

4-2025

Real Housewives & Real Crimes: The Implications of Broadened Privacy Rights on White-Collar Offenses

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Shrinithi Venkatesan, *Real Housewives & Real Crimes: The Implications of Broadened Privacy Rights on White-Collar Offenses*, 16 Wm. & Mary Bus. L. Rev. 667 (2025),
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REAL HOUSEWIVES & REAL CRIMES: THE IMPLICATIONS OF BROADENED PRIVACY RIGHTS ON WHITE-COLLAR OFFENSES

SHRINITHI VENKATESAN*

ABSTRACT

Reality television stars turn their fame into fortune, often blurring ethical lines as they exploit their platforms for personal gain. These personalities engage in fraud, tax evasion, and embezzlement, all while maintaining a prominent presence on-screen. Specifically, stars on The Real Housewives franchise realize tremendous successes from their stints on the famous television show by capitalizing on their exposure through social media. With their newfound wealth and fame, many of these stars commit white-collar crimes under their viewers' watchful eyes. This Note examines three prevailing examples of reality television stars who committed various white-collar crimes. Interestingly, networks tolerate criminal behavior because the contractual relationship with their talent permits the companies to collect royalties from a star's business ventures. Although contractual relationships require a star to discuss their legal matters on television, stars are becoming savvy in their ability to call on privacy laws to limit their negative exposure. As technology exploitation and constitutional concerns continue to rise, the courts and state legislatures attempt to balance an individual's right to privacy with public interest in acquiring important information. This Note proposes that courts and the legislature should resist broadening privacy protections to reality television stars who commit white-collar crimes by exploiting their platforms.

* William & Mary Law School, JD Candidate 2025; Indiana University, BS in Finance 2022. I would like to thank the *William & Mary Business Law Review* staff for their meticulous editing efforts to prepare this Note for publication. To my friends—your unwavering kindness made this journey unforgettable. Most importantly, to my family (Mom, Dad, Janani, and Kiran), for creating a warm and loving home and continually reminding me of what truly matters.

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INTRODUCTION

When Andy Cohen, producer at Bravo Television (Bravo), initially pitched *The Real Housewives* franchise, he failed to anticipate the creative ways in which its stars would exploit the platform.¹ Bravo mass-produces reality television shows with new talent, in part because the network is aware of how appreciative consumers are of “guilty pleasure” content.² With thousands of up-and-coming shows on cable television and streaming platforms, reality television has reshaped the way individuals interact with the small screen.³ The rising popularity of reality television, in conjunction with rampant social media use, provides an accessible platform for “ordinary people” to quickly rise to stardom and attain celebrity status.⁴ Reality television’s power is not to be underestimated, as scholars document its ability to alter politics and wealth in the current societal landscape.⁵

Many networks shifted from casting celebrities to casting “ordinary people” to provide viewers with a more genuine feeling.⁶ As a result, participants on dating reality television shows such as *The Bachelor* and *Love Island* can quickly attain celebrity status and consequently capitalize on this fame through social media.⁷ Unfortunately, there are those who misuse their newfound fame and fortune.⁸

¹ See Jessica Dickler, *Andy Cohen on the Making of a ‘Housewives’ Brand*, CNBC (June 23, 2018, 3:00 PM), <https://www.cnbc.com/2018/06/22/andy-cohen-on-the-making-of-a-housewives-brand.html> [<https://perma.cc/ML4T-3HK3>].

² See Judy Berman, *Reality TV Has Reshaped Our World, Whether We Like It or Not*, TIME (Aug. 4, 2022), <https://time.com/collection/reality-tv-most-influential-seasons/6199108/reality-tv-influence-on-world/> [<https://perma.cc/5W29-BMTR>].

³ *Id.*

⁴ *See id.*

⁵ *Id.*

⁶ See T.L. Stanley, *The Situation for Reality Stars? Money, Honey*, L.A. TIMES (Oct. 18, 2011, 12:00 AM), <https://www.latimes.com/entertainment/tv/la-xpm-2011-oct-18-la-et-reality-shills-20111019-story.html> [<https://perma.cc/N8C9-UCV5>].

⁷ *See id.*

⁸ *See, e.g.*, Press Release, U.S. Dep’t of Just., California Attorneys Charged with Misappropriating Settlement Funds Intended for Relatives of Victims of Lion Air Flight 610 (Feb. 1, 2023) [hereinafter California Attorneys Charged],

As concerns regarding unscripted television, social media, and technology exploitation continue to popularize, citizens and lawmakers alike worry about its negative consequences on privacy.⁹ In particular, Congress has attempted to balance competing interests by passing privacy protection laws, creating hurdles for technology-based companies from exploiting their users.¹⁰ Networks control privacy rights to avoid litigation on the matter by requiring reality television stars to sign ironclad contracts, which often limit a star's right to both privacy and publicity.¹¹ Discussions on privacy and publicity rights often prevail in today's cultural and political landscape, as Congress and the Supreme Court grapple with defining an individual's right to privacy.¹² This Note argues that courts and the legislature should hesitate to extend greater privacy protections to reality television stars, especially those who exploit their position by committing white-collar crimes.

This Note proceeds in six parts. Part I details three prevailing examples of reality television stars on *The Real Housewives* who capitalized on their fame through entrepreneurship and sponsorship deals.¹³ As a result of this newfound income, many participants commit white-collar crimes, including tax evasion, fraud, and telemarketing schemes, all while appearing on television.¹⁴ Part II explains how networks and their talent curate a

<https://www.justice.gov/usao-ndil/pr/california-attorneys-charged-misappropriating-settlement-funds-intended-relatives> [<https://perma.cc/X382-9HQZ>].

⁹ Shlomit Yanisky-Ravid & Ben Z. Lahav, *Public Interest vs. Private Lives—Affording Public Figures Privacy in the Digital Era: The Three Principal Filtering Model*, 19 U. PA. J. CONST. L. 975, 978–79 (2017).

¹⁰ Joseph Duball, *US House Lawmakers Keep Federal Privacy Legislation Top of Mind*, IAPP (Mar. 1, 2023), <https://iapp.org/news/a/us-house-lawmakers-keep-federal-privacy-legislation-top-of-mind/> [<https://perma.cc/HWU6-S5DG>].

¹¹ See Catherine Riley, *Singing in Glitter or Blood?: Unconscionability and Reality Television Contracts*, 3 N.Y.U. J. INTELL. PROP. & ENT. L. 106, 111 (2013).

¹² See Charlie Gee, *Reality-Based Television Versus the Civil Right to Privacy: A Battle of Access*, 67 J. FILM & VIDEO 79, 81 (2015). Compare *Roe v. Wade*, 410 U.S. 113, 152 (1973) (holding that although the Constitution does not explicitly mention any right to privacy, courts have recognized that a right of personal privacy does exist under the Constitution and Bill of Rights), with *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 273 (2022) (abrogating *Roe v. Wade* and holding that the “right of personal privacy” strictly means to shield information from disclosure).

¹³ *Infra* Part I.

¹⁴ *Infra* Part I.

codependent relationship that allows for tremendous monetary gain for both parties.¹⁵ Part III highlights the historical trends within privacy laws and how the current Supreme Court and state legislatures attempt to balance an individual's right to privacy with the public's interest in the publication of truthful information.¹⁶ Moreover, Part III describes how a network binds its participants through adhesion contracts which limit a star's right to litigate privacy violation claims in court.¹⁷

Further, Part IV discusses society's shift toward valuing stronger privacy protections, driven in part by the rise of social media and an increased awareness of constitutional rights, prompting many to question reality network business practices.¹⁸ Part V details how the shift toward greater privacy protections, if applied to the cast of *The Real Housewives*, would limit the criminal justice system's ability to curtail white-collar crimes.¹⁹ Finally, Part VI offers four possible solutions to guide courts, legislatures, and networks to reduce white-collar crimes while also honoring an individual's right to privacy.²⁰

I. *THE REAL HOUSEWIVES* & WHITE-COLLAR OFFENSES

The transition from reality television stardom to white-collar convict is an all-too-common storyline. Stars including home décor mogul Martha Stewart, *Jersey Shore's* Mike Sorrentino, dance instructor Abby Lee Miller, and real estate tycoon Todd Chrisley are only a few examples of convicted celebrities who wrongfully capitalized on their fame by committing crimes ranging from tax evasion to embezzlement.²¹ For the sake of simplicity, this Note will focus on individuals featured on *The Real Housewives* franchise, including Teresa Giudice, Jen Shah, and Erika Jayne. These stars violated several white-collar criminal laws,

¹⁵ *Infra* Part II.

¹⁶ *Infra* Part III.

¹⁷ *Infra* Part III.

¹⁸ *Infra* Part IV.

¹⁹ *Infra* Part V.

²⁰ *Infra* Part VI.

²¹ Komal Banchhor, *10 Celebrities Who Committed White-Collar Crimes and Got Caught*, MKT. REALIST (Nov. 8, 2023), <https://marketrealist.com/who-are-the-10-celebrities-who-served-jail-terms-for-white-collared-crimes/> [<https://perma.cc/P6SJ-PMM3>].

and many stars in general find themselves specifically in violation of 18 U.S.C. § 1343, which reads:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, transmits or causes to be transmitted by means of wire, radio, or television communication in interstate or foreign commerce, any writings, signs, signals, pictures, or sounds for the purpose of executing such scheme or artifice, shall be fined under this title or imprisoned not more than 20 years, or both. . . .²²

Offenders in violation of the aforementioned statute have the ability to cause severe financial damage to their victims.²³ Often, society overemphasizes the detrimental impact that street crime has on a community, but a closer look shows that white-collar crimes have, in the aggregate, resulted in greater monetary losses.²⁴ In the past forty years, institutions have studied the ways in which “white-collar crime breeds distrust, lowers social morale, and ‘attack[s] the fundamental principles of American institutions.’”²⁵ Thus, the judicial and legislative branches must find creative ways to deter reality television stars in violation of 18 U.S.C. § 1343 because of their propensity to cause severe losses to victims and the federal government.²⁶

A. Teresa & Joe Giudice—Fraud & Tax Evasion

Teresa and Joe Giudice are leading examples of reality stars who committed white-collar crimes while on television.²⁷ The Giudices showcased their lives on *The Real Housewives of New Jersey (RHONJ)* since its inception in 2009.²⁸ Teresa realized

²² 18 U.S.C. § 1343.

²³ See Neal Shover et al., *Long-Term Consequences of Victimization by White-Collar Crime*, 11 JUST. Q. 75, 76 (1994).

²⁴ See *id.*

²⁵ *Id.*

²⁶ See *id.*

²⁷ Press Release, U.S. Dep’t of Just., ‘Real Housewives of New Jersey’ Stars Sentenced to Prison for Conspiracy, Bankruptcy Fraud, and Tax Offenses (Oct. 2, 2014) [hereinafter RHONJ Stars Sentenced], <https://www.justice.gov/usao-nj/pr/real-housewives-new-jersey-stars-sentenced-prison-conspiracy-bankruptcy-fraud-and-tax> [<https://perma.cc/Z53V-YKLB>].

²⁸ *Id.*

great successes while featured on the show: she made over one million dollars in earnings per season, appeared on *Dancing with the Stars* and *Celebrity Apprentice*, and published seven books, four of which were on *The New York Times Best Sellers* list.²⁹ Needless to say, *RHONJ* made Teresa a household name.³⁰ Teresa used her platform to garner a large fanbase, which supported her various business ventures that ultimately allowed her to accumulate millions of dollars in wealth while appearing on the show.³¹ Her newfound successes came to an abrupt halt when an investigation revealed the couple filed false loan applications to obtain mortgages on their home, hid assets in bankruptcy court, and failed to pay income taxes on nearly one million dollars in earnings.³² Although she maintained her innocence on television, Teresa eventually pled guilty to her involvement in the crime and received a fifteen-month sentence in federal prison.³³ Conversely, Judge Esther Salas sentenced Joe to forty-one months in federal prison and ordered removal to his native country of Italy.³⁴

Upon completing her prison sentence, Teresa seamlessly reintegrated back into the cast of *RHONJ*, where she again maintained her innocence and claimed that the government only pursued her case to make an example of her.³⁵ Judge Salas partially corroborated Teresa's contention, later declaring she intentionally declined to take Teresa's celebrity status into account in sentencing because she wanted to send a message of deterrence to future celebrities by showing that no one is above the law.³⁶

²⁹ Beth Shilliday, '*RHONJ* Star Teresa Giudice Is Back to Making Money after Bankruptcy! See Her Net Worth', LIFE & STYLE (Jan. 29, 2023, 11:21 AM), <https://www.lifeandstylemag.com/posts/teresa-giudice-net-worth-how-the-rhonj-star-makes-money/> [https://perma.cc/M3NZ-AR2M].

³⁰ *See id.*

³¹ *See id.*

³² RHONJ Stars Sentenced, *supra* note 27.

³³ *Id.*

³⁴ *Id.*

³⁵ Kelly Wynne & Dave Quinn, *Teresa Giudice Believes She Was 'Used as an Example' for Fraud Charge Jail Time: 'Most Devastating Thing'*, PEOPLE (Oct. 14, 2022), <https://people.com/tv/bravocon-2022-teresa-giudice-believes-she-was-used-as-example-fraud-charge-jail-time/> [https://perma.cc/PEQ6-H8AY].

³⁶ "In the end, however, [Judge Salas] said she needed to show that criminal behavior must be punished regardless of one's celebrity. . . . I need to send a message that it isn't who you are, how famous you are. If you do something wrong, there will be consequences to pay." Thomas Zambito &

B. Jen Shah—Wire Fraud & Conspiracy to Commit Money Laundering

Jen Shah, known from *The Real Housewives of Salt Lake City* (*RHOSLC*) was recently convicted for orchestrating a nationwide telemarketing scheme.³⁷ Prior to and throughout her stint on *RHOSLC*, Shah's shell corporation would target and defraud elderly citizens by promising the victims financial security.³⁸ In reality, Shah sold the contact information of potential victims who were particularly vulnerable to the scheme.³⁹ Consequently, her shell corporations would fraudulently charge the victims' credit cards until they were deprived of their life savings.⁴⁰ Critics found Shah's crime especially abhorrent because of her willingness to scam innocent elderly citizens, particularly those who lack supervision or technological proficiency, to fund her extravagant lifestyle for television.⁴¹

Bravo filmed and featured Shah's arrest and subsequent legal proceedings on the third season of *RHOSLC*.⁴² The show saw record-high ratings as fans tuned in to either watch a beloved

Vicki Hyman, *For Reality TV Stars Joe and Teresa Giudice, a Very Different Kind of Reality Awaits*, NJ.COM (Oct. 3, 2014, 10:22 AM), https://www.nj.com/news/2014/10/for_reality_tv_stars_joe_and_teresa_giudice_a_different_kind_of_reality_awaits.html#incart_maj-story-2 [<https://perma.cc/EN4X-JRMU>].

³⁷ Press Release, U.S. Dep't of Just., Reality Show Cast Member Jennifer Shah Sentenced to 78 Months in Prison for Running Nationwide Telemarketing Scheme (Jan. 6, 2023), <https://www.justice.gov/usao-sdny/pr/reality-show-cast-member-jennifer-shah-sentenced-78-months-prison-running-nationwide> [<https://perma.cc/5P88-BT8Z>].

³⁸ *See id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See id.* U.S. Attorney Damian Williams stated "this conviction and sentence demonstrate once again that we will continue to vigorously protect victims of financial fraud and hold accountable those who engage in fraudulent schemes." *Id.*; *see also* Peter O'Dowd & Grace Griffin, *When a Criminal Case Like Jen Shah's Plays Out on Reality TV, the Public Gets a Front-Row Seat*, WBUR (Jan. 13, 2023), <https://www.wbur.org/hereandnow/2023/01/13/jen-shah-criminal-case-reality-tv> [<https://perma.cc/Y57E-4XLC>].

⁴² Michael Levenson, *Jennifer Shah, 'Real Housewives' Star, Sentenced in Fraud Scheme*, N.Y. TIMES (Jan. 6, 2023), <https://www.nytimes.com/2023/01/06/us/jennifer-shah-rhoslc-sentenced.html#:~:text=Jennifer%20Shah%2C%20who%20gained%20fame,thousands%20of%20victims%2C%20prosecutors%20said.>

public figure be found innocent or watch the rich and famous fall from grace.⁴³ Similar to Teresa, Shah capitalized on her newfound notoriety by continuing to appear on *The Real Housewives*.⁴⁴ However, unlike Teresa, who appeared fearful of her impending conviction, Shah seemed to enjoy the attention.⁴⁵ For instance, prosecutors admitted into evidence Shah's tagline on the show, where she expressed that "the only thing I'm guilty of is being Shah-mazing."⁴⁶ Shah's scenes from the show, mocking the criminal justice system and lacking remorse for her conduct, ultimately contributed to the judge's punitive sentence of six years in federal prison.⁴⁷

C. Erika Jayne—Wire Fraud & Embezzlement

Unlike Shah and Giudice, there are some stars who value privacy when battling legal issues while featured on reality television.⁴⁸ Erika Jayne, star on *The Real Housewives of Beverley Hills (RHOBH)* is currently embroiled in several lawsuits regarding her husband Tom Girardi's fraudulent business dealings.⁴⁹ Girardi, a prominent Los Angeles lawyer, was indicted for embezzling millions of dollars in client settlements to pay for his now-defunct firm's operating expenses.⁵⁰ The Justice Department charged Girardi with eight counts of wire fraud and four counts of criminal contempt, which, if convicted, carries a sentence in excess of twenty years in federal prison.⁵¹ Jayne's nonchalant

⁴³ See O'Dowd & Griffin, *supra* note 41.

⁴⁴ See *id.*

⁴⁵ Levenson, *supra* note 42.

⁴⁶ *Id.*

⁴⁷ See O'Dowd & Griffin, *supra* note 41. For more information on the admissibility of character evidence as it relates to reality television, see generally K.L. Renner, *The Crossover Event from Hell: Evidence, Admissibility, and Truth When Reality Television Meets Criminal Prosecutions*, 57 GA. L. REV. 361 (2022).

⁴⁸ Kate Chernitsky, *Right to Privacy Versus Reality TV: Does Real Housewives Cross the Line for Entertainment?*, ST. ANDREWS L. REV. (Nov. 7, 2021), <https://www.standrewslawreview.com/post/right-to-privacy-versus-reality-tv-does-real-housewives-cross-the-line-for-entertainment> [<https://perma.cc/M5VB-MJD5>].

⁴⁹ See California Attorneys Charged, *supra* note 8.

⁵⁰ *Id.*

⁵¹ *Id.*; see Press Release, U.S. Att'y's Off. Cent. Dist. of Cal., Disbarred Personal Injury Lawyer Tom Girardi Found Guilty of Defrauding Clients out of

behavior towards her husband's charges led many viewers to speculate about her involvement in the criminal activity.⁵²

After news broke of Girardi's misdoings, several plaintiff law firms filed lawsuits to recoup losses stemming from Girardi's misconduct.⁵³ Jayne's innocence was further called into question when a judge ordered that she relinquish her diamond earrings, valued at \$750,000, because it was legally considered stolen property in light of the allegations against Girardi.⁵⁴ Jayne appealed the bankruptcy court's decision to retain possession of her earrings.⁵⁵ Two years later, the United States District Court for the Central District of California reversed the bankruptcy court's

Tens of Millions of Dollars (Aug. 27, 2024), <https://www.justice.gov/usao-cdca/pr/disbarred-personal-injury-lawyer-tom-girardi-found-guilty-defrauding-clients-out-tens> [https://perma.cc/53XA-V65R]. In 2024, a jury found Girardi guilty of wire fraud for misappropriating and embezzling millions of dollars in client settlements. Girardi diverted \$25 million to pay for private jets, luxury cars, exclusive golf and social clubs, and Jayne's entertainment career. *Id.*

⁵² Dave Quinn, *Tom Girardi Found Guilty of Embezzling Millions from His Clients. So What Does This Mean for Erika Girardi?*, PEOPLE (Aug. 31, 2024, 10:01 AM), <https://people.com/tom-girardi-guilty-what-does-this-mean-for-erika-girardi-8704837> [https://perma.cc/765B-M8ED]; see also David Thomas, *Erika Jayne Girardi, Hundreds More Targeted in Trustee Lawsuits*, REUTERS (Jan. 11, 2023, 10:45 AM), <https://www.reuters.com/legal/litigation/erika-jayne-girardi-100s-more-targeted-trustee-lawsuits-2023-01-10/> [https://perma.cc/L872-336H]. Lawsuits against Jayne claim that Girardi diverted millions of dollars to her personal checking account and entertainment company, which made Jayne complicit in the criminal activity. The lawsuits further allege that Jayne is personally liable for receiving \$97,200 from Girardi Keese from 2015 to 2018.

⁵³ Ally Mauch, *Embezzlement Suit Against Erika Girardi Dismissed in Illinois, Will Be Refiled in California*, PEOPLE (Jan. 31, 2022, 12:07 PM), <https://people.com/tv/embezzlement-suit-against-erika-girardi-dismissed-in-illinois-will-be-refiled-in-california/> [https://perma.cc/3QB9-9J8Q]. Edelson PC, the plaintiff-facing law firm representing the alleged victims, previously stated, "[w]e are very much looking forward to presenting the full facts of Erika's relationship to Tom's Ponzi scheme, including how much money she made off the backs of the widows and orphans of the Lion Air crash." *Id.*

⁵⁴ Lanae Brody, *Erika Girardi Is 'Relieved' after Handing over \$750K Earrings, Despite Their 'Sentimental' Value: Source*, PEOPLE (July 6, 2022, 1:01 PM), <https://people.com/tv/erika-girardi-relieved-to-return-sentimental-diamond-earrings-source/> [https://perma.cc/96QN-ZSXQ].

⁵⁵ Esther Kang, *RHOBH: Erika Wins Legal Battle over \$750 Earrings—but Her Pals Think She Should Cough Up Some 'Good Karma'*, PEOPLE (Jan. 24, 2024), <https://people.com/rhobh-recap-erika-girardi-wins-legal-battle-over-750k-earrings-housewives-urge-good-karma-8549462> [https://perma.cc/VJ5S-ZBMN].

judgment, finding that the trustee failed to prove that Jayne purchased the earrings using Girardi's client trust fund money.⁵⁶

When questioned by her co-stars as to her level of involvement in her husband's crimes, Jayne maintained her innocence and pleaded that the public grace her with privacy until the case ended.⁵⁷ Despite her requests for privacy, Jayne nevertheless continued to appear on reality television notwithstanding her criminal violations and lawsuits, highlighting how celebrities are often willing to jeopardize their legal circumstances in pursuit of the substantial income offered by reality television.⁵⁸

II. REALITY TELEVISION IS GOOD FOR BUSINESS

An appearance on a reality television show can catapult almost anyone into success.⁵⁹ Once featured on a show, individuals gain the opportunity to capitalize on their exposure by bolstering their social media presence.⁶⁰ Social media creates a direct pipeline that allows reality television personalities to maintain their celebrity status and remain successful in the years following their television appearance.⁶¹ Giudice, Shah, and Jayne are examples of opportunists who see the value of what reality television can provide.⁶²

A. *Building Businesses Through Reality Television*

Although reality television is categorized as "guilty pleasure" entertainment, the platforms are now primarily used as a place to promote and build businesses.⁶³ A network itself may not offer participants a substantial salary, but the increased exposure opens the door to brand deals, sponsorships, and book deals worth

⁵⁶ *Id.*

⁵⁷ See Chris Murphy, *A Brief Overview of Erika Jayne's Legal Woes*, VANITY FAIR (Oct. 14, 2021), <https://www.vanityfair.com/hollywood/2021/10/a-brief-overview-of-erika-jaynes-legal-woes> [https://perma.cc/P5CR-H5CB].

⁵⁸ See, e.g., Stanley, *supra* note 6.

⁵⁹ *Id.*

⁶⁰ See Berman, *supra* note 2.

⁶¹ See *id.*

⁶² See, e.g., Shilliday, *supra* note 29.

⁶³ See Berman, *supra* note 2.

well over a million dollars.⁶⁴ Influencers from Molly-Mae Fury to billionaires like Kim Kardashian jump-started their multimillion-dollar brands through reality television.⁶⁵ It is no surprise that individuals inundate reality television shows with applications, as they offer individuals a direct route to success.⁶⁶

B. A Mutually Beneficial Relationship

Networks and their talent fashion a mutually beneficial relationship.⁶⁷ Networks typically incorporate contractual clauses enabling them to claim a portion of business earnings generated by their stars.⁶⁸ For example, *The Real Housewives* cast member Bethenny Frankel successfully negotiated with Bravo to remove a clause in her contract stating that the network would receive a percentage of Frankel's profits from her non-television ventures.⁶⁹ The network regretted that decision when Frankel sold her Skinnygirl cocktail brand for over one hundred million dollars.⁷⁰ After learning about Frankel's influx in profits and recognizing

⁶⁴ See Shilliday, *supra* note 29 (explaining how a majority of Giudice's wealth stems from brand and book deals); see also Berman, *supra* note 2 ("Reality TV has radically altered the landscapes of celebrity, politics, and power. It has made many people extremely rich; Kim Kardashian has a net worth of \$1.8 billion . . . [w]ithout the Real Housewives, the Kardashian-Jenner clan, and the *Selling Sunset* cast, the pages of gossip raps would be virtually blank.").

⁶⁵ See Berman, *supra* note 2.

⁶⁶ Daryl Austin, *Reality TV Attracts More Applicants Than Ever. For Reality-TV Coaches, It's a Gold Rush*, WALL ST. J. (Feb. 24, 2023, 8:00 AM), <https://www.wsj.com/articles/reality-tv-casting-coaches-survivor-amazing-race-bbd52bd6> [<https://perma.cc/CT6L-BDJD>] ("According to Lynne Spillman, a two-time, Emmy-nominated casting director, getting on reality TV is more competitive than ever, as applicants look to parlay participants roles into lucrative influencer gigs or bona fide acting careers. To stand out to the producers and directors eyeing their applications, it's key to convey that they can elicit a range of emotions.").

⁶⁷ See Stanley, *supra* note 6.

⁶⁸ See Ingrid Mendoza, *Bethenny Frankel's Shocking 'Real Housewives' Salary Revealed; Her Net Worth Now at \$80 Million*, INT'L BUS. TIMES (Apr. 13, 2023, 1:10 AM), <https://www.ibtimes.com/bethenny-frankels-shocking-real-housewives-salary-revealed-her-net-worth-now-80-million-3685469> [<https://perma.cc/4NSW-DSP8>].

⁶⁹ See *id.*

⁷⁰ *Id.*

its stars' abilities, the network reinstated the clause, now commonly referred to as the "Bethenny Clause," in all its contracts.⁷¹

C. Business Deals Beyond the Network

Not only do networks benefit from their talent; fashion brands and modeling agencies are eager to onboard stars as well.⁷² Marketing executives learned that companies can increase their profit margins by partnering with reality television stars, as partnerships yield the same boosts in sales at lesser cost to agencies.⁷³ Studies show that consumers find endorsements made by reality television stars to be more authentic than those made by traditional celebrities.⁷⁴ Mark Young, a business professor at the University of Southern California, declared that these lucrative partnerships are worthy ventures for marketers: "If I pay a reality star 1/50 of what I'd pay Johnny Depp, my return is going to come back much quicker."⁷⁵ The intricate relationship between reality stars, networks, consumers, and brands demonstrates that not only is this business model highly effective, but it is here to stay.⁷⁶ As a result of this business model's popularity and an inherent increase in participants' exposure, courts are eager to understand how privacy law will impact this niche industry.⁷⁷

III. PRIVACY LAWS IN REALITY TELEVISION

As reality television continues to grow in popularity, networks must balance a viewer's need for entertainment with a star's right to privacy.⁷⁸ This Section details the constitutionality of privacy laws, legislatures' and courts' attempts to codify an individual's right to privacy, the lack of privacy rights in reality television, the contractual relationship between the network and

⁷¹ *Id.*

⁷² *See Stanley, supra note 6.*

⁷³ *See id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *See id.*

⁷⁷ *See generally Yanisky-Ravid & Lahav, supra note 9.*

⁷⁸ *See id.* at 999–1001.

its participants, and the ways in which courts balance an individual's right to privacy with the public interest.

A. *An Overview of an Individual's Right to Privacy*

Whether the Constitution protects any citizen from privacy invasions remains a matter of debate.⁷⁹ Historically, scholars described the right to privacy to mean “[t]he right to be let alone” or “[t]he right of inviolate personality.”⁸⁰ However, with rapid social media growth and technological advancements, courts face challenges in accurately delineating the rights protected by privacy law.⁸¹ Due to courts' inability to define an individual's constitutional right to privacy, federal and state legislatures have taken on an active role in codifying privacy laws.⁸² For example, Congress enacted the Privacy Act of 1974 (the Act) which “provides safeguards against unwarranted invasions of privacy by establishing a code of ‘fair information practices.’”⁸³ This federal

⁷⁹ Compare *Roe v. Wade*, 410 U.S. 113, 152 (1973), with *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 273 (2022).

⁸⁰ J. Joseph Cummings, *Television and the Right of Privacy*, 36 MARQ. L. REV. 157, 157 (1952) (quoting Louis D. Brandeis & Samuel D. Warren, *The Right to Privacy*, 4 HARV. L. REV. 193 (1890)).

⁸¹ See Yanisky-Ravid & Lahav, *supra* note 9, at 999–1001.

⁸² See, e.g., 5 U.S.C. § 552a (1974). The Privacy Act of 1974 “establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies.” *Privacy Act of 1974*, U.S. DEPT OF JUST. (Oct. 4, 2022), [https://www.hhs.gov/sites/default/files/privacysummary.pdf](https://www.justice.gov/opcl/privacy-act-1974#:~:text=The%20Privacy%20Act%20of%201974%2C%20as%20amended%2C%205%20U.S.C.,of%20records%20by%20federal%20agencies;see%20also%20Health%20Insurance%20Portability%20and%20Accountability%20Act%20(HIPAA),Pub.L.No.104-191,110%20Stat.1936%20(1996).Passed%20to%20reform%20the%20health%20insurance%20industry,the%20Act%20require[s]%20the%20Secretary%20of%20[Health%20and%20Human%20Services]%20to%20publicize%20standards%20for%20electronic%20exchange,%20privacy%20security%20of%20health%20information.” Summary of the HIPAA Privacy Rule, U.S. DEP'T OF HEALTH & HUM. SERVS. (Oct. 19, 2022), <a href=). Further, HIPAA prohibits covered entities from disclosing a patient's information from anyone other than the patient. *Id.*

⁸³ See 5 U.S.C. § 552a (1974); see also *Privacy Act*, U.S. DEPT OF TREASURY, <https://home.treasury.gov/footer/privacy-act#:~:text=The%20Privacy%20Act%20of%201974,of%20%22fair%20information%20practices.%22> [<https://perma.cc/QX6Q-2PD3>].

statute focuses on governmental agencies rather than private companies such as networks.⁸⁴ Since the Act fails to mention reality television implications, the legislature is still unaware of the negative impact that unscripted television can have on white-collar laws.⁸⁵ It is evident that lawmakers do not consider television an area in need of regulation because they refuse to codify a federal or state statute that outlines privacy rights for television stars.⁸⁶ Unlike other matters, such as health care and artificial intelligence, reality television is slow to change its stance on affording greater privacy protection for its stars.⁸⁷

B. The Use of Contractual Relationships to Govern Privacy Rights

Reality television networks and stars enter into a contractual relationship to determine stars' privacy rights.⁸⁸ In the past, participants across various reality television shows retained the right to sue networks for defamation, fraud, invasion of privacy, intentional infliction of emotional distress, trademark infringement, and civil rights violations.⁸⁹ More recently, producers have introduced elaborate and ironclad contracts to ensure that the unpredictability of unscripted television does not open the door for parties to litigate.⁹⁰ In addition to near one-hundred-page contracts, producers require participants to sign full releases, privacy waivers, and non-disclosure agreements.⁹¹ Often, networks demand complete disclosure of a participant's personal details and conduct invasive investigations, even going so far as to investigate participants' religious affiliations and past sexual history.⁹²

⁸⁴ See 5 U.S.C. § 552a (1974).

⁸⁵ See *id.*

⁸⁶ Dennis D. Hirsch, *The Law and Policy of Online Privacy: Regulation, Self-Regulation, or Co-Regulation?*, 34 SEATTLE U. L. REV. 439, 451–55.

⁸⁷ See Riley, *supra* note 11, at 114–15.

⁸⁸ *Id.* at 107–08.

⁸⁹ *Id.* at 114–15.

⁹⁰ *Id.* at 123.

⁹¹ *Id.* at 107, 124.

⁹² *Id.* at 124.

Networks require participants to forfeit their right to privacy with stringent contractual language, with one such contract stating:

I understand that, in and in connection with the Program . . . I may reveal and/or relate, other parties . . . may reveal and/or relate, or the Producer may thus edit, information about me of a personal, surprising, defamatory, disparaging, embarrassing or unfavorable nature. I further understand that my appearance, depiction, and/or portrayal in or in connection with the Program, and my actions and the actions of others displayed in or in connection with the Program, may be disparaging, defamatory, embarrassing or of an otherwise unfavorable nature, and may expose me to public ridicule, humiliation or condemnation. I acknowledge and agree that Producer shall have, in its sole discretion and editorial control, the right to include any such information and any such appearance, depiction, portrayal, actions and statements in and in connection with the Program. I understand and acknowledge that while such conduct might otherwise constitute a tort, I have freely and knowingly consented to such conduct and waive any action against Producer.⁹³

Networks implement strict contractual language as it effectively diminishes a star's right to privacy and publicity.⁹⁴ *The Real Housewives* casting director Melissa Stanforth even admits that producers impose an "open-book" policy, granting them access to all aspects of a cast member's life, from seemingly trivial matters (including contents of their closets) to matters of significant importance (such as their children).⁹⁵ Stanforth explains, "I always ask people what's off the table. [If they] say, '[t]his, this, this and that,' I say, 'You shouldn't be on reality TV.'"⁹⁶ Based on this "open-book" policy, Bravo likely required Giudice, Shah, and Jayne to discuss their ongoing legal issues, regardless of how the additional exposure could negatively impact public opinion or their cases.⁹⁷ Moreover, such unlimited access can leave both the stars

⁹³ *Id.* at 126–27.

⁹⁴ *See id.*

⁹⁵ Charlotte Chilton, *55 Rules Bravo's 'Real Housewives' Cast Members Have To Follow*, WOMEN'S HEALTH (Jan. 25, 2022), <https://www.womenshealthmag.com/life/g31899425/real-housewives-bravo-rules/?slide=5> [<https://perma.cc/4CBW-KSPY>].

⁹⁶ *Id.*

⁹⁷ *Id.*; *see also* Murphy, *supra* note 57.

and the network in a vulnerable position.⁹⁸ For instance, Jayne inadvertently implicated Bravo through her legal controversies when the attorney suing Jayne subpoenaed the network to acquire hundreds of hours of unaired footage, text messages, and emails to understand whether Jayne was complicit in her husband's crimes.⁹⁹ Thus, contractual relationships can be a double-edged sword, but ultimately serve as an effective tool for a network to prevent litigation.

C. Courts' Interpretations of the Contractual Relationship

Despite contractual agreements typically limiting a participant's ability to sue networks, many still attempt to pursue legal action—albeit with limited success.¹⁰⁰ In the event of litigation, the odds of the television star prevailing over the network are nearly impossible for four main reasons.¹⁰¹ First, rooted in principles of contract law, participants freely enter into contractual relationships and presumably retain the power to negotiate.¹⁰² It is important to note that although the contractual process generally promotes negotiation, reality show participants often lack the bargaining power necessary to negotiate certain clauses.¹⁰³ Frequently, the only choice participants can freely make is to either agree to all the terms or to forgo the opportunity altogether.¹⁰⁴ Second, courts favor networks because they assume the financial risk in their relationship with the stars.¹⁰⁵ A network must protect itself from the inherent risks of hiring individuals who lack respectable reputations or are otherwise naïve about televised programs.¹⁰⁶ Third, because courts typically aspire to preserve

⁹⁸ See Murphy, *supra* note 57.

⁹⁹ *Id.* The plaintiffs' attorney suing Girardi and Erika Jayne for damages, Jay Edelson, recently stated, "[T]he victims have had to endure watching the *Real Housewives* cast do things like eat caviar pie and drink specially-made vodka served by white-gloved staff as they pay lip service to the lives Tom has ruined." *Id.*

¹⁰⁰ Riley, *supra* note 11, at 123–28.

¹⁰¹ *Id.* at 135.

¹⁰² *Id.*

¹⁰³ *Id.* at 135–36.

¹⁰⁴ *Id.* at 136.

¹⁰⁵ *Id.* at 135.

¹⁰⁶ *Id.* at 113.

contractual relationships and the negotiation processes, plaintiffs cannot show that the contract was unconscionable to the degree necessary to render the contract void.¹⁰⁷ Fourth, the law considers reality television stars to be public figures, so they accordingly enjoy lesser privacy protections compared to that of an ordinary citizen.¹⁰⁸ Courts consistently hold that the First Amendment right to freedom of speech and press allows citizens to openly criticize public figures, and these figures must meet an exceedingly high threshold to collect damages in libel lawsuits.¹⁰⁹

Although the contractual relationship seems to heavily favor networks, contracts are necessary for the network to shield itself from liability while also producing content at a high volume.¹¹⁰ Even absent a contractual relationship, courts often defer to networks for privacy violation claims.¹¹¹ For instance, in *Best v. Berard*, plaintiff Best brought suit against the City of Naperville and several production companies for her involuntary appearance on a reality television show.¹¹² The defendants were several production companies that partnered with the city to produce *Female Forces*, an unscripted show that follows female police officers on duty.¹¹³ Two police officers featured on *Female Forces* pulled Best over for driving with an expired license plate sticker.¹¹⁴ During the arrest, the network conveyed that it would only feature Best's arrest on television if she signed the consent

¹⁰⁷ *Id.* at 130–34. “Under California state law, unconscionable contracts are subject to severability under CA Civil Code § 1670.5(a); hence the entire contract would not be void regardless of a finding regarding an individual clause. Markedly, there is no precedent finding the standard and existing clauses of a reality television contract unconscionable.” *Id.*

¹⁰⁸ See Yanisky-Ravid & Lahav, *supra* note 9, at 980–81. United States courts define public figure as: “(1) celebrities, (2) those holding or formerly holding public office, (3) criminals, (4) inventors, researchers, and academics, (5) war heroes, (6) figures from the news, and (7) unwilling to unexpected public figures.” *Id.*

¹⁰⁹ *Id.* at 993–94.

¹¹⁰ See Riley, *supra* note 11, at 123–27.

¹¹¹ See generally *Best v. Berard*, 776 F. Supp. 2d 752 (N.D. Ill. 2011) (holding that the City of Naperville and *Female Forces* did not violate the Illinois Right to Publicity Act by airing the plaintiff's commission of a crime, despite the plaintiff's refusal to enter into a contractual relationship with the network).

¹¹² *Id.* at 753–54.

¹¹³ *Id.*

¹¹⁴ *Id.* at 754.

form.¹¹⁵ Best refused to sign the form, but footage of her arrest nonetheless aired on *Female Forces*.¹¹⁶ Best sued the network, claiming that it violated her privacy rights under the Illinois Right to Publicity Act, which prohibits the use of an individual's identity for commercial purposes without written consent.¹¹⁷

In its ruling, the court balanced an individual's right to privacy with constitutional concerns, holding that the First Amendment's core purposes were implicated "when the government . . . imposes sanctions on the publication of truthful information of public concern . . . privacy concerns give way when balanced against the interest in publishing matters of public concern."¹¹⁸ The court further reasoned, that "the commission of a crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions, are without question events of legitimate concern to the public."¹¹⁹ It is clear that even minor crimes, such as driving with a suspended license, are matters of public concern warranting transparent media coverage.¹²⁰ By extension, white-collar crimes committed by reality television stars are certainly considered matters of public concern.¹²¹

The *Best* ruling illustrates how, even absent a contractual relationship, courts are eager to sacrifice an individual's privacy concerns in exchange for free media.¹²² *Best* provides insight on how courts could rule should a member of *The Real Housewives* bring a privacy claim against Bravo.¹²³ This ruling may provide comfort for those who worry that stars may evade public scrutiny by calling on privacy laws.¹²⁴ It is clear that the courts of law are in support of networks, especially those that supposedly place

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 755.

¹¹⁸ *Id.* at 757.

¹¹⁹ *Id.* (citing *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 492 (1975)).

¹²⁰ Christine N. Walz, *Right of Publicity Claim Involving Reality TV Show Prohibited under First Amendment*, HOLLAND & KNIGHT (May 2011), <https://www.hklaw.com/en/insights/publications/2011/04/right-of-publicity-claim-involving-reality-tv-show> [<https://perma.cc/T9GH-8H2N>].

¹²¹ *Id.*; see also Shover et al., *supra* note 23, at 76.

¹²² 776 F. Supp. 2d at 758–59.

¹²³ See *id.*; see also Riley, *supra* note 11, at 124–28.

¹²⁴ See Darby Green, *Almost Famous: Reality Television Participants as Limited-Purpose Public Figures*, 6 VAND. J. ENT. L. & PRAC. 94, 95, 99 (2003).

public interest ahead of an individual's right to privacy.¹²⁵ Although participation in reality television appears unfair on its face, prospective stars weigh the cost of relinquishing their privacy rights with the success associated with reality television.¹²⁶ Ultimately, individuals choose to participate in reality television because the potential for success far outweighs any concern for privacy.¹²⁷

IV. CALLS FOR CHANGE

Although the court in *Best* placed public interest before an individual's right to privacy, the exploitive qualities inherent within reality television result in individuals' need for greater protections.¹²⁸ While the previous examples illustrate success stories, an appearance on a reality television show does not always result in a positive outcome.¹²⁹ Renewed focus on mental health and well-being led some legislatures abroad to afford greater privacy protections to reality show participants.¹³⁰

A. *British Television & Parliament Action*

The United Kingdom is one of the few jurisdictions that responded to calls to reform reality television procedures following significant privacy struggles faced by British personalities.¹³¹ Sophie Gradon, Mike Thalassitis, and Caroline Flack were featured on *Love Island*, a British dating reality show that films participants in their pursuit to find their match.¹³² Upon leaving

¹²⁵ See *id.* at 96.

¹²⁶ See Riley, *supra* note 11, at 135; see also Stanley, *supra* note 6.

¹²⁷ See Stanley, *supra* note 6.

¹²⁸ See Yanisky-Ravid & Lahav, *supra* note 9, at 978; see also Rachel Spencer, *Love Island's Mike Thalassitis and Sophie Gradon's Deaths Among 38 Suspected Suicides Linked to Reality TV Shows Worldwide*, THE SUN (Mar. 23, 2019), <https://www.thesun.co.uk/tvandshowbiz/8705713/love-island-mike-thalassitis-sophie-gradon-suicide-reality-tv/> [https://perma.cc/HC3G-22FQ].

¹²⁹ See Spencer, *supra* note 128.

¹³⁰ See *Committee Announces Inquiry into Realty Television*, UK PARLIAMENT (May 15, 2019) [hereinafter UK PARLIAMENT], <https://committees.parliament.uk/committee/378/digital-culture-media-and-sport-committee/news/103566/committee-announces-inquiry-into-reality-tv/> [https://perma.cc/JH2Q-BYQ8].

¹³¹ See *id.*

¹³² Bindu Rai, *Three 'Love Island' Suicides Raise Concerns about Reality Show*, GULF NEWS (Feb. 17, 2020), <https://gulfnews.com/entertainment/tv/three>

the show, Gradon, Thalassitis, and Flack faced incessant online bullying and all tragically died by suicide.¹³³ Critics of the show asserted that the suicides were a result of the stars' increased exposure coupled with poor mental health, and urged networks to implement safeguards to protect their talent.¹³⁴

After the tragic *Love Island* suicides came to light, the Office of Communications implemented regulations requiring UK networks to bear responsibility for the "wellbeing and dignity" of reality television show participants.¹³⁵ To comply with these safeguards, *Love Island* now suspends participants' social media accounts and also implements inclusive language training, psychological assessments, and therapy sessions.¹³⁶ These safeguards help to protect participants' mental health and well-being, but participants have voiced concern that suspending their social media accounts hinders their ability to realize monetary success while featured on the show.¹³⁷

Further, the Parliament's Committee for Digital, Culture, Media and Sport (the Committee) launched an inquiry to consider a network's duty of care to participants and whether the government should impose additional regulations.¹³⁸ The Committee enforced precautions that require a network to submit a written report on best practices to support participants' mental health.¹³⁹ The UK Government placed the burden on the legislature and private entities, rather than courts, to address privacy concerns in reality television.¹⁴⁰ Since reality television agreements are

-love-island-suicides-raise-concerns-about-reality-show-1.69761973 [https://perma.cc/7SW4-FXUF].

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ Patricia Nilsson, *Ofcom Proposes New Rules to Protect Reality TV Participants*, FIN. TIMES (July 29, 2019), <https://www.ft.com/content/66e4865a-b1e1-11e9-8cb2-799a3a8cf37b> [https://perma.cc/D7SU-UJFQ].

¹³⁶ Aidan Milan, *What Changes to Love Island Were Made after Mike Thalassitis and Sophie Gradon's Deaths?*, METRO UK (Feb. 19, 2020), <https://metro.co.uk/2020/02/19/changes-love-island-made-mike-thalassitis-sophie-gradons-deaths-12268940/> [https://perma.cc/7BPR-LT59].

¹³⁷ Alexandra Whiteside, *The Evolution of Love Island: Are Its New Social Media Regulations a Sign of Change?*, THE DRUM (Mar. 28, 2023), <https://www.thedrum.com/opinion/2023/03/28/the-evolution-love-island-are-its-new-social-media-regulations-sign-change> [https://perma.cc/82F4-QCSU].

¹³⁸ UK PARLIAMENT, *supra* note 130.

¹³⁹ See *id.*

¹⁴⁰ See *id.*

rooted in contract law, courts are averse to implementing language that is outside the scope of the contract.¹⁴¹ These increased protections may be necessary for issues such as mental health and suicide, but courts should exercise caution when granting leniency for all charges faced by reality stars.¹⁴²

B. Courts' Evolving Perspectives Since the Best Decision

Since the *Best* ruling, courts have reevaluated the importance of an individual's right to privacy.¹⁴³ In a recent California case, *Young v. NeoCortext Inc.*, cast members of several television shows brought a class action suit against NeoCortext, an application developer, for using their likeness and identity to solicit the purchase of paid subscriptions to the application.¹⁴⁴ The plaintiffs sought fair compensation under California Civil Code Section 3344, which holds entities liable for knowingly using another's name, voice, signature, photograph, or likeness for advertising or selling purposes.¹⁴⁵ This case slightly differs from *Best* because the plaintiffs invoked publicity rights, which some scholars describe as a combination of privacy and property law.¹⁴⁶ Legal scholars in the nineteenth century discussed publicity in conjunction with privacy rights.¹⁴⁷ The right to publicity is an individual's right to own a property interest in their image, which includes their name,

¹⁴¹ See Riley, *supra* note 11, at 116–17.

¹⁴² See UK PARLIAMENT, *supra* note 130; see also *infra* Part V.

¹⁴³ See *Young v. NeoCortext Inc.*, 690 F. Supp. 3d 1091, 1099 (C.D. Cal. 2023).

¹⁴⁴ *Id.* at 1096.

¹⁴⁵ Cal. Civil Code § 3344 (West 2010).

Any person who knowingly uses another's name, voice, signature, photograph, or likeness, in any manner, on or in products, merchandise, or goods, or for purposes of advertising or selling, or soliciting purchases of, products, merchandise, goods or services, without such person's prior consent . . . shall be liable for any damages sustained by the person or persons injured as a result thereof.

Id. A right of publicity claim requires: “(1) defendant's knowing use of plaintiff's identity, (2) appropriation for the defendant's advantage, (3) direct connection between alleged use and commercial purpose, (4) lack of consent, (5) resulting injury.” See *NeoCortext*, 690 F. Supp. 3d at 1104.

¹⁴⁶ Porsche Farr, *What Good is Fame if You Can't Be Famous in Your Own Right?: Publicity Right Woes of the Almost Famous*, 16 MARQ. INTELL. PROP. L. REV. 467, 468 (2012).

¹⁴⁷ *Id.* at 467–69.

picture, likeness, voice, and other characteristics.¹⁴⁸ Conversely, the right to privacy, especially as it relates to public figures, means “the right to be free from having their image ruined by ‘idle gossip’ or negative statements published in the press.”¹⁴⁹

The *NeoCortext* case presents a publicity issue with underlying privacy implications.¹⁵⁰ The court explained that under California law, when an artist is faced with a right of publicity challenge to his or her work, he or she may raise an affirmative defense that the work is protected by the First Amendment so long as the work contains transformative elements.¹⁵¹ *NeoCortext* argued that the application’s purpose is to transform photos or videos in which the plaintiffs appear.¹⁵² Ultimately, the court denied *NeoCortext*’s motion for summary judgment, holding that the final product lacked transformative elements and sufficiently depicts Young’s likeness such that *NeoCortext* could have violated Section 3344.¹⁵³

V. DANGERS OF EXPANDING PUBLICITY & PRIVACY RIGHTS FOR REALITY TELEVISION

The rulings in *Best* and *NeoCortext* exemplify courts’ aversion to granting deference to plaintiffs for privacy violations, but their willingness to grant victories for publicity violations.¹⁵⁴ As publicity rights become more accessible to “ordinary people,” courts may grant greater deference to reality television stars.¹⁵⁵ The courts’ tendency to rule in favor of plaintiffs in publicity cases suggests that the legal system is more willing to safeguard individual rights when financial compensation is at stake.¹⁵⁶ The

¹⁴⁸ *See id.* at 468–69.

¹⁴⁹ *See id.* at 468.

¹⁵⁰ *See* 690 F. Supp. 3d at 1096; *see also* Farr, *supra* note 146, at 470. Judges distinguish publicity rights from privacy rights by focusing on economic interests. Courts generally agree that every person has a right of publicity independent of their right to privacy. The value of one’s publicity rests on each person’s right to grant the use of their publicity as they choose.

¹⁵¹ *NeoCortext*, 690 F. Supp. 3d at 1103.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Compare* 776 F. Supp. 2d 752, 759 (N.D. Ill. 2011), *with* 690 F. Supp. 3d at 1103.

¹⁵⁵ *See, e.g., NeoCortext*, 690 F. Supp. 3d at 1103.

¹⁵⁶ *See id.* at 1104 (denying the defendant’s motion to dismiss the case and finding that the plaintiff sufficiently made a *prima facie* showing that the

broadening of publicity rights may result in the broadening of privacy rights, as only a “murky line” appears between the two concepts.¹⁵⁷ As a result, courts may rule in favor of stars like Giudice, Shah, and Jayne’s right of publicity while also inherently affording broader privacy rights as well.¹⁵⁸

A. The Real Housewives *Convicts Remain Unscathed*

A network’s codependent relationship with its stars endangers the criminal justice system’s ability to reduce white-collar crime.¹⁵⁹ Often, white-collar criminals serve their sentence in federal prison, only to receive greater opportunity upon release.¹⁶⁰ For instance, Giudice returned to the small screen following her fifteen-month sentence in federal prison.¹⁶¹ Since her release, Teresa published memoirs and cookbooks and continues to profit from her fame on reality television.¹⁶² Similarly, Erika Jayne, who is still named in several lawsuits,¹⁶³ continues to star on *RHOBH*, which opened the door for her Las Vegas residency.¹⁶⁴ It would be no surprise if in six years Jen Shah returns to *The Real Housewives* franchise to discuss her time in prison and rebuild her image.¹⁶⁵ Not only are the stars willing to return to television, but the network encourages such behavior because it boosts ratings and reviews.¹⁶⁶

defendant violated his publicity right by using his identity to solicit app subscriptions without fairly compensating the plaintiff).

¹⁵⁷ Farr, *supra* note 146, at 470.

¹⁵⁸ *See id.*

¹⁵⁹ *See Shover et al., supra* note 23, at 75–76.

¹⁶⁰ *See, e.g., Shilliday, supra* note 29.

¹⁶¹ *See id.*

¹⁶² *Books by Teresa Giudice*, THRIFTBOOKS, <https://www.thriftbooks.com/a/teresa-giudice/213489/?srsltid=AfmBOooeWHiAFAoBpoyHPsqW5zEWnN57ujIkXT5bPmDwoMrZqG1z7IIu> [<https://perma.cc/N9PZ-VR44>].

¹⁶³ D. Thomas, *supra* note 52.

¹⁶⁴ Dave Quinn, *Erika Girardi’s Vegas Residency Comes to Life in New RHOBH Spinoff*, Erika Jayne: Bet it All on Blonde, PEOPLE (Nov. 5, 2023, 2:31 PM), <https://people.com/bravocon-2023-erika-jayne-bet-it-all-on-blonde-limited-series-trailer-8387597> [<https://perma.cc/U8PB-NR5B>].

¹⁶⁵ *See id.*

¹⁶⁶ *See* Loree Seitz, ‘Real Housewives of Salt Lake City’ Season 4 on Track to Hit Series Ratings High with 1.9 Million Viewers Exclusive, THEWRAP (Oct. 16, 2023), <https://www.thewrap.com/real-housewives-salt-lake-city-season-4-ratings-viewership-bravo-peacock/> [<https://perma.cc/M5AR-PH59>].

B. Savvy The Real Housewives Stars May Influence Privacy Law

As privacy becomes recognized as an issue in need of reform, stars can call on networks to change contractual language to afford greater protection.¹⁶⁷ After the *Love Island* star suicides and with constitutional concerns escalating, networks may change their stance on privacy.¹⁶⁸ By extension, greater privacy protections will lead to more stringent publicity laws, as courts are concerned about the unlawful misuse of a plaintiff's likeness or image for monetary gain.¹⁶⁹ An increase in privacy and publicity protections will decrease public scrutiny and exposure while allowing reality stars to continually profit from their past or present criminal behavior.¹⁷⁰ The following section offers several solutions to prevent reality television stars from exploiting privacy laws to commit white-collar crimes.

VI. SOLUTIONS

Legislatures and courts fail to address the concerns surrounding reality television, primarily because unscripted television is a modern phenomenon that lacks regulation.¹⁷¹ However, legislatures, courts, and private entities can nonetheless implement regulations to limit white-collar crimes committed by reality stars and public figures. The following Section details how entities can curb white-collar crimes through the illegality defense, Son of Sam laws, reform in the punishment phase, and regulation of private entities.

A. Illegality Defense

A reality television star's ability to transform privacy law violates the legal doctrine "*ex turpi causa non oritur actio*," which

¹⁶⁷ See Riley, *supra* note 11, at 130–33.

¹⁶⁸ See Spencer, *supra* note 128; see also *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215, 273 (2022) (abrogating *Roe v. Wade* and holding that the "right of personal privacy" strictly means to shield information from disclosure).

¹⁶⁹ See *Young v. NeoCortex Inc.*, 690 F. Supp. 3d 1091, 1103 (C.D. Cal. 2023).

¹⁷⁰ See Yavinsky-Ravid & Lahav, *supra* note 9, at 999–1000.

¹⁷¹ Louisa Ballhaus, *What Are the Legal Rights of Reality TV Stars, Really?*, BBC (Mar. 12, 2024), <https://www.bbc.com/culture/article/20240311-legal-rights-of-reality-tv-stars> [<https://perma.cc/HM59-4QCK>].

is more commonly known as the illegality defense.¹⁷² This core tenant of justice explains that an individual who suffers damage at the hands of another, but who had himself acted in an unconscionable manner, should be deprived of any remedy which the law might otherwise provide.¹⁷³ Essentially, courts should resist assisting a plaintiff who is guilty of illegal conduct of which the court takes notice.¹⁷⁴

Applied here, if a star from *The Real Housewives* sues the network for privacy or publicity violations, the court should refrain from ruling for the star.¹⁷⁵ Without television exposure, stars cannot continue to leverage their name and image for monetary gain.¹⁷⁶ As the court stressed in *Best*, criminal wrongdoing, even as minor as an expired license plate sticker, is a public issue exposed for public scrutiny.¹⁷⁷ Surely, major white-collar crimes are likewise serious issues in need of public attention.¹⁷⁸

B. Son of Sam Laws

Further, Congress could enact laws similar to the Son of Sam laws, ensuring that reality stars do not profit from their misdoings after serving their criminal sentence.¹⁷⁹ Implemented in 1978, forty states and the federal government passed legislation

¹⁷² Margaret Fordham, *The Role of Ex Turpi Causa in Tort Law*, SING. J. LEGAL STUD. 238, 238 (1998).

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 239.

¹⁷⁵ *See id.*

¹⁷⁶ *See Stanley, supra* note 6.

¹⁷⁷ *See Walz, supra* note 120.

¹⁷⁸ *Id.*

¹⁷⁹ Rudolph Alexander, Jr., *Victims' Rights and Son of Sam Laws: Implications for Free Speech and Research on Offenders*, 6 CRIM. JUST. POL. REV. 275, 275 (1992); *see also* Sandra Thomas, *Son of Sam Laws*, FREE SPEECH CTR. (July 19, 2024), <https://firstamendment.mtsu.edu/article/son-of-sam-laws/> [<https://perma.cc/P6EU-6TFJ>]. The New York state legislature enacted the Son of Sam laws after serial killer David Berkowitz sold his story rights.

The purpose of the law is to “prevent those accused or convicted of a crime from profiting from the commercial exploitation of their crimes by contracting for the production of books, movies, magazine articles, television shows and the like in which their crime is reenacted” or in which the “person’s thoughts, feelings, opinions, or emotions” about the crime are expressed. *Id.* (quoting N.Y. EXEC. L. § 632a (1977)).

that prevented criminals from receiving compensation by selling their stories to publishers and movie producers.¹⁸⁰ Proponents of the legislation advocated for the law, arguing that it was essential to protect victims' rights.¹⁸¹ Although Son of Sam laws were largely overhauled for violating First Amendment rights, the New York legislature was on course in its attempt to curb a criminal's accessibility to publications that would allow them to profit from their crime.¹⁸² Should the federal government implement a law along the same grain as the Son of Sam laws, Teresa Giudice would be unable to return to the small screen.¹⁸³ Accordingly, Son of Sam laws would be effective in limiting a convict's ability to return to the platform in which the crime was committed.¹⁸⁴

C. Changes to the Punishment Phase

Additionally, the legislature can pass federal regulations focused on the sentencing phase.¹⁸⁵ Courts already exercise such punishments for white-collar crimes, specifically in the securities sector.¹⁸⁶ Upon the enactment of the Sarbanes-Oxley Act, the Securities and Exchange Commission retains the power to bar securities law violators from serving on boards of publicly traded companies or trading securities on the stock market.¹⁸⁷ Prior to

¹⁸⁰ Alexander, Jr., *supra* note 179.

¹⁸¹ S. Thomas, *supra* note 179.

¹⁸² *The First Amendment Problems of "Son of Sam" Laws*, U.S. DEPT JUST. [hereinafter *The First Amendment Problems*], <https://www.justice.gov/archives/jm/criminal-resource-manual-1105-first-amendment-problems-son-sam-laws> [<https://perma.cc/23DA-3YY4>]. In 1991, the Supreme Court held that Son of Sam laws are inconsistent with First Amendment rights. The Court found that although there is an interest in compensating victims for harm, the law itself is "overinclusive" and "reaches a wide range of literature that does not enable a criminal to profit from his crime while a victim remains uncompensated." *Id.* (quoting *Simon & Schuster Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 121–22 (1991)).

¹⁸³ *See id.*

¹⁸⁴ *See id.*

¹⁸⁵ *See* Philip F.S. Berg, *Unfit to Serve: Permanently Barring People from Serving as Officers and Directors of Publicly Traded Companies after the Sarbanes-Oxley Act*, 56 VAN. L. REV 1871, 1872–73 (2019).

¹⁸⁶ *Id.*

¹⁸⁷ *See id.* The enactment of Sarbanes-Oxley provided courts and independent agencies with the ability to implement creative remedies, other than a lengthy prison sentence, for white-collar offenders. The Act also provided

Sarbanes-Oxley, such punishments were rare, allowing security law violators to go unpunished.¹⁸⁸ Similarly, courts may impose punishments that bar reality television personalities from returning to *The Real Housewives* franchise or other similar television shows in which it is possible to attain a profit.¹⁸⁹ Similar to the Son of Sam laws, this punishment places stars on notice that the law does not tolerate white-collar crime.¹⁹⁰

D. Following Parliament's Lead

In response to the *Love Island* suicides, the UK Parliament required private entities to value participants' mental health and well-being.¹⁹¹ Parliament's research and rule-making in this sector indicates that common-law jurisdictions can impose privacy-related regulations.¹⁹² The legislature could compel networks to include a clause stating that, should the star commit white-collar crime during their stint on the show, the network has full and unencumbered access to the star's life for the sake of public interest.¹⁹³ The legislature can require the network to provide viewers with broad access to the participant's involvement in their legal proceedings.¹⁹⁴ Such a solution would essentially limit a participant's ability to invoke privacy rights as way of protecting their public image, which would ultimately reduce their chances of success on reality television.¹⁹⁵

CONCLUSION

Limiting privacy rights for reality television stars is essential to deter financial crime. Courts recognize the importance of prosecuting white-collar crimes to the fullest extent.¹⁹⁶ The

notice to all citizens that white-collar crimes are serious offenses in which harsh punishments are just. *Id.*

¹⁸⁸ *See id.* at 1873.

¹⁸⁹ *See id.*; see also Berman, *supra* note 2.

¹⁹⁰ *The First Amendment Problems*, *supra* note 182.

¹⁹¹ UK PARLIAMENT, *supra* note 130.

¹⁹² *See id.*

¹⁹³ *See id.*

¹⁹⁴ *See id.*

¹⁹⁵ *See id.*

¹⁹⁶ *See generally* Yanisky-Ravid & Lahav, *supra* note 9.

government and private entities understand that white-collar crimes erode public trust in economic institutions, promote inequality, and destabilize markets.¹⁹⁷ However, courts and legislatures fail to recognize the ways in which reality television serves as a conduit for the commission of unlawful behavior. Reality television provides an accessible platform for “ordinary people” to share their lives, grow their businesses, and become well-known public figures. A participant’s willingness to bind themselves to strict contractual language, which essentially eliminates their right to privacy, indicates the transformative nature inherent in an appearance on reality television.

In litigation, courts habitually rule in favor of networks for their tendency to deliver information of public concern.¹⁹⁸ However, as technological and social media exploitation continue to escalate, courts are placing greater emphasis on an individual’s right to privacy.¹⁹⁹ As a result, courts are deferring to an individual’s right to privacy and publicity, especially in cases where financial compensation is at issue.²⁰⁰ Courts and legislatures should deny expanding privacy rights to reality television stars who exploit their position by committing white-collar crimes. While the intersection of reality television and financial crime is a relatively recent phenomenon, addressing this issue remains of paramount importance to disincentivize illicit behavior.

¹⁹⁷ Shover et al., *supra* note 23, at 76.

¹⁹⁸ See Riley, *supra* note 11, at 116–17.

¹⁹⁹ See Young v. NeoCortext Inc., 690 F. Supp. 3d 1091, 1104 (C.D. Cal. 2023).

²⁰⁰ Compare Best v. Berard, 776 F. Supp. 2d 752, 759 (N.D. Ill. 2011), with *NeoCortext*, 690 F. Supp. 3d at 1103.