Copyright Trolling
An Empirical Study of “John Doe” Litigation

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We all know that the Internet is full of porn, but ...
2,004 Cases filed Jan-Jun 2014

<table>
<thead>
<tr>
<th>Category</th>
<th>Freq.</th>
<th>Percentage</th>
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<tr>
<td>Other Copyright</td>
<td>1,027</td>
<td>51.25</td>
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<td>Pornography</td>
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<td>41.27</td>
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<td>Other John Doe</td>
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<td>7.49</td>
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When did it happen?
How did it happen?
Is now the time to panic?
Copyright Litigation in US District Courts

- Regular Copyright
- Pornography
- Other John Doe

Suits Filed by Year (Quarter)
Permissive Joinder

- Plaintiff files suit in the form “Digital Sin v. Does 1 through 5000”
  - One filing fee ($350)
  - Cases are not intended to go to trial
- Plaintiff files a motion for early discovery to obtain names + addresses from ISPs
- Plaintiff demands settlement (threatens exposure, statutory damages)
  - Does not usually bother to serve defendants so named
  - $2,000 to $4,000 settlements are common
Statutory Damages

- Statutory damages range from $750 to $150,000 (in the U.S.)
  - No requirement of actual damage
  - Deterrence
  - Reparations
  - Monetizing infringement (and non-infringement!)
How?

Pornography is a great vehicle for ‘extortion’

- Threats of naming and shaming, exposing other pornography downloading
- Note the irony that the thing people don’t want to be accused of not illegal downloading per se, but consuming legal pornography.

  - It might be true that file-sharers get less sympathy because of social taboos about pornography, but then so do the plaintiffs.
Why does this make us uncomfortable?

- These are not ‘frivolous’ suits as such
  - Although some might be. Most of the time there really a lot of infringement

- Lack of due process.
  - Discovery becomes a hunting license.
  - Plaintiff’s lawyers don’t care if you did not do it. If you are the account holder, you have to prove your innocence.
  - The rational innocent defendant will settle in almost every case

- Misuse of litigation process
  - Deterrence & Compensation 😊
  - Monetization for its own sake 😞
  - Punishments seem arbitrary and disproportionate,
  - Joinder seems like exploiting a loophole
  - Methods involve creepy surveillance and ‘extortion’
    - Some plaintiff’s attorneys are very shady (citations to sanctions orders in paper)