

British Internet libel case threatens free speech internationally

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In an out-of-court libel settlement, Demon Internet, one of Britain's oldest independent Internet service providers, has effectively accepted responsibility for all material hosted on their servers. The case has major implications for free speech on the Internet in Britain and beyond.

The libel case was brought by physicist Laurence Godfrey, who claimed he had been defamed in two anonymous postings in discussion forums hosted by Demon. The libel case began in January 1998, when Godfrey served a writ on Demon demanding the removal of a message posted in the newsgroup *soc.culture.thai* a year earlier.

Four days before the case was due to come to court, Demon agreed to pay Godfrey £15,000 damages and his legal costs, estimated at £230,000. Demon will face similar costs itself, bringing the total to nearly half a million pounds.

In earlier hearings Demon argued that they were not the publishers of the material, and were not responsible for the posting in the same way a newspaper would be responsible for an article. The court ruled out this defence in March last year. Justice Moreland said the company had no protection under section 1 of the 1996 Defamation Act, which enables a provider to avoid liability if it can prove "innocent dissemination". The judge ruled that because Demon had refused to remove the postings, it was, in effect, the publisher.

After initially stating that they would fight the ruling, Demon's owners Thus plc. opted to settle out of court. In front of Justice Eady, the company apologised for failing to remove the postings at the time Godfrey had protested.

Godfrey has also sued several other Internet service providers and online publications. His previous cases include settlements against New Zealand TeleCom, the

Melbourne PC users group, and the online edition of Canada's *Toronto Star*. In October 1998 he filed suit against the University of Minnesota, Minneapolis ISP StarNet, and Kritchai Quanchairut, a former University of Minnesota student.

Demon argued that since they did not create the postings, the items were not theirs to remove. As they were not the originators of the content, they could neither verify nor refute its accuracy.

The company said it would press the government for recognition that Internet service providers "should not be liable for the millions of items carried on the Internet every day". But that is precisely what has been established in this case. Nick Braithwaite, Godfrey's lawyer, said the case "had established a firm precedent that Internet service providers can be publishers in English libel law".

It has also established that under UK law an Internet service provider is responsible for the material carried on its sites, regardless of the country of origin. In the United States, ISPs are considered to be no more liable for the messages posted on them than the post office would be for the contents of letters it delivers.

But US-based ISPs are still threatened by this decision, according to London media lawyer Mark Stephens. He told the *New York Times* that service providers everywhere would be vulnerable to threats from the rich and litigious. ISPs, "wherever they're located in the world and whether or not they're protected by the free speech guarantees of the Bill of Rights in America" could be dealt with "harshly, robustly and expensively in the British courts," he said.

He described the situation created by the settlement as "open season" on ISPs: "This exposes Internet companies to the ability on the part of the rich and powerful to censor them. If you're rich and powerful,

you could sue the Internet company to take something off the Internet edition of an American newspaper, because you know they're going to censor the newspaper even if the newspaper doesn't censor itself.”

If ISPs are held liable for the content they carry on their servers, they will be under tremendous pressure to become the censors of public opinion. As a result of the Godfrey case, Demon Internet now routinely removes material that it considers “unsuitable or defamatory,” according to a company spokeswoman.



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