

Lexia: Undergraduate Journal in Writing, Rhetoric & Technical Communication

Volume V

2016–2017

[\[Internet Privacy: Dictated by Trolls?\]](#)

[Catherine Evans]

James Madison University

In the age of social media, our jobs, relationships, and social lives can take place almost entirely over the internet. We expect to see people's personal information available at a moment's notice, and many complain that privacy has become a thing of the past. However, there are still many aspects of how we use the internet that we would prefer to keep to ourselves. But how can we be assured of the privacy of this information? Does posting on the internet automatically waive our right to control how that information is used?

Imagine waking up in the morning to find information you *thought* was private plastered online for your significant other, friends, co-workers, relatives, and employer to see. Now imagine that the information shared was your response to a Craigslist request for a kinky sex partner and included pictures of yourself in various compromising positions. For over 150 men, this nightmare became a reality when a self-proclaimed internet troll decided to teach them a lesson about the dangers of assuming *anything* online.

The Experiment

In 2006, a Seattle-based web developer named Jason Fortuny decided to conduct an online "experiment." He took explicit photos from a real ad and reposted them as his own, posing as a 27-year-old woman seeking a "str8 brutal dom masculine male" in order to see how many responses he could get (Schwartz). He wrote on his web journal that he received "178 responses, with 145 photos of men in various states of undress" (Baio). These responses included full email addresses (personal and business) and telephone numbers (Jesdanun).

Experiments such as these are not a rarity. In 2006, just before Fortuny posted his Craigslist ad, a journalist named Simon Owens decided to see how many people

responded to ads in the “no strings attached” section of the site. He picked three cities (Houston, New York, and Chicago) and created four different fake ads with different emails for each. He then recorded the number of responses to each ad, offering advice for other straight males along with observations about how much information people were willing to share with complete strangers. Owens did not, however, share any of the information he was given. His most astute observation hinted at what was to come: “if a really malicious person wanted to get on Craigslist and ruin a lot of people’s lives, he easily could” (Owens). It would be simple, he surmised, for a person to ruin someone’s life with readily shared information.

The Controversy

Fortuny, modelling his experiment after Owens’, decided to do just that. In a shocking move, he posted every single one of the over 150 responses, complete with photographs and personal information, to his personal blog and to Encyclopedia Dramatica, a Wikipedia-like site that delights in internet trolling (Baio). Many of the men were immediately identified, leading to marital separations and people losing their jobs (Schwartz). One man, recognized for using his company email, was fired for sending a photograph exposing himself in his cubicle at work (McNerthney). Commenters threatened to physically harm Fortuny, causing him to remove his own contact information from the web (Schwartz). This is by no means the first or last time that presumably private information has become public; in fact, a copycat prank surfaced days after Fortuny’s.

Fortuny’s intentions, however, make this case particularly intriguing: he identifies as an internet troll. In the late 1980s, users of the internet began using this word to describe “someone who intentionally disrupts online communities” (Schwartz).

As the internet has advanced, it has come to mean seeking “lulz,” which is the “joy of disrupting another’s emotional equilibrium”—a goal which is becoming easier to meet as people share more and more personal details online (Schwartz). Fortuny even spoke at the “Lulz Conference” about his experiment (*Doe v. Fortuny* 10). In an interview with the *New York Times*, Fortuny disclosed that trolling “allows [him] to find people who do stupid things and turn them around” (Schwartz). Despite the seeming desire to educate people about internet safety by demonstrating what could happen—this defense appeared to be ever-so-slightly less than unethical—the troll refused to take the pictures and information down from Encyclopedia Dramatica or his own blog.

The Legal Case

Although many commenters agreed that the moral lines Fortuny crossed were reprehensible, there was much debate as to the legality of his actions. NBC News, along with many internet speculators—and Fortuny himself—seemed to think that neither the troll nor the victims had acted illegally (Jesdanun). This argument appeared to stem from the fact that the responders willingly gave up their personal information, which, according to proponents of this claim, meant that the information no longer qualified as private.

Others believed that Fortuny could be held accountable for posting under false pretenses on Craigslist. Craigslist Chief Executive Jim Buckmaster stated that Fortuny had indeed violated the site’s policies: the ad in question, he said, was removed several times, only to be reposted (Jesdanun). Some believed that Fortuny could be held accountable for “intentional infliction of emotional distress,” which, given his self-proclaimed status as a troll, may have been easier to prove than in other cases (Baio). Another argument was that Fortuny publicly disclosed private facts, making this a legal

issue surrounding privacy. While analyzing a different privacy scandal, Julie Hilden stated that the argument of privacy could only be used if the disclosure was public, the facts were private, and the publication was “highly offensive” (Hilden). The Fortuny case did appear to meet these requirements, though there was still debate about whether the disclosed information qualified as “private” after being sent via Craigslist.

In February 2008, two years after the incident, one responder sued Fortuny in the state of Illinois. Before filing, the anonymous responder had sent the troll a Digital Millennium Copyright Act (DMCA) takedown notice to remove the material from the blog, to which Fortuny sent a counter-notice and restored the information (“Doe v. Fortuny”). The responder then took the matter to the Illinois Northern District Court on the grounds that Fortuny had “violated copyrights and invaded his privacy by posting his photograph and personal information online” (“Doe v. Fortuny”). Fortuny claimed he was not the one who posted the information to Encyclopedia Dramatica, so the plaintiff wanted an injunction to force Fortuny to remove the photograph and personal information only from his blog (“Doe v. Fortuny”). Fortuny, who chose to represent himself, attempted to file a motion to dismiss on the grounds that the court did not have legal jurisdiction over him, a Washington resident; however, this effort was unsuccessful.

Fortuny was brought to court for violation of the Copyright Act. Because the ad was posted through Craigslist, the Craigslist Privacy Policy applied. This policy requires that users agree not to “make available content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party” applied (*Doe v. Fortuny* 4). Because the information shared was deemed private to the individuals, the victims had copyright on their photographs and responses. The plaintiff claimed that Fortuny’s

actions also caused him to suffer from “humiliation, embarrassment, lost opportunity of keeping his family together, and emotional distress” (*Doe v. Fortuny* 7). He asserted that Fortuny acted with “actual malice” by intruding on his privacy (*Doe v. Fortuny* 11). Doe then demanded a trial by jury, which was granted.

Following the trial, the court ordered Fortuny to pay the plaintiff \$35,001 in statutory damages for violating the Copyright Act, \$5,000 as compensation for disclosing private information, \$32,362.50 in attorney fees, and \$1,989 in additional costs (*Doe, Default Judgement Against Fortuny* 1). In the end, the troll had to pay a total of \$74,352.50—just shy of what the plaintiff had originally demanded. Fortuny was also required to remove the material from his website once and for all (*Doe, Default Judgement Against Fortuny* 1).

The Conclusion

The fact that people, in 2006, would have willingly divulged so much personal information to strangers online is shocking. Now, ten years later, almost half the U.S. population are Facebook users—not to mention users of other forms of social media (“Newsroom”). In the age of social media, we are able to live both our personal and professional lives online. It has become common practice for an employer to look up a potential hire and keep track of their postings on social media. So much of our private information is available for others to see, and the potential for abuse is great. Keeping control of this data is at the forefront of online privacy (Walrave 1).

Privacy is not seclusion, however. To say that it is would be to say that anything we share, whether spoken or written, has become public. Rather, privacy is control over how much information we share with different people or groups (Walrave 1). This idea becomes distorted online because we cannot truly know who is seeing our information.

Even on social media, we expect to have some control over who sees our information. We can set privacy settings so that only certain people have access to our posts and photos, but these settings only go so far—as anyone who has ever been sent a screenshot of a supposedly private conversation can attest to. As social media users, we are only truly aware of a very small percent of the people we are sharing information with—however, if someone we did not intend to have this information used it against us maliciously, we would rightly feel that our privacy had been breached.

In the case of Fortuny’s “Craigslist Experiment,” users believed that they were sharing information only with a young woman interested in sex. Posing under false pretenses, Fortuny was able to seize control of this information and use it against the responders’ will, resulting in a loss of privacy. Though they were brought up in court, the results of this breach are unrelated to the issue of privacy and are hardly under the perpetrator’s control (though perhaps intended). For example, the man who sued Fortuny claimed that he lost the opportunity to keep his family together due to Fortuny’s actions. However, he can hardly claim that Fortuny made him respond to the ad or attempt to cheat on his wife. The real crime was the loss of control over his information, who received it, what was done with it as a consequence, and his loss of privacy.

Laws should (and do) exist in an attempt to prevent private information from becoming public in this way. The Illinois District Court ruled circumstantially that Fortuny’s actions violated the Copyright Act and interfered with the responders’ privacy. But what happens when the perpetrator is not easily recognizable? There have recently been numerous celebrity nude leaks across the internet. In some of these cases, their intimate photos were hacked by third parties that are quite difficult to identify. Tracking

down the hacker (when possible) is a time-consuming and expensive process, and the image or information has already had time to circulate around the internet (Steinberg). What use are these laws if they cannot be enforced in the anonymous environment of the internet? And how do we prevent situations like the Fortuny case, where the information he spread was actively given to him, albeit under deceptive circumstances?

The simple answer is that preventative measures will only go so far to protect us from people interfering with online privacy. It is important that courts make clear the consequences of violating another person's privacy on the internet, as they did in the Fortuny case. We do not waive our legal right to privacy when we post, as only the intended audience should be able to see our information. If anyone beyond this group has seen this data, then the Copyright Act has been breached. Our legislation needs to catch up to court decisions to create a clearer deterrent for hackers and trolls. It is possible that, had Fortuny known the legal consequences of his actions, he would not have been so brazen about his experiment.

However, the fact remains that hackers and trolls, who can dictate the audience of our information, exist in the world today. It is therefore vital that we understand how to protect ourselves on the internet. Personal control over our content on the internet is limited, unfortunately, so we need to be careful about what information is available for the taking. Until clearer laws or stricter internet security is enacted, we must rely on our own judgement to keep us safe from trolls such as Jason Fortuny.

Works Cited

- Baio, Andy. "Sex Baiting Prank on Craigslist Affects Hundreds." *Waxy*, 8 Sept. 2006, http://waxy.org/2006/09/sex_baiting/, Accessed 3 December 2016.
- Cabron, Lou. "Jason Fortuny Speaks." *10ZenMonkeys*, 23 Sept. 2006, <http://www.10zenmonkeys.com/2006/09/23/jason-fortuny-speaks/>. Accessed 3 December 2016.
- Doe v. Fortuny. Default Judgement Against Fortuny. Sept. 4, 2009. 08 C. 1050. Illinois Northern District Court. *Digital Media Law Project*. Web. 4 December 2016. Available at:<http://www.dmlp.org/sites/citmedialaw.org/files/2009-04-09-Default%20Judgment%20Against%20Fortuny.pdf>.
- Doe v. Fortuny. 08 C. 1050. Illinois Northern District Court. 2008. Web. <http://www.dmlp.org/sites/citmedialaw.org/files/2-20-2008-Fortuny%20Complaint.pdf>
- "Doe v. Fortuny." *Digital Media Law Project*, 8 Aug. 2008, <http://www.dmlp.org/threats/doe-v-fortuny>. Accessed 4 December 2016.
- Hilden, Julie. "Are Accounts of Consensual Sex a Violation of Privacy Rights? The Lawsuit Against the Blogger 'Washingtonienne'" *FindLaw*, 21 June 2005, <http://writ.news.findlaw.com/hilden/20050621.html>. Accessed 4 December 2016.
- Jesdanun, Anick. "Prankster Posts Sex Ads Replies Online." *NBC News*, 12 Sept. 2006, <http://www.nbcnews.com/id/14791788/#.WENYGeYrLid>. Accessed 3 December 2016.

- McNerthney, Casey. "Kirkland Man Sued for Fake Sex Ad on Craigslist." *SeattlePI*, 6 Aug. 2008, <http://blog.seattlepi.com/seattle911/2008/08/06/video-kirkland-man-sued-for-fake-sex-ad-on-craigslist/>. Accessed 4 December 2016.
- "Newsroom." *Facebook*, 2016, <http://newsroom.fb.com/company-info/>. Accessed 4 December 2016.
- Owens, Simon. "Your Chances of Getting Laid Through Craigslist: A Bloggasm Case Study." *Bloggasm*, <http://bloggasm.com/your-chances-of-getting-laid-through-craigslist-a-bloggasm-case-study>. Accessed 3 December 2016.
- Regan, Tom. "Our Scrambled Sense of Online Anonymity." *Christian Science Monitor*, 27 December 2006.
- Schwartz, Mattathias. "The Trolls Among Us." *New York Times Magazine*, 3 August 2008.
- Steinberg, Joseph. "Can You Be Arrested - Or Sued - For Viewing Or Sharing Nude Celebrity Photos? Here Are Some Relevant Laws." *Forbes*, 24 Sept. 2014, www.forbes.com/sites/josephsteinberg/2014/09/24/can-you-be-arrested-or-sued-for-viewing-or-sharing-nude-celebrity-photos-here-are-some-relevant-laws-2/#33ab2e5b7299. Accessed 4 December 2016.
- Walrave, Michel, et al. "The State of Online Self-Disclosure in an Era of Commodified Privacy." *Cyberpsychology: Journal of Psychosocial Research on Cyberspace*, vol. 10, no. 1, 2016, pp. 100-107.
- Zharkovsky, Daniel. "'If Man Will Strike, Strike Through the Mask': Striking Through Section 230 Defenses Using the Tort of Intentional Infliction of Emotional Distress." *Columbia Journal of Law and Social Problems*, vol. 44, no. 193, 2008, pp. 193-233.