

CATCHING A CATFISH

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ABSTRACT

Catfishing, or using someone else's photos in order to bait someone into an online relationship, is a new problem the Internet age faces. Since social media has basically taken over the Internet, it has completely changed the way in which people form relationships. Unfortunately, it has opened the floodgates for some people, catfishers, to trick others into relationships whether romantic or platonic.

What I find most interesting is that there is [minimal case law](#) in regards to catfishing. In this analysis, I am going to look at social media terms and conditions, existing case law that could determine whether or not you could sue someone for catfishing, and lastly whether or not it would be ethical to take legal action against someone who uses your photos in a catfishing situation.

[INTRODUCTION](#)

Ellie Rose: "At the end of the day, whether you remove them or not doesn't bother me. I'd really just like to know why you started them up in the first place?"

Charlotte Jean: "I've tried to stop on many occasions. I'm so aware of how wrong it is but I've done it for three years. It feels like part of my life. It's beyond ridiculous, I know."

Ellie Rose: "Yeah, it's very bizarre. Would you mind letting me know if you know us? Also, is it just you on your own?!? This must literally take up all of your time."

Charlotte Jean: "I really am sorry, I honestly do try to stop. No, I'm from London. I've seen some of you out a couple of times though."

Over the course of six years or so, Ellie Flynn and her group of friends have found over 60 fake profiles pretending to be them, ranging all the way from MySpace to

Instagram.¹ The above conversation resulted from Flynn finally breaking down and messaging one of the phony accounts.² Flynn and her friends are the true faces behind the photos used in this particular case of catfishing.

_____ The term “catfish” was coined by Nev Schulman and his team in his documentary, *Catfish*, which follows his journey to Michigan to meet the woman he fell in love with online. Her name was Megan Faccio. As fate would have it, Megan is actually Angela, a 40-year-old mother who orchestrated an elaborate web of fake profiles all surrounding “Megan.”³ There will be much more on this later.⁴

_____ The actual term, as described by Schulman, stemmed from Angela’s husband, who told Nev and his crew the story of how on long trips on fishing boats from Alaska to China, the skin of the codfish they were transporting would get mushy and tasteless. To combat this issue, fishermen would put catfish in with the cod to nip at their tails to keep them moving. How does this relate, exactly? After giving the anecdote, he followed it up by saying he thanked God for the catfish because life would be dull, boring and dull if we didn’t have someone nipping at our fins.⁵ The term is now used to describe any deceptive profile on social media.

_____ With this paper, I want to come to a conclusion of sorts. I want to find out if it would even be possible to sue someone for using your photos in a catfishing situation. I

¹ Ellie Flynn, “Someone’s Been Using My Photos to ‘Catfish’ People for Nearly A Decade,” *Vice*, January 21, 2015, accessed April 8, 2015, <http://www.vice.com/read/someones-been-using-my-identity-to-catfish-people-for-nearly-ten-years-930>

² *Ibid.*

³ *Catfish*. Directed by Henry Joost and Ariel Schulman. United States: Independent Documentary, 2010. DVD, 87 min.

⁴ *Ibid.* Further on into my article, I would like to talk about the ethical reasons involved in the decision to sue someone for using your photos in a catfishing situation. I also want to delve deeper into why people create fake profiles. Later on in Nev’s film, you learn about Angela’s mental illness and how it has played a role in her decision to create this vast network of fake profiles, which will play an integral role in this section of my work.

⁵ *Ibid.*

am going to divide the rest of this article into three main subject areas. Part I will consist of breaking down various Terms and Conditions regulations among social media sites such as Facebook, Twitter, Instagram and Photobucket to see the variations in rules regarding photo usage. Facebook's Terms and Conditions, for example, state, "We respect other people's rights, and expect you to do the same. You will not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law. We can remove any content or information you post on Facebook if we believe that it violates this Statement or our policies."⁶

____ Part II of this article will discuss the possibilities of suing someone for catfishing using your photos. How exactly would you go about it? What would you sue under?

Since the case law in regards to catfishing is very recent and minimal in nature, you would have to rely on these few cases and also case law that was around before the Internet. Some possibilities for suing would be fraud, intentional infliction of emotional distress, appropriation of name or likeness or copyright infringement. For the purposes of this analysis, I am going to focus on appropriation of name or likeness, considering the current case law from recent court decisions.

____ Part III of my article will focus on the ethical decision that would go into suing someone for catfishing using your photos. In the case of *Catfish* the movie, Angela is a woman with the tendency to lie who had taken her deception too far.⁷ Why do people feel the need to create these fraudulent profiles in order to trick people? In the case mentioned at the beginning of the article, Ellie Flynn's catfisher claimed to have few friends and

⁶ "Statement of Rights and Responsibilities," Facebook, accessed April 8, 2015, www.facebook.com/legal/terms.

⁷ *Catfish*.

fancied living their lives instead of hers.⁸ Whatever the reasons I find behind the need to catfish, I want to sort out whether or not it is appropriate to sue these catfishers for their fraudulent online endeavors.

PART I: TERMS AND CONDITIONS OF SOCIAL MEDIA SITES

In this section of my analysis, I am going to look at Facebook, Instagram and Twitter's terms of service and privacy guidelines. These sites are the leading social media dealing with catfishing situations, so it's important to know where each of these sites stand in regards to how they and their users can use content on their sites.

Facebook

In Facebook's "Statement of Rights and Responsibilities," it is written that users cannot use Facebook to do anything unlawful, misleading, malicious or discriminatory⁹. It also states that users will not provide any false personal information on Facebook, or create an account for anyone but themselves without permission.¹⁰ Under the section "Protecting other people's rights," you cannot post content that infringes on someone's rights or violates the law.¹¹ This section also states that if Facebook feels as if you are infringing upon someone's intellectual property, they have the ability to remove or suspend your page until the matter is settled.¹²

Facebook also has a separate set of rules called "Facebook Principles," which outline what users have the right to do. As a user of Facebook, you have the right to share whatever information you want.¹³ They also clearly state that people deserve to own their

⁸ Ellie Flynn, "Someone's Been Using My Photos to 'Catfish'."

⁹ "Statement of Rights and Responsibilities," Facebook, accessed April 8, 2015, www.facebook.com/legal/terms.

¹⁰ Ibid.

¹¹ "Statement of Rights and Responsibilities," Facebook.

¹² Ibid.

¹³ "Facebook Principles," Facebook, accessed April 12, 2015, <https://www.facebook.com/principles.php>

information. People have the ability to decide with whom their information is shared. They also offer ways for users to report fraudulent accounts. Facebook does not allow an account that lists a fake name, uses another user's photos, pretends to be another user or does not represent a real person.¹⁴

Instagram

Instagram, a photo-sharing social media app, also offers strict guidelines about photo ownership and usage. In their basic terms, it says that you cannot impersonate people, you cannot use this service for an illegal purpose¹⁵, you cannot attempt to restrict another user from enjoying this service, and if you are found in violation of any of these terms, it is under Instagram's discretion on whether or not your account is terminated.¹⁶ Also stated in the terms, Instagram claims no responsibility or ownership to the content you post. It also reserves the right to monitor disputes between users but has no obligation to do so.¹⁷ When you agree to these terms and conditions, you grant Instagram "non-exclusive, fully paid and royalty-free, transferable, sub-licensable, worldwide license to use the Content that you post on or through the Service."¹⁸ They also state that the user is legally responsible for content they post that is in violation of their terms of use¹⁹, which releases them from any legal accountability for fraudulent accounts.

¹⁴ "How do I report a fake account?" Facebook, accessed April 8, 2015, <https://www.facebook.com/help/167722253287296>.

¹⁵ I think that catfishing would fall under this category because you would be using someone else's photos, which is already a copyright infringement or appropriation of name or likeness.

¹⁶ "Terms of Use," Instagram, last modified January 19, 2013, accessed April 12, 2015, <https://help.instagram.com/478745558852511>.

¹⁷ Ibid.

¹⁸ "Terms of use," Instagram.

¹⁹ Ibid.

Like Facebook, Instagram also has a system for reporting fake accounts.²⁰ If someone creates a fake profile of you, whether or not you have an Instagram account, you can report while in the app or by filling out a form on their website. When reporting a fraud account, you fill out your name, email address, account name (if applicable) and upload a photo of your government-issued identification in order to have the account investigated.²¹

Instagram's community guidelines echo their terms and conditions in regards to sharing content that you have the right to share. The guidelines touch on disputes being handled between community members by directly commenting or asking someone to take down content that belongs to you.²² If the issue is unable to be resolved with the direct method, users can file a copyright report. Under their intellectual property information, Instagram discusses what is considered intellectual property.

Twitter

Twitter's terms of service state that any content posted is at the responsibility of the person who created the content.²³ They state that Twitter does not endorse the truthfulness or accuracy of the content posted via users.²⁴ When you sign up for Twitter, you agree to give them permission to use your content royalty-free.²⁵ Twitter reserves the right to remove any content or suspend any profile that infringes upon the intellectual property of another.

²⁰ "What can I do if someone is impersonating me on Instagram?" Instagram, accessed April 12, 2015, <https://help.instagram.com/446663175382270/>.

²¹ "Report an Impersonation Account on Instagram," Instagram, accessed April 12, 2015, <https://help.instagram.com/contact/636276399721841>.

²² "Community Guidelines," Instagram, accessed April 12, 2015, <https://help.instagram.com/477434105621119/>.

²³ "Terms of service," Twitter, accessed April 12, 2015, <https://twitter.com/tos?lang=en>.

²⁴ Ibid.

²⁵ "Terms of Service," Twitter.

Under Twitter's rules, they explicitly state that users cannot impersonate another person. "You may not impersonate others through the Twitter service in a manner that does or is intended to mislead, confuse, or deceive others."²⁶ Unlike the other social media sites described above, Twitter allows "fan and parody" accounts. According to their impersonation policy, an account will not be removed if the user shares a name but no other commonalities, or if the account clearly states it has no affiliation with a similarly named individual.²⁷ Also, if you create a fan or parody account, you must explicitly state in your username or description that you are a parody or fan account.²⁸

Similarities can be seen throughout all of these different terms and conditions. Facebook, Instagram and Twitter all state that when you sign up to use their service, you give them the right to use your content you post to share with advertisers and to use for themselves as well. This is all royalty-free to you. Nowhere in these terms do the sites give other permissions these same rights to your information. All three of these social media sites point-blank say that fraudulent accounts are not permitted. They offer ways to report this information as well.

Also, these sites do not claim ownership of any content posted using their services. This releases them from any legal responsibilities if a user were to sue another user for something like violation of terms of service. So, if you were not interested in taking legal action against someone using your photos, it would be easy to have the social

²⁶ "The Twitter Rules," Twitter, accessed April 12, 2015, <https://support.twitter.com/articles/18311-the-twitter-rules>.

²⁷ "Impersonation Policy," Twitter, accessed April 12, 2015, <https://support.twitter.com/articles/18366>.

²⁸ Ibid.

media site investigate and remove the account. If someone was interested in taking legal action, I am going to look at how one would build a case against a catfisher in Part II.

PART II: THE POSSIBILITIES OF SUING SOMEONE FOR CATFISHING

_____ If someone wanted to sue another for using their photos in a catfishing situation, there are a few things they would have to take into consideration beforehand. The big determinant for whether or not someone would be able to successfully sue depends largely upon where the catfisher found the photos.

_____ Sites such as Photobucket, a photo sharing website, state in their terms and conditions that any photos posted on the site are considered public information.²⁹ Another factor to consider is how private a user keeps their photos and information. Should it matter whether or not your information is only viewable by people the user approves of?³⁰

Once these things are established, the person looking to sue would need to look into existing case law in relation to catfishing. When considering the different avenues a person could take in suing someone, the most effective, as I've found, would be appropriation of name or likeness³¹, with other possible avenues including fraud,³²

²⁹ "Privacy Policy," Photobucket, last revised August 20, 2013, accessed April 12, 2015, <http://photobucket.com/privacy>. I am going to further discuss this in a sub-section dedicated to photo sharing sites that have automatically public rules.

³⁰ In my opinion, the user's privacy settings should not be taken into consideration when debating a catfishing case. They should be protected under the privacy torts regardless of their settings.

³¹ "Can I Sue for Being Catfished?" HG.org, accessed April 1, 2015, <http://www.hg.org/article.asp?id=33850>.

³² Ibid.

According to HG.org, "Fraud is often both a criminal charge and a tort. Fraud claims may be premised on the fact that a person materially represented himself or herself, another person reasonably relied on this misrepresentation, the person knew that the representation was false and intended the other person to rely on it and the other person was injured in some manner. When perpetrators of catfishing schemes intentionally act like another person and initiate contact and a

intentional infliction of emotional distress³³ or copyright.³⁴ For the purposes of this paper, I am going to dissect appropriation of name or likeness.

Origin of the Photos

When looking into a possible lawsuit, it will often times come down to where the photos came from. For example, if someone got the photos from Photobucket, they can be considered fair game due to its open use policy.³⁵

With Photobucket, any photograph or video posted on public areas are up for public use by anyone who stumbles upon them. But, on the opposing side if this, Photobucket also has a copyright and intellectual property policy. If you feel as if your information is being misappropriated, you can contact Photobucket's Copyright Agent with the following information: Your name, address, telephone, email address, a statement that says you did not authorize the use of your photos, a statement that the use is not authorized by law and lastly, a statement that you (the authorizing party) are acting

³³ Ibid. romantic relationship with another person, the first few elements may not be difficult to prove. However, the last element – injury of some sort – may be more difficult to prove.”

According to HG.org, “If there was no financial gain involved in the situation, the victim may pursue a claim for intentional infliction of emotional distress. This legal claim is successful when the victim can prove that the defendant’s conduct is extreme and outrageous and that conduct resulted in severe emotional distress in the victim. In order to prevail with this claim, it would require showing that there has been psychological damage because of the conduct and that the perpetrator’s conduct was actually outrageous enough to shock the senses. Some states also recognize the tort of negligent infliction of emotional distress. This tort requires a less serious mens rea and may be used in place of a case that has issues with showing intentional conduct.”

³⁴ Copyright Law of the United States of America, U.S. Copyright Office, accessed April 29, 2015, <http://www.copyright.gov/title17/92chap5.html#501>.

According to the Copyright Office, “Anyone who violates any of the exclusive rights of the copyright owner as provided by [sections 106](#) through [122](#) or of the author as provided in [section 106A\(a\)](#), or who imports copies or phonorecords into the United States in violation of [section 602](#), is an infringer of the copyright or right of the author, as the case may be. For purposes of this chapter (other than [section 506](#)), any reference to copyright shall be deemed to include the rights conferred by [section 106A\(a\)](#). As used in this subsection, the term “anyone” includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his or her official capacity. Any State, and any such instrumentality, officer, or employee, shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity.”

³⁵ “Privacy Policy,” Photobucket.

on behalf of yourself.³⁶ Once these steps are completed, Photobucket will review your request and do what they deem appropriate. They will also comply with any court request.³⁷

Do Privacy Settings Matter

When looking at a user's privacy settings to decide whether or not they played a part in their photos being taken, it really shouldn't matter, considering your privacy is protected under the privacy torts. These originated from the 1901 landmark court case, *Roberson v. Rochester Folding Box Co.*, that established a person's right to privacy.³⁸

In *Roberson v. Rochester Folding Box Co.*, alleges that Franklin Mills Co., a flour company affiliated with Rochester Box Co., used the photo of the plaintiff Ms. Roberson on a flour ad without her permission. The ad circulated nearly 25,000 prints in the public arena, which resulted in the humiliation of the plaintiff.³⁹ This embarrassment caused the plaintiff severe emotional and physical distress such as nervous shock that caused her to become ill and bedridden.⁴⁰

As a result, the defendants were ordered to pay \$15,000 in damages to the plaintiff for her distress. The court concluded that the plaintiff had a reasonable case against the defendants, and established that she had a "right of privacy," or the right to be

³⁶ "Photobucket Corporation Copyright and Intellectual Property Policy," Photobucket, last revised January 14, 2009, accessed April 12, 2015, <http://photobucket.com/copyright>.

³⁷ Ibid.

³⁸ *Roberson v. Rochester Folding Box Co.* 1901, 171 N.Y. 538, accessed April 6, 2015, <http://faculty.uml.edu/sgallagher/Roberson.htm>.

³⁹ Ibid.

⁴⁰ Ibid.

left alone.⁴¹ This is where the right of privacy originated. The torts, which will be discussed later, came from common law.⁴²

In short, the privacy settings of your profile should not matter because you have the right to be left alone.

Pertinent Case Law

Case law about catfishing is new to the legal world with the creation of social media sites such as Facebook. The cases pertinent to this topic that will be discussed are *Zimmerman v. Ball State University*, *United States v. Drew* and *Jane Doe v. Friendfinder*. After discussing these cases, I will look at the possibility of going to jail for catfishing.

1.

In *Zimmerman v. Ball State University*, two college students, Jacob Zimmerman and Sean Sumwalt, catfished their roommate by posing as a 15-year-old named Ashley. They befriended their roommate and started a relationship with him as Ashley. After the roommate suggested they go see a movie together, Zimmerman and Sumwalt waited with a video camera to exploit their roommate and embarrass him.⁴³ They revealed they were Ashley and posted the video on YouTube and titled it, “[Name of Roommate] is a pedophile.”⁴⁴ The roommate complained to the university and the two boys were suspended for a year. They tried to challenge this in court under First Amendment Right claims, but they were turned down due to the objectionable nature of their actions.⁴⁵

⁴¹ Ibid.

⁴² "The Privacy Torts: How U.S. State Law Quietly Leads the Way in Privacy Protection," Privacilla, last revised July 1, 2002, accessed April 1, 2015, http://www.privacilla.org/releases/Torts_Report.html.

⁴³ Kashmir Hill, "'Catfishing' Gets Its First Legal Mention," *Forbes*, April 26, 2013, accessed April 29, 2013, <http://www.forbes.com/sites/kashmirhill/2013/04/26/catfishing-gets-its-first-legal-mention/>.

⁴⁴ Ibid.

⁴⁵ Ibid.

Judge Magnus-Stinson stated, “The Students took their “catfishing” scheme a step further—videotaping the target’s reaction when he found out that “Ashley” did not exist, and posting the video on YouTube with the caption “[the Target] is a pedophile.” The Court fails to see how their actions could not be considered objectionable.”⁴⁶ This 2013 case is the first to actually name catfishing.

2.

In *United States v. Drew*, Lori Drew and her daughter created a fake profile under the name Josh Evans and started a relationship with the teen Megan Meier to discover what Megan said about her daughter.⁴⁷ After they gained the trust of Megan through Josh, they messaged her saying that the world would be better off without her. Megan then committed suicide by hanging herself in her closet.⁴⁸

After discovering who was to blame, the Supreme Court took legal action against Drew by charging her under the Computer Fraud and Abuse Act (CFAA) for violation of terms of service.⁴⁹ The problem is that this condemns any Internet user that violates the terms of service of any website. On August 28, 2009, Judge Wu overturned his previous conviction, stating that violation of the terms of service of a website should not implicate the CFAA.⁵⁰

3.

It is interesting that the case, *Doe v. Friendfinder Network Inc.*, was brought against the site and not the party who created the profile. Friendfinder is a site where

⁴⁶ Ibid.

⁴⁷ Murray, Ryan, "Myspace-ing Is Not a Crime: Why Breaching. Terms of Service Agreements Should Not Implicate the Computer Fraud and Abuse Act," *Loyola of Los Angeles Entertainment Law Review* (2009).

⁴⁸ Ibid.

⁴⁹ Ibid.

⁵⁰ Ibid.

adults can meet. The woman, whose privacy is protected in this suit (Jane Doe), had a fake profile created using her photos and name. It described sexual things about her that were false. Friendfinder hosted the profile and used it in advertisements.⁵¹ When plugged into search terms, true biographical information came up with this racy profile.

The court stated that under the circumstances, she had a valid claim to pursue Friendfinder and not the third party. They said that the Communications Decency Act section 230, which immunized websites from liability did not apply in this case.⁵²

The commonality between these cases is the privacy tort appropriation of someone's name or likeness. While it is assumed that suing someone under appropriation of name or likeness requires one party to financially benefit, this isn't true. In order to sue someone for appropriation, a person has to prove that their likeness was the use of a protected attribute, for an exploitative purpose and that they did not give consent for the use of their likeness.⁵³ The protected attribute does not have to be a full name, just enough to actually identify the plaintiff.

The next thing one must prove is that their likeness was used for an exploitative reason. This is where the aspect of financial gain is refuted. The plaintiff needs to prove that their likeness was used for a financial or personal benefit to the defendant.⁵⁴ Lastly, the plaintiff must prove that they did not give consent to the defendant. While it is not yet clear, these stipulations could very well apply to a false profile created online.⁵⁵

⁵¹ Jane Doe v. Friendfinder Network, Inc. and Various, Inc., Civil No. 07-cv-286 Opinion No. 2008 DNH 058, accessed April 29, 2015, <http://www.dmlp.org/sites/citmedialaw.org/files/2008-02-7-Friendfinder%20Order.pdf>.

⁵² Ibid.

⁵³ "Using the Name or Likeness of Another," Digital Media Law Project, last revised July 30, 2008, accessed April 1, 2015, <http://www.dmlp.org/legal-guide/using-name-or-likeness-another>.

⁵⁴ Ibid.

⁵⁵ Ibid.

The law is completely dependent upon state, however. For example, New York and California treat appropriation of name or likeness as a misdemeanor punishable by thousands of dollars in fines and up to a year in jail.⁵⁶

PART III: ETHICAL ISSUES INVOLVING CATFISHING LAWSUITS

This last section will discuss whether or not it would be appropriate to sue someone for catfishing with your photos. As stated in the introduction, the case of Nev Schulman's catfishing shows Angela, who clearly has some mental instability in regards to pathological lying.⁵⁷ You can also see some mental health issues in regards to Ellie Flynn's predicament, where an unknown person has made fake profiles for all of her and her friends for almost ten years now. Lastly, some catfishers do it for reasons of personal insecurity about their appearance, reasons involving their sexuality and gender, bullying and sometimes, people are just unkind. Hopefully, most people would take the stance that Mantei Te'o, a Notre Dame football player, did and choose not to pursue legal action.⁵⁸

Catfish the Movie

In the 2010, film, Nev Schulman randomly gets a friend request from an 8-year-old named Abby. He accepted and became friends with the little girl.⁵⁹ Her profile depicted her as a prodigal child painter. Nev then began corresponding with Megan Faccio, Abby's half sister, and they started a romantic relationship.⁶⁰ Not too long after, Megan began sending Schulman mp3 files of her singing cover songs. After discovering these mp3's were ripped from YouTube, Nev and his filmmaking team, consisting of his

⁵⁶ Victor Luckerson, "Can You Go to Jail for Impersonating Someone Online?" *Time*, January 22, 2013, accessed April 29, 2015, <http://business.time.com/2013/01/22/can-you-go-to-jail-for-impersonating-someone-online/>.

⁵⁷ *Catfish*.

⁵⁸ Brady, Erik, and Rachel George, "Manti Te'o's 'Catfish' Story Is a Common One," *USA Today*, January 18, 2013.

⁵⁹ *Catfish*.

⁶⁰ *Ibid*.

brother, Ariel, and his friend, Henry Joost, decided to head to Michigan to find out if Megan was real.⁶¹ They were greeted by Angela, who told them she had been diagnosed with uterine cancer; this was later found to be false. After speaking to Abbey alone, Nev discovered that she was not the person painting, Angela was.

Megan had then texted Nev saying she wasn't home because she was in rehab, which was then confirmed by one of Megan's Facebook friends.⁶² Angela later admitted that the photos of Megan were of someone else and her account, and she ran Megan's friends' accounts, too. Angela's daughter really was in rehab, as it turns out, but the photos used were that of Amiee Gonzalez, who resides in Vancouver, Canada.⁶³

Ellie Flynn

With Ellie Flynn and her friends, it is stated by a psychologist that the person behind the fake profiles needs to seek counseling.⁶⁴ There are over 60 profiles of Ellie and her friends floating around the Internet. Ellie says that almost everyone she has befriended online since adolescence has a fake profile of them. The leading profile seems to be Chia Colarossi, since it is the most active. The fake Twitter profile has over 36,000 tweets to date.⁶⁵ What kind of person has the energy and time to devote to the near-immediate reposting of information?

According to Dr. Claire Casey, a psychiatrist who specializes in online addiction, said that she suspects a mild autism spectrum disorder. The creator of the fake accounts has contacted Flynn to admit that what she is doing is wrong.⁶⁶ "The fact that she is

⁶¹ Ibid.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Flynn, "Someone's Been Using My Photos."

⁶⁵ Ibid.

⁶⁶ Ibid.

solitary and almost obsessive about it, even though she knows it's a completely ridiculous thing to do, suggests she has mild autistic spectrum disorder, and that's probably what is fueling this. You can't force someone to go and see a psychiatrist unless they're a danger to themselves or the general public, so unless she's made direct threats or been violent, there's little you can do. I think this is going to run and run and run. She probably doesn't have friends or a boyfriend or anyone to talk to—creating these fake profiles allows her to be daring, clever, attractive, and witty, and she can pretend to be something she can't be in real life," said Casey.⁶⁷

Catfish the TV Show

In the television show based off of Nev's documentary, he and his team help real-life people in online relationships decipher whether or not it is a legitimate person they are involved with. Typically, the catfishers on the show do so because of self-esteem issues, gender and sexuality issues, bullying instances or sometimes, they are just people who want revenge. Regardless of the reason, it's clear that these people are suffering from identity issues and feel as if they can only be accepted by pretending to be someone else.

1.

Many of the catfishers featured on the show have self-esteem issues concerning their appearance. This can be seen in Season 1, Episode 5 of Catfish the TV Show.⁶⁸ Jarrod contacted Nev and his team to help his finally meet Abigail Johnson, a woman he

⁶⁷ Ibid.

⁶⁸ Catfish the TV Show, "Season 1, Episode 5," *MTV*, 4:23, December 13, 2013, <http://www.mtv.com/shows/catfish/catfish-the-tv-show-ep-5-recap/865359/video/#id=1698873>.

had been in a relationship with for months. Nev called her, and a female answered.⁶⁹

Abigail agreed to meet up with Jarrod later that week.

Later on, a reverse Google image search showed that the photos originally came from a Facebook account belonging to Shana Roberts. This was a bad sign that Abigail wasn't who she claims to be. After Nev and his team relayed the new information to Jarrod, he was still willing to meet Abigail. He then said that he would be bummed if Abigail didn't look like her profile photo, but if the woman behind Abigail was as funny and personable as the woman on the phone, he would be open-minded.⁷⁰

As it turned out, Abigail did not look at all like her profile photo, but said that everything that they talked about was real, and so were the emotions. "Basically, all of it was pretty much me, but not me," said Abigail. "All the emotions were real, but with a different face," said Jarrod, "I know you so much, but at the same time I don't know who you are." They later met up for a follow-up, and they agreed to take things slow in order to get back to where they were, emotionally.⁷¹

2.

Another common occurrence on the show is that the catfisher is of the opposite gender. In Season 1, Episode 8, Nev met with Tyler Hayden, who wanted to meet up with his online girlfriend, Amanda Miller.⁷² Tyler's friends mentioned that Amanda would never speak to him on the phone, which raised a red flag in their minds.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Catfish the TV Show, "Season 1 Episode 8," *MTV*, 4:15, January 13, 2013, <http://www.mtv.com/shows/catfish/catfish-the-tv-show-ep-8-recap/872616/video/#id=1700289>.

After a reverse photo search revealed that the photos came from a MySpace with the name of *TRINA*, Nev attempted to contact Amanda.⁷³ She agreed to meet Tyler, and when they arrived at Amanda's house, it was revealed that Amanda was really Aaron, a gay man. Tyler was understandably disappointed, but Aaron said he needed to get help for his issues.⁷⁴

3.

The final reasons I would like to address in regards to why people choose to catfish are bullying and revenge. In Season 1, Episode 1, Nev met with Sunny Cross, a 21-year-old nursing student in Arkansas.⁷⁵ Sunny believed she was in a relationship with Jamison King, an anesthesiology student in Arkansas. Nev called Jamison, and the voice sounded stereotypically feminine. Jamison agreed to meet Sunny. Once Nev, his team and Sunny arrived at Jamison's house, a woman named Chelsea came outside and admitted to being Jamison.⁷⁶

Chelsea talked about how she originally created Jamison four years ago after looking to seek revenge upon a girl who had been bullying her online. After a while, she began to catfish multiple people using the fraudulent profile. At first, she was not apologetic to Sunny whatsoever. After speaking alone with Nev, she realized that the bullying that occurred in high school attributed to her making the fake account.⁷⁷

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Catfish the TV Show, "Season 1, Episode 1," *MTV*, 4:49, November 19, 2012, <http://www.mtv.com/shows/catfish/catfish-the-tv-show-ep-1-recap/860204/video/#id=1697960>.

⁷⁶ Ibid.

⁷⁷ Ibid.

“They called me dyke, fat, lesbian and fatass,” said Chelsea. She finally admitted to Nev that what she did was wrong and then later apologized to Sunny. She then told Chelsea that she was not angry, but sad for her.⁷⁸

The common denominators throughout these examples are a severe lack of self-esteem and some sort of mental health issues. As seen in all of these instances of catfishing, those who were duped or had their photos used did not take legal action against the catfishers. This is also clear in the now infamous case of Mantei Te’o, who was catfished by someone he knew.⁷⁹ Te’o had no plans to take legal action against the person who created a fake woman and then faked her death.⁸⁰

DISCUSSION AND CONCLUSION

_____ After copious amounts of research and dissection of terms of service agreements, case law and the psychology behind why people catfish, I do not think, in most cases, it is appropriate to sue someone for using your photos in a catfishing situation. Sometimes, the people who tend to catfish have some mental health issues that they either have not addressed or do not have control of.⁸¹ Or, more often, their self-esteem and self-worth is so poor that they feel as if they need to be another person.

_____ Would you really be interested in suing someone who already thinks so little of themselves? Personally, I would never have the heart to take that route considering all of the problems these catfishers seem to have with themselves.

⁷⁸ Ibid.

⁷⁹ Brady, Erik, and Rachel George, "Manti Te'o's 'Catfish' Story Is a Common One," *USA Today*, January 18, 2013.

⁸⁰ This is a very interesting article to read. I have demonstrated my point that those who are actual victims of catfishing are not making the effort to sue the catfishers, mostly out of compassion. This is also clear with Te’o, even after he said that he was the victim of a sick joke.

⁸¹ See Section III

When considering an established case law for a catfisher using unauthorized photos, I think it would be best to [use discretion when deciding whether or not you would like to sue](#). [Since I have concluded that it would be possible to sue](#) someone for catfishing, I have decided that there should be amendments to social media terms of service rather than inventing case law.

With adjustments to the terms of service on sites like Facebook, I think the catfishing epidemic could flounder. I suggest that Facebook and similar sites change their impersonation punishments⁸² by making them stricter. If anyone is caught and reported to them, there should be a strike system put into place. If they are caught once, they should be suspended for a period of time. On the second occurrence, their accounts should be terminated and they should no longer be allowed to use that media platform. As far as I can tell, as long as there is no real punishment put into place for catfishers, they are going to keep nipping at our fins.

⁸² [“How Do I Report A Fake Account?”](#)

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