



Hulk Hogan Wins Big Verdict

Insights

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In what might be a cautionary tale of the privacy risks for organizations who do business in buying and selling information, last Friday, a Florida jury awarded Hulk Hogan, whose true name is Terry Bollea, \$115 Million in damages against Gawker.com and its former owner, Albert J. Daulerio, for the website's portrayal of him having sexual relations with a woman not his wife. Bollea sued Gawker after the website published a recording of him having sex. Filed in 2012, Bollea's complaint alleged: (1) invasion of privacy by intrusion upon seclusion, (2) publication of private facts, (3) violation of the Florida common law right of publicity, (4) intentional infliction of emotional distress, and (5) negligent infliction of emotional distress. Bollea later amended his complaint to allege copyright infringement.

Bollea's complaint is noteworthy for several reasons: First, Gawker successfully defended much of Bollea's attempts at gaining preliminary injunctive relief against the website on grounds that a court's granting of an injunction constituted a prior restraint on speech under the First Amendment. A federal district court in Florida agreed. Gawker tried the same approach in the state trial court by stating that its actions were protected by the First Amendment's protection of journalism—a fact the jury rejected.

First Amendment restraint aside, Bollea's jury award highlights a risk for companies or organizations (as well as their employees) that use content, data, or other people's images in manners that could be perceived by others to violate common law privacy rights. Often forgotten in the mix of statutory privacy protections such as HIPAA, PIPEDA, or the EU Privacy Directive, common law tort claims for privacy violations on a state law level remain alive and well as tools of privacy right enforcement against companies and employees as the Gawker case shows. More specifically, the newer "invasion of privacy by intrusion upon seclusion" tort alleged by Bollea has been adopted by multiple courts in the United States and Canada as a viable cause of action for breaches of privacy.

While the media considers the impact of the Gawker case, Gawker has announced it is likely to appeal. In the meantime, companies and their employees are reminded to be aware of common law claims in addition to the statutory patchwork of privacy laws by which they may be regulated. As mentioned in the comment to Restatement (Second) of Torts, Section 652D upon which Bollea based his claims:

Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters. . . . When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy