

# How to Unmask the Internet's Vilest Characters

By EMILY BAZELON

In June 2009, Lani (a nickname) got a [Facebook](#) message from a stranger alerting her to nude photos of herself that had been posted on a Web site called Private Voyeur — along with her name, her workplace and the city she lives in. The post, titled “Jap Slut,” was published anonymously by someone who used a proper noun followed by numbers as an Internet handle.

Lani went to the police. She suspected that the poster was an ex-boyfriend who, she says, threatened to kill himself if she didn't pose for naked photographs toward the end of their abusive relationship. According to Lani, when the police questioned her ex-boyfriend, he said that he had distributed the photos among his friends but that he wasn't the one who put them on the Web. The police then told Lani they couldn't help her, so she contacted Private Voyeur, which agreed to take the post down. A few months later, though, a new post appeared, with the same photographs and the same information identifying her.

You might think that the legal system offers an easy solution to problems like these — but it doesn't. According to free-speech advocates, there's a good reason for that: Stopping trolls, which is the term used for those who abuse the privilege of the Web's anonymous open mike, would mean choking off other critics, which obviously has undemocratic implications. After all, anonymity is a trusted tool of dissidents and whistle-blowers.

Congress and the courts have largely heeded this argument, too. Section 230 of the 1996 Communications Decency Act — the law that matters most for speech on the Web — holds that online service providers aren't responsible for offensive content if they've tried to block a

little of it. In other words, if you edit some of the comments on your site, you're not liable for the one with a harmful lie that you didn't edit, as a newspaper would be if it published a libelous letter to the editor.

This is fair enough: Web sites with open comments aren't really like newspapers. But in interpreting Section 230, federal appeals courts went a step further. They

have said that the law gives the providers and sites a free pass for essentially all content that users post. That's why Private Voyeur didn't have to police its pages for the reappearance of Lani's photos. It's also why [Google](#) doesn't get in trouble for surfacing these posts in search results, which is perhaps even more damaging.

There's no question that the Web would be a more civilized place if Congress changed Section 230 to hold online service providers and Web sites liable for posts like "Jap Slut" (or Google liable for indexing them) if they have clear notice about what's wrong with the content and still disseminate it. That's how copyright law works online. What's tricky about extending this approach is that some posts would be deleted not because they actually defame or violate privacy but because someone *complains* that they do. The heckler's veto, as it's called, is anathema to free-speech advocates, as well as to the big Internet companies, which don't want to be responsible for any user content, given the Web's volume and pace. So don't look for Section 230 to change any time soon.

And that leaves people like Lani in a lousy situation. Their only option for using the law to punish trolls is to sue for defamation or invasion of privacy, as Lani has done. The problem is that while she could win a court order unmasking the troll's identity (and ultimately win damages), it's hard to bring such a suit without making her own humiliation complete. Though the "Jap Slut" post and pictures are public, they're still largely out of sight. Lani's children and parents don't know about them, and neither do the customers at her business. But if she were to file this kind of suit, Lani would risk linking the photos to her name forever, not just in the Web's dark corners but also in court documents and news coverage.

Which is why we need to pursue another way to take legal action — one that has been out of favor but ought to be given new life in the Internet age. We should encourage more anonymous-plaintiff lawsuits.

Fighting an anonymous smear with an anonymous lawsuit is a counterintuitive idea — and a lot of judges, including the judge on Lani's case, are reluctant to try it. But there's some precedent in American law for suing anonymously when a case revolves around private sexual or medical facts. That's how we got *Roe v. Wade*. "These kinds of suits don't squelch much speech, but they still address the harm," points out the [University of Maryland](#) law professor Danielle Citron, an expert on the topic. Indeed, if more people sued anonymously, the trolls might

understand that hiding behind an online handle doesn't mean you can't be traced — and there might be fewer hateful posts as a result. Courts have ordered Google to turn over I.P. addresses in a few of these cases. The lawyers who represent Lani have two other clients who succeeded in suing their trolls anonymously, and who won settlements while remaining unknown to the public (though not to the defendant) throughout. The lawyers are starting a nonprofit, Without My Consent, to help bring more such cases.

Of course, anonymous lawsuits come at a cost, given the public's legitimate interest in knowing all the facts of a case. That's why courts generally apply a balancing test, weighing the plaintiff's right to privacy against the constitutionally protected presumption of openness in court. But the Internet puts a thumb on the scale for the plaintiff, as the U.S. Court of Appeals for the 11th Circuit recognized in a smart recent ruling involving another kind of troll: the Girls Gone Wild video franchise.

The plaintiffs — B., J., S. and V. — wanted to sue Joe Francis, founder of Girls Gone Wild, for emotional distress because they'd been filmed flashing their breasts or having sex when they were too young to legally consent. (Francis and his company have paid millions of dollars in fines for doing this repeatedly; Francis also went to jail on related criminal charges.) These four women said that if they had to bring the case or testify under their own names, they would risk becoming "Internet sensations permanently identified with the videos." As the 11th Circuit noted in granting the plaintiffs' request to sue anonymously, another woman who sued Girls Gone Wild under her own name has been permanently tagged by name as a "breast-flasher" on the highly trafficked Internet Movie Database.

After a trial in April, an all-woman jury agreed that Francis's behavior was "atrocious and utterly intolerable." But they said the plaintiffs hadn't shown he intentionally caused them emotional distress. The women were not awarded money damages. At the same time, their names, amazingly, were never in the press. This seems right. The law shouldn't guarantee victory. But it should let you fight the trolls without doing their shaming work for them.