



Even Gawker haters should fear the strategy Peter Thiel is using to destroy Gawker

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This week we learned that billionaire Peter Thiel, who made his fortune as a co-founder of PayPal and an early investor in Facebook, has been bankrolling a lawsuit that could drive Gawker Media out of business. The story was first [reported by Forbes](#) and confirmed by Thiel himself in a [Wednesday interview with the New York Times](#).

"It's not like it is some sort of speaking truth to power or something going on here," Thiel argued. "The way I've thought about this is that Gawker has been a singularly terrible bully. I refuse to believe that journalism means massive privacy violations."

Thiel, in other words, sees his lawsuit as a public-spirited attempt to enforce norms of decency and respect for personal privacy.

But whatever you think of the merits of the particular lawsuit against Gawker, critics warn that this kind of arrangement — where a wealthy person funds third-party lawsuits against a common foe — is ripe for abuse.

"The law used to disapprove of this kind of arrangement," says Walter Olson, a legal expert at the Cato Institute. For centuries, he argues, courts in the United Kingdom, United States, and elsewhere recognized that wealthy people could use third-party lawsuits as a weapon against those they disliked — and had rules in place to prevent this power from being abused.

But laws limiting this kind of third-party involvement have fallen out of favor in recent decades, opening the door for billionaires like Thiel to use their vast resources to wage war on people they don't like.

In 2012, Gawker published a video of former professional wrestler Terry "Hulk Hogan" Bollea having sex. Hogan said the video was taken without his knowledge or consent, and he sued Gawker for invasion of privacy.

In March 2016, a jury awarded Hogan \$140 million in damages. The ruling is still being appealed, but if it's upheld it could put Gawker Media — which publishes sites like Jezebel and Gizmodo in addition to Gawker itself — out of business.

The First Amendment gives American media organizations greater latitude than they enjoy in most other developed countries. But US media organizations don't have unlimited freedom. One of the key constraints is personal privacy. Revealing certain kinds of information — especially about people who are not public figures — can get a media organization trouble.

And Gawker exercises this freedom more aggressively than most other media organizations. In one of its most infamous stories, Gawker reported on a New York media executive soliciting the services of a male escort. The piece was later removed after founder Nick Denton decided that the story had gone over the ethical line.

Outing gay people is something of a specialty for the digital gossip rag. Gawker was one of the first to report that CNN anchor Anderson Cooper was gay in 2009. In 2013, Gawker reported that Fox News anchor Shepard Smith was romantically involved with a male staffer.

And one of the early targets of Gawker's outing campaign was Peter Thiel. A 2007 post called "Peter Thiel is totally gay, people" apparently marked the start of Thiel's vendetta against the site. "It's less about revenge and more about specific deterrence," Thiel told the Times on Wednesday, indicating he viewed his funding of lawsuits as bigger than just its previous posts about him.

Still, the Hogan video represented a new low for Gawker. The video of Hogan having consensual sex with the wife of a radio shock jock (who arranged the encounter and made the videotape) had no obvious news value, but Gawker decided to publish it anyway.

In court, Hulk Hogan's lawyers sought to portray Gawker as an organization without a moral compass. It wasn't a hard argument to make. At one point, one of Hogan's lawyers asked a former Gawker editor if there were any situation in which a celebrity sex tape would not be newsworthy.

"If they were a child," replied the editor, Albert Daulerio. "Under what age?" the lawyer asked.

"Four."

As a result, arguments about media freedom fell on deaf ears in the jury box. Jurors didn't buy arguments that the First Amendment protected Gawker's right to humiliate random celebrities by publishing video of their most intimate moments.

Even if you think Gawker stepped over the line in publishing the Hogan sex tape — and personally I do — there's still a lot of reason to worry about the prospect of wealthy people using lawsuits as a weapon against people they don't like.

Gawker isn't the only publication to be targeted by a disgruntled billionaire. Last year, the liberal magazine Mother Jones defeated a defamation lawsuit filed by Republican donor Frank

VanderSloot. Winning the lawsuit cost Mother Jones, a relatively small nonprofit organization, and its insurance company \$2.5 million in legal fees.

If VanderSloot's goal was to punish Mother Jones for writing an accurate but unflattering story about him, a loss was almost as good as a victory. His lawsuit sought \$74,999 (staying just under the \$75,000 threshold that would have allowed Mother Jones to move the case to federal court and away from an Idaho jury that might have favored the hometown plaintiff). So "winning" the lawsuit cost Mother Jones 30 times as much as the amount it would have had to pay if it had lost.

What was really ominous was what happened after VanderSloot's loss. He "announced that he was setting up a \$1 million fund to pay the legal expenses of people wanting to sue Mother Jones or other members of the 'liberal press.'"

As far as I know, no one has taken him up on the offer. But the threat to freedom of the press is obvious. Any news organization doing its job is going to make some enemies. If a wealthy third party is willing to bankroll lawsuits by anyone with a grudge, and defending each case costs millions of dollars, the organization could get driven out of business *even if* it wins every single lawsuit.

That appears to be the situation Gawker is in. The Hogan lawsuit is not the only lawsuit Gawker is facing. Hogan's attorney, Charles Harder, is also leading two other lawsuits against Gawker. We don't know for sure which lawsuits Thiel is funding, but ultimately it may not matter. If Thiel keeps paying for people to sue Gawker, sooner or later the legal costs will drive Gawker out of business.

"Some people following the Thiel story appear to be surprised that these weapons can be used by rich and powerful people in order to get their way," Olson tells me. But he argues that they shouldn't be.

Olson argues that if you went back a century or two and talked to British or American legal scholars, "they'd say of course these things would be used by the rich and powerful if you allowed them." Under doctrines called champerty and maintenance, the law used to bar unrelated third parties from paying someone else to engage in litigation and financing a lawsuit in exchange for a share of the damages.

But states have loosened these laws over the past 50 years, in part because lawyers began to see easy access to the courts as being in the public interest. This was driven in part by the rise of public interest litigation — think, for example, of an environmental group finding a third-party plaintiff to sue a company to stop an environmentally sensitive development project.

"Awards are constantly being given to projects in which some wealthy person decides that someone needs to be sued, finds someone who has standing as a plaintiff, and generously funds their litigation," Olson says.

But whether you view this kind of litigation as public-spirited or vexatious will often depend on your politics. After all, Thiel portrays his campaign against Gawker as a kind of public interest litigation.

"I can defend myself," Thiel told the Times on Wednesday. "Most of the people they attack are not people in my category. They usually attack less prominent, far less wealthy people that simply can't defend themselves." Thiel added that "even someone like Terry Bollea who is a millionaire and famous and a successful person didn't quite have the resources to do this alone."

"I don't expect to make any money from this," Thiel added. "This is not a business venture."

Whether or not you find Thiel's specific complaints about Gawker persuasive, the larger problem is that this kind of tactic systematically shifts power from the media to wealthy people. Wealthy people can use this kind of third-party lawsuit to inflict harm on publications that anger them whether or not their lawsuits ultimately prove meritorious. And that, in turn, will put pressure on publications to tread lightly when reporting on wealthy people.