

## A Tragedy That Won't Fade Away

**When grisly images of their daughter's death went viral on the Internet, the Catsouras family decided to fight back.**

**Jessica Bennett**

**NEWSWEEK**

From the magazine issue dated May 4, 2009

This is a story about a photo—an image so horrific we can't print it in NEWSWEEK. The picture shows the lifeless body of an 18-year-old Orange County girl named Nikki Catsouras, who was killed in a devastating car crash on Halloween day in 2006. The accident was so gruesome the coroner wouldn't allow her parents, Christos and Lesli Catsouras, to identify their daughter's body. But because of two California Highway Patrol officers, a digital camera and e-mail users' easy access to the "Forward" button, there are now nine photos of the accident scene, taken just moments after Nikki's death, circulating virally on the Web. In one, her nearly decapitated head is drooping out the shattered window of her father's Porsche.



The Web is full of dark images, so perhaps the urge to post these tragic pictures isn't surprising. But for the Catsouras family, the photos are a daily torment. Just days after Nikki's death, her father, a local real-estate agent, clicked open an e-mail that appeared to be a property listing. Onto his screen popped his daughter's bloodied face, captioned with the words "Woohoo Daddy! Hey daddy, I'm still alive." Nikki's sisters—Danielle, 18, Christiana, 16, and Kira, 10—have managed to avoid the photos, but live in fear that they'll happen upon them. And so the Catsourases are spending thousands in legal fees in an attempt to stop strangers from displaying the grisly images—an effort that has transformed Nikki's death into a case about privacy, cyber-harassment and image control.

The Catsourases are by no means the first to suffer at the hands of cyber-aggressors. But their story is unique in that it touches on so many of the ways the Web has become perverted: as an outlet for morbid curiosities, a space where cruel behavior suffers little consequence and an uncontrollable forum in which things that were once private—like photos of the dead—can go public in an instant. The case also illustrates how the law has struggled to define how legal concepts like privacy and defamation are translated into an online world.

For the Catsouras family, calling attention to the case has obvious drawbacks: they realize some who read this story may seek out their daughter's death photos, though they desperately hope you won't. But the family decided that sharing its story with NEWSWEEK was worth that risk, to raise awareness of the real suffering caused by their dissemination—and of the need for America's legal system to better protect privacy in the Internet age. "The fact is that we will never get rid of the photos anyway," says Lesli, Nikki's mother. "So we have made a decision to make something good come out of this horrible bad."

From the beginning, Nikki's death had all the makings of a sensational story. She was gorgeous; it was Halloween, and she was driving a \$90,000 sports car. She was from Orange County; the Beverly Hills 90210 of the housewives-filled suburbs. And from the outside, the Catsourases seemed to have it all: Christos and Lesli and their four beautiful girls lived in a planned community with man-made parks and multimillion-dollar homes. The family ate dinner together almost every night; their best friends lived next door.

But the family's life wasn't as idyllic as it seemed. In third grade, Nikki was diagnosed with a brain tumor that doctors didn't think she'd survive. It turned out to be benign, but 8-year-old Nikki had to undergo intensive radiation, and doctors told her parents the effects of that treatment on her young brain might show up someday—perhaps by causing changes in her judgment, or impulse control. Her family believes that's why, the summer before the accident, Nikki tried cocaine and

ended up in the hospital in a cocaine-induced psychosis. She used cocaine again the night before the accident, her family says. Lesli and Christos discussed checking her into a hospital, but decided against it: she was to visit a psychiatrist the next day, a specialist on brain disorders. So they let her sleep it off, and the next day, the three of them ate lunch together.

Afterward, as Christos left for work, he waved goodbye to his daughter, and Nikki flashed him a peace sign from the couch, smiling. Lesli went to fold laundry. About 10 minutes later, Lesli heard the door slam, and footsteps out the back door. She walked toward the garage, hesitantly, and locked eyes with Nikki, who was backing out of the driveway in Christos's Porsche 911 Carrera—a car she was never allowed to drive. Lesli called out to her, but Nikki looked away, accelerating out the cul-de-sac. Lesli phoned Christos, who began driving around trying to find his daughter and called 911. As he waited on hold, two police cars raced past him, sirens blaring, headed toward the toll road. "Has there been an accident?" he asked. "Yes," the dispatcher told him. "A black Porsche."

At the accident site, a crane was lifting the remains of a car so crumpled it was hard to tell what it had been. But Christos recognized a hubcap, barely attached, and collapsed onto the pavement. Later, two coroners told the family Nikki had been driving at close to 100mph when she clipped another vehicle, tumbled over the median and smashed into the concrete tollbooth. An autopsy would later reveal that she still had cocaine in her system.

Two weeks later, Lesli's brother, Geoff, got a call from a neighbor. "Have you seen the photos?" he asked. Apparently, photos of the crash scene were circulating around town, via e-mail. Soon they showed up on Web sites, many of them dedicated to hard-core pornography and death. A fake MySpace page was set up in Nikki's name, where she was identified as a "stupid bitch." "That spoiled rich girl deserved it," one commenter wrote. "What a waste of a Porsche," announced another.

The family filed a formal complaint about the photos' release, and three months later, they received a letter of apology from the California Highway Patrol. An investigation had revealed that the images, taken as a routine part of a fatal accident response, had been leaked by two CHP dispatchers: Thomas O'Donnell, 39, and Aaron Reich, 30. O'Donnell, a 19-year CHP veteran, had been suspended for 25 days without pay. Reich quit soon after—for unrelated reasons, says his lawyer. Both men declined requests for comment, but Jon Schlueter, Reich's attorney, says his client sent the images to relatives and friends to warn them of the dangers of the road. "It was a cautionary tale," Schlueter says. "Any young person that sees these photos and is goaded into driving more cautiously or less recklessly—that's a public service."

For the Catsouras family, however, knowing how the photos were leaked doesn't prevent their spread. So they hired a lawyer, Keith Bremer, and a tech company called [Reputation Defender](#) that works to remove malicious content from the Web. Together, they began tracking the Web sites displaying the photos, issuing cease-and-desist letters, and using advanced coding to make the photos harder to find in a Google search. Neither tactic was very successful: the family has no legal basis to compel Web sites to remove the photos, and no amount of programming magic could keep them from spreading to new sites. "Long story short, it became a virtually unwinnable battle," says Michael Fertik, a Harvard Law School graduate who is the founder of Reputation Defender.

So the Catsouras family sued the CHP for negligence, privacy invasion and infliction of emotional harm, among other charges. The case itself doesn't challenge Web users' right to post Nikki's photos, but it would hold the CHP accountable—creating a legal deterrent to prevent such leaks in the future. "There's not a lot of law on our side here," says the family's attorney, of Bremer, Whyte, Brown & O'Meara, LLP. "But putting these photos on the Internet was akin to placing them in every mailbox in the world."

In California, though, the case established little legal precedent. In March 2008, it was dismissed by a superior-court judge, who ruled that while the dispatchers' conduct was "utterly reprehensible," it hadn't violated the law. "No duty exists between the surviving family and defendant," the opinion reads, because privacy rights don't extend to the dead. "It's an unfortunate situation, and our heart goes out to the family," says R. Rex Parris, the attorney representing O'Donnell. "But this is America, and there's a freedom of information."

The Catsourases have appealed the court's decision—and at least one legal expert believes they may prevail. "Many, many courts have concluded that families of deceased individuals do have privacy rights to the deceased," says Daniel Solove, a law professor at George Washington University. In particular, he cites a 2004 case involving death-scene photos of former deputy

White House counsel Vincent Foster, who died in 1993 of a self-inflicted gunshot wound to the head. In that case, the Supreme Court ruled that the government could deny Freedom of Information Act requests for the photos based on a family's right to survivor privacy. "I'm totally perplexed at how the [California] court concludes there was no duty to preserve this family's privacy," he says.

While the specifics of the Catsouras case are unique, the broader issue—of how current laws seem impotent when faced with the viral spread of malicious Internet content—is becoming a widespread concern. Until it was shuttered last year, a site called Juicy Campus stirred controversy by spreading rumors about college students' alleged sexual escapades. Sites like DontDateHimGirl leak dirty allegations about unsuspecting men. And two Yale Law School alumnae have spent years going after the perpetrators of nasty gossip about them, posted on a legal-discussion board.

But while libel and slander are regulated by law in the real world, in the cyberworld almost anything goes. In 1996, Congress passed legislation—Section 230 of the Communications Decency Act—that immunizes Web sites from liability for the speech of individuals, under the rationale that companies like AOL shouldn't be responsible for the actions of each user. As a consequence, victims of a damaged reputation have little legal recourse. A person could try to sue the individuals who post on a Web site—as the Yale women have done—but in the world of anonymous postings and shared public computers, just finding a person's real name can be next to impossible. Even if you do identify them, and they agree to remove the content, it's unlikely the content is contained to that Web site alone. "We have created a deck that is so stacked against private individuals who want to protect their name and privacy that you don't even have a fighting chance," says Fertik of Reputation Defender.

That's why, legally, anyone can post bloody images of Nikki Catsouras—but it doesn't explain why so many people feel compelled to look. Some are driven by simple curiosity, psychologists say—the same urge that causes passing motorists to gawk at accidents. But online, anonymity allows us to go further, without the fear of public judgment. "It's like having a mask," says John Suler, a cyber-psychologist at Rider University. That mask can cause us to behave in ways we normally wouldn't—fueled by a kind of mob mentality. "The people looking at these photos don't have to face this family, and it disconnects them from the victims they're hurting," says Solove, the author of a book about Web privacy, "The Future of Reputation."

Two and a half years after Nikki's death, her loss hangs over the Catsouras family. They've made her room into a makeshift music studio, but there are still folders with her schoolwork, a closet full of clothes and her posters of Jim Morrison, Radiohead and the Beatles line the walls. Danielle, the daughter closest to Nikki in age, and Kira, the youngest, both study from home now, afraid to face the rumor mill at school. Christiana, the middle daughter, is finishing up her sophomore year, but memories of her sister pop up when she least expects it, like when a firefighter mentioned Nikki in a driver-safety lecture; Christiana fled the room crying.

Lesli and Christos forbid their daughters from using social-networking sites like MySpace, and have enabled computer settings that prevent photos from popping up on their screen. But Nikki's story is pervasive: Google delivers 246,000 results for "Catsouras." Recently, Christiana needed the address to a local hair salon called "Legends." She typed "Legends Ladera Ranch," the name of their town, into Google, and Nikki's name, as the "legend" of "Ladera Ranch," popped up. "It's the simple things you never expect," says Christos. "We live in fear of the pictures. And our kids will never Google their name without the risk of seeing them."

Today the entire family is in therapy, and they've taken out a second mortgage to cover the costs of their legal battle. They still eat dinner as a family each night, but Nikki's seat sits empty. At times, they wish they could put it all behind them. But for the moment, they're focused on the June 1 deadline for a California appeals court to rule on their case. "In a perfect world, I would push a button and delete every one of the images," says Lesli. In the real world, she finds some comfort in working to change the laws, so that photos of some future family's dead child might stay locked away, leaving only smiling, lively images to remember.

*Readers who want to lend support to the Catsouras family can access [www.SupportNikki.org](http://www.SupportNikki.org), a new website launched by ReputationDefender, which has worked to remove more than 2,000 of Nikki's photos from the Web so far. [Read here](#) to learn more about the impact of NEWSWEEK's story.*

URL: <http://www.newsweek.com/id/195073>