



# **Judge & Jury ?**

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# Summary:

- Some legal theories
- What's the problem ?
- Some existing legislation
- A new way forward ?
- What about self-regulation ?
- What happens now ?

# Legal frameworks:

- Strict liability
- Mere conduit
- Common carrier
- Notice and take-down
- Digital Millennium Copyright Act (DMCA)

# Notice & Take Down problems:

- Defamation:
  - Libel is very easy to achieve
  - Justification hard to prove
  - Third party notification
  - Expectation of unsuitable behaviour
- Copyright, Conspiracy & Sediton
  - How can an ISP establish the truth ?
  - Should you be trusting the police ?

# Possible solutions:

- Electronic Commerce Directive
  - lots of theory, but nothing practical
- Section 230 immunity (Zeran)
  - has loss of CDA unbalanced the USA law ?
- R4 regime
- Do nothing !
  - is this just the price of doing business ?

# R4 - new idea based on DMCA

- Report
  - formal notification of unacceptable content
- Remove
  - immunity comes from acting in a reasonable time
- Respond
  - author can stand behind their actions
- Replace
  - ISP just does what it is told

# R4 - some details

- Process does not iterate
- Industry would need to advise on timescales
- May be a need for pre-replacement
- Can one avoid Remove in non-urgent cases?
- There are issues to solve about anonymity
- The courts can get involved at any time
- Replace may affect the quantum of damages!

# Why self-regulation won't cut it:

Any practical solution must ensure that the ISP gets immunity from existing laws for following rules [otherwise you have to keep an eye on those laws]

**AND**

those who invoke the process must face legal sanctions if they “cheat” [otherwise there is nothing to hold them back]

# What now ?

- Decide what the industry wants !
- Lobby Government ?
  - Electronic Commerce Directive Regulations
- Lobby law-makers ?
  - ISP Preservation Act 2001 ?
- Press campaign ?
  - The online world is SPECIAL
- Hope it all goes away ?

# Finally:

## back to the frameworks:

- ✗ Strict liability
- ✓ Mere conduit
- ✗ Common carrier
- ✗ Notice and take-down
- ✓ Digital Millennium Copyright Act (DMCA)
  - ♥ R4 variant