

# UK Internet libel case could set dangerous precedent

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Demon Internet, one of the oldest UK Internet Service Providers (ISP), is currently fighting a legal battle against a libel case brought by scientist Laurence Godfrey. Its origins lie in a previous action brought by Godfrey against Michael Dolenga, a Canadian citizen who is reported to have posted libelous messages in a Usenet discussion group. Godfrey claimed to have asked Demon to remove this and another offending material posted in groups hosted by Demon. He claims the present action stems from the ISP's refusal to do so.

British courts have already awarded Godfrey £15,000 in libel damages, but Dolenga is reported to have said, "I'm not recognising the British court's jurisdiction and the hell with it." For Godfrey to pursue the matter through the US courts would probably cost more than the award itself. Godfrey is seeking further damages from Demon for hosting the offending material.

In a pre-trial hearing at the end of last month, Mr. Justice Morland said in London's High Court that Demon, now part of Scottish Telecom Internet Services, was liable for information uploaded to their servers. The ISP is to appeal against the decision, which they say "could have a profound impact on the entire Internet community if Internet Service Providers are charged with responsibility for monitoring personal opinions carried over the Internet".

What is at stake is whether Demon Internet is liable for the information that is posted to and made available from newsgroups that are held on its servers. This is an issue that has long been contentious. According to David Furniss, Director of Scottish Telecom's Internet Services, the practicalities of monitoring all the information currently available via the Internet would mean only limited services being offered to Internet users and would greatly reduce the availability and variety of content.

"This decision will affect not only the way ISPs operate their services, but impact upon the entire concept of freedom of information that has been the driving force in the development of the Internet.

"The ruling suggests that Internet Service Providers should be held liable for the information that they transmit between one party and another. This potentially opens up the Internet industry at large to millions of similar unjustified complaints.

"If comparable comments had been made to Mr. Godfrey in a public forum such as a restaurant he would not be suing the owner of the restaurant for defamation. The only difference in this instance is the lack of clarity in the law and lack of understanding of the parameters of the Internet.

"A newsgroup, is essentially a virtual 'chat' forum in an eclectic international medium and as such, it would be impossible to expect an ISP to vet every article complained about. ISPs are constantly battling to make the public aware of the sheer scale of the information exchanged across the Internet, and the impossibility of monitoring items posted. This could vary in source and format from web site content provided by a commercial customer selling products, to one of perhaps a million individual articles posted to more than 35,000 active newsgroups available across the globe on a daily basis," said Furniss.

Demon argues further that the message in question did not come from the ISP's server, but actually originated from overseas and from a user that was not even a subscriber to the newsgroup.

Demon has received the backing of the Internet Service Provider Association (ISPA), who denounced the pre-trial hearing. They said that the action is wrong for the simple reason that it is not technically possible for an ISP to monitor all the traffic flowing across the

Internet, to and from the Usenet discussion groups.

The ISPA has written to the Department of Trade and Industry Minister Michael Wills to request an urgent meeting to state its case.

Legal opinion is divided on the case. Alistair Kelman, a barrister specialising in IT legal matters, said: "There are two aspects to this case. If you notify the person or ISP that there is defamatory material on the Usenet, then the ISP should review the matter or at least take appropriate action." Speaking to Newsbyte News Network, Kelman said Demon should have said they were looking into the matter rather than refusing to take any action at all.

"There is a need to balance things between reasonable action and censorship, but the ISP needed to develop a procedure to handle such cases. It did not in this case, hence the court case," he said.

Nicholas Bohm, an independent solicitor and consultant to City firm of solicitors Norton Rose, put forward the view: "As a result of this decision, the scales are not weighted where justice normally requires if a person can ban a publication by a simple complaint without taking any financial risk or responsibility himself."

The Demon Internet case is only the latest of 10 libel suits filed by Godfrey. Three years ago, he received an out-of-court settlement from a physicist in Britain's first Internet libel case.

According to Simon Davies, director of Privacy International, the decision against Demon "is a dangerous precedent, and what's more, it seems almost frivolous. UK court officials haven't even learned to program their video recorders yet. They tend to work on very ancient definitions. We have some very unfortunate black holes in terms of protection. The 'common carrier' argument, the whole question of store-and-forward, is hotly contested here."

Godfrey's previous cases include settlements against New Zealand TeleCom, the Melbourne PC users group, and the online edition of the *Toronto Star*. In October last year he filed suit against the University of Minnesota, Minneapolis ISP StarNet, and Kritchai Quanchairut, a former University of Minnesota student.

The Demon case could prove to be a long one. If the ISP's appeal against the High Court decision fails, they still have recourse to the House of Lords and then the European courts. The whole issue of liability for

Internet content has proved a longstanding headache for legal systems internationally.

One of the first ISPs to come up against such action was Prodigy in the US. A ruling in a New York appeals court at the end of last year, however, found that online service providers are "passive carriers" akin to telephone companies and therefore not responsible for defamatory e-mail messages and bulletin board postings originating from subscribers. The unanimous ruling of four judges, issued by the New York State Appellate Division, Second Judicial Department, is part of a growing wave of decisions relaxing the potential liability service providers face for the actions of their subscribers. The decision went out of its way to criticise a 1995 court ruling that online services can be sued for libel if the provider has a policy of taking steps to control its subscribers' messages.

In the December 1998 decision, the appeals panel dismissed a case filed against Prodigy for libel and harassment by 15-year-old Boy Scout, Alex G. Lunney. Lunney filed the action in 1994 after he found e-mail and bulletin board postings claiming him as the author. It later turned out that an unknown third party had penned the messages, which threatened and insulted a scoutmaster, using vulgar language.



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