

Is Peter Thiel right about Gawker?

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Tech billionaire funding lawsuits against Gawker

04:39 - Source: [CNN](#)

Editor's Note: Marc J. Randazza is a Las Vegas-based First Amendment attorney and managing partner of the Randazza Legal Group. Follow him on Twitter: [@marcorandazza](#). The opinions expressed in this commentary are solely those of the author.

CNN —

There is a Klingon saying that “revenge is a dish best served cold.” There is another saying used by parents everywhere: “This is why we can’t have nice things.” Both maxims came to mind as the [news](#) broke about PayPal co-founder Peter Thiel bankrolling Hulk Hogan’s lawsuit against Gawker media.

The revenge part? In 2007, Valleywag, a now defunct Gawker blog, published a piece on Thiel, outing him as gay. Thiel apparently waited, patiently, for an opportunity to support litigation against Gawker, a media company that traffics in gossip.

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When in 2012 Gawker posted a video of Hogan – whose real name is Terry Bollea – having sex with a friend’s wife, Bollea sued for invasion of privacy and in March won a \$140 million award. On Wednesday Florida Circuit Judge Pamela Campbell upheld the verdict and the award; Gawker intends to appeal.

But, news reports revealed that Thiel funded the suit — possibly to the tune of \$10 million in legal fees – as part of a plan to get back at Gawker for invading his privacy.



Now the battle lines are forming.

On one side, people are yelling words like “maintenance,” “barratry” and “champerty.” In legal terms, maintenance means “helping another to push a suit.” “Champerty” is maintenance in exchange for a financial stake in the case, and “barratry” is doing both on a regular basis.

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Hulk Hogan sues Gawker over sex tape

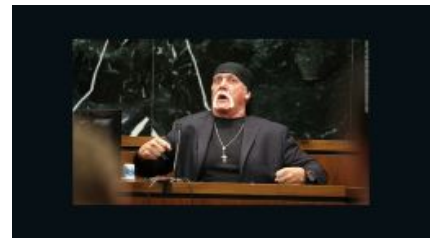
02:00 - Source: [CNN](#)

In common law, all these were prohibited, and they're still "dirty words." Historically, we wanted to ban these kinds of things because they would encourage frivolous lawsuits. We were concerned that the wealthy would, as English jurist William Blackstone warned in the 18th century, "buy up claims, and, by means of their exalted and influential positions, overawe the courts, secure unjust and unmerited judgments, and oppress those against whom their anger might be directed."

This sounds a lot like how some people describe Thiel's actions.

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But, for the most part, we have done away with bans on maintenance, barratry, and champerty. In fact, doing so cleared the way for contingent fee representation, and now outside funding for litigation is not exactly rare, and it isn't even always so nasty.



When the ACLU represents a party in an important civil rights case, isn't that a third party funding a case to promote an agenda? What about the NRA? It happens all the time, and when it happens to support a cause someone likes, you don't hear the word "champerty."

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Gawker founder speaks out about Hulk Hogan trial

01:29 - Source: [CNN](#)

In my practice, when I am defending someone's free speech rights — say, a poor defendant — I am often confronted with a well-funded, censorship-minded individual on the other side. What to do? We have often turned to "crowdfunding" platforms or benefactors to raise legal defense funds.

Perhaps passing the collection basket to protect free speech seems, on the surface, more noble than a lone billionaire exacting payback on a media site. But, I won't claim it to be so. Because there is another way to look at this. Is Thiel really a free speech bully out to destroy the media? He has, in the past, also funded the Committee to Protect Journalists. Is that a contradiction? Perhaps, if you look at the world from a lazy, binary, point of view.

But, from another point of view, Thiel is willing to do what it takes to protect what little privacy we have left. Remember, his vengeance is not aimed at Gawker for writing a mean opinion about him, it is for invading his privacy. Thiel had the right to choose how and when he came

out as gay, and Gawker took that away from him.

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Hogan: Sex tape was a 'horrible choice'

02:13 - Source: [CNN](#)

That Thiel wanted to teach Gawker a lesson, nearly a decade later, when the company invaded Hulk Hogan's privacy, is unsurprising. In fact, if the real principle here is privacy, and not censorship, the texture of the debate becomes a lot more complex than First Amendment advocates like myself might have reflexively believed.

Nevertheless, even if Thiel's motivations are defensible, some say his actions provide a "blueprint" for how the wealthy and powerful can control the media. Those views are, I think, naïve. This isn't exactly the most complex plan, and Thiel is hardly the first individual to come up with the idea to harass an enemy through proxy litigation.

Further, those who wish to engage in private censorship have done so for years without the need for the complexity of third parties or the patience to wait years for the right case. SLAPP suits are rampant. SLAPP stands for Strategic Lawsuit Against Public Participation.

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Thiel: College diploma is a dunce hat

05:28 - Source: [CNN](#)

In states without anti-SLAPP laws, the wealthy can just file frivolous lawsuits, punishing critics and muzzling free speech by bankrupting media and nonmedia defendants alike – just through the costs of defense. (Which is why [we need a national anti-SLAPP law](#).)

Beyond this, billionaires have always had the ability to just go out and buy the newspaper, rather than fight it. After losing a major SLAPP suit (that loss is on appeal) casino magnate Sheldon Adelson simply purchased the Las Vegas Review Journal. After casino mogul Steve Wynn [lost one last year, he lobbied to try to repeal the Nevada anti-SLAPP law](#)

[Related article Is Hulk Hogan's sex tape newsworthy?](#)

The fact is, the rich and powerful will always use their influence to try to distort the system.

When I started writing this piece, it was my intention to pillory Thiel. I must admit that as I've studied the issue, I've had to refine my view. I ask you readers to discount most shrill voices on both sides of the debate, and realize there is more nuance here than you might think.



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It is true that outside litigation financing might have been wrong at one time, but it has become normal. Are Thiel's actions ushering in a new era of censorship? I think not any worse than we've suffered already.

Gawker is the media, and thus I reflexively find myself defending it. But, when we look at what got Gawker here in the first place – outing a man who hadn't yet decided to come out, posting a sex tape, we perhaps realize that maybe the real fight here is about privacy, and not freedom of the press.

Of course, in the end, maybe the press suffers. But are its wounds really received in an honorable battle? Gawker is not publishing the Pentagon Papers or the Panama Papers. Gawker is not speaking truth to power. Gawker is doing what its name suggests.

When it comes to the First Amendment, that isn't supposed to matter. But, perhaps that gets us back to the second maxim I began with: "That's why we can't have nice things." Rather than Thiel being the bad guy here for financing an invasion of privacy suit, we ought to realize that any fingerprint stains on the First Amendment in this case come from Gawker

If the media can't behave responsibly when it comes to privacy, it may find that there are more Peter Theils and more Hulk Hogan juries out there willing to force them to do so.

And in the end, none of us can have nice things.

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