

The Internet: US court challenges online anonymity

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A Florida appeals court ruled Monday that Internet Service Providers (ISPs) must divulge the identities of people posting messages on their servers that are deemed to be defamatory.

The ruling came in a case brought by Erik Hvide, the former CEO of Hvide Marine Inc. Hvide alleges that personal attacks against him on Yahoo and America Online Internet chat areas also caused damage to the company's image.

Acting on behalf of eight unnamed defendants, the American Civil Liberties Union (ACLU) first wanted the court to rule on whether Hvide had actually been defamed, before identifying defendants named in court papers only as John Doe. The ACLU argued that if there was no defamation, the critics should remain anonymous.

The appeal hearing was seeking to stop the implementation of subpoenas for the records of Yahoo and America Online, whose services were used by one of the defendants.

Public policy director with the Electronic Frontier Foundation (an online campaign for Net freedom) Lauren Gelman is worried that the case sets a dangerous precedent. "This kind of speech happens all the time in all kinds of chat rooms. We don't want to see these subpoenas become regularly used to cause people to self-censor themselves," Gelman said.

Lyrissa Lidsky, who argued the case for the ACLU, said the decision was a surprise and a setback, but she argued that it was "not a defeat for all the other John Does in the pipeline." Stating that the ACLU was exploring the possibility of further appeals, Lidsky told the Associated Press, "The court had the potential to set an important precedent about the right to speak anonymously on the Internet. The courts are eventually going to have to come to grips with this issue and

decide how broad free speech rights are in cyberspace".

However, the latest court decision sets a dangerous precedent that has significant implications for the freedom of the Internet. If upheld, the ruling could effectively end critical discussion groups. Users could face court action to reveal their identity by anyone taking exception to their remarks.

The case is the latest in a string of attempts to curtail free speech on the Internet. Previous legislative attacks have focused upon making ISPs responsible for the content on their servers, as in the action against Prodigy in the US. However, a December 1998 ruling in a New York appeals court found in the Prodigy case that ISPs were "passive carriers" akin to telephone companies and therefore not responsible for any defamatory e-mail messages or bulletin board postings originating from subscribers. This unanimous ruling by four judges in the New York State Appellate Division was one of a number of decisions relaxing the potential liability of ISPs for the actions of their subscribers. The decision specifically criticised a 1995 court ruling that online services could be sued for libel if the provider had a policy of taking steps to control its subscribers' messages.

The Prodigy ruling was effectively overturned in Britain last year. In an out-of-court libel settlement, Demon Internet, one of Britain's oldest independent ISPs, effectively accepted responsibility for all material hosted on their servers.

The libel case against Demon was brought by physicist Laurence Godfrey, who claimed he had been defamed in two anonymous postings in discussion forums hosted by the ISP. 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 faced similar costs itself, bringing the total to nearly half a million pounds.

Legal experts warned that the Demon case had international implications. Under the threat of massive financial penalties, ISPs are being turned into the police service of the Internet. Demon now removes any discussion group postings that it considers libelous on a routine basis.

The latest ruling in Florida requires ISPs to hand over the names and personal details of those accused of libel, even prior to a trial having taken place. Both AOL and Yahoo have taken no position on the lawsuit, saying they will do whatever the judges demand.



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