The Multatuli Project
ISP Notice & take down

Lecture by Sjoera Nas, Bits of Freedom*
SANE, 1 October 2004

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Under the European E-Commerce directive internet hosting providers risk liability for apparently illegal content from their customers. Once they are notified, they should take immediate action to block or remove the content. How serious are providers in the Netherlands about their responsibility for the online freedom of speech? Should providers first ask their customer to respond to an allegation, or does 'immediate' mean they have to first shoot and ask questions later? What if the complaint about an alleged infringement lacks legal grounds?

LEGAL BACKGROUND

The general legal framework in Europe for provider liability is the European directive on electronic commerce.[1] The directive was adopted in 2000 and is legally binding since 17 January 2002. In Articles 12 to 14 three kinds of providers are described, with their respective liabilities. In case of mere conduit (access provisioning) and caching, providers are exempted from any liability. In the case of hosting, providers are only exempted if they have no actual knowledge of 'apparent' illegal content and, if so, act expeditiously to remove the content.

This vague European liability-rule was to a great extent inspired by a court case instigated in 1995 by the religious sect Scientology against the Dutch author Karin Spaink and 20 providers that hosted copies of her home-page. In 2003, 8 years after the first allegation, the Appellate Court of The Hague rejected all claims and ruled that freedom of expression should prevail upon copyrights. Currently the case is with the Supreme Court, but a ruling is not to be expected before 2006.[2]

Spaink had published the Fishman Affidavit on her home-page. This affidavit, a court-testimony from a former member, contained many quotes from documents that the church wanted to keep secret. When Scientology threatened to sue her and XS4ALL, many other people put mirrors on their home-pages. In interim injunction proceedings in 1996, the court of The Hague declared all Scientology's claims against XS4ALL, Karin Spaink and the other defendants to be unfounded. Scientology appealed, but lost once again in 1999. However, this 1999 decision included a separate declaratory judgement stating that providers could be held liable if three conditions are met; first, the provider is notified; secondly, the notification leaves no reasonable doubt about the infringement of (copy-)rights; and thirdly, the provider does not take down or block the material.

Besides the E-commerce directive and national jurisprudence, provider liability is also determined in some countries by the penal code, which might contain sanctions for helping to distribute texts that are considered obscene or in violation of good taste. Finally, the general terms and conditions of providers are decisive on how they deal with allegations of infringing content and what the user rights are in such cases.

COMPARISON WITH THE USA

In the United States, there is a safe harbour provision for providers confronted with allegations of copyright infringement. In the 1998 Digital Millennium Copyright Act, section 512 stipulates that all categories of service providers qualify for the safe harbour provisions, access, caching, hosting and service as search engines.[3]

The legal safe harbour consists of 5 elements.

- a complaint must identify himself and the infringements exactly
- plaintiff and the customer must act 'in good faith', on penalty for perjury.
- the provider must block the material upon receipt of the complaint and inform the customer
- materials must be put-back in 10, maximum 14 business days after a counter notice
- identification data can only be obtained with a subpoena

Compared with these Safe Harbour provisions, the European legislation leaves plenty of room for doubt and misguided judgement by providers. There are no criteria to validate complaints and counter notices and there are no arrangements for the hand-over of customer data, besides general privacy principles that do allow voluntary hand-over. More-over there is no obligation in Europe to inform the customer and there are no legal guarantees to protect the freedom of speech.

Though a put-back procedure is not the ideal solution, since it leaves room for fanatics like Scientology to shut-down website and instigate long legal procedures, at least it gives some kind of guarantee to internet users their counter claim is taken seriously.

LIBERTY EXPERIMENT

In July and November 2003, 3 researchers from the Oxford Centre for Socio-Legal Studies conducted a small experiment with notice and takedown, to see if the different legal regime made any difference in practice.[4] They found a very appropriate article from the famous philospher/economist John Stuart Mill, On Liberty, dating from 1869. They published a part of the second chapter, about freedom of speech, on a homepage in the USA and a homepage in the UK, with a clear indication that the text dates from 1869 and belongs to the public domain.

Then they sent a fake complaint to the 2 major ISPs, on behalf of the (non-existent) John Stuart Mill Heritage Foundation, using a free and anonymous Hotmail address. The result was shocking. The UK provider removed the homepage within 24 hours. The US provider on the other hand, insisted their plaintiff would declare to act in good faith. Maybe, they write, if they had proceeded with this last, fraudulent, step, this provider would have also taken down the material, since there was no indication at all the complaints department had looked at the home-page. They were just following procedure. For the scientists this was enough proof the different legal approach in the USA made it a lot harder to take down a website.

THE TAKE DOWN TEST

To investigate notice & take down procedures on a larger scale, Bits of Freedom organised a similar experiment this summer, on a much larger scale, involving 10 Dutch ISPs.

We picked 3 free dial-up ISPs (Freeler, Tiscali and Wanadoo), 3 paid access providers (Demon, Planet Internet and XS4ALL), 3 hosting providers (iFast, Ladot/Active 24 and Yourhosting) and 1 cable internet provider (UPC/Chello). [5]

A text was uploaded from the famous author Multatuli (Eduard Douwes Dekker), dating from 1871. The text is about democracy, and begins with the story of the sheep. The sheep chase away a tyrant, only to find themselves in need of specialists to represent them, and they end up inviting the tyrant back, disguised as 'Specialist'. The text clearly states in the opening line that the work dates from 1871, and was reprinted in 1981. At the bottom of the text there is a line stating 'this works belongs to the public domain', right after the final conclusion from Multatuli: 'It is certain that _my_ goddess, Reason, is not satisfied with such childish and criminal tricks'.[appendix 1]

First the customer was invented, and given the name 'Johan de Ruyter'. When in 1860 Multatuli published his most famous work Max Havelaar, exposing the abuse of free labour in the Dutch Indies, he was cheated out of his copyrights by his first publisher, Johan de Ruyter. Only years after the first publication, was Multatuli able to regain his copyrights, and publish a revised edition. In 3 cases, we were unable to create the fictional character Johan de Ruyter, and used the real identity of Mr. B. de Kler. [6]

Secondly, a fake society was created to act as copyright holder, the E.D. Dekkers society. Representing this society was a 'legal advisor', Mr. Johan Droogleever. His name alludes to the name of Droogstoppel, one of the main characters in Max Havelaar. A few weeks after the text were brought online, Mr. Droogleever started to send complaints to the providers from his Hotmail account.

In the set-up of this experiment, the customer would not respond if the ISP would ask for a reply, in order to test what ISPs do if they have to take a decision themselves.

The letter from Droogleever says:[7]

E.D. Dekkers society
Rotterdam

To whom it concerns,

I am writing to you as the legal representative of the E.D. Dekkers society. The society owns the copyright of all the published works of E.D. Dekkers. I hereby notify you that you are hosting material (published via a so-called home-page) which infringes on our copyrights.

The address of the website is <different per provider>

Use nor distribution of this material has been authorised by the E.D. Dekkers society. Hence I have to conclude that this publication constitutes an infringement of the copyrights of the society.

Under the European E-Commerce directive you as a hosting provider are liable for unlawful content if you don't act immediately after you have been notified of this fact. I trust you will take all necessary measures upon receipt of this notification to end this and all future infringements of our intellectual property rights.

Thank you for your courtesy and anticipated co-operation,
Mr. J. Droogleever (legal advisor E.D. Dekkers society)
johandroogleever@hotmail.com

THE RESULTS

The first ISP to act 'expeditiously' was Tiscali, one of the largest access providers in Europe. One day after having received the complaint, Tiscali replaced the home-page by a 'Notice', referring to the general terms and conditions. Droogleever was told Tiscali gives customers 48 hours to remove the content. The customer never received the full complaint.[8]

Wanadoo, another large pan-European access provider, also acted fast, and warned their customer immediately about the complaint, and gave him 24 hours to remove the content, adding that the customer 'had without permission placed a text' on his home-page. The customer never received the full complaint. Wanadoo somehow forgot to remove the home-page. Only after Droogleever sent a second complaint, 10 days later, did Wanadoo immediately remove the site. [9]

The first hosting ISP that received the complaint, Yourhosting, even outdid Tiscali and Wanadoo, and removed the website within 3 hours. They did call and e-mail the customer, and confirmed the take down to Droogleever. They took all the arguments for granted, and reported to the customer on the phone that the infringement was 'a fact'. In their e-mail they said 'We are obliged to do this after we have been notified of an alleged criminal act." In their zealousness to comply, to Droogleever they added a very surprising line: "Normally we only take materials off-line if we receive a written notification with proof, but in this case we have made an exception." [10]

The second hosting ISP (LaDot, renamed in Active24 during the complaints round), lost the first complaint, perhaps due to the name change, but immediately after the second complaint e-mails the customer and warns him to notify the ISP if he has permission to publish the material, or remove the content within 28 hours. Droogleever also receives an acknowledgement that LaDot has informed the customer and if the customer says that he has no permission, he will be given 'reasonable time to remove the material'. However, if the customer were to say he had permission, Droogleever is advised to contact the police or start a civil case, because LaDot is unable to decide in copyright matters. 3 days later the website is removed.[11]

The third hosting ISP (iFast) was only added to the experiment at a very late stage. They received the first complaint on 28 September. A few hours later, the 'Managing Director' sent the full address details of their customer to Droogleever, including year of birth, telephone number and private e-mail address, assuring Droogleever 'further measures' would be taken, but also requesting Droogleever to contact the customer directly.
So we did. The next day, Droogleever sent the complaint to the customer, with CC to the Managing Director. 24 hours later, Droogleever sent a new complaint to iFast, insisting take down should happen within 12 hours, or legal steps would be taken. iFast complied, and removed the site the next morning.[12]

Planet Internet [13]and Demon [14] both sent an auto-reply to the general abuse-address, with reference to a special procedure for copyright-related complaints. Their 'questionnaire' is more or less identical, and based on the original developed by XS4ALL in 1999-2000, during the legal struggle with Scientology about provider liability. This questionnaire basically asks the plaintiff to identify himself, describe the alleged infringement as accurately as possible, add available proof, and indemnify the provider from any liability for acting upon the request to take down.

We sent the questionnaire back to the providers, adding the fake address of Blaak 1 in Rotterdam, and the telephone number of Rotterdam City Hall. We didn't add any new argument, just restated the E.D. Dekkers society owned all the copyrights. Both providers warned their customer to remove the homepage within 48 hours after having received the questionnaire. Obviously, they never even looked at the home-page, or bothered to read the questionnaire, let alone verify the identity of the plaintiff.

The only 3 providers that did not take down the material are XS4ALL, UPC and Freeler. Freeler never bothered to dignify the complaints sent to abuse@freeler.nl with an answer, and only sent 2 auto-replies to new complaints sent to info@freeler.nl, and only indicated it would take at least 5 working days to deal with the e-mail.

UPC sent a clear reply to Mr. Droogleever: [15]

Dear Sir,

It is insufficiently clear for us that you represent the E.D. Dekkers society. Also because you send your complaint via a free and anonymous hotmail-address we cannot verify sufficiently that you act on behalf of the above mentioned copyright holder.

If you can present us several verifications indicating this society really exists and you are acting on behalf of them, we can decide to maybe process your complaint.

We trust we have informed you sufficiently,

Best wishes,
Chello abuse

In order to test UPC once more, we created a new (free) account with another provider based in The Netherlands; office@droogleever.xtdnet.nl. 2 new complaints from this address remained unanswered. Likely because Chello thought they had dealt sufficiently with the matter, but it would have been nice if they had answered the new mails with the same answer as before.

XS4ALL finally, was the only provider in this test that demonstrated it had looked at the page and saw the 2 references indicating copyright had expired a long time ago. Following procedure, they did send a questionnaire, and asked an attorney to send a answer to the questionnaire to Droogleever explaining the year of death of Eduard Douwes Dekker.[16]

Thorough as that looks, XS4ALL didn't answer the first 2 complaints sent to abuse@xs4all.nl. Like all other providers tested for this experiment, XS4ALL doesn't have any indication on the home-page or contact-page about complaints or notice and take down procedure.

SUMMARY OF RESULTS: 70% TAKE DOWN

Out of 10 providers, only UPC demonstrated distrust about the origin of the complaint (the free and unverifiable hotmail address), and only XS4ALL gave evidence they had actually looked at the page, and were aware of the fact the author had died in 1887, 117 years ago.

3 hosting providers and 4 access providers removed the text without even looking at the website, or demonstrating any clue about copyright basics. This leads to a take down 'success' of 70 percent.

2 providers don't reply at all to e-mails sent to their official abuse e-mail address, Freeler and XS4ALL. We understand these addresses receive many e-mails, but they could at least be answered with an auto-reply indicating the proper procedure to file different kinds of complaints.

1 provider (iFast) forwarded all the personal details about their customer to our fake plaintiff, something Droogleever never asked for. Besides violating freedom of speech, they also seriously breached the privacy of their customer.

In all of the cases except for XS4ALL, the customer was informed before the takedown, but only in a few cases followed by the full complaint of Droogleever. In the set-up of our test, the customer never replied, leaving it entirely up to the ISP to decide about the rightfulness of the complaint. In most regular cases we expect the customer would reply or voluntarily take down the material if enough time was given. In 3 cases, the time to respond to the allegation was too short (with the 3 hours given by Yourhosting as the worst example).

CONCLUSIONS

It only takes a Hotmail account to bring a website down, and freedom of speech stands no chance in front of the cowboy-style private ISP justice.

These are two very alarming conclusions of this test. Internet service providers never asked for the huge responsibilities forced upon them by the European Directive on e-commerce to decide about the content of their customers, but they don't seem to realise how crucial their judgements are. Different from classical printers or editors, on-line it only takes one simple command to block access and thus remove materials completely. In the Netherlands judges might order to remove a magazine or book from the stands or bookstores, but this seldom happens, and can only happen in courts, subjected to public scrutiny and the possibility to appeal.

Providers have a major social and ethical responsibility as guardians of the freedom of expression and freedom of speech. They should translate that into a balanced procedure, managed by qualified staff with basic copyright knowledge. Superficially, the European legislation on liability of providers creates a balance between liability and freedom of speech. In theory, providers should find themselves caught between a rock and a hard place, and find a balanced manner to address both liabilities (towards the plaintiff and towards their customer). But in practice, liability for wrongful take down is not translated in adequate penalties or appeal procedures for customers. Deleting the works of a customer seems a decision that can be dealt with light-heartedly.

Maybe to their defence Dutch providers will point out customers have plenty of other places to go in the highly competitive global ISP hosting world.
But such an argument would deny the existence of fundamental rights, laid down

for example in the European Convention on Human Rights, guaranteeing, besides privacy and freedom of expression, fair process and equal treatment in equal circumstances. More specifically, in the Netherlands the constitution explicitly functions 'vertically', meaning citizens can appeal to their basic rights against other citizens, including companies.

Providers do act as judges, and no matter how many other hosting providers could provide digital asylum to a customer, they have to respect fundamental rights within their own territory.

Finally, of the 3 providers that showed formal procedure with a questionnaire, only 1 actually verified the nature of the complaint and rejected it clearly. In the other two cases, the paper procedure remains worthless. This demonstrates the acute need for legal guarantees surrounding notice and take down procedure, including penalties for wrongful take down.

If these are the results of a very straightforward copyright case, how do ISPs deal with allegations of discrimination, slander or extremist political or religious expression? There are no statistics about the amount of content-related complaints providers receive, nor any statistics about the resulting actions, including hand-over of identification data and take down. We have to seriously fear the results.

The researchers from the Oxford Centre for Socio-Legal Studies that conducted the Liberty experiment tried to compile some statistics by surveying Dutch ISPs, with the help of the Dutch ISPA NLIP. Only five (33%) out of 15 members responded to the survey, and ten (67%) were not willing to participate, even though the researchers "made clear that the intention of the research is not to put the blame on ISPs for removing content in an inappropriate way, but rather to get a clearer picture of what the problems are for ISPs." The conclusion the researchers draw is "Either ISPs perceive the NTD issue as unimportant, or they fear that intensified public discussion, and transparency, could harm their business. We assume that the latter is the more likely explanation, given the failure of Rightswatch and the lack of legal clarity in Europe." [17]

RECOMMENDATIONS

Quoting from the Liberty study: "The quandary for the ISP is whether to strictly investigate all claims of legal infringement, which is higher cost to itself in legal and forensic resources, or to adopt a more self-serving, cheaper and easier regime. To save costs and liabilities, the ISP may remove content immediately upon notice in order to protect itself against liability or to satisfy content consumers. The ISP is encouraged to become a censorship body, to avoid liability when they choose to take down the information from a website upon receipt of a claim." [18]

The results of the very limited Liberty experiment and this test demonstrate the need for a legal safe harbour provision for ISPs. Providers should be obliged to give their customers a reasonable time to respond, with a minimum of 3 working days. While waiting for the answer, materials should not be removed. In case of no response, the ISP should only block in case of immediate danger, unmistakable unlawfulness or proven financial damages (for example by major copyright holders). In case of a motivated reply by the customer, the case should be referred to court, with indemnity for the ISP for any wrongfulness that might result from leaving the materials online (and accessible) during such a legal procedure.

Secondly, this test shows a penalty for perjury is not enough. There should also be a penalty for providers in case of wrongful takedown. The provider has its own

responsibility to validate complaints, possibly with the help of external expertise. In any environment that engages with the freedom of speech and expression, fair process should be guaranteed. If small providers cannot afford in-house legal expertise, they should bundle forces and help create a general legal ISP hotline. But currently there is no legal or moral incentive to invest in this kind of due process.

The Dutch ministry of justice started talks with the ISPA, hotlines, police and copyright holders a year and half ago about instituting such a first-line legal judgement. But this has not yet resulted in anything, because nobody wants to bear the financial costs. Meanwhile the discussion is taking place behind closed doors, without any participation from civil society. We have to fear the results of such negotiations for transparency and accountability.

Practically, to address the results of this test, a 1 day training course in legal basics for all ISP staff dealing with complaints would be a good start.

Thirdly, all providers should have a clear notice and take down policy, accessible from their home-page. None of the tested providers gave any indication how to complain and how to respond. Many providers refer to their general terms and conditions. They usually have phrases allowing the provider to do anything he thinks suitable, including terminating the account without any prior warning. After the recent verdict from the Dutch Supreme Court in the case of XS4ALL against Abfab, property rights of the network seem to prevail above freedom of speech rights, but it remains to be seen how valid such hidden or grey provisions are when tested against basic consumer rights.

Finally, for the sake of transparency and accountability it would be a good idea to publish yearly statistics about notice and take down. Given the lack of interest to collaborate voluntarily, maybe the National Regulatory Authority (OPTA) could use its legal authority to demand these numbers.

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*Sjoera Nas (1969) works for Bits of Freedom, a not-for-profit organisation based in Amsterdam advocating digital rights. She is editor of EDRI-gram, a bi-weekly newsletter about digital rights in Europe. From 1998 until 2002 she worked for internet provider XS4ALL. As public affairs officer, she was responsible for the policy with regards to principal issues, like freedom of speech and privacy. She is still connected to XS4ALL as member of the advisory board and does consultancy on privacy and public affairs. In the research, XS4ALL was not given a different treatment from the other providers.

Earlier, Sjoera Nas published an article about the daily practice of ISPs dealing with complaints in 2003, in the OSCE book Spread the Word, 'The future of freedom of expression on-line - why ISP self-regulation is a bad idea'.

**The revisions in this article are minor English language corrections and a correction of footnote 4, regarding the broader context of the Liberty Online study.

This paper, the presentation and the earlier article are available on-line at http://www.bof.nl/takedown/

NOTES

1. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce) http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=en&numdoc=32000L0031&model=guichett

2. XS4ALL offers an overview of the Scientology case and all the verdicts in English http://www.xs4all.nl/uk/news/overview/scientology3.html

3. DMCA section 512 http://assembler.law.cornell.edu/uscode/html/uscode17/usc_sec_17_00000512----000-.html

This section identifies 4 categories of service providers:
-Conduit Communications include the transmission and routing of information, such as an email or Internet service provider, which store the material only temporarily on their networks. [Sec. 512(a)]
-System Caching refers to the temporary copies of data that are made by service providers in providing the various services that require such copying in order to transfer data. [Sec. 512(b)]
-Storage Systems refers to services which allow users to store information on their networks, such as a web hosting service or a chat room. [Sec. 512(c)]
-Information Location Tools refer to services such as search engines, directories, or pages of recommended web sites which provide links to the allegedly infringing material. [Sec. 512(d)]

4. Christian Ahlert, Chris Marsden and Chester Yung, How 'Liberty' disappeared from Cyberspace, Oxford 2004, http://pcmlp.socleg.ox.ac.uk/liberty.pdf

The small test was conducted by the researchers in the context of a broader study funded by the European Commission about codes of conduct in all digital content-related industries: from gaming to mobile services and from broadcasting and the film industry to the more traditional press councils for printed media. The Liberty study does not form part of the final report.

Self-regulation of digital media converging on the Internet - Industry codes of conduct in sectoral analysis (April 2004), http://pcmlp.socleg.ox.ac.uk/IAPCODEfinal.pdf

5. Overview of the tested URLs

Free dial-up http://www.j.deruyter.freeler.nl http://home.tiscali.nl/jderuyter http://home.wanadoo.nl/johanderuyter	Cable http://members.chello.nl/k.waals/
Paid internet access http://www.jderuyter.demon.nl/ http://www.xs4all.nl/~jruyter http://home.planet.nl/~bdekler	Hosting http://www.johan-de-ruyter.nl http://www.ivodekler.nl http://www.bdekler.nl

6. This was the case with 2 hosting providers because they demanded a passport copy for the the domain registration. Planet Internet only allowed for automatic transfer of the subscription fee and thus needed a real bank account. Finally, in

order to test UPC, an existing customer kindly allowed us to use her home-page, since it was too expensive to open up a new year-account only for this test.

7. The e-mails were sent in Dutch. The Dutch version of the letter is:

E.D. Dekkers Genootschap
Rotterdam

L.S.,

Ik schrijf u als juridisch vertegenwoordiger van het E.D. Dekkers genootschap. Het genootschap is auteursrechthebbende van alle gepubliceerde werken van E.D. Dekkers. Ik stel u hierbij in kennis van het feit dat u een werk host (gepubliceerd via een zogenaamde homepage) dat inbreuk maakt op onze auteursrechten.

Het adres van de website is <PER PROVIDER>

Gebruik noch verspreiding van dit materiaal is op enigerlei wijze geauthoriseerd door het E.D. Dekkers genootschap. Daarom stel ik vast dat deze publicatie inbreuk maakt op het auteursrecht van het genootschap.

Onder de Europese richtlijn inzake elektronische handel bent u als hostingprovider aansprakelijk voor onrechtmatige content als u niet onmiddellijk ingrijpt nadat u van dit feit in kennis bent gesteld. Ik vertrouw er dan ook op dat u na ontvangst van deze notificatie alle noodzakelijke maatregelen neemt om deze en verdere mogelijke inbreuken op onze intellectuele eigendomsrechten te beeindigen.

Onder dankzegging voor uw aandacht en medewerking,

Hoogachtend,
Mr. J. Droogleever (juridisch adviseur E.D. Dekkers genootschap)
johandroogleever@hotmail.com

8. Tiscali to Droogleever:

Geachte heer Droogleever,

Tiscali neemt overtredingen van de netiquette zeer ernstig op. Het abuse en security team zal niet aarzelen op te treden als blijkt dat een van onze abonnees illegale content op zijn of haar homepage heeft staan.

Wij hebben onze abonnee in kwestie op de hoogste gesteld, en geven hem/haar 48 uur de tijd om de content te verwijderen. Is de content na het verstrijken van deze termijn onverhoopt nog online, dan gaan wij over tot verwijdering ervan.

Met vriendelijke groet,

9. Wanadoo to Droogleever:

From: abuse@wanadoo.nl
To: johandroogleever@hotmail.com
Subject: Re: herhaalde waarschuwing inbreuk auteursrecht
Date: Fri, 24 Sep 2004 10:30:43 +0200 (CEST)

Geachte mevrouw, mijnheer,

De teskt [SIC] is verwijderd.

Met vriendelijke groet,
Wanadoo abuseteam

Wanadoo, 10 jaar internetervaring

10. Yourhosting to their customer:

Onderstaand bericht ontvingen wij heden middag, waarop wij uw index.html hebben hernoemt.[SIC]

Wij zijn hiertoe verplicht nadat wij op de hoogte zijn gesteld van een mogelijk strafbaar feit, ik hoop op uw begrip en volledige medewerking.

Met vriendelijke groet,
(followed by the integral complaint)

and to Droogleever:

Geachte heer Droogleever,

De genoemde passages zijn offline gehaald, tevens hebben wij contact opgenomen met onze klant hierover.

Normaal gesproken doen wij dit in dit soort gevallen alleen bij geschreven melding met bewijsstukken, echter maken wij in dit geval een uitzondering.

Met vriendelijke groet,

11. LaDot to their customer:

Geachte heer, mevrouw de Kler,

Wij verzoeken u vriendelijk aan te tonen dat u gerechtigd bent de door u gepubliceerde informatie op uw website te plaatsen.

Indien u niet beschikt over de toestemming verzoeken wij u vriendelijk de informatie voor dinsdag 17.00 uur te verwijderen.

Wij vertrouwen erop u hiermee voldoende te hebben geinformeerd.

Active 24: Powerful Hosting, Surprisingly Easy

and to Droogleever:

Geachte heer Droogleever,

Wij hebben uw email ontvangen.

Wij zullen contact opnemen met de eigenaar van de website en deze vragen of hij toestemming heeft om het gepubliceerde te publiceren.

Indien hij aangeeft dat hij geen toestemming heeft zullen wij hem een redelijke termijnstellen om het gepubliceerde te verwijderen.

Indien hij aangeeft wel toestemming te hebben dient u aangifte te doen bij de politie en eventueel een civiele zaak te beginnen bij de rechtbank.

Wij kunnen helaas niet bepalen wie wel of geen gelijk heeft bij auteursrecht zaken.

Wij vertrouwen erop u hiermee voorlopig voldoende te hebben geinformeerd.

Active 24: Powerful Hosting, Surprisingly Easy

12. iFast to Droogleever:

Beste,

Dit domein is door mij in opdracht door de heer de Ruyter geregistreerd.

Zijn gegevens zijn:

Uw naam:
Dhr. De Ruyter

Adres:
Koningin Emmakade 151

Postcode:
2518JK

Plaats:
Den Haag

Land:
Nederland

Geboorte datum:
14091958

Email:
j.deruyter@zonnet.nl

Telefoon:
0205241229

Ik zorg dat verdere maatregelen worden genomen. Maar ik wil ook graag dat u de heer De Ruyter op deze feiten wijst.

13. Planet Internet to their customer:

Geachte heer/mevrouw,

Wij willen u erop attenderen dat het volgende misbruik vanaf uw account is gepleegd:

- Het onderhouden van een website bij Planet Internet met materiaal waarop copyright berust (plaatjes, muziekbestanden, teksten, films, games). U wordt verzocht dit materiaal voor 27 september 2004 van uw site te verwijderen, daar wij u anders de toegang tot uw homepage zullen ontzeggen en de pagina's zullen verwijderen.

U kunt uitsluitend op dit bericht reageren door op "reply" of "antwoorden" te klikken, of door uw reactie te sturen aan abuse@planet.nl. Vergeet hierbij niet om uw gebruikersnaam en/of klantnummer te vermelden. Gaarne vernemen wij van u de stand van zaken.

Met vriendelijke groeten,

14. Demon to their customer:

Geachte klant,

Wij hebben een klacht gehad over uw homepage, http://www.jderuyter.demon.nl/ Het E.D. Dekkers Genootschap claimt de rechten van de tekst van E.D. Dekkers die op uw homepage geplaatst is.

Volgens onze voorwaarden dient u ervoor te zorgen dat u de rechten heeft van copyrighted materiaal dat u publiceert (zie http://www.demon.nl/support/homepages/voorwaarden.html). Ik verzoek u mij vandaag of morgen of een beargumenteerde verklaring te geven dat u met het publiceren van de tekst geen rechten van derden schendt, of de tekst van uw homepage te verwijderen.

Met vriendelijke groet/kind regards,

15. The text from UPC in Dutch:

Geachte heer Droogleever,

Het is voor ons onvoldoende duidelijk dat u optreedt namens het E.D. Dekkers genootschap. Mede omdat u uw klacht stuurt via een gratis en anoniem hotmail-adres kunnen wij niet voldoende verifiëren dat u handelt namens de bovengenoemde auteursrechthebbende partij.

Indien u ons meerdere vormen van verificatie kunt overhandigen waarin duidelijk gemaakt wordt dat dit genootschap officiëel bestaat en dat u uit hun naam handelt kunnen wij besluiten om uw klacht eventueel in behandeling te nemen. Wij vertrouwen erop u hiermee voldoende te hebben geïnformeerd.

16. XS4ALL asked a lawyer to respond to Droogleever, after they had received the questionnaire:

Geachte heer Droogleever,

Cliente, XS4ALL Internet B.V., heeft mij verzocht te reageren op uw e-mail van 27 september jl. en de vandaag ontvangen ingevulde questionnaire.

Zoals u waarschijnlijk bekend is, vervalt het auteursrecht op een werk door verloop van 70 jaren, te rekenen vanaf 1 januari van het jaar volgend op het sterfjaar van de maker (artikel 37 Auteurswet). Voorzover mij bekend is de heer Dekker gestorven in 1887 en zijn de auteursrechten op zijn werk vervallen. XS4ALL is derhalve niet gehouden enige actie met betrekking tot de door u genoemde URL te ondernemen.

Ik vertrouw erop u met het voorgaande voldoende te hebben geinformeerd.
<name legal firm>

17. Christian Ahlert, Chris Marsden and Chester Yung, How ‘Liberty’ disappeared from Cyberspace, page 15.

18. Idem, page 7-8.

APPENDIX
Beginning and end of homepage

Tekst uit E.D.Dekkers 'Duizend en enige hoofdstukken over specialiteiten' (eerste druk 1871, herdrukt door Salamander in 1981, blz 76-94.)

A is een monarchische herder, en mishandelt z'n schapen. Dat komt van die alleenheersing!

_L'Histoire nous apprend
Qu'en de tels accidents
L'on fit_ ...

On fit ... Wat? Wel een revolutie! Alle schapen liepen tehoop en maakten een grondwet.--Of 't in '48 geschiedde, weet ik niet, maar het jaar doet niet ter zake.--Volgens die grondwet dan, zouden alle schapen verheven worden tot herders, en A gedegradeerd tot schaap. Niet één _princeps_ of _voorste_ zou voortaan de kudde leiden, drenken en scheren, maar _allen_ zouden _allen_ ...

Dat ging niet! Iedereen wou voorgaan. Iedereen wou 't eerst drinken, of liever nog, alleen. Iedereen had lust in scheren, maar niemand wou geschoren worden. Bovendien, alles blaatte door elkaar, en de ooien konden hun eigen lammeren niet verstaan. Men had de regering van eenling A allerdrukkendst gevonden, ondragelijk zelfs, maar bevond zich niet veel beter onder de tirannie van allen over allen. Dan volgt het vertegenwoordigend stelsel:

--Indien we eens niet allen tegelijk blaatten, riep 'n politieke nieuwlichter, doch het recht daartoe slechts toekenden aan ... zeventig?

--Reactie! riep 'n opgewonden lam dat niet vrij was van carbonarisme.

--Geenszins, antwoordde de eerwaardige hamel van wie het voorstel was uitgegaan, en die veel wol was kwijtgeraakt onder het regime van de panarchie. Ik verzeker u op m'n republikeinse eer, dat het volstrekt niet in mijn bedoeling ligt, terug te keren tot de alleenheersing. Eens en vooral, weg met A! Hij is ontherderd en blijft ontherderd!

--Weg met A! blaatte de kudde.

(cut long text)

enz. Hadden niet al die specialiteiten van beroerdheid eenmaal--en hebben ze niet nog, in zekere landen--zo'n _Vox_ op hun hand? Doch, dit daargelaten, ik vraag of zij die de wil van hun God vereenzelvigen met de volkswil, geen zonde begaan door die eensluidende voxen door te knippen als een poliep? Me dunkt: ge zult de Heer uw God niet regionaliseren.

Zeker is het dat _mijn_ godin, de _Rede_, geen genoegen neemt met zulke kinderachtige en misdadige kunstjes.

(Deze tekst behoort tot het publiek domein)