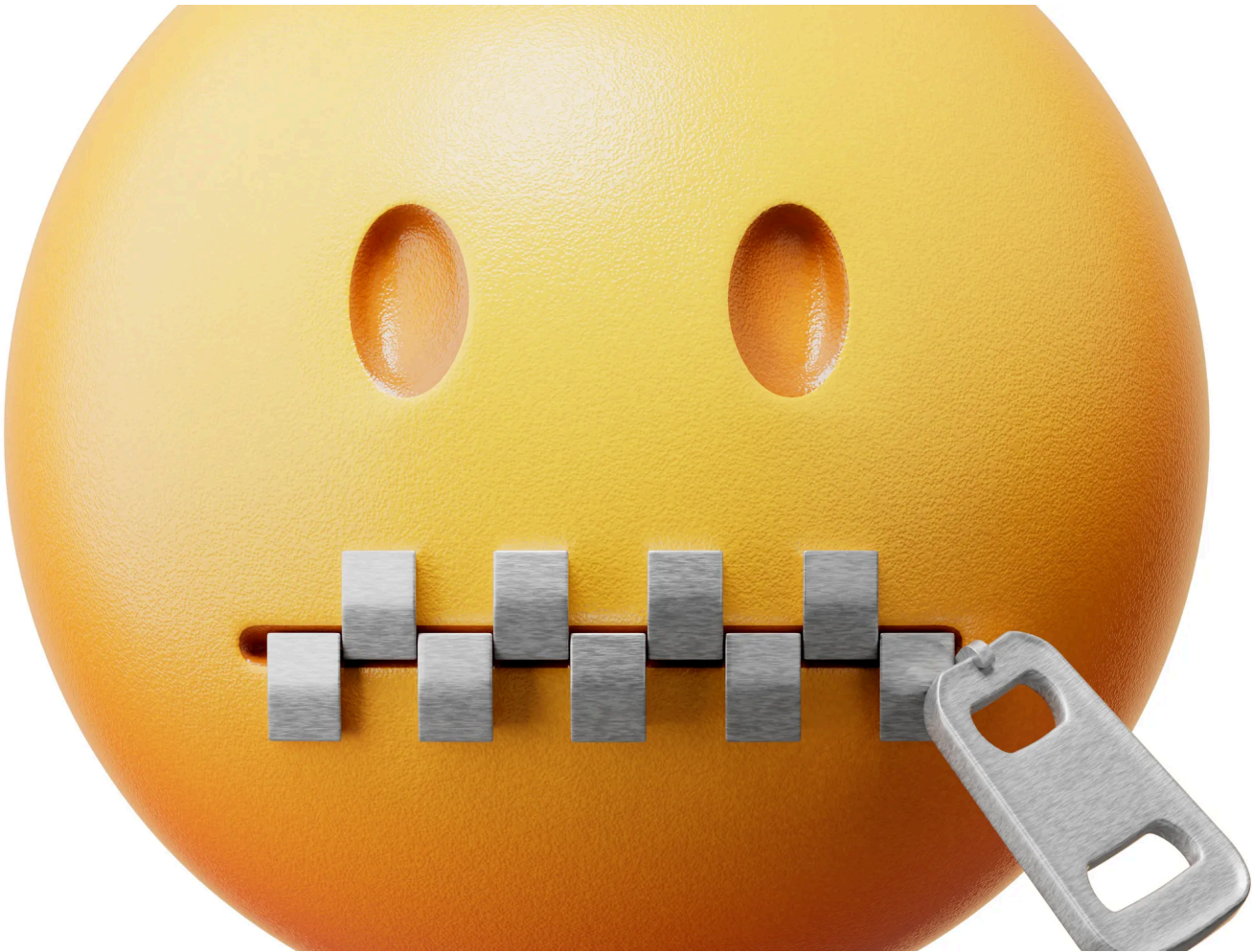




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Hush-Hush Affair How the NDA became the defining legal document of our time.

By Reeves Wiedeman, a features writer at New York Magazine

Illustration: Javier Jaén for New York Magazine



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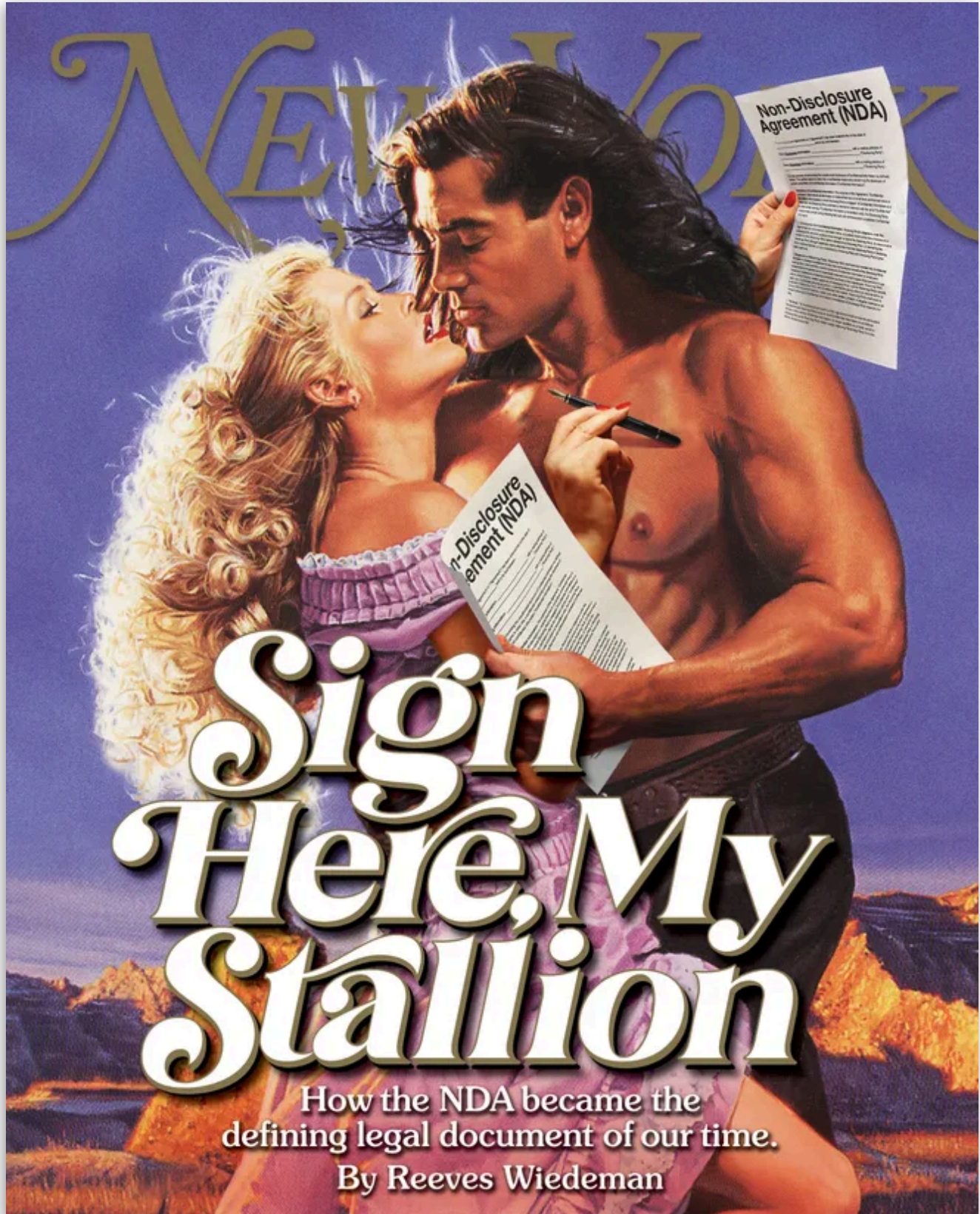
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The nondisclosure agreement is designed to live in the shadows. But earlier this year, I started to notice them everywhere. There was, of course, the NDA [Donald Trump](#) gave to [Stormy Daniels](#), which was at the heart of his [criminal trial](#) and would now play a role in a second presidential election. In Silicon Valley, employees at [OpenAI](#) complained that the digital juggernaut of the moment was sending out NDAs that threatened to claw back their vested equity if they criticized the company. Lawyers representing [Brad Pitt and Angelina Jolie in their divorce](#) were arguing all spring over who had tried to make whom sign the more onerous NDA. [O. J. Simpson](#) reportedly gave one to every member of his family before they could visit him on his deathbed. And in May, in a very modern cry for help, [Miss USA](#) demanded a release from her NDA through a cryptic Instagram post in which the first letter of each sentence spelled out I AM SILENCED.

Those were just the NDAs that made headlines. In Vermont, a teacher at a Brazilian-jujitsu center was apparently requiring students to sign an NDA before receiving their black belt so they wouldn't run off with his techniques. A 70-year-old woman in London convinced her local council to dim some streetlights that were keeping her awake and was then asked to sign an NDA so other residents wouldn't be encouraged to bring further complaints. In Bhutan, where a government project to build a "Mindfulness City" had been shrouded in secrecy, a lawyer writing in the state newspaper argued that it was necessary to alter the country's "traditional culture of gossiping and information sharing" and replace it with "a tool that is relatively new in Bhutan — the Non-Disclosure Agreement." During an event at the Nassau

Coliseum on Long Island, a professional wrestler who had been accused of signing one to cover up a backstage incident (he denies doing so) was taunted by fans with a thunderous chant: "NDA! NDA! NDA!"

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To steal a phrase from Taylor Swift, who's both complained¹ about NDAs and given them out,² pop culture has entered its NDA era. Billie Eilish released a song called "NDA" about the life of a modern celebrity: "Had a pretty boy over, but he couldn't stay / On his way out, made him sign an NDA." The movie *Red, White & Royal Blue*, about a relationship between a British prince and the son of an American president, turned the paperwork into a double entendre: "My NDA is bigger than yours." The document was now common enough to be the kicker of an Onion headline ("Leonardo DiCaprio Sparks Engagement Rumors As Girlfriend Flaunts New NDA") and the answer to 114-Down in a Sunday New York *Times* crossword ("Hush-hush pacts, in brief"). In January, there were 47 bidders in an auction for a prop NDA from the first episode of *Succession*, given by Logan Roy's bodyguard to a young boy whom Roman Roy mocks during a baseball game. The winning bid was \$3,500.

The NDA was also popping up in my own life. I was asked to sign an NDA to get an early look at a book of poetry, to have the privilege of taking a survey about how much I was or wasn't enjoying the database LexisNexis, and to enter the offices of a now-shuttered tech start-up that provided custodial services. The NDA was in my group chats ("This is probably not information I want to share publicly, but figuring this group chat has an NDA built in") and at a wedding I attended in May, where the groom's roommates from his bachelor days got up to the microphone and were greeted by a cry from the back of the room: "Didn't y'all sign an NDA?"

Gradually, then all at once, the NDA became enmeshed in every part of our lives — the defining legal document of our time. No one can say how many are signed every day because NDAs often prohibit even the acknowledgment of their existence, but lawyers who deal with them attest that a thicket of boring legalese once reserved for guarding proprietary corporate secrets is now one of the most commonly signed contracts in the world. One study says a third of American workers have signed one; another puts the number at more than half. NDAs are being given out to roommates, to parents,³ to boyfriends and ex-girlfriends,⁴ and to bachelor-party attendees and wedding guests. At a moment when it has never been easier to publicly shame, people are looking for a little extra insurance against being canceled. And while the Me Too movement highlighted the ways NDAs have long been used to cover up crimes and misdeeds, the true fallout of that reckoning was a perverse one: Harvey Weinstein may have made the NDA infamous, but he was also an advertisement for its power.

NDA is now a loaded acronym, at once ominous and farcical, hinting at both the oppressive measures corporations and powerful individuals will take to keep people quiet and the absurd lengths people will go to in an attempt to win back the privacy we no longer have. It is a modern pinkie promise deployed among friends⁵ and a sad reminder of just how little we trust one another. The ubiquity of the NDA has made the act of signing one unremarkable, right up until the moment you are faced with choosing whether to break one, at which point you may begin to wonder exactly how we got here.

In its simplest form, the nondisclosure agreement is a contract that prevents someone from saying something in exchange for something else. That something else is typically money, in the form of a job or a cash settlement, but it could be the chance to attend a sneak preview of a new Marvel movie. A “confidentiality agreement” is just another name for an NDA, while a non-disparagement agreement gives the same acronym a narrower focus: You can't say something *mean*.

From there, every NDA, like every relationship, is a little bit different. Some fit on a single sheet of paper, like the one comedian Pete Davidson⁶ required from the audience at one of his stand-up shows, while others can be more than 30 pages long, like the one Tiger Woods⁷ gave to his mistress when his marriage was very publicly falling apart. They can be given out preemptively (as part of a prenup, or a contract given to a new hire) and retroactively (as in a divorce settlement, or when something bad happens at your job and your boss is willing to pay you not to talk about it). Some NDAs include carve-ins allowing you to talk to a therapist or close friends; others include carve-outs for specific friends with loose lips. The terms can expire at the end of a project or on a specific date. David Bowie's divorce NDA ended after ten years, at which point his ex-wife, Angela, went on TV and said she was now free to let the world know she had once walked in on Bowie in bed with Mick Jagger. An NDA can also last forever.⁸ In 2018, a Canadian court ruled that a woman could not get out of an NDA she had signed 20 years earlier regarding the sexual abuse she had suffered at the hands of her father, even though her father was now dead.

The origins of the NDA are fittingly murky. Shipping companies were among the earliest to use it to ensure a captain didn't run off to another boat with the secret to a safe passage through the Strait of Malacca. By mid-century, major corporations had adopted the idea to protect what became known as trade secrets. (If you talk to enough lawyers about the history of NDAs, the recipe for Coca-Cola will be invoked with such frequency that you will become a

Pepsi fan for life.) Like so much else, the tech revolution supercharged its prevalence. The early days of Silicon Valley were defined by a remarkable openness,⁹ and California's prohibition on noncompete agreements was seen as one reason for the industry's flowering. But the rising tech giants didn't want their recruits to abscond with their algorithms, and the NDA was a ready alternative. Then came the tech-fueled NDA boom: the founding of Docusign and its digital document-sharing competitors, which turned forcing paperwork on someone into a matter of a few clicks, and the advent of social media, which made leaking easier and gave the NDA a fresh purpose.

Today, the NDA is a part of virtually every American industry.¹⁰ A cannabis grower who developed bespoke weed varieties in Florida, Hawaii, and Missouri told me he has clients sign NDAs. When Amazon required NDAs from officials in Indianapolis, which was vying to host its HQ2 in 2019, the officials were so paranoid they went around handing out their own NDAs to more than 400 people in the city, including the concierge at the hotel where the Amazon executives were staying. Companies do sometimes try to enforce their NDAs,¹¹ but the contracts are often just as effective as a bluff or threat to make people think twice about speaking out. The effect is sometimes comic. This past spring, a representative for a shopping center in a Washington, D.C., exurb said he couldn't comment on reports that a Trader Joe's would be coming soon, despite the banner hanging in front of the mall that read TRADER JOE'S COMING SOON.

One reason the NDA is so common is that it costs a company almost nothing to distribute,¹² and a corporate legal team exists in part to find ways to avoid even the possibility of risk. "It's become an arms race," Vincent White, an employment lawyer in New York, told me of the increasingly byzantine and threatening NDAs he has seen. "Every single year, there are new provisions and new tactics to increase the level of control and increase the level of silence." Many NDAs now feature an additional layer of secrecy that forces claims to be adjudicated through a private arbitration process rather than a public trial, and there are pre-negotiated penalties, known as liquidated damages, that can approach a million dollars for a single violation. White recently had to counsel two parents whose fifth-grader had won a spot on a children's reality-TV show and was now being asked to sign an NDA promising not to talk about it. "You're asking a fifth-grader to not tell their friends what they did this summer," White said.

While NDAs were originally reserved for executives or employees with access to proprietary technical or financial information, the paperwork has flowed down the org chart.¹³ "They used

to be confined to pretty rarefied worlds, and now you see companies imposing these on janitors,” Jodi Short, a professor at the University of California College of the Law, San Francisco, said. This spring, I found job listings that required an NDA to work as a forklift driver in Virginia, an e-commerce associate at Island Beach Gear on the Jersey shore, and a “meat cutter” at a biltong shop in suburban Charlotte, North Carolina. The NDA is now a part of many job hunts — some companies require it in order to come in for an interview — and a meme went around TikTok that the document could be used to explain any gaps in your résumé: “Sorry, I signed an NDA.”

The next frontier for companies was to extend the web of secrecy to their customers.¹⁴ This year, a plastic surgeon in Seattle was found to have made more than 10,000 patients sign an NDA before their procedures that prohibited them from posting a “negative review,” which was defined as anything less than four stars. Julie Macfarlane, an emerita professor of law in Ontario and the co-founder of Can’t Buy My Silence, an organization that advocates for the regulation of NDAs, told me companies often use them to keep the public from learning about bad things they have done. “The first case in which a parent was compensated because of the impact of tainted baby formula was years before anyone knew about it,” Macfarlane said.

But even this consumer-facing use has expanded. Companies now deploy NDAs to conceal their own generosity. In April, I spoke to a man I’ll call Paul, a pseudonym he requested I use to avoid jeopardizing his status as a member of Marriott’s Ambassador Elite program. Paul is 37, works in real estate in Hong Kong, and travels a lot. He achieved his Ambassador Elite status by spending a hundred nights in Marriott hotels last year. Over Easter, when Paul checked in to the Royalton Chic Cancún, a Marriott on the beach, the receptionist greeted him with good news: a free upgrade! But there was a catch. The receptionist slid a piece of paper across the desk. Paul would need to promise not to brag about his upgrade at the pool bar. The NDA didn’t look very legal. It was half a page long, and the last words, in bold below the signature line, were “Please, have an amazing vacation.”

Joe Darrow for New York Magazine; Photo: Everett Collection

In May, I got a call from a blocked phone number. “Hi, it’s DeuxMoi,” the woman at the other end of the line said. DeuxMoi is the pseudonymous proprietor of a self-titled Hollywood gossip empire that dispenses blind items with inscrutable levels of accuracy. Her sources often claim they are breaking an NDA by talking to her, which makes sense because everyone in Hollywood is under an NDA pretty much all the time: actors and producers, along with nannies, housekeepers,¹⁵ aides,¹⁶ security guards,¹⁷ assistants,¹⁸ and every real-estate agent¹⁹ from Brentwood to Calabasas. (DeuxMoi’s identity is more or less an open secret to anyone who cares to know, but she continues to give out NDAs to people she works with in a professional context.) A Hollywood animal handler recently told *The New Yorker* about the bulldog he had trained for *And Just Like That ...*, but an NDA prohibited him from even identifying the species he was bringing to the set for the next season of *Only Murders in the Building*.

While we spoke, DeuxMoi searched through tips that had come in via DM. “I have 115 messages with the word *NDA* in them,” she said. One person claimed that agencies in Los Angeles regularly sent NDA’d models to the home of an A-list celebrity; another, who identified as an influencer with experience signing NDAs, said she had recently helped a friend look one over before they slept with a Formula 1 driver. (I’m eliding the names, but DeuxMoi didn’t.) There is now an app called Celebrity NDA that promises NDA distribution “with ease and class.”

It makes a certain sense for celebrities to protect themselves in the same way companies guard their trade secrets: In Hollywood, people really are corporations. A friend in Los Angeles told me she had recently gone to a party, in a canyon she couldn’t disclose, with Hollywood eminences whose names she redacted, where NDAs were handed out at the door, and for good reason — some weird stuff had gone down that she now couldn’t tell me about. But it often doesn’t seem like the NDA is worth the trouble. A writer told me they had gone to a different party at the home of an entertainment executive in the Hollywood Hills with a stack of NDAs at the door, and nothing crazy happened at all. “It’s just what these kinds of people do,” the writer said, referring to rich, semi-famous people with access to a lawyer on retainer. The popularity of sites like DeuxMoi was a testament to both the need for NDAs and their futility. “How do you trace a leak back?” DeuxMoi said. “I have the girl’s name, but I’m never gonna fucking give that up.”

Farrah Abraham was a teenager when she signed her first NDA as a star on the MTV reality shows *16 and Pregnant* and *Teen Mom* in the aughts. For the NDA, reality television was a Rubicon crossing of sorts — a blurring of the commercial and personal that brought the document into the lives of more “ordinary” people. (Was it really so crazy for the Kardashians to give NDAs to everyone in their life, which is to say their IP?) Abraham’s life after the shows became one tabloid mess after another: a sex tape, boyfriends talking to the press. Eventually, she’d had enough. Abraham took a 12-week, \$12,000 course called “Emotionally Naked Dating” and decided that anyone who came into her life would need to promise discretion. “If someone doesn’t want to sign an NDA, no problem; I just won’t be talking with you,” she told me recently. She has a folder on her computer dedicated to NDAs²⁰ and estimates she has given out more than 500.

Abraham gave her current boyfriend an NDA when they met through OnlyFans and another when they started dating as part of a lengthier “relationship contract” they regularly update. (He recently insisted on a clause prohibiting her from responding to men on social media, while she inserted a provision requiring him to tell women who flirt with him that he has a

girlfriend.) Abraham said that the NDA has helped make this relationship the healthiest she has ever been in and that everyone should use them. Last fall, she posted a YouTube video detailing three steps for locking down your partner with an NDA. She thought even teenagers could benefit. “If you’re a kiddo in middle school and you’re sending some risky pics, this is gonna save you,” Abraham said. Last year, her 15-year-old daughter gave an NDA to her boyfriend.

Since marriage is a contract — you can think of it as a noncompete — it makes a certain warped sense that the NDA has inserted itself into romance. Celebrities, in fact, have been giving NDAs to their romantic partners for years,²¹ so much so that what stood out to DeuxMoi were the tips about famous people who supposedly *didn’t* use them. “Oh, look at this — Jamie Foxx, no NDA,” DeuxMoi said before also mentioning a British actor who “would never even think about using an NDA.” (This was especially brave because the Brit is married.) A willingness to kiss without paperwork is now a form of chivalry.

The dating NDA is also being deployed even among the non-famous. “I can think of four guys off the top of my head,” White, the employment lawyer, told me of friends in New York who give NDAs to women they’re dating. “It’s the same guys that will go and get a proactive vasectomy — literally, the overlap is near 100 percent.” His friends aren’t celebrities. “It’s small-market newscasters, or hedge bros, a medium-tier meteorologist,” White said. The threat was largely social-media embarrassment. “I’m going to a wedding, and this guy was like, ‘I’m bringing a date, but she’s a TikToker’” — automatic grounds for an NDA — “and his perspective is ‘She’s got a hundred thousand subscribers, and if she throws you up on TikTok, she could ruin you,’” White said. Some men also seem to see the NDA as part of their appeal. James Sexton, a New York divorce attorney, told me he is sometimes asked to draft NDAs for clients getting back on the dating market — the NDA cycle of life. “I have clients who use them not because they’re worried about disclosing anything but partly because it’s kind of cool to say to a girl, ‘I’m sorry, but my lawyers insist. That’s how important I am,’” Sexton said.²²

Several lawyers told me they weren’t sure a dating NDA would hold up in court, partly because a contract like this has to offer an explicit benefit to the person signing it. Sexton advises clients to make the NDA literally transactional. “Give her \$10,000 or \$5,000 and say, ‘I know this is silly, but I want you to accept this because it’s what makes this binding,’” Sexton said. “If you think your secrets are so important they’re worthy of paperwork, then it should be worth ten grand to you.”

When you stop and consider the idea, there is something ominous in signing an NDA at the beginning of a relationship. One New York matchmaker who helps privacy-conscious clients dispense NDAs said women occasionally ask if there's something they should be worried about. But an NDA technically can't prohibit someone from reporting a crime, and White insisted the men he knew weren't trying to preemptively enable themselves to do something untoward without repercussion. "It's guys trying to protect the little amount of fame or power that they have," White said. "They're not villains who hate consent, but they are out here being pretty aggressive — Aziz-type stuff." As a female tech executive who has encountered NDAs in the dating world put it to me, "It's like how Gen Z won't have sex; rich millennial men won't go on a date without paperwork."²³ She told me she even knew of two women, tech execs with an eye on their careers, who were having their dates sign them too.

This spring, I heard from a man I'll call Steven who encountered a dating NDA in an unusual circumstance. A recently divorced Manhattanite in his 50s who works in finance, Steven had signed up for one of the many matchmaking services that cater to the city's upper-class singles. "I've been set up with multiple billionaires," he told me. "If I was a whore for money, my life would be great." On the morning of one such date, Steven was given the first name and number of the woman he would be seeing that night; it didn't take much Googling to figure out she had once been married to a very wealthy man. Over dinner, Steven got the feeling the woman wasn't being totally open with him, especially when they started talking about their previous spouses. "Because I date age-appropriate people, basically every date becomes about what happened in your divorce," Steven said.

Eventually, the woman apologized for perhaps coming across as cagey. It's wasn't that she didn't want to discuss her ex — she couldn't. She was prohibited from talking about her decadeslong marriage because her divorce settlement included an NDA. The secrecy, and what it might conceal, didn't necessarily worry Steven, but he did feel sorry for her. "Dating is getting to know somebody, and it's kind of fucked up to not be able to share the biggest part of your life," Steven said. "It's treating marriage like a firing — 'I'll give you severance, but there's an NDA that comes with it.'"

Before the advent of social media, NDAs were rarely included in divorce settlements²⁴ — Donald Trump did sue his first wife, Ivana, in 1991 for allegedly violating one by writing a novel with a thinly veiled real-estate-executive character — but the rising tide of millennial divorcées is more attuned to its public image.²⁵ NDAs are now so common that one attorney

who typically handles wealthy clients told me his firm includes them as a standard provision in pro bono cases. Some divorce NDAs are simply non-disparagement clauses — *Don't call my mom and tell her it was all my fault* — while others are narrowly tailored to conceal a couple's finances. ("I can think of at least three times I've represented high-profile people who don't have the finances one may think, and they get an NDA so the image of wealth can be maintained," Jacqueline Newman, a New York divorce lawyer, told me.) But the confidentiality provisions can get hyperspecific. "A big one for entertainment figures is their cosmetic procedures," Sexton, the divorce lawyer, said. Some agreements include a provision that if one spouse violates the NDA, the other gets to breach it once too. Call it the doctrine of mutually assured divorce destruction.

Most divorce lawyers I spoke to thought Steven's date, the woman who wouldn't talk about her ex, was being paranoid since proving a breach like that would be all but impossible. (One New York divorce lawyer suggested an NDA is only as good as a condom: "They're prophylactic, not foolproof.") But Lisa Clampitt, who runs a matchmaking service in New York, said she has recently encountered more divorcées who were deeply anxious about breaking their NDAs. "Sometimes people are fearful — 'Oh my God, my entire divorce agreement is based on this NDA,'" Clampitt said. Her advice was to pivot the conversation and say "I'm focusing on my next chapter."

A divorce settlement is intended to give both parties a chance to move on. But as Steven's date found out, an NDA can pop back up in ways you never expect. Raoul Felder, a celebrity divorce lawyer in New York since the 1960s, told me he was among the first people to include NDAs in divorce settlements. "Then I learned, little by little, there are no secrets," he said. He has come to see NDAs as a burden clients are putting upon themselves. "Say the wife tells somebody at a beauty parlor, who tells a friend, and eventually it makes it around to the other side and they say you violated the agreement," Felder said. "Or two men at a bar — if the other guy talks about his miserable divorce, you want to tell him about how that happened to you, too!" He no longer advises his clients to put NDAs in their agreements. "Too much secrecy is as bad as too little secrecy, or maybe worse," Felder said. "It's contrary to human nature."

Ariella Steinhorn had dealt with the NDA in her dating life — she had been warned away from a particular New York matchmaking service where men were known to require them — but the document that turned her into an anti-NDA crusader was a more traditional one. In 2018, she signed an NDA as part of a separation agreement after

three miserable months of handling PR for a blockchain company. “You feel this deep visceral or emotional resistance to signing a document preventing you from talking about a thing you’ve experienced,” she said. Steinhorn eventually broke her NDA by speaking to the *Washington Post* and founded a consultancy called Lioness to help people navigate the tangle of challenges that may ensue after signing an NDA. Lioness has helped publish insider accounts about Apple, Microsoft, and Boeing as well as Andrew Yang’s presidential campaign.

NDA breakers come to Steinhorn with a range of goals. Some want to blow the whistle in major publications; others are simply looking for some kind of emotional release. (Steinhorn encourages some to consider writing autofiction.) In 2021, Steinhorn heard from Ally Abrams, who was looking for all of the above after being fired as the head of internal communications at Blue Origin, Jeff Bezos’s spaceflight company. She left following a dispute with the company’s general counsel, and her separation agreement included an NDA prohibiting her from talking about the firm on every platform from Instagram to Glassdoor. She was allowed only to send a select group of colleagues a company-approved email about her departure, attached as Exhibit C to the agreement.

Abrams said the next year was awful: “My whole identity was wrapped up in work, and I didn’t feel comfortable talking about any part of what had happened and why.” Her mental and physical health deteriorated, which is in line with various studies that have shown the ways holding on to a secret can produce an array of ill effects — hypertension, cancer, a diminished immune system. (Go ahead, spill the tea. It’s good for you!) Eventually, Abrams started to hear from former colleagues who had also been pushed out of Blue Origin or had concerns about the company. “After being the woman behind the story for so many years and helping executives push their narratives, I wanted to tell my story,” she said. But the first lawyer she met charged her \$500 and told her she was foolish even to think about breaking her NDA.

A lawyer referred by Lioness presented Abrams with a different calculus: While Bezos had essentially limitless resources to come after her, she could make it harder to do so if she made enough noise. Abrams and her former colleagues started meeting in secret at her house, writing an essay that detailed issues ranging from sexual harassment to the safety of the company’s spacecraft. When Lioness asked Blue Origin for comment, Abrams got a letter from the company saying it would take back her \$48,000 severance if she published the essay. Abrams called her mother to let her know she might need help. “I wish you wouldn’t do this,” her mom said. “This is just how the world works.”

Abrams published the essay in 2021 and went on CBS to talk about the allegations. She prepared for the worst — and then nothing happened. Blue Origin issued a statement saying that Abrams had been fired for an unrelated offense and that it took both sexual harassment and safety seriously, but the company didn't come after her severance. She has noticed that Blue Origin's general counsel still checks her LinkedIn profile every so often. "He just looked again three weeks ago," she told me.

Steinhorn thinks telling stories is a path to breaking the NDA spell and recommended I call the actress Miriam Shor, who was on a break from filming something she couldn't tell me about. "That's sort of par for the course these days," she said. Shor, like most actors, can barely get a look at a script without signing an NDA binding her to secrecy about the project. "That's new in the last ten years," she said.

Shor became interested in NDAs several years ago when she was made to sign one to resolve a dispute about a show she was on. "I'm not bound by the NDA anymore because I insisted it be limited — which, by the way, they told me was not possible," she said. "I started negotiating, and I was told, 'You don't do that.'" The company, for example, wanted the NDA to last forever; Shor got it limited to a few years. While she wasn't interested in talking publicly about the incident that had led to her NDA, she did care about the process. "The biggest problem wasn't my own difficulty with it emotionally — and it was difficult to have someone say, 'This thing happened, and you can't talk about it as long as you live' — but the normalization, the standardization, the communal shrug," she said.

Shor has spent the past three years co-directing a documentary about the spread of NDAs with filmmaker Julianne Dressner. Meanwhile, the scripts keep coming in: "I have never had to sign more NDAs than I have since the moment I decided to make a documentary about NDAs." She understood the need to protect IP, but many NDAs end up covering much more. "The massive mission creep has infiltrated every aspect of our lives now," she said. "It's insane that the plot of the next *Spider-Man* movie and raping a person are given the same contractual treatment. Abuse is not IP."

Me Too produced various efforts to rein in NDAs, but progress was fitful. Last year, Shor and others encouraged SAG-AFTRA to negotiate a ban on NDAs that cover things beyond the plot of a movie; a proposal made it to the bargaining table but not the final deal. There are new laws on the books in various states and around the world, but others have fallen apart. "I'm slightly pissed off," Zelda Perkins, a former assistant to Harvey Weinstein, told me this spring. Since going public about Weinstein in 2017, Perkins had devoted herself to banning NDAs as

the co-founder, with Macfarlane, of Can't Buy My Silence. Just that week, the U.K. finance minister had rejected the findings of a Treasury report — “Sexism in the City” — that called for an NDA ban in London's finance world. “This should already be solved, but we got Boris Johnson in and you got Trump,” Perkins said. “I wouldn't have had to do this if things had gone the way it looked like they were going.”

When we spoke, Perkins was still grappling with the effects of the NDA she had signed more than 25 years ago. Working for Miramax was her first job out of college. Weinstein's advances were constant, albeit unsuccessful, and in 1998, a new Miramax assistant came to Perkins at the Venice Film Festival and told her Weinstein had just assaulted her in his hotel suite. Both women quit and hired lawyers, who told them the only thing someone in their position — young, female, powerless — could do was to negotiate an agreement in exchange for keeping quiet. Each of them signed an NDA that prohibited them from even keeping a copy of the document. “I was so young that, in many ways, I didn't understand the implications of what had happened,” Perkins said. “I didn't understand what it was going to do to my life.” She went on job interviews with producers but found herself tongue-tied when asked about her departure. “I finally said, *I can't even go on job interviews because I'll just start screaming the truth,*” she told me. Perkins moved to Guatemala and spent five years in “self-imposed exile” working with horses. “No one there had heard of Harvey, nobody cared,” she said. “I could talk about it — and of course, I talked about it.”

Perkins eventually made her way back to the U.K. and found work with the British theater producer Robert Fox. But the NDA shadowed her. When Fox got into a row with another powerful producer that Perkins suspected had resulted in a confidentiality agreement, she told me that “Robert didn't know my history and couldn't understand why I went so stratospheric.” By the time Jodi Kantor of the New York *Times* called in 2017, Perkins couldn't hold in her anger any longer and became one of the first women to speak publicly about Weinstein's offenses. Even then she felt thwarted. “When I spoke out in 2017, I felt like, *If I tell the grown-ups, they'll do something* — I was 45 but hadn't realized I was the grown-up,” Perkins said. “The entire time I was under that NDA, I was kind of retarded to my 23-year-old self.”

She echoed something I've heard from other women who were made to sign NDAs after having traumatic experiences: The NDA itself had been even more impactful on their lives than the harassment they experienced. “There comes a point where you realize the continued harm of having your voice taken away from you, when you realize how much that fact has changed the landscape of your life,” Perkins said.

For all the farcical ways in which NDAs have spread, their most insidious uses have also continued. Women are more likely than men to be made to sign an NDA,²⁶ and a British activist group called Pregnant Then Screwed estimates that three-quarters of women who sign NDAs involving discrimination and harassment suffer mental-health effects. Only a quarter say they would sign one again.²⁷ There have been victories in the effort to limit NDAs — including the federal Speak Out Act of 2022, which prohibits the enforcement of NDAs that cover sexual harassment or discrimination — but many of the laws have loopholes. Bad people are still doing bad things and preventing people from talking about them. The heady early days of Me Too feel far away.

At the same time, I've heard another argument: the feminist case *for* the NDA. A leading advocate of the approach is Tamara Holder, one of many women who signed an NDA as part of sexual-harassment settlements with Fox News, where Holder worked as a liberal legal analyst. She has since pivoted her law firm to represent women in harassment cases and other disputes. "I've represented more than a hundred women since I left Fox," Holder said. "And almost all of them are under NDAs."

Holder told me she is "all for people having a voice" but thinks going public is overrated. "This is a very polarizing thing to say, but I don't support using your voice if you're just using it to share," she said. "Speaking out as a woman still comes with a scarlet letter, and I am opposed to women speaking out without a strategy." What happened to her at Fox is "in the past," and the signed contract was all the closure she could expect — a lawyer through and through.

While Holder respects the campaign to ban NDAs, she believes not only that it is a pipe dream to think they are going away but that NDAs are the only reason women have been able to receive a financial settlement when something bad happened to them. "People are paying for peace and silence, not anything else," Holder said. "They don't want to pay all this money and then let you go out and say, 'My husband paid me \$50 million in the divorce, and by the way, he's a scumbag.'" The NDA, she argued, is the best bargaining chip a victim has.

Many plaintiffs' lawyers have made this case, but the evidence is less clear. In 2019, New Jersey passed one of the most expansive anti-NDA laws in the country over similar objections from attorneys in the state. Four years later, a professor at Penn State University surveyed lawyers who worked on both sides of disputes and found that banning NDAs has had little effect on them. "It's impacted neither the ability to settle discrimination and harassment lawsuits, nor the amount of those settlements," Katy McClure, a plaintiffs' attorney in New Jersey, told me. The bad guys still had incentives to settle — they wanted to avoid costly and embarrassing

trials — and most victims weren't taking the money and then going public. It turned out everyone got what they wanted without the additional paperwork. Maybe all those NDAs had been pointless all along.

But this is also a love story, and if we cannot rid ourselves of the NDA, we'll have to learn how to live with it. In the summer of 2020, KJ Smith was on a flight from L.A. to Atlanta with the rest of the cast of *Sistas*, a Tyler Perry show on BET, when she locked eyes with an actor set to play a new character — “Mister tall, dark, and handsome, Skyh Black,” as she later put it. Smith was smitten but too nervous to do much about it: *Sistas* had a no-fraternization policy (“Our show casts beautiful, smart people, so it's a good policy”), and 2020 didn't offer many opportunities to fraternize anyway. “We were always standing six feet away, eight feet away — how many feet was it?” Smith said. “There was a lot of tension.”

When the season wrapped, Smith finally worked up the nerve to slide into Black's DMs. They met up a few days later at Zuma Beach in Malibu for a date that went well enough to bleed into a second one at Smith's apartment the following night. Now Black was nervous. *Sistas* was his big break, and he worried that a single misstep — like getting involved with one of his new show's leads — could derail that momentum. Then again, he thought he might be falling in love.

“Are you ... okay?” Smith said after walking into her living room and finding Black sitting uncomfortably on her couch. He took a deep breath and popped the question that was gnawing at him.

“Hey,” Black said, “would you mind signing an NDA?”

Smith made a face. Black worried he had screwed up.

“Oh my God,” she said, “I was just about to ask you the same thing.”

Smith and Black were at different stages in their careers, but NDAs had already become a regular part of their lives. “You have your glam team come to your home, you have delivery services,” Smith said of the people she gave them to. “You have to keep up your protections.” Black didn't have an entourage — “I had a barber, not a glam team” — but after someone got hurt at a party at his apartment, a mentor warned that “a friend today could be someone suing you tomorrow.” Black, who was still early in his career, asked a lawyer friend to write up an

NDA he could give to anyone who came over to his house. At Smith's apartment, she and Black pulled up the Docusign app on their phones. And after the paperwork was signed? A gentleman never tells, especially once he's legally prohibited from doing so.

When we spoke, three years after the signing, Smith pulled up the NDA Black had sent on her phone and laughed. "Okay, wow," she said. "He called his home 'the Skyh Zone.'" The single-page document Black had given his new girlfriend prohibited her from sharing "any personal information that guests become aware of at the Skyh Zone."

"It's adorable!" Smith said. "I think mine was like four pages."

"It's five pages!" Black said, pulling hers up on his phone. "There's, like, articles."

Smith and Black both recognized the absurdity of the situation, but looking back, they also saw the exchange of NDAs as a foundational moment in their relationship. "It felt like a fairy tale," Smith told me. The NDA made them feel they could actually open up to each other. "We care about our careers, and we love love," she said. Last fall, in Malibu, the last place they were before promising to keep their secrets forever, Smith and Black got married.

When I first heard their story, it felt like arriving on the other side of the looking glass. But it also showed the modern NDA in its most romantic form — a contract between two equals, entered into by choice, promising to protect each other from the worst impulses of our modern world and be kind to each other if it all falls apart. Smith and Black had a new NDA as part of their prenup and another they gave out to employees at their new production company. Both of them said they have some "really exciting" projects they're working on and are excited to share more. It will just have to wait until their NDAs lift.

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