else. It is, however, hard not to see that there are financial benefits for a company like ReputationDefender to do so. Indeed, the greater the quantity of sexual harassment toward affluent victims that appears on the Internet, the wealthier reputation defense services can become. Substantial widespread online personal misery equals success for these companies. The sexual-harassment-based component of the ReputationDefender business model partly depends on a long-term flourishing of frightening misogyny that the legal system will not address. If individuals targeted by AutoAdmit commentators are indeed defenseless, it is because the legal system has left them this way.

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<sup>177</sup> See Nakashima, *supra* note 20.

<sup>178</sup> Katherine Mangan, *2 Deans Denounce Online Law-Student’s Discussion Board That Allows Anonymous Personal Attack*, CHRON. OF HIGHER EDUC., Mar. 23, 2007, at 31 (emphasis added).

In a move that no doubt enhanced its perceived legitimacy as well as its visibility, in April 2007, Harvard Law School seemed to convene an entire mini-conference around the for-profit company,<sup>179</sup> with ReputationDefender CEO Michael Fertik<sup>180</sup> as one of five featured panelists. Although AutoAdmit was specifically mentioned as a topic that the panel would address, no one representing AutoAdmit was permitted to speak.<sup>181</sup>

In the context of my administrative work at the Feminist Law Professors blog, I once received a promotional comment from ReputationDefender in response to a critical blog post I had written<sup>182</sup> about one of David Lat's "hotties" contests at Above the Law. His response read as follows:

Dear Prof. Bartow,

In light of this posting, we thought your readers might [sic] interested to learn about a similar "contest" involving female law students featured in this week's Washington Post:

Like the law librarians, these law students, who include ReputationDefender clients, did not give permission for their pictures to be used, and in no way invited this unwanted attention. The women whose pictures were misappropriated were also subjected to explicit and even threatening comments that were anonymously posted on a popular law school discussion forum. Once aware of the "contest," the women requested that the site remove the pictures, and were ignored and publicly mocked. They then turned to ReputationDefender. The site was shut down after we repeatedly effected the removal of the pictures.

Although there is a sense that nothing can be done about these sorts of "contests" (short of perhaps posting unflattering pictures of the bloggers themselves), ReputationDefender is working to empower private individuals who have been unfairly subjected to this type of anonymous and hateful commentary. In particular, we are working to change the sexually harassing culture of the website that hosted the contest through a petition that asks the discussion forum to establish a clear and easy mechanism for resolution of these sorts of complaints and disputes. For more information about our campaign and petition please see: [http://reputationdefender.com/campaign\\_home.php](http://reputationdefender.com/campaign_home.php).

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<sup>179</sup> See Internet Speech Panel at HLS, Berkman Clinical Wiki, [http://cyber.law.harvard.edu/clinicalwiki/Internet\\_Speech\\_Panel\\_at\\_HLS](http://cyber.law.harvard.edu/clinicalwiki/Internet_Speech_Panel_at_HLS) (last visited Apr. 17, 2009).

<sup>180</sup> Michael Fertik, <http://www.naymz.com/search/michael/fertik/792233> (last visited Apr. 17, 2009).

<sup>181</sup> Internet Speech Panel at HLS, Berkman Clinical Wiki, [http://cyber.law.harvard.edu/clinicalwiki/Internet\\_Speech\\_Panel\\_at\\_HLS](http://cyber.law.harvard.edu/clinicalwiki/Internet_Speech_Panel_at_HLS) (last visited Apr. 17, 2009).

<sup>182</sup> See Posting by Ann Bartow to Feminist Law Professors, <http://feministlawprofessors.com/?p=1671> (Apr. 8, 2007, 17:47 EST).

Thanks,  
 RDBlogger  
 Reputationdefender.com<sup>183</sup>

Ironically, the “proprietary” mechanism that ReputationDefender used to “repeatedly effect[ ] the removal of the pictures,” about which the company was craftily opaque in the e-mail, was the notice and take-down procedure that is available via the DMCA,<sup>184</sup> a provision of Title 17 of the United States Code, governing copyright, the Copyright Act of 1976. Unlike pleas for help related to harassment, ISPs will actually respond to claims that the copyright in a photograph is being infringed.<sup>185</sup> They do this routinely and even reflexively because they are risk-averse and want safe-harbor immunity from infringement suits.<sup>186</sup> It seems creepily dishonest for ReputationDefender to claim one provision of the Copyright Act as a “proprietary technique,”<sup>187</sup> but of course ReputationDefender does not want potential clients to know that anyone could easily accomplish the same thing on her own. It is doubtful that any reputation defense service offers clients anything that they cannot do for themselves if they have a basic understanding of applicable laws, of the way that search engines function, and of the vulnerability of search engines to targeted manipulation.<sup>188</sup>

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<sup>183</sup> Internet comment from RDBlogger, ReputationDefender, to Ann Bartow, Professor of Law at University of South Carolina School of Law, *quoted in* Feminist Law Professors, <http://feministlawprofs.law.sc.edu/?p=1576> (Mar. 7, 2007, 18:59 EST) (hyperlinks omitted) (referring to Posting by Ann Bartow to Feminist Law Professors, <http://feministlawprofs.law.sc.edu/?p=1512> (Feb. 16, 2007, 16:11EST)); *see also* Nakashima, *supra* note 20; Posting by Ron Jones to Law Librarian Blog, [http://lawprofessors.typepad.com/law\\_librarian\\_blog/2007/02/above\\_the\\_laws\\_.html](http://lawprofessors.typepad.com/law_librarian_blog/2007/02/above_the_laws_.html) (Feb. 16, 2007).

<sup>184</sup> U.S. COPYRIGHT OFFICE, THE DIGITAL MILLENNIUM COPYRIGHT ACT OF 1998 U.S. COPYRIGHT OFFICE SUMMARY 12 (1998), *available at* <http://www.copyright.gov/legislation/dmca.pdf>.

<sup>185</sup> *See* Steven J. Horowitz, *Defusing a Google Bomb*, 117 YALE L.J. POCKET PART 36 (2007), <http://thepocketpart.org/2007/09/08/horowitz.html> (proposal to create a notice and take down procedure for defamation claims linked to search engines). *But see* Grimmelmann, *supra* note 154, at 48 (criticism of efforts to censor search engines).

<sup>186</sup> *See* Glynn S. Lunney, Jr., *The Death of Copyright: Digital Technology, Private Copying, and the Digital Millennium Copyright Act*, 87 VA. L. REV. 813, 823 n.30 (2001). *See generally* Niva Elkin-Koren, *Making Room for Consumers Under the DMCA*, 22 BERKELEY TECH. L.J. 1119 (2007); Tarleton Gillespie, *Copyright and Commerce: The DMCA, Trusted Systems, and the Stabilization of Distribution*, 20 INFO. SOC'Y 239 (2004).

<sup>187</sup> *See* Posting of Scott Gilbertson to Monkey\_Bites, [http://blog.wired.com/monkey\\_bites/2006/10/need\\_someone\\_to.html](http://blog.wired.com/monkey_bites/2006/10/need_someone_to.html) (Oct. 23, 2006, 16:02 EST).

<sup>188</sup> For example, Google search results can be manipulated by a technique called “Google bombing.” *See* Search Engine Dictionary.com, Google Bomb, <http://www.searchenginedictionary.com/terms-google-bomb.shtml> (last visited Apr. 17, 2009); *see also* Sara Kehaulani Goo, *Google Moves to Disarm Search ‘Bombs’*, WASH. POST, Jan. 30, 2007, at D3 (Google announced it was “changing its algorithms to eliminate so-called “Google bombs.”); Posting by Marisa Taylor to WST Digits, <http://blogs.wsj.com/digits/2009/01/23/google-bombing-moves-from-bush-to-obama> (Jan. 23, 2009, 15:58 EST) (explaining how a Google bomb was used in a political context).



Some downsides to reputation defense services are analogous to the pitfalls of self-help “censorware.” When the Supreme Court ruled that many of the provisions of the Communications Decency Act were unconstitutional (excepting, of course, § 230), the Justices noted that a remedy was available for parents who did not want their children exposed to pornography or “indecency” on the Internet.<sup>189</sup> They could purchase filtering software (a.k.a. “censorware”) and subscribe to related content filtering services to keep undesired words and images away from their computers.<sup>190</sup> In this way they could accomplish with their private purchasing power what the government would not do for them in terms of providing tools to regulate the information that was accessible to their children. This decision created a demand for censorware; however, it was not until the federal government made the use of censorware mandatory for schools and libraries that wanted to receive federal funding under the E-rate program<sup>191</sup> that the financial windfall to software companies grew appreciably because the E-rate program enabled many new institutions, all with censorware requirements, to connect to the Internet.<sup>192</sup> This windfall continues to grow because censorware is not a one-time purchase; it requires constant upgrades and updating.<sup>193</sup> Even public venues that do not receive federal funding are compelled to subscribe to filtering services by state and local laws.<sup>194</sup>

When it appears that self-help options are available, momentum for official intervention can dissipate. Government actors may decline to assist online harassment victims because the more affluent ones can theoretically purchase assistance from ReputationDefender or similar services. They might not see a need to step in and have the government provide assistance that could be readily purchased, at least by those who can afford it. The role of “Internet Editor” in the context of defamation and harassment has been ceded to private companies like ReputationDefender, since neither norm entrepreneurs nor the legal system have effectively taken it on. Meanwhile, reputation defense services have strong incentives to derail public efforts to address the problems that they purport to solve for a price.

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<sup>189</sup> *Reno v. ACLU*, 521 U.S. 844, 854–55 (1997).

<sup>190</sup> *Id.* at 877.

<sup>191</sup> See CHARMAINE JACKSON, CRS REPORT FOR CONGRESS, THE E-RATE PROGRAM: UNIVERSAL SERVICE FUND TELECOMMUNICATIONS DISCOUNTS FOR SCHOOLS 10 (2004), available at [http://www.ccsso.org/content/pdfs/E\\_rate\\_II.pdf](http://www.ccsso.org/content/pdfs/E_rate_II.pdf) (noting that “schools that receive the E-Rate discount, and that have Internet access, have always been required to certify that they have an Internet safety policy and technology protection measures including Internet filtration devices”).

<sup>192</sup> *Id.* at 4.

<sup>193</sup> See, e.g., *Censorware Products*, PC AUTHORITY, July 2000, <http://www.pcauthority.com.au/Feature/18469,censorware-products.aspx>.

<sup>194</sup> Geraldine P. Rosales, *Mainstream Loudoun and the Future of Internet Filtering for America’s Public Libraries*, 26 RUTGERS COMPUTER & TECH. L.J. 357, 358 (2000).

### III. REPUTATION DEFENSE SERVICES ARE ATTRACTIVE TO ENTITIES SEEKING TO ACTIVELY HIDE MISDEEDS

Affirmatively fostering the climate of a blog, chat room, discussion board, listserv, or the like is a form of norm entrepreneurship.<sup>195</sup> Editing and deletions, by contrast, are more like police functions. Some combination of norm entrepreneurship and police functions generally prevails in most online environments, though there are certainly contexts that rely fairly exclusively on one or the other. Reputation defense service providers try to manipulate both to benefit their clients.<sup>196</sup>

As discussed above, while individual AutoAdmit participants may be liable for threats and defamatory claims that they post, AutoAdmit management has no enforceable duty to monitor or censor the board or to identify bad actors, nor does it have any legal obligation to allow anyone maligned on the site to post complaints or corrections.<sup>197</sup> This legal framework left Ken Zeran vulnerable to extensive personal abuse over a decade ago and it leaves AutoAdmit, JuicyCampus, and countless other harassment victims similarly vulnerable today with no relief from extensive, invasive, and degrading public comments about their looks, intelligence, and personal lives. It is no surprise that there would be efforts to monetize this kind of misery. ReputationDefender, a private, for-profit company, has described its services as follows:

First, we SEARCH. We scour the Internet to dig up every possible piece of information about you and present it in an interactive monthly report . . . Next, we DESTROY. You can select any content from your report that you don't like. This is where we go to work for you.<sup>198</sup>

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<sup>195</sup> A "norm entrepreneur" is a "popular neologism in legal academia" meaning "someone who promotes certain normative choices by others." Posting by William McGeeveran to Info/Law, <http://blogs.law.harvard.edu/infolaw/2006/08/29/stopbadware-as-norm-entrepreneur> (Aug. 29, 2006).

<sup>196</sup> See *infra* text accompanying notes 198–204.

<sup>197</sup> See Communications Decency Act, 47 U.S.C. §230(c) (2006).

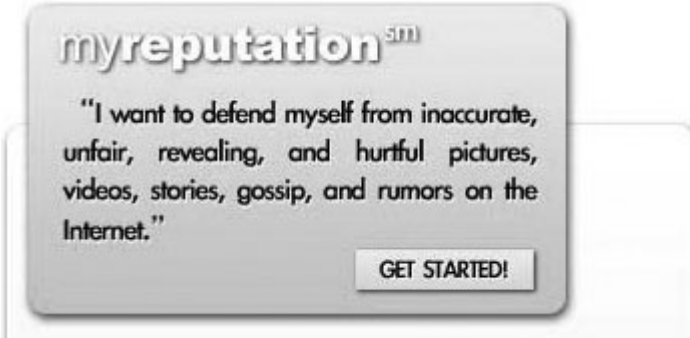
<sup>198</sup> The prior description of ReputationDefender's services is no longer available on the ReputationDefender website, but the text of the advertisement still may be found at various blogs. See, e.g., Reputation Defender, [http://realitybasedcommunity.net/archive/2007/06/reputation\\_defe.php](http://realitybasedcommunity.net/archive/2007/06/reputation_defe.php) (last visited Apr. 17, 2009). The current website overview of the company's services is as follows:

ReputationDefender was created in 2006 to defend your good name on the Internet. Today, ReputationDefender has grown to be the world's first comprehensive online reputation management and privacy company. We're the most experienced and most technologically innovative company of our kind. With customers in over 35 countries, ReputationDefender is proud to serve a global customer base throughout the world's largest community—the Internet.

Our goal is straightforward:

- To SEARCH out all information about you and your family throughout the Internet and present it to you in a clear, easy-to-understand fashion

The SEARCH part of the service requires payment of a subscription fee, which costs \$14.95 per month, with discounts to people who sign up for one or more years at a time.<sup>199</sup> The DESTROY aspect of the enterprise costs \$29.95 per piece of unwanted information, with no guarantee of positive or sustainable results.<sup>200</sup> Reputation defense services like to characterize what they do as helpful and empowering to victims, but ReputationDefender is a for-profit business, not a provider of pro bono social services. Here is another image once found in the ReputationDefender website:<sup>201</sup>



ReputationDefender claims it will monitor blogs and sites like MySpace, Facebook, Xenga, Bebo, Flickr, LiveJournal, and many others for any material that might be damaging or distressing to a client and then it will “use [its] array of proprietary techniques developed in-house to correct and/or completely remove the selected unwanted content from the web.”<sup>202</sup> It does not require that information targeted for “destruction” be inaccurate, harassing or defamatory.<sup>203</sup> Rather, its “MyEdge” service is billed as “personal PR for the web” and purports to offer clients the ability to “own [their] search engine results” for annual fees ranging from \$99 to \$599.<sup>204</sup> Part of the service is to sanitize any inconvenient truths.

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- To provide DESTROY assistance, helping to remove, at your request, inaccurate, inappropriate, hurtful, and slanderous information about you and your family using our proprietary in-house methodology. This same mission extends to your personally identifiable information, like name, address, and phone number.
  - To deliver CONTROL over how others are able to perceive you on the Internet

ReputationDefender, About Us, <http://www.reputationdefender.com/company> (last visited Apr. 17, 2009).

<sup>199</sup> ReputationDefender, MyReputation, <http://www.reputationdefender.com/myrep.php> (last visited Apr. 17, 2009).

<sup>200</sup> See ReputationDefender, Frequently Asked Questions, Can Reputation Defender Guarantee its Destroy Assistance Results?, <http://www.reputationdefender.com/faq> (last visited Apr. 17, 2009).

<sup>201</sup> See Posting of Scott Gilbertson, *supra* note 187.

<sup>202</sup> *Id.*

<sup>203</sup> ReputationDefender, MyReputation, <http://www.reputationdefender.com/myreputation> (last visited Apr. 17, 2009).

<sup>204</sup> ReputationDefender, MyEdge, <http://www.reputationdefender.com/myedge> (last visited Apr. 17, 2009).

ReputationDefender is also willing to mask or bury accounts of mainstream news stories even if they are true.<sup>205</sup> *BusinessWeek* described the company as a “counter-vigilante” and tellingly noted: “For executives there’s a new, \$10,000 premium service from ReputationDefender.com that can promote the info you want and suppress the news you don’t. The company also claims it can make information disappear altogether.”<sup>206</sup> Businesses often have deeper pockets than individuals, so they are undoubtedly attractive clients to any company that provides reputation-management services. The tools used for reputation defense have applications that can affect share prices, investment decisions, and consumer perceptions—anything that might be susceptible to information manipulation.

ReputationDefender refuses to disclose the exact nature of its so-called destruction tools,<sup>207</sup> and presumably its competitors do as well. In addition to utilizing the notice and take-down procedures of copyright law, another of ReputationDefender’s vaunted proprietary techniques is apparently to send e-mails to blogs and websites hosting information that its clients want to disappear. This reputation-management method has, on at least one occasion, backfired quite dramatically. Ronnie Segev is a concert pianist who was jailed for harassment after he called Priceline.com 215 times to get a refund for a \$953 ticket he never purchased.<sup>208</sup> The *New York Post* reported:

A judge later dismissed the charges, but not before Segev spent 40 hours in a Manhattan holding cell with hardened criminals who laughed at him, threatened him and tried to steal his fancy watch and sneakers.

A tough-looking cellmate asked him, “So, what are you in for?” “Priceline refund,” the musician sheepishly replied. It went downhill from there.<sup>209</sup>

After The Consumerist blog noted this in a post that seemed to this author to be sympathetic towards Segev, it received an e-mail from Reputa-

<sup>205</sup> See, e.g., Posting of Ben Popken to The Consumerist, <http://consumerist.com/268604/firms-hired-to-cajole-websites-into-annihilating-their-own-content> (June 13, 2007, 16:57 EST) (stating ReputationDefender sends “pleas to mean websites for posting factual information already reported in mainstream media publications”); Posting of Ben Popken to The Consumerist, <http://consumerist.com/consumer/evil/ronnie-segev%E2%80%94reputationdefender-can-eat-a-dick-227969.php> (Jan. 11, 2007, 07:09 EST); Posting of Pierre-Joseph Proudhon to Bullied Academics, <http://bulliedacademics.blogspot.com/2007/01/reputation-defender-to-consider-bullied.html> (Jan. 18, 2007, 19:53 EST).

<sup>206</sup> *Web Attack: Nastiness Online Can Erupt and Go Global Overnight, and “No Comment” Doesn’t Cut it Anymore. Here’s How to Cope*, BUSINESSWEEK, Apr. 16, 2007, [http://www.businessweek.com/magazine/content/07\\_16/b4030068.htm](http://www.businessweek.com/magazine/content/07_16/b4030068.htm).

<sup>207</sup> Scott Gilbertson, *Delete Your Bad Web Rep*, WIRED, Nov. 7, 2006, <http://www.wired.com/science/discoveries/news/2006/11/72063>.

<sup>208</sup> Posting of consumerist.com to The Consumerist, <http://consumerist.com/consumer/evil/priceline-has-customer-arrested-for-diligent-refund-attempt-150618.php> (Jan. 25, 2006, 11:26 EST).

<sup>209</sup> David Hafetz, *Pianist Thrown in Pen for Harping: Called Priceline 215 Times Over “Rip-Off,”* N.Y. POST, Jan. 22, 2006, at 9.

tionDefender asking it to remove the post in an e-mail that, according to The Consumerist, said in pertinent part:

We are writing to you today because our client, Ronnie Segev, has told us that he would like the content about him on your website to be removed as it is outdated and disturbing to him. Would you be willing to remove or alter the content? It would mean so much to Mr. Segev, and to us. Considerate actions such as these will go a long way to help make the Internet a more civil place.<sup>210</sup>

In response, a blogger at The Consumerist posted a second entry concerning Ronnie Segev entitled “Ronnie Segev & ReputationDefender Can Eat a Dick.”<sup>211</sup> While the first post primarily mocked Priceline, this one savaged Segev for trying to “finagle internet censorship and information blackouts.”<sup>212</sup> While the *New York Post* eventually archived the article about Segev in a way that makes it hard to find, and harder to access, the posts at The Consumerist continue to be prominently tied to Segev’s name on Internet search engine results. One commenter asked: “You think Segev will now call ReputationDefender 215 times for a refund?”<sup>213</sup> That a request for help with a public relations issue would result in this kind of backlash should have been predictable to a company whose entire business model relies on widespread online malice and incivility. ReputationDefender does not seem to possess a proprietary tool that will instill compassion or empathy in strangers, nor is ReputationDefender, or any other reputation defense service, likely to develop one.

Reputation defense services likely also engage in practices known as astroturfing and search-engine optimizing, content-manipulation techniques that are killing some of the more democratic and appealing aspects of the Internet.<sup>214</sup> Astroturf is commentary that is manufactured to appear authentic, but is actually the product of deceptive public relations opinion-shaping campaigns.<sup>215</sup> It is Internet content that springs from artificial grass roots (hence the name) and is engineered to falsely appear as originating from

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<sup>210</sup> Letter from Dave S., ReputationDefender, to Ben Popken, Co-Executive Editor, The Consumerist (Jan. 10, 2007), *quoted in* Posting of Ben Popken to The Consumerist, <http://consumerist.com/consumer/evil/ronnie-segev%E2%80%94reputationdefender-can-eat-a-dick-227969.php> (Jan. 11, 2007, 07:09 EST).

<sup>211</sup> *Id.*

<sup>212</sup> *Id.*

<sup>213</sup> Posting of Pete to The Consumerist, <http://consumerist.com/consumer/evil/ronnie-segev-reputationdefender-can-eat-a-dick-227969.php#c829486> (Jan. 11, 2007, 08:01 EST).

<sup>214</sup> For more on astroturfing, see Ann Bartow, *Some Peer-to-Peer, Democratically, and Voluntarily-Produced Thoughts*, 5 J. ON TELECOMM. & HIGH TECH. L. 449, 457–60 (2007) (reviewing YOCHAI BENKLER, *THE WEALTH OF NETWORKS: HOW SOCIAL PRODUCTION TRANSFORMS MARKETS AND FREEDOM* (2006)).

<sup>215</sup> See *id.* at 458 (citing Center for Media and Democracy, Recent Posts About Astroturfing, <http://www.prwatch.org/taxonomy/term/110> (last visited Apr. 17, 2009)); NewPR Wiki, AntiAstroturfing / GeneralDiscussion, <http://www.thenewpr.com/wiki/pmwiki.php?pagename=antiAstroturfing.GeneralDiscussion> (last visited Apr. 17, 2009)).

diverse and geographically distributed, independently acting individuals.<sup>216</sup> Reputation defense services may be seeding the world wide web with astroturfing websites and blogs of their own creations to create a faux chorus of noise that drowns out speakers that their clients wish would “sod off,” whether for socially good reasons, or for bad.

Another avenue available to reputation defense organizations is Search Engine Optimizing, which has been characterized by at least one legal scholar as fraud.<sup>217</sup> It is an effort to manipulate search engine results for profit.<sup>218</sup> Navigating the Internet to find useful sites and desired information generally requires the use of a private, for-profit Internet search engine.<sup>219</sup> Though the United States government financed development of major aspects of the Internet, the “electronic superhighway” is very much a private thoroughfare.<sup>220</sup> The First Amendment may guarantee citizens certain speech rights on public streets and sidewalks, but there are no analogous rights or privileges in privately-owned cyberspace, and there are no digital equivalents to public streets or sidewalks. If a search engine ignores a webpage because it dislikes the content, or because it is paid by interested parties to do so, it is unclear whether the functionally silenced speaker has any legal recourse.<sup>221</sup> The interface between law and Internet search engines is still developing.<sup>222</sup> Search engines are not under any legal obligation to disclose how and why certain results are obtained or how they are prioritized.<sup>223</sup> They may choose to cooperate or collaborate with reputation defense services, or they may not. If the prospect looks attractive enough, they

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<sup>216</sup> See *id.* (citing Wikipedia, Astroturfing, <http://en.wikipedia.org/wiki/Astroturfing> (last visited Apr. 17, 2009)).

<sup>217</sup> See James Grimmelman, *The Structure of Search Engine Law*, 93 IOWA L. REV. 1, 44–46 (2007).

<sup>218</sup> See Wikipedia, Search Engine Optimization, [http://en.wikipedia.org/wiki/Search\\_engine\\_optimization](http://en.wikipedia.org/wiki/Search_engine_optimization) (last visited Apr. 17, 2009).

<sup>219</sup> See *Reno v. ACLU*, 521 U.S. 844, 844 (1997).

<sup>220</sup> *Id.*

<sup>221</sup> See Frank Pasquale, *Rankings, Reductionism, and Responsibility* 11–13 (Seton Hall Law Sch., Pub. Law Research Paper No. 888327, 2006), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=888327](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=888327).

<sup>222</sup> See Frank Pasquale, *Federal Search Commission? Access, Fairness and Accountability in the Law of Search*, 93 CORNELL L. REV. 1149, 1206–09 (2008); Greg Lastowka, *Google’s Law* 28–37 (Sept. 27, 2007) (unpublished manuscript), available at <http://works.bepress.com/lastowka/4>.

<sup>223</sup> Cf. Disputes between trademark holders and search engine owners concerning key words and metatags. See, e.g., Benjamin Aitken, *Keyword-Linked Advertising, Trademark Infringement, and Google’s Contributory Liability*, 2005 DUKE L. & TECH. REV. 21 (2005); Zohar Efroni, *Keywording in Search Engines as Trademark Infringement: Issues Arising from Matim Li v. Crazy Line 19* (Nov. 2006) (unpublished manuscript), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=946927](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=946927); Terrance J. Keenan, *American and French Perspectives on Trademark Keying: The Courts Leave Businesses Searching for Answers*, 2 SHIDLER J. L. COM. & TECH. para. 14 (2005), <http://www.lctjournal.washington.edu/Vol2/a014Keenan.html>.

could start their own competing services, manipulating information far more effectively because they are in control of their algorithms.<sup>224</sup>

Because techniques like astroturfing and Search Engine Optimizing work regardless of the truth of the information to be hidden, reputation defense services can ultimately make women less safe. Note that ReputationDefender markets itself as a service you should use if you are meeting others online,<sup>225</sup> meaning, apparently, that the company can help someone eliminate material that might drive away potential dates. This can, of course, cut different ways, but someone can use ReputationDefender or a comparable entity to try to bury a past of very bad behaviors that a potential date might really need to know about for her own safety and well-being. Even the nastiest and most repulsive posters associated with AutoAdmit could take advantage of the services offered by ReputationDefender, or a company like it, to sanitize Internet references, for example, to bury any acts of harassment for which they have been held accountable.

#### CONCLUSION

The Internet houses many communication venues, and makes them accessible to anyone with a computer and Internet access. Women are disproportionately targeted for abusive or dismissive treatment,<sup>226</sup> and data suggests that they respond by leaving these angry and uncomfortable electronic spaces,<sup>227</sup> which may actually have been the goal of the negative treatment. Some fairly egregious episodes of online harassment have been covered in the mainstream media, but these are only the tips of some very large, polluted, and destructive icebergs.

Fighting back or even complaining about maltreatment can create a backlash that exacerbates the scope and frequency of the abuse. Many blogs and websites seem perfectly content to host all types of abusive content if it leads to higher site-visit numbers, and few seem motivated to moderate the interactive portions of their sites in ways that decrease sexist language or attacks. Online norms that discourage sexism have not evolved in any cognizable form in mainstream Internet culture. The supposed anonymity offered by the Internet brings out the worst in many people.

ISPs are the actors who are best positioned to discourage or control aggressive and harmful online speech from a technological standpoint.

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<sup>224</sup> For example, presumably Google knows a lot more about how Google searches work than any other entity does, so Google could do a far better job of Google bombing and manipulating search results if it wanted to get into the reputation defense business.

<sup>225</sup> ReputationDefender, Resource Center: Online Dating, [http://www.reputationdefender.com/resource\\_center/Online\\_Dating](http://www.reputationdefender.com/resource_center/Online_Dating) (last visited Apr. 17, 2009); *see also* Posting of Kate Zimmermann to SearchViews, <http://www.searchviews.com/index.php/archives/2006/11/control-alt-delete-your-reputation.php> (Nov. 7, 2006).

<sup>226</sup> Hussain & Griffiths, *supra* note 64, at 52.

<sup>227</sup> FALLOWS, *supra* note 55, at 14.

However, ISPs have neither obligations nor incentives to do so, and are immune from civil and criminal liability regardless of how much damage their customers inflict on others while utilizing their services, pursuant to § 230 of the Communications Decency Act.<sup>228</sup>

Persistent online harassment can generate pervasive and corrosive personally identifiable material that search engines link to victims' names. The lack of practical legal remedies has created a market for reputation defense services that promise to reduce or even eliminate unwanted online information. One illustrative reputation defense service, ReputationDefender, latched very ostentatiously onto the AutoAdmit situation and to Juicy-Campus, the college campus "defame-a-thon," to generate as much publicity for itself as possible. The company basically used the suffering of others to increase its visibility and profitability.

The monetization of Internet harassment that reputation defense services endeavor to accomplish is deeply problematic. The subscription-based business model assumes and relies on perpetual, ongoing acts of Internet harassment. This creates unsavory incentives for reputation defense services to stir up trouble, or at least to perpetuate the conditions that create it, as they derive financial benefits from hostile online climates that foster new client relationships. Reputation defense companies also have economic incentives to oppose legal reforms that undermine the necessity of their service offerings. These reputation defense companies also provide lawmakers who do not want to intervene with a justification for inaction based on the purported availability of private solutions to the problem. Finally, because they are willing to hide or manipulate information regardless of whether it is true or false, reputation defense services distort and corrupt the performance of search engines, and impede public access to socially valuable information. Businesses can employ reputation defense services to bury their misdeeds in cyberspace. And the same women who have been victimized by an online discussion board might well like to avoid dating anyone associated with that entity, but if their harassers retain reputation defense services, this connection could be hidden from them. Reputation defense services will not reduce the amount or harms of Internet harassment. They are far more likely to take a bad situation, the online culture of misogyny, and make it far worse.

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<sup>228</sup> Communications Decency Act, 47 U.S.C. § 230(c)(2006), *supra* text accompanying notes 168–72.



