# Notice and Takedown

## "Judge & Jury ?" revisited

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IANAL!

# Legal frameworks:

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

# Notice & Take Down regimes

- Defamation
- Adoption
- Tobacco Adverts
- Illegal-to-possess Child Pornography
- Copyright ? Race Hate ?? Sedition ???
- ECommerce Directive
  - May 2000, 18 months to implementation

# Possible solutions:

- Section 230 immunity (Zeran)
    - has loss of CDA unbalanced the USA law ?
- Electronic Commerce Directive
    - envisages generic "notice-and-takedown"
    - will this just be the price of doing business?
- R4 regime
    - ISPs do not have to assess worth of notices

# 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
- Replace may affect the quantum of damages!
- 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
- People can go to the Court at any stage

# 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]

# Why are ISPs special ?

- Scale
  - millions of customers
  - tens of millions of articles

- Immediate right of reply
  - a "democratic medium"

- Global competition
  - customers will choose providers without apparently arbitrary "takedown" powers

# Finally:
## back to the frameworks:

✘ Strict liability

✔ Mere conduit

✘ Common carrier

✘ Notice and take-down

✔ Digital Millennium Copyright Act (DMCA)

♥R4 variant