

British judge loosens restrictions against Internet service providers in Jamie Bulger case

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16 July 2001

In a significant decision a High Court judge in London ruled June 10 that Internet Service Providers (ISPs) could not be held responsible, in the event that the identities of the killers of toddler Jamie Bulger are revealed on the Internet.

With the recent decision to release Thompson and Venables—who were detained at the age of 11, eight years ago, for the killing of two-year-old Jamie Bulger—the courts ruled that their new identities were to remain secret and that anyone publishing details of the two would be held in contempt of court.

From the standpoint of protecting Thompson and Venables, the ruling was totally inadequate. It only applies in England and Wales, as separate laws cover Scotland. Neither is there anything stopping the publication of material on the Internet in another country. With this in mind, the original court order said that ISPs based in Britain would be liable if material was made available on their servers that could be deemed to be in contempt.

Demon, the UK's largest and oldest independent Internet Service Provider, complained that it was unfair that ISPs should automatically be held in contempt of court for material appearing on the Internet. In a statement, Demon's parent company, Thus plc, said it understood the seriousness of the issues dealt with in the injunction and fully supported the law, but said it needed clarification.

“The injunction as it stands covers all content on our servers which is generated on the Internet worldwide and what we have asked the court today is to define the parameters of our responsibility.”

The ruling by High Court judge Dame Elizabeth Butler-Sloss, president of the Family Division at the

Lord Chancellor's Department, agreed that the original injunction was inappropriate and should be modified. The new version states that the order only applies to ISPs if they have actual knowledge of the breach and fail to take reasonable steps to prevent publication or block access.

There were indications that Thus was looking for greater protection than that offered by Butler-Sloss' ruling. When asked if he was happy with the agreement, Michael Tugendhat QC said that happy was not the word, adding, “but we have all signed it.” The Attorney General and the lawyers acting for Thompson and Venables all agreed the modifications.

The ruling, although offering some protection to ISPs, upholds the notion that they are liable for the content carried upon their services. It effectively makes them responsible for policing the Internet, something lawmakers in other countries, notably the US, where constitutional guarantees protects the right to free speech, have been unable to do.

In a case against Demon last year, the precedent was established that British ISPs could be held liable for content on their servers. Demon agreed to an out-of-court settlement in a libel case 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 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.

The case established that under UK law an ISP is responsible for the material carried on its servers, regardless of the country of origin. In the United States, ISPs are considered to be no more liable for the messages they carry than the post office would be for the contents of letters it delivers. The modifications made by Butler-Sloss do nothing to overturn this.

It is entirely legitimate and necessary to protect the identities of Thompson and Venables, especially under conditions of the lynch-mob atmosphere surrounding their release. But the latest ruling again reveals how inadequate the protection offered to the two really is.

Under conditions of the ever-closer integration of the world market and the birth of international mediums such as the Internet, national law becomes increasingly ineffective. While Demon is subject to the changed injunction, and therefore obliged to remove any links from their servers to contemptuous material they are made aware of, Aol.com and thousands of other overseas providers, who have a substantial British customer base, would be under no such obligation.

Any attempt to address this anomaly with calls for the Internet to be subordinated to British law must be resisted. It is the British judicial system that is responsible for the original identities of Thompson and Venables being revealed in the first place, when the information was released to the media by the trial judge eight years ago.



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