



14TH ANNUAL

# INTELLECTUAL PROPERTY SCHOLARS CONFERENCE

UC BERKELEY SCHOOL OF LAW, BOALT HALL

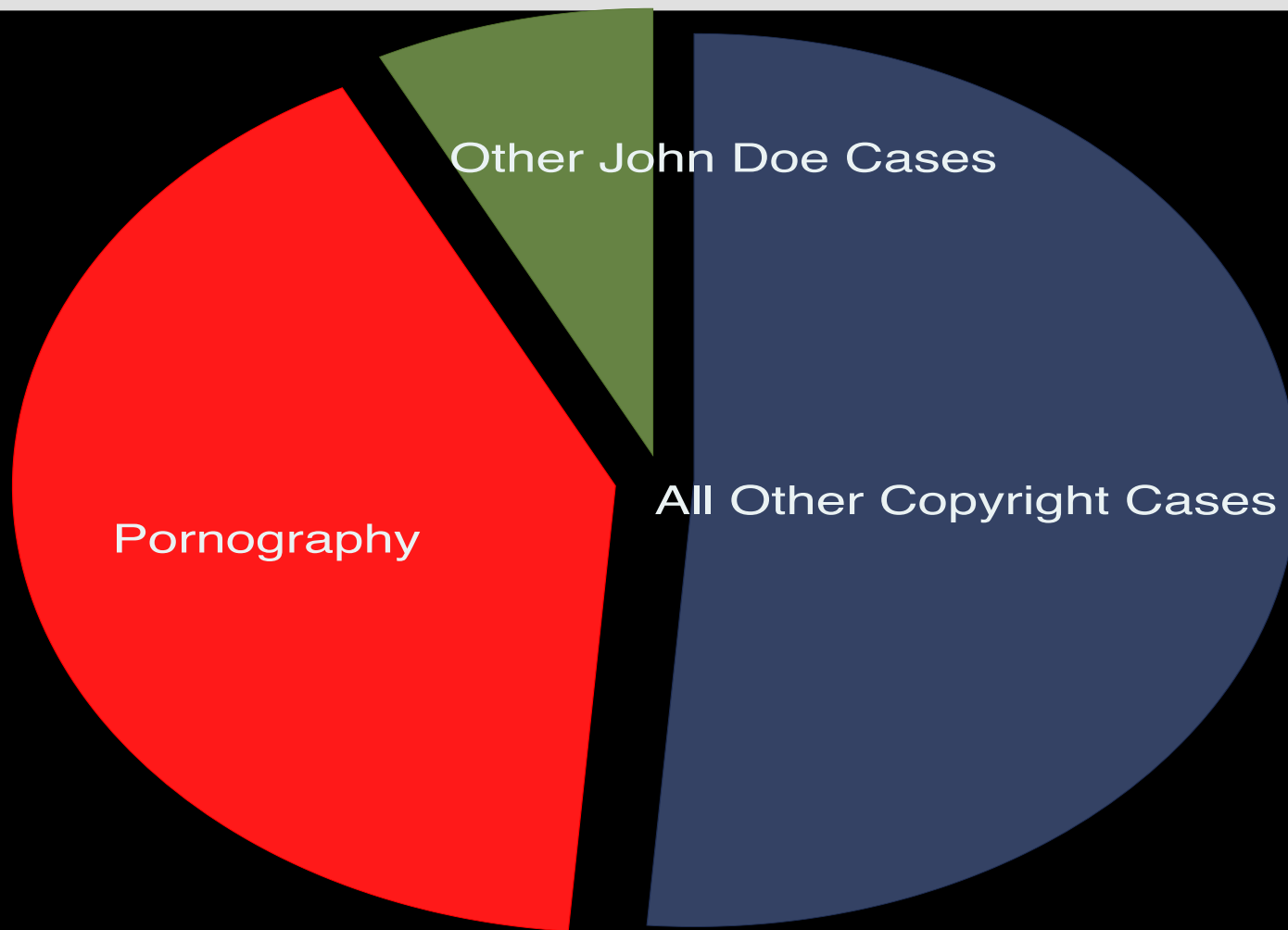
AUGUST 6 - 8, 2014

## *Copyright Trolling*

*An Empirical Study of “John Doe” Litigation*

*Prof. Matthew Sag,  
Loyola University Chicago School of Law  
August 8, 2014*

**We all know  
that the Internet  
is full of porn,  
but ...**



**2,004 Cases filed Jan-Jun 2014**

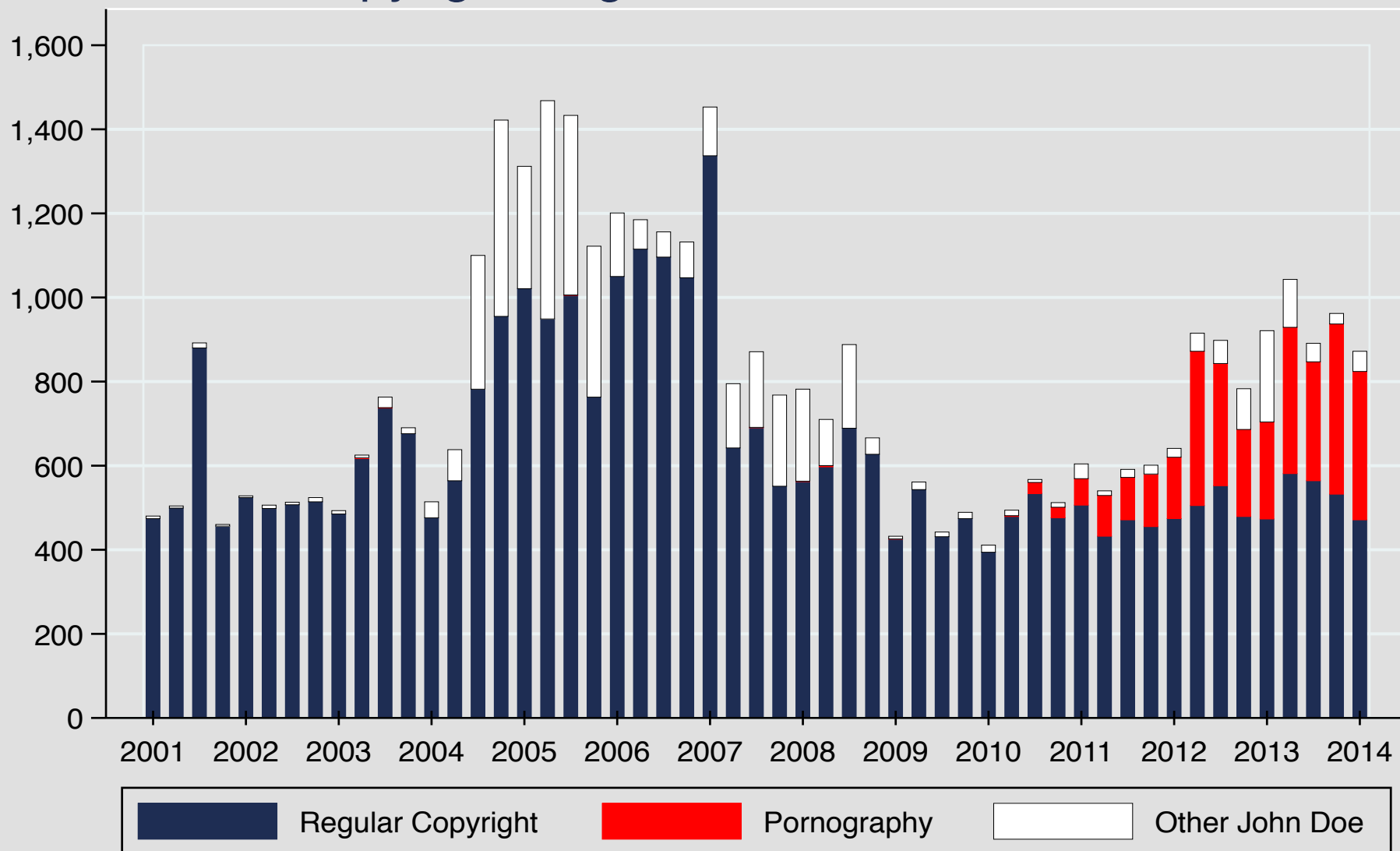
	<u>Freq.</u>	<u>Percentage</u>
Other Copyright	1,027	51.25
Pornography	827	41.27
Other John Doe	150	7.49

**When did it happen?**

**How did it happen?**

**Is now the time to panic?**

## Copyright Litigation in US District Courts



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

# How?

## Statutory damages

Illinois > Champaign > 61821 > 2606 W John St



### LG Electronics 55LN5400 55-Inch 1080p 120Hz LED TV

by [LG](#)

★★★★★ 569 | [263 reviews](#) | [17 answered questions](#)

Price: **\$748.00** ✓ [Prime](#)

[Low Price Guarantee](#)

[Enhanced delivery](#)

**Note:** This item may be available at a lower price from other [sellers](#) that are not eligible for Amazon Prime.

**Only 3 left in stock (more on the way).**

Ships from and sold by Amazon.com.

Size: **55-Inch**

42-Inch

47-Inch

50-Inch

**55-Inch**

60-Inch

**2606 W John St,  
Champaign, IL 61821**

3 beds, 2 baths, 1,370 sqft

● For Sale by Owner

**\$149,999**

Zestimate®: \$137,368

## 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!)



## 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)

