Judge & Jury?

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IANAL!
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 & Sedition
  – 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