



ELSEVIER

International Review of Law and Economics 21 (2002) 475–498

International
Review of
Law and
Economics

Civil and criminal sanctions against blackmail: an economic analysis

Fernando Gómez^{a,*}, Juan-José Ganuza^b

^a *Department of Law, Universitat Pompeu Fabra, Barcelona, Spain*

^b *Department of Economics and Business, Universitat Pompeu Fabra, Barcelona, Spain*

Accepted 24 October 2001

Abstract

The rationale behind the legal prohibition of blackmail and its effects have worried lawyers, economists and philosophers. The paper tries to offer a new perspective on the issue by introducing a simple game-theoretic model of the blackmail interaction under three alternative legal regimes: blackmail as a legally enforceable contract, blackmail as a voidable contract, and criminal blackmail. We show that the first two are substantially equivalent, and are unable to prevent a successful blackmail equilibrium outcome. Making blackmail a crime can instead alter this result for some parameters of the model.

We also explore the justification for criminalizing blackmail and find it, in line with previous Law and Economics literature on blackmail (Ginsburg and Shechtman (1993), Coase (1988)), in the correction (albeit incomplete) of misaligned incentives to acquire information and the revelation and no revelation outcomes involved in the blackmail transaction. This justification could be undermined by the advantages of what seems to be a superior legal regime in terms of efficiency: no legal regulation of blackmail. This hands-off system can also destabilize, in a one-shot interaction, the successful blackmail outcome. In plausible dynamic interactions, however, it fails to do so and, in fact, its effects actually resemble those of blackmail as an enforceable contract. This result might explain why most legal systems stick to the criminalization of blackmail. © 2002 Elsevier Science Inc. All rights reserved.

Keywords: Blackmail; Legal regulation of information; Criminal sanctions; Law enforcement

1. Introduction

As a form of illegal behavior, blackmail seems to be a rather marginal and picturesque phenomenon. At least it does not appear too frequently before the Courts, if one is to judge by

* Corresponding author. Tel.: +34-93-542-1647; fax: +34-93-542-1719.

E-mail address: fernando.gomez@dret.upf.es (F. Gómez).

the, admittedly narrow, historical experience of Spanish Civil and Criminal Courts. In spite of its rarity, and somewhat unexpectedly, blackmail has been the object of considerable and remarkable theoretical attention in the last two decades. Philosophers¹, lawyers² and economists or Law and Economic scholars,³ have striven to explain what is wrong with blackmail, what justifies its unlawfulness and what should the attitude of the legal system be in the presence of its various manifestations and forms.

This paper intends to offer an analysis of the effects of a hypothetical legalization of blackmail upon the actions of the individuals involved, as well as those resulting from a pure regime of civil unenforceability and of a system of criminal sanctions, using the tools of game theory,⁴ in a simple model with perfect information. In the light of the predictions of this simple model, different aspects relative to the legal regulation of blackmail are considered.

The paper is organized as follows: in Section 2, a positive model of blackmail is presented, in which we examine the behavior of the parties under three alternative legal regimes: legal blackmail (the agreement between the blackmailer and his victim is a legally binding contract), mere non-enforceable blackmail, and criminal blackmail.

Section 3 analyzes the implications of the model in the event that the revelation of information turns out to be socially desirable, as well as when the revelation turns out to be detrimental in terms of social welfare.

In Section 4, we explain how the prior two sections contribute towards supporting the justification for criminalizing blackmail prevalent in the Law and Economics literature, and principally associated with Ginsburg and Shechtman (1993) and Coase (1988).

Section 5 discusses some qualifications to the findings of the previous sections, including a fourth alternative for a legal system, namely no legal consequences arising from blackmail, and Section 6 concludes.

2. A model of blackmail and its legal regulation

The model presents three games between the blackmailer and the victim. The differences between the rules of the three derive from the different treatment of blackmail in each of the alternative regimes analyzed: legally binding contract, unenforceability of the blackmail deal and criminal unlawfulness.

The behavior that the model tries to explain is an archetypal case of blackmail, and it is based on the following assumptions:

1. The games are of perfect information.
2. The blackmailer C , can obtain (we assume legally) potentially harmful information for the victim V , at an exogenously determined cost, c , such that $c \geq 0$.

It is not authorized neither a decision made by C to invest a greater or lesser cost for the acquisition of the information, nor the possibility of variation on V 's part as for the size of the activity that the information stems from, nor the carrying out of precautionary measures tending to prevent that the information of said activity become susceptible of being obtained by others, and therefore, a potential origin of blackmail. In this sense, the model can be described as static as it excludes the incentives for preparatory behavior.

متن کامل مقاله

دریافت فوری ←

ISIArticles

مرجع مقالات تخصصی ایران

- ✓ امکان دانلود نسخه تمام متن مقالات انگلیسی
- ✓ امکان دانلود نسخه ترجمه شده مقالات
- ✓ پذیرش سفارش ترجمه تخصصی
- ✓ امکان جستجو در آرشیو جامعی از صدها موضوع و هزاران مقاله
- ✓ امکان دانلود رایگان ۲ صفحه اول هر مقاله
- ✓ امکان پرداخت اینترنتی با کلیه کارت های عضو شتاب
- ✓ دانلود فوری مقاله پس از پرداخت آنلاین
- ✓ پشتیبانی کامل خرید با بهره مندی از سیستم هوشمند رهگیری سفارشات