
A primer on the law of internet communication and content: from the UK and Dutch perspective*

Una introducción al derecho de comunicación y contenidos por Internet: perspectiva del Reino Unido y Holanda

Arno R. Lodder**

Vrije Universiteit Amsterdam, Transnational Legal Studies, Center for Law & Internet

Andrew D. Murray***

London School of Economics and Political Science, Department of Law

ABSTRACT

Communication on the internet is unprecedented in its scale, scope, speed, and anonymity. Online words immediately reach the whole globe, can have tremendous impact, and the author is not always known. Our legal system is not naturally fit to deal with these characteristics of the internet. In this paper we address internet communication and content issues from a legal angle. Our discussion reveals the struggle of the law with getting control over what happens on the internet. It is no matter of favouring the law or the internet, the two should act in tandem to realize a safe and just society. The final word on how strict or free legal control should be, has not been said determined. We contribute to this discussion in our paper by discussing UK and Dutch case law and doctrine on threats, defamation, grooming, and ISP blocking.

Key words: internet communication, criminal threats, defamation, blocking technology, filtering, grooming.

RESUMEN

La comunicación en internet no tiene precedentes en cuanto a su escala, diseño, velocidad y anonimato. Las palabras puestas online alcanzan inmediatamente el globo entero pudiendo tener tremendo impacto y el autor no siempre es conocido. Nuestro sistema legal no es naturalmente apropiado para tratar con las características de internet. En este artículo, abordamos las cuestiones de comunicación y contenidos de internet desde un punto de vista jurídico. Nuestra discusión revela la batalla del derecho para conseguir control sobre lo que sucede en internet. No se trata de favorecer el derecho o el Internet, los dos deben actuar en conjunto para lograr una sociedad justa y segura. La última palabra sobre cómo debiera ser un control legal estricto o libre, no ha sido dicha aún. Aquí

Fecha de recepción: 1 de noviembre de 2014.

Fecha de aceptación: 29 de noviembre de 2014.

* Artículo de Reflexión.

** Professor of Vrije Universiteit Amsterdam, Transnational Legal Studies, Center for Law & Internet

*** Professor of London School of Economics and Political Science, Department of Law.

contribuimos a esa discusión presentando casos jurídicos tanto de Holanda como del Reino Unido sobre amenazas, difamación, engaño a menores y bloqueo de ISP (Internet Service Providers).

Palabras clave: comunicación en internet, amenazas criminales, difamación, tecnología de bloqueo, filtrado, engaño a menores.

1. INTRODUCTION

The legal regulation of online activity, in particular the control of content-related harms is a perennial problems for governments around the world. This paper will examine what lessons may be learned from the experiences of two Western European jurisdictions, the Netherlands and England & Wales with respect to four different content harms: criminal threats; grooming of minors; defamation; and copyright infringement. We will look at different tools used to control these actions, including the employment of technical protocols (blocking) and the blunt application of legal controls. In our analysis of the four case studies we will examine how the courts in the two jurisdictions have dealt with complex questions such as: how can you interpret intent in an environment without visual cues and without the normal social relationships we develop in the real world?; does an attempt to commit a crime which is impossible interfere with the natural operation of the criminal law?; when is one in public or in private? (is a tweet sent to a closed group a public or private communication?); and is blocking a justifiable and balanced response to harm?

The issue of the legal control of online activity is one which has vexed governments ever since the World Wide Web came along in 1991. The problem is a lack of borders between jurisdictions. While the real world is full of borders and clearly delimited powers of states and governments to control us the online world is more of a Wild West, to use an analogy often used in the 1990s and early 2000s [Look, 2001; Berg 2000]. To control content which floats freely across borders seems an impossible task. How can the UK government prevent the flow of pornographic or extremist content from sites outside the UK? How can the Dutch government prevent Dutch citizens from downloading content from The Pirate Bay in Sweden? This problem was first highlighted by Cyber-exceptionalists such as John Perry Barlow [Barlow, 1996] and David Johnson and David Post [Johnson & Post 1996] in the 1990s. These exceptionalists believed that the Internet was an exceptional space in which traditional governments, founded upon the modern notion of the Westphalian state, had no right to intervene outwith their accepted borders and that any intervention in Cyberspace would have effects and consequences outside of their borders rendering any intervention illegitimate. In Barlow's now infamous *Declaration of Independence for Cyberspace* [Barlow, 1996] he made this claim flesh: 'Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders' and 'our identities have no bodies, so, unlike you, we cannot obtain order by physical coercion. We believe that from ethics, enlightened self-interest, and the commonweal, our governance will emerge. Our identities may be distributed across many of your jurisdictions.' He concludes rather grandly by declaring independence unilaterally: '[Your] increasingly hostile and colonial measures place us in the same position as those previous lovers of freedom and self-determination who had to reject the authorities of distant, uninformed powers. We must declare our virtual selves immune to your sovereignty, even as we continue to consent to your rule over our bodies. We will spread ourselves across the Planet so that no one can arrest our thoughts.' While we may today look back on this a somewhat naive statement, one which even Barlow himself admitted in 2004 was made by a younger and less wise version of himself, [Doherty, 2004] one must not discount the importance of

the contribution of the exceptionalist movement to the debate at this time. In time the exceptionalist movement would be countered by the Cyber-collective movement of Lawrence Lessig, Tim Wu, Jack Goldsmith and Yochai Benkler. This east coast, Harvard-led movement pointed out that governments could easily control activities online through manipulation of code [Lessig, 1999; Goldsmith & Wu, 2006] and monitoring and blocking of activities. This model has become the cornerstone of online governance and regulation as used by western liberal democracies. We allow most activity online but we monitor for certain forms of harmful activity and then prosecute where the actor is within their jurisdiction. Where they are not technical measures such as site or IP address blocking may be used. This leaves the question though have governments and judges, out of fear of lack of control erred too far in policing online activities? Do they now over-regulate activities which although harmful are in fact minimally harmful? This we hope to unearth through our four case studies.

2. CRIMINAL THREATS: ARE YOU SERIOUS?

One of the key issues online is the absence of borders. This is not just the borders between states but also the borders between individuals. It is far too easy to see other internet users as remote, even non-human. If you never see the other person it is easy to depersonalise them which makes antisocial behaviour all too common online. The variety and scope of antisocial behaviour online continues to grow with problems on the increase including trolling, the posting of so-called revenge porn, gossiping (which may lead to defamation) and speech potentially harmful to minors. One issue which the courts in an increasing number of countries have had to deal with is the rise in online criminal threats, and in particular the vexed issue of distinguishing between actual threats and expressions of anger or frustration, which without visual cues, can be easily misinterpreted.

2.1 UK law

UK Law has a long tradition of dealing with threats made at a distance, having developed laws initially to deal with threats sent by mail and then later by telephone. Death threats made by means of mail or public telecommunications systems are dealt with under s.16 of the Offences Against the Person Act 1861. This makes it an offence to threaten to kill another, where that person fears the threat will be carried out. The maximum sentence under s.16 is ten years imprisonment. This is a little-used provision only for the most serious of threats. In the case of *R. v Nimmo and Sorley* [2014], threats to rape feminist campaigner Caroline Criado Perez, made via Twitter, which included implied but not explicit threats against her life, were not prosecuted under s.16 but instead were prosecuted under s.127 of the Communications Act 2003. This is a commonly used provision which makes it an offence to “send by means of a public electronic communications network a message or other matter that is grossly offensive or of an indecent, obscene or menacing character”. This carries a maximum penalty of six months imprisonment and a fine of up to level 5 on the standard scale, currently £5000. The Crown Prosecution Service (CPS) also may use s.4A of the Public Order Act 1986 which makes it an offence to “use threatening, abusive or insulting words or behaviour, or disorderly behaviour, or display any writing, sign or other visible representation which is threatening, abusive or insulting, thereby causing that or another person harassment, alarm or distress.” This carries the same penalties as s.127 of the Communications Act and tends to be used where racially or religiously abusive language is used such as in the case of *R. v Stacey* [2012] where tweets made in relation to the collapse on the pitch of the professional footballer Fabrice Muamba by the accused quickly took on a racially abusive form. Finally there is the option to prosecute under s.1 of the Malicious Communications

Act 1988 which makes it an offence to “send to another person a letter, electronic communication or article of any description which conveys a message which is indecent or grossly offensive [or] a threat.” This provision was used to prosecute the case of *R. v Duffy* [2011] when an internet troll left sick and abusive messages on a facebook tribute page to a fifteen year old girl who had committed suicide and on memorial pages relating to other teenagers who had died tragically.

The most difficult question though is intent. Oftentimes it is easy to determine the intent of a criminal threat: statements like “I am not your friend, you w*g c**t, go pick some cotton”, made by Liam Stacey, and “go kill yourself! I will get less time for that; rape?! I’d do a lot worse things than rape you” made by Isabella Sorley are clearly racially abusive in the first case and threatening in the second. However what about a tweet which reads “Crap! Robin Hood Airport is closed. You’ve got a week and a bit to get your shit together otherwise I am blowing the airport sky high!”? That was the tweet sent on 6 January 2010 by Paul Chambers to his 600 or so followers when he heard the news that Robin Hood airport in Doncaster had been closed due to adverse weather conditions. The tweet probably needs a little context. Mr Chambers had met a young woman called Sarah via Twitter. She lived in Northern Ireland and used the Twitter handle @crazycolours. He planned to fly out to meet her in Northern Ireland on 15 January and he had been sending private messages to her while watching the news about worsening weather conditions in the UK. When Robin Hood airport, from where he was to fly out, announced its closure he sent the fateful tweet. The tweet was not read at the time by anyone who was alarmed by it or felt the threat to be genuine, but on 11 January a duty manager from the airport found the tweet when searching for tweets relating to the airport. He was duty bound to report it to the police, which he did. On 13 January Chambers was arrested on suspicion of involvement in a bomb hoax and was eventually charged following advice from the CPS with sending by a public electronic communication network a message of a “menacing character” contrary to s.127(1)(a) of the Communications Act 2003. On 10 May 2010 Chambers was found guilty by District Judge Jonathan Bennett at Doncaster Magistrates Court. Alarming for all users of social network platforms the CPS had argued that s.127(1)(a) was a strict liability offence without the need to establish *mens rea* (the intention must be criminal). Thankfully Judge Bennett rejected this assertion and relying on the authority of *DPP v Collins* [2006] found that “the prosecution must show some *mens rea* to satisfy me, to the requisite standard of proof, for me to find this case is proved” [Murray 2013, 151] Judge Bennett was though convinced that Chambers had some form of *mens rea* because he posted the message to his timeline rather than in a reply to @crazycolours as he had done previously.

Chambers appealed and in November 2010 his appeal was lost. Her Honour Judge Davies, sitting with two Magistrates found that Chambers’ tweet contained menace and that he must have known that it might be taken seriously. Judge Davies told the court that Chambers had been an unimpressive witness and said: “Anyone in this country in the present climate of terrorist threats, especially at airports, could not be unaware of the possible consequences.” [Wainwright 2010] An appeal by stated case was allowed and was stated on 3 March 2011. An initial hearing by the Division Court failed to produce a verdict after a highly unusual split between the two judges, [Allen Green, 2012] so a further hearing before three judges rather than the usual two was arranged. Finally on 27 July 2012 Chambers saw his conviction quashed by a Division Court chaired by the Lord Chief Justice, Lord Judge in the case of *Chambers v DPP* [2012]. The Divisional Court was strong in its criticism of the earlier decisions in the case. Lord Judge gave the decision of the Court and in his judgement he addressed both the *Actus Reus* and the *Mens Rea* of the s.127 offence. With regard to the *Actus Reus* he noted: “The 2003 Act did not create some newly minted interference with the first of President Roosevelt’s essential freedoms – freedom of speech and expression. Satirical, or iconoclastic, or rude comment, the expression of unpopular or unfashionable

opinion about serious or trivial matters, banter or humour, even if distasteful to some or painful to those subjected to it should and no doubt will continue at their customary level, quite undiminished by this legislation...we should perhaps add that for those who have the inclination to use ‘Twitter’ for the purpose, Shakespeare can be quoted unbawdlerised, and with Edgar, at the end of King Lear, they are free to speak not what they ought to say, but what they feel.” [Chambers, 2012, [28]] As to the *Mens Rea* “The mental element of the offence is satisfied if the offender is proved to have intended that the message should be of a menacing character (the most serious form of the offence) or alternatively, if he is proved to have been aware of or to have recognised the risk at the time of sending the message that it may create fear or apprehension in any reasonable member of the public who reads or sees it. We would merely emphasise that even expressed in these terms, the mental element of the offence is directed exclusively to the state of the mind of the offender, and that if he may have intended the message as a joke, even if a poor joke in bad taste, it is unlikely that the *mens rea* required before conviction for the offence of sending a message of a menacing character will be established.” [Chambers, 2012, [38]] Chambers thus sets the standard in the UK for the distinction between threatening speech and poorly chosen attempts at humour.

2.2 Dutch law

An overview of court cases concerning threats on Hyves (Lodder 2010), the then most popular Dutch social media site which stopped offering its services at the end of 2013, painfully illustrated what people say in the “online open”. Expressions used ranged from “I want to drag your face over the concrete” to “hey, make your picture bigger, so I am sure I kill the right person”, and the regularly recurring epithet of “pedophile”. On social media, in particular on Twitter, people seem not always to be aware of who can read what they write. From the comfort of their home, or outside using their smart phone, they fail to realize that there is literally a whole world at the other side of their connection. The younger generation, who use these tools more naturally and instinctively, seem to be less affected by death threats and extreme language. Whereas once death threats were uncommon, today in some circles threats like “I’ll shoot your head off” or “I’ll kill you” seems to be as normal as saying “Hi, how are you doing”.

The Dutch website DeathThreats (doodsbedreiging.nl) collects threatening tweets, and it is really shocking to see what is tweeted every day, every hour. One example of an obvious, not serious, threat was after a referee had disadvantaged Ajax Amsterdam in a European football match. In over a dozen tweets individuals announced they would kill the referee. We assume the referee understood this was an inappropriate expression of frustration, not a real threat.

A large number of lower court cases deal with threats, for example insulting the Queen via Twitter. These tweets are terribly insulting, but should not be taken seriously, e.g.: “the death of that bitch is unavoidable”. The Court of The Hague on 9 December 2011 (ECLI:NL:RBSGR:2011:BU7420) based their conviction in this case on both S.261 (offensive speech/insult, defamation) and S.285 of the Criminal Code (threats). They though considered the accused to be mentally ill and so he was sentenced to one year remand in a psychiatric hospital. Another case involved similar expressions including “Bea it won’t last long, trust me” (a reference to Queen Beatrix), and “your species is cancer to humanity”. The Court of Den Bosch on 24 August 2012 (ECLI:NL:RBSHE:2012:BX5364) imposed a suspended sentence of six month for both the threat and defamation, under *inter alia* conditions that the accused would be treated for his autism, not drink alcohol, and not use internet and social media between the hours of midnight and 8am. The latter condition is special, but the evidence showed that during that time he posted the offending tweets.

Other regularly occurring threats on Twitter are by high school students telling they are going to blow up the school. These students are arrested, but there does not seem to be many of these cases taken to

court. A warning probably is enough here. As a practical issue, for the police it is difficult to determine how serious such a threat is. The chances are not high, but the police does want to run the risk of ignoring a person that subsequently really blows up a school.

Threats also have a qualified variant related to terrorism. In 2013 the Court in Zeeland-West-Brabant (ECLI:NL:RBZWB:2013:BZ0603) convicted a person who made threats against the Muslim population. The accused was a youth who was convicted and sentenced to 93 days of youth detention, of which 80 were suspended. One of the conditions for his probation was that he would take a social skills training course.

At least four cases regarding online threats made it to the Supreme Court. In 2007 the Supreme Court (ECLI:NL:HR:2007:BA3598) ruled that “in writing” includes e-mail. The decisive criterion is whether the threat reaches the victim in a readable format, no matter how the message is communicated. Another case, in 2009, dealt with sedition related to the then Prime Minister, Jan Peter Balkenende. The Supreme Court (ECLI:NL:HR:2009:BJ7237) indicated that communication encouraging the execution of the Prime Minister is punishable, no matter whether it is realistic to expect the actual execution. Additionally, the communication was not considered a contribution to the public debate so a defence of freedom of speech did not have a role to play. In 2012 the Supreme Court (ECLI:NL:HR:2012:BW6181) decided that the framework to evaluate threats includes whether the threat reaches the victim, how realistic the fear for the victim is to lose his life, and whether this has been done intentionally. The case concerned the right-wing populist Geert Wilders, who is often threatened via e-mail and social media. There is a wide series of court cases from over 10 years about threats addressed at him. Recently several court cases dealt with raps directed at him on Youtube. In 2014 one of these cases made it to the Supreme Court (ECLI:NL:HR:2014:485). The Supreme Court indicated that even if the rap should be considered a work of art, this does not legitimize a threat to someone e.g. that he will be next with bullets in his body. The defense argued that Article 10 ECHR justifies initiating a social debate, but the words chosen were so direct and explicit that the Court of Appeal correctly considered it a threat.

3. GROOMING: COMMUNICATION WITH MINORS

The act of “grooming”, befriending or establishing an emotional connection with a child, in order to lower the child’s inhibitions in preparation for sexual abuse is not new. However it is now much easier to groom a child using information technology which hides the groomer from the child, allowing them to pretend to be younger and closer in age to the intended victim.

3.1 UK law

The UK only formally criminalised the act of grooming in 2003 in s.15 of the Sexual Offences Act 2003. Prior to this law enforcement authorities had to prosecute for malicious communications or harassment which didn’t capture the full impact of the crime and what had been attempted.

To commit the offence the offender (who must be aged eighteen or over) must either have met or communicated with the child (being a person under sixteen and who the accused does not reasonably believe to be over sixteen) on at least two previous occasions; the offender must then either meet the child or travel with the intention of meeting the child; and at that time, the offender has the intention of committing a relevant sexual offence (including sexual activity with a child, causing a child to engage in sexual activity, engaging in sexual activity in the presence of a child, or causing a child to watch a sexual act). The reason why the offence is framed in this way is to prevent the risk of criminalising innocent communications with children, by including the final element that the offender must either meet, or travel

with intent to meet the minor for the purpose of some form of sexual encounter it removes any element of uncertainty. To date the key issue has been a discussion of what counts as “communicated”. This was reviewed by the Court of Appeal in *R. v G.* [2010].

The case involved a man known to the family of the victim. He appeared to be a close family friend and had known the victim and her family for some time. It is reported the victim’s family and his family intended to holiday together. He was accused of assaulting the victim on five occasions and was convicted under s.15. The appellant appealed this conviction arguing that the previous communication he had had with the child was of a non-sexual nature, all he had done was arrange to meet her, as a family friend, after school. In essence his appeal was based on the claim that the prior communication must have been undertaken with a view to instigate a sexual relationship for the s.15 offence to be made out and in his case this was not true. The Court held this was not the case. Lord Justice Leveson in giving the decision of the Court noted that “On the face of it, the fact that the description of the offence in the heading is ‘meeting a child following sexual grooming etc’ might be taken to suggest that the behaviour antecedent to any arranged meeting must itself be sexual in nature. The phrase ‘sexual grooming’, however, does not appear in the section and although the origin of the offence might have been a concern that paedophiles could use the internet to contact and groom children, the language of the provision is far wider than ‘virtual’ sexual contact. Thus, the only requirement prior to the intentional meeting during which A (over 18) intends to do anything to B (under 16) which, if carried out, would involve the commission by A of a relevant offence is meeting or communication ‘on at least two occasions’. There is absolutely no requirement that either communication be sexual in nature.” [*R. v G.*, 2010, [16]]. Thus the key is that the accused has been in contact with the victim before meeting or travelling with intent to meet the victim, the nature of the contact is unimportant. The s.15 offence is currently subject to amendment by the Criminal Justice and Courts Bill. This amendment will see the removal of the two contacts rule replaced with a simple rule that the accused must have contacted the victim only once. This is viewed as necessary following a number of child abuse scandals in the UK and given the new nature of immediate communications (it is now easy to instantly ask a minor to send an indecent picture which is then used immediately to blackmail them in the course of a single communication). There has been surprisingly little objection to this amendment given that the two meetings safeguard was seen to be important in the drafting of the 2003 Act. Finally it should be noted that a vital tool for law enforcement contained in s.15 is that the offence is committed once the accused “travels with the intent to meet” the child. They never have to actually meet. This means that once the contact between the accused and the intended victim is reported to the police the police can take over the child’s account (once two communications have been actually sent to the child) and then can continue the conversation as if they were the child. If the accused then suggests they meet the police can arrange a meeting using the child’s account and arrest the accused when they arrive for the meeting.

3.2 Dutch law

In 2010 grooming was introduced in S.248e Criminal Code. Although the term can also refer to offline communications (in Belgium the law also includes offline grooming), grooming is understood as taking place on the internet. The opportunity for adults to approach minors is obviously easier on the internet than it is in the real world. The Article criminalizes preparatory acts for the production of child porn and/or sexual activities with minors. So an attempt is not required; the proposal for a meeting with the intent to either produce child porn or to sexually engage with the minor is sufficient to be punishable as grooming. Therefore as the crime is already a preparatory act, attempted grooming is not punishable (Court of Amsterdam 2 July 2013, ECLI:NL:RBAMS:2013:4000).

The rationale of criminalizing grooming is that you can stop pedophiles at an early stage. A way to realize this is to let police officers act as “honey pots”. They should be careful by what they say, for should they incite the accused no prosecution would be possible. In the summer of 2013 the Court of Appeal for The Hague ruled that offenders could not be punished if they believed they were talking with a minor but in fact it appeared to be a police officer (Court of Appeal The Hague 25 June 2013, ECLI:NL:GHDHA:2013:2302). Early in 2014 the Minister of Justice submitted a proposal to amend the Article to make it possible to make use of so-called “adolescents as bait”.¹

Also in 2013 the Court of Appeal for Arnhem-Leeuwarden (1 February 2013, ECLI:NL:GHARL:2013:BZ0385) dealt with the case of preparatory rape of a ten year old girl. The accused had discussed what he wanted to do with the girl, and was driving to meet her with attributes and money to pay her mother. He was apprehended before meeting the girl, and found guilty. The interesting aspect of this case is that the girl did not exist; he could have never committed the crime. The argumentation in this case is debatable, but in our opinion makes more sense than the just discussed case of policemen as groomers. The Court argued that the rationale of criminalizing preparatory acts is protecting society against serious crimes (the maximum penalty of crimes in case of preparatory acts should be at least 8 years). The acts of the offender clearly expressed he was willing to actually abuse a child under 12. The fact that he could not commit the crime was independent from his will, he was stopped. This willingness shows that he is a danger to society. The Supreme Court has confirmed this conviction (27 May 2014, ECLI:NL:HR:2014:1233).

4. DEFAMATION IN SOCIAL MEDIA: PUBLIC OR CONFIDENTIAL?

You can defame someone with little thought and without the intent to defame them. The law sometimes finds it difficult to distinguish criticism or even parody from intent to harm the reputation of another, and this is made more difficult in the online world where there is a lack of visual cues and there may be the arbitrary restrictions of technology such as Twitter’s 140 word limit.

4.1 UK law

In the famous UK case of Lord McAlpine of West Green v. Bercow [2013] a tweet which said “Why is Lord McAlpine Trending *Innocent Face*” was found to be defamatory as when it was read alongside other information and innuendo in both online and offline media at the time: “the Tweet meant, in its natural and ordinary defamatory meaning, that the Claimant was a paedophile who was guilty of sexually abusing boys living in care” [Lord McAlpine, 2013 [90]]. Whatever the problems with meaning, innuendo and intention, and there are many [Bernal, 2014; Khan, 2012], there remains the question of when and where publication occurs in the online world, in a variation of the old philosophical conundrum “If I tweet and no one is around to read it, has it been published?”. The question of whether parts of the online environment are public or private, and even the location of messages has proven problematic for judges and legal commentators. In the famous Australian case of Dow Jones v Gutnick [2002] the High Court of Australia found that material placed on a server in New Jersey, USA had been published in the Australian state of Victoria in a case where around 1,700 subscribers (from 550,000) paid their subscription by Australian registered credit cards. An argument that publication had occurred in South Brunswick, NJ was dismissed by the Court as publication is not a singular event but actually one of both publication and reception: “Because publication is an act or event to which there are at least two parties, the publisher and a person to whom material is published,

¹ Government of the Netherlands, Opstelten invests in fighting cyber crime, <http://www.government.nl/news/2014/02/25/opstelten-invests-in-fighting-cyber-crime.html>

publication to numerous persons may have as many territorial connections as there are those to whom particular words are published. It is only if one starts from a premise that the publication of particular words is necessarily a *singular* event which is to be located by reference *only* to the conduct of the publisher that it would be right to attach no significance to the territorial connections provided by the several places in which the publication is available for comprehension” [Dow Jones, 2002 [40]].

This application of the “multiple publication rule”, that is the rule that each publication or republication of a defamatory statement is equally as actionable [Russell and Smillie, 2005] became commonplace as courts sought to deal with inter-jurisdictional defamation actions. Many of these actions were brought in the High Court of England & Wales as London was seen as the international centre for libel tourism [Handman et al, 2009]. A series of cases examining when and where publication occurred followed. These included *Harrods v. Dow Jones* [2003], where the publication of ten copies of the Wall Street Journal newspaper in the UK, plus “a very small number of “hits” on the article as published on the web” was deemed to be sufficient publication in England & Wales for the High Court to take jurisdiction as “these English publications relating to an English corporation, however limited and technical, are most conveniently dealt with in an English court” [Harrods, 2003 [43]], and *Don King v Lennox Lewis* [2004] where comments posted on two US-based boxing website were found to be published in England & Wales on the basis that “various witnesses have provided evidence to the effect that the two relevant websites are popular and frequently accessed by people interested in boxing within this jurisdiction” [Don King v Lennox Lewis, 2004 [26]]. The Question of when publication occurs within a jurisdiction was finally fully examined in *Jameel v Dow Jones* [2005]. This case involved a story published in the Wall Street Journal in the United States and published online on the WSJ website, thereby allowing readers in England & Wales to read it. The story claimed to identify twenty Saudi businessmen who had given financial backing to the creation of Al Qaeda and to Osama Bin Laden. The document known as “The Golden Chain” identified among these backers Yousef Jameel. Mr. Jameel challenged this claim and claimed it to be defamatory. Despite the fact that Mr. Jameel was not ordinarily resident in England & Wales and despite the publication taking place in the United States Mr. Jameel relied upon *Harrods v. Dow Jones* and *Don King v Lennox Lewis* to raise an action in England & Wales. The Court subjected this claim to closer scrutiny than in these previous cases and found that despite particulars of claim which alleged that the WSJ website had between 5,000 and 10,000 subscribers in the jurisdiction, evidence supplied by Dow Jones showed that the document which names Mr. Jameel had only been read by five subscribers in England & Wales. Given the minimal damage this would have done to Mr. Jameel’s reputation in England & Wales, and the high costs of raising a libel action, Lord Phillips MR concluded that England & Wales was not a suitable jurisdiction to hear this case. The publication (the list of golden chain donors) had not substantially taken place within the jurisdiction and that the level of harm which had been suffered by such an insignificant publication was so little as to be *de minimis* [Jameel, 2005 [69]].

Following *Jameel* the courts have taken a much more robust view as to when there has been substantial publication within the jurisdiction as a result of material being placed online. The *Jameel* principle, as it has become known has been applied to all manner of cases where a limited circulation of the defamatory statement renders the claim *de minimis* including *Johanna Kaschke v. David Osler* [2010] where the court found the claimant had done more to publicise the alleged defamatory statement on her own blog than the respondent had on his, and *Sanders v Percy* [2009] where a claimant with a long history of friction with with first defendant who was an officer of the courts acting in an official capacity, was found to fall foul of the *Jameel* principle as “the limited allegations which remain, [were] published only to the claimant’s own solicitor, [and] constitute “a game which is not worth the candle” [Sanders, 2009 [8]]. More recently, Parliament has reviewed publication in the Defamation Act 2013. By s.9 when an action for defamation is

brought against an individual not domiciled in the UK, or another EU member state, the court may elect not to hear the case unless it is “satisfied that, of all the places in which the statement complained of has been published, England and Wales is clearly the most appropriate place in which to bring an action in respect of the statement.” This is a statutory formulation of the Jameel principle.

4.2 Dutch law

One of the most controversial criminal law cases in the Netherlands is the so-called “Deventer moordzaak”. This is a long running case which began when Jacqueline Wittenberg was murdered in Deventer in 1999. There has long been doubt as to whether the man convicted of her murder, her tax advisor Ernest Louwes, was actually guilty. In 2007 Maurice de Hond, of Gallup opinion polls, interfered in the public discussion and claimed he was sure the handyman Michael de Jong was guilty of murder. He handed in proof to the public prosecutor, but they decided not to take up the case against the handyman. Maurice de Hond kept publishing, amongst others via his weblog, claims that Mr. de Jong was guilty. Mr. de Jong sued for defamation and after being condemned by the Supreme Court to pay damages, Mr De Hond was later subject to a Supreme Court ruling in the related criminal case. By presenting claiming the facts as 100% proven he crossed the border of his right to free speech (Supreme Court 14 June 2011, ECLI:NL:HR:2011:BP0287 (criminal law), this was also the finding of the civil law case (Supreme Court 1 October 2010, ECLI:NL:HR:2010:BN5662).

In the sacred space of the home you can say whatever you want, but once you enter the public space you can become guilty of defamation. Scholars and the judiciary has struggled for years to clearly demarcate the distinction between what is private and public online. This distinction is relevant in many areas, recently (2012-2015) a series of court cases (including ECJ Svensson-case) addressed the issue of what is public in the context of hyperlinks.

At the end of 2009 two Courts of Appeal (Den Bosch 12 October 2009, ECLI:NL:GHSHE:2009:BK5777, and Leeuwarden 3 November 2009, ECLI:NL:GHLEE:2009:BK1897) ruled on a similar defamation case. One of the characteristics of the internet, whether it is possible to communicate in private, was at stake, addressing the key element “publicity” of defamation. In both cases the social media profile of the accused was set private, so only the virtual friends of the owner could access whatever was put on the social media account. The general public had no access to these profiles. The Court of Appeal Den Bosch indicated that a small group of virtual friends (10-12) on a social network (set private) is not public, so defamation is not possible. According to the Court of Appeal Leeuwarden a small group of virtual friends (20-25) is too much to consider it private. One could argue that apparently somewhere in between 12 and 20 virtual friends the balance switches from private to public. It is, however, not merely a matter of numbers.

Important is also who these people are, and what “procedure” is used to accept people as virtual friends. The criterion from a defamation perspective is that the moment “random thirds” could be part of the audience the group of listeners becomes public in the legal sense. How to be sure whether any number of virtual friends does not include accidental passers?

In 2011 The Supreme Court (5 July 2011, ECLI:NL:HR:2011:BQ2009) decided on the Leeuwarden case. The metaphor often used in defamation cases is the living room. The Supreme Court argued that the utterance on a private social medium platform cannot be compared to information that is shared in the privacy of the living room (e.g., a birthday party). It is questionable whether a crowded living room is really different from a private social media profile. In particular since the following line of reasoning of the Supreme Court could be applied to communication in the living room as well, viz. “people could without any restriction and in any way they deemed appropriate use the communication, which makes it

foreseeable and expected that the text would be further disseminated.” The problem with this interpretation is that even 1-to-1 confidential communication could become defamation, depending on the content of the communication, via so-called “kruipsmaad” (creeping defamation).

5. BLOCKING INTERNET TRAFFIC

One perennial problem for law enforcement are online copyright infringements. Unsurprisingly the opportunity to get something for nothing is extremely attractive and the high level of copyright infringement online has been observed and continually commented on for the last twenty years [Pink, 1995; Savola, 2014]. A series of global cases has established the civil and criminal liability of sites which operate as file sharing services [A&M Records v Napster, 2001; Universal Music v Sharman, 2005; Sweden v. Neij, 2009]. However, experience has shown that findings against individual file sharing sites and operators do little to reduce the incidence of file sharing online. As a result the tactic used by copyright holders has evolved recently to move away from direct engagement with sites and operators who provide the means for individuals to trade content with one another (file sharing services) to blocking access to such sites through the application of blocking tools.

5.1 UK law

The legal foundation for such action is to be found in Art.8, in particular Art.8(3) of the Copyright and Related Rights Directive 2003 (Dir.2001/29/EC). This provides that “Member States shall ensure that rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe a copyright or related right.” In the UK this has been given effect by s.97A of the Copyright, Designs and Patents Act 1988 (as amended). This has translated the language of the Directive where intermediaries are named to specifically name service providers, “The High Court (in Scotland, the Court of Session) shall have power to grant an injunction against a service provider, where that service provider has actual knowledge of another person using their service to infringe copyright.” In determining whether a service provider has actual knowledge of the infringement the Court may take anything it deems relevant into account but in particular the Court is directed to take account of whether the service provider has received a notice outlining the nature of the infringing site from the copyright holder.

The application of s.97A has become a first order instrument in the fight against online copyright infringement over the last five years. The first English case to use s.97A was *Twentieth Century Fox v. Newzbin* [2010]. This case involved a service domiciled within the United Kingdom and therefore easily made subject to the jurisdiction of the High Court. Newzbin was an indexing service for Usenet files. It was a subscription only service netting a substantial annual profit. It was also clear that a substantial percentage of indexed content was there in breach of copyright conditions. There was a fig leaf of a copyright enforcement system using a reporting and “delisting” tool but Mr Justice Kitchin did not believe it was offered as a genuine service to copyright holders: “I have no doubt that this is another superficial attempt to conceal the purpose and intention of the defendant to make available binary content of interest to its users, including infringing copies of films. As will be seen, the defendant has done nothing to enforce this restriction.” [*Twentieth Century Fox*, 2010 [45]].

The claimants sought a wide injunction to prevent Newzbin from supplying links to any material in breach of copyright. Kitchin J. felt he could not award such a widely drafted injunction noting that he had only been briefed on the rights of the parties before him and that an injunction could only in his view be narrowly awarded to the rights holders who were represented before him. He did though grant this narrow

injunction to the claimants. Almost immediately Newzbin Ltd. was sold to a third party who resurrected the site with a Seychelles hosting agreement and operating from the same web address under a similar name, Newzbin II. This prevented the claimants from recovering costs and allowed the site to continue to operate outside the jurisdiction of the High Court. The claimants then returned to the court with a new strategy. If Newzbin was now outside the jurisdiction of the court could they block access to it? The claimants returned to the High Court to seek a new and innovative injunction in the case of *Twentieth Century Fox v. British Telecommunications* [2011]. The claimants argued that British Telecommunications (BT) could be enjoined under s.97A as they had been placed on notice as to the nature of the Newzbin site. They further argued that as BT already operated a filtering system on behalf of all major UK ISPs, known as the Anti-Child Abuse Initiative, or Cleanfeed, an injunction awarded against BT would effectively block the Newzbin II site from most UK users at minimal cost to the internet service providers. In essence all Twentieth Century Fox sought was to have Newzbin II added to the list of blocked sites. There was though a problem that Arnold J had to overcome before he could grant the injunction. A Belgian case on ISP filtering had been referred to the European Court of Justice for judgement. The final decision of the court was still outstanding at the time Arnold J heard the Twentieth Century Fox case but the opinion of the Advocate General had been issued and it was very negative in relation to applying the Belgian equivalent of s.97A in the manner the Court was being asked to do. The case was *Scarlet Extended v. SABAM* [2012] and it involved an application by SABAM, a Belgian collecting society, to require Belgian ISPs to install a system to filter file-sharing content with a view to preventing illegal file sharing. Scarlet is one of Belgium's larger ISPs and refused to comply with the request. They argued this was 'contrary to art.15 of the Directive on Electronic Commerce (Dir.2000/31/EC) because it would impose on Scarlet a general obligation to monitor communications on its network which would be in breach of Article 15 of the Directive. The Advocate General had recommended that the Court find that Article 15(1) prevented the Belgian authorities from making and enforcing the order sought and when the Court decided the case in November 2011 they upheld the AG in full. They found that "the injunction imposed on the ISP concerned requiring it to install the contested filtering system would oblige it to actively monitor all the data relating to each of its customers in order to prevent any future infringement of intellectual-property rights. It follows that that injunction would require the ISP to carry out general monitoring, something which is prohibited by Art.15(1)" [*Scarlet Extended v. SABAM*, 2012, [H7]]. Arnold J though felt he could distinguish Twentieth Century Fox from Scarlet Extended. The key difference was Scarlet Extended was an application for an open-ended surveillance programme to be constructed at great cost whereas Twentieth Century Fox was directed at a single web address, was reviewable over time and made use of an already extant technology: the Cleanfeed system. On this basis he awarded the injunction sought, the first time an Internet Service Provider had been specifically enjoined under s.97A. From this beginning a number of cases have followed. In *Dramatico Entertainment v British Sky Broadcasting* [2012] the six largest UK ISPs (who control over 95% of the UK home broadband market) were enjoined to block access to The Pirate Bay, both through its main address thepiratebay.se and a number of mirror addresses. In a number of following cases including *EMI Records v. British Sky Broadcasting* [2013] and *1967 Ltd. v. British Sky Broadcasting* [2014] a large number of sites have been blocked including Fenopy, H33t, Torrentz, LimeTorrents and Kickasstorrents [Angelopoulos, 2013].

5.2 Dutch law²

The blocking by ISPs has been addressed in a series of court cases surrounding the Pirate Bay. Early in 2009, charges were filed in Sweden against the people behind the Pirate Bay, followed up by a conviction

² Based on the extensive discussion in Lodder & Van der Meulen (2013).

of one year imprisonment for Fredrik Neij, Gottfrid Svartholm, Peter Sunde, and Carl Lundström on April 17, 2009. The criminal conviction in 2009 fueled the actions of BREIN, a foundation which aims to enforce intellectual property rights in the Netherlands, basically for the entertainment industry. BREIN sued Pirate Bay personnel in the summer of 2009 for copyright violation.

The summons was delivered at the address as recorded in the Swedish population register, but was returned. The defendants did not show up in court, but the judge (Court of Amsterdam 30 July 2009, ECLI:NL:RBAMS:2009:BJ4298) allowed the proceedings to take place in absentia. This is allowed in summary proceedings if the plaintiff has put sufficient effort in trying to reach the defendant. Interesting in this case, is that the effort consisted, amongst others, in sending the court order via e-mail, Twitter, and Facebook (the plaintiff was de-friended minutes after the court order was left on the Pirate Bay owned Facebook page). Decisive for the judge was the reaction of one of the defendants when the press confronted him with the upcoming court case: “Having a court case in Amsterdam on July 21, does not ring a bell.” It was clear he knew about the court case from that moment on.

The Court of Amsterdam ordered on 22 October 2009 (ECLI:NL:RBAMS:2009:BK1067):

1. Pirate Bay should delete all torrents that refer to material that infringes on copyright material relevant to BREIN;
2. Block access of Dutch internet users on the various Pirate Bay websites to the torrents under 1.

Needless to say that the Pirate Bay people did not act accordingly. Based on this verdict BREIN asked Dutch providers to filter out Pirate Bay internet traffic. The providers did not grant this request. Therefore, BREIN decided to sue only, in what they called a test case, the ISP that facilitated most Pirate Bay traffic. This appeared to be, naturally, Ziggo the biggest provider in the Netherlands. On principle grounds XS4ALL joined Ziggo as a defendant in this case.

In summary proceedings BREIN applied Article 26d of the Dutch Copyright Act, the Dutch implementation of Article 11 of Directive 2004/48/EC on the enforcement of intellectual property rights (see also Article 8(3) Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society):

“(...) rightholders are in a position to apply for an injunction against intermediaries whose services are used by a third party to infringe an intellectual property right (...)”

The third party concerned here are the subscribers of the ISP. This may sound somewhat strange since the services of the ISP are not used by a third party but their subscribers they have a contractual relationship with. However, third only means others than the ones directly involved in the infringements. The judge did not grant the request, since he argued that the injunction is only allowed in cases of direct infringement. Hence, the order would apply to all users of the provider, not only those infringing copyrights after accessing The Pirate Bay.

At first sight this may seem a bit odd: people who do infringe are banned, and people who do not infringe did not go to the Pirate Bay anyway. But just as the people using Pirate Bay could do that for legal purposes, those who do not use the Pirate Bay might want to go there for legal activities as well. Practically, it is hard to indicate which torrents exactly infringe, but that is yet another problem.

In the proceedings on the merits that BREIN started after they lost the summary proceedings, they made the same claim (Court The Hague 11 January 2012, ECLI:NL:RBSGR:2012:BV0549). The judge followed the European Court of Justice (ECJ) ruling from 12 July 2011 (L’Oreal/eBay), and stated that Article 11 of Directive 2004/48/EC on the enforcement of intellectual property rights can also be used to prevent

infringements. In a later case (Scarlet/Sabam) on 24 November 2011 the ECJ indicated that an unspecified, active monitoring duty cannot be asked from access providers.

This latter decision is interesting, since the verdict in summary proceedings of the Dutch judge was precisely asking this from the providers XS4ALL and Ziggo. If this verdict would be translated to ISPs it would not be allowed according to the Scarlet vs. Sabam case. However, since BREIN chose a different strategy in which it asked the mere banning of domain names and IP addresses this EU court ruling could not be applied directly. This actually means that due to BREIN claiming too much (hence, also blocking legal internet traffic), they could circumvent the active monitoring prohibition. Blocking websites or IP addresses of the Pirate Bay was ordered from the ISPs in this case.

During the proceedings BREIN claimed that blocking had been effective in Denmark and Italy. Still, it is very easy to circumvent the blocking, and the people who really want to use the Pirate Bay can do so. Interestingly enough, research carried out by the University of Amsterdam showed no difference in internet traffic after the ban.

The judge ordered Ziggo and XS4ALL to block a list of 24 websites (of which several were outdated at the moment of the verdict, and others later became outdated), as well as three IP addresses. Curious is that BREIN had the right to change the list anytime they believed this being necessary, without judicial intervention. One could argue that the judge did not really take notice of the particular sites anyway, but in a trial at least the opponents have the opportunity to object. Ziggo and XS4ALL should follow an order, and start a new trial if they do not agree with a particular IP address or website. If Ziggo or XS4ALL do not comply they have to pay a daily fine, if BREIN makes a mistake there is no specific consequence described in the verdict.

The Court of Appeal for The Hague decided an appeal in relation to this case on 28 January 2014 (ECLI:NL:GHDHA:2014:88). The court took into account several research outputs that demonstrated that the volume of internet traffic relating to infringing material showed very little, if any, difference as measured before and after the blocking. In fact the research suggested the opposite may be the case, there was even an increase measured. Therefore the Court concluded that the blocking measures had not been effective. Despite the fact that the measures by the providers did not cost much or take much effort, being forced to block infringed on the freedom to act at its discretion. Taking into account the ineffectiveness and as a consequence that the measure could not contribute to what was aimed at, the hindering of free entrepreneurship by ordering to block the internet traffic the Court found this to be Disproportional. BREIN argued that this was just a beginning in a scheme consisting of several steps. The Court blamed BREIN, however, noting that they did not put any effort into taking these next steps. One of these steps was to sue other major torrent providers such as Kickass.to, Torrentz.eu and possibly also Isohunt. Considering the present case a mere test-case does not sound very convincing against this background. BREIN did not even ask these torrent-sites to stop.

6. CONCLUDING OBSERVATIONS

Our case studies show remarkable similarities in the way the Netherlands and England & Wales deal with the four case studies. Arguably in both jurisdictions there has been a reach to over-regulate over a fear of lack of control. With regard to criminal threats we see that both have had difficulties in dealing with spurious or benign speech acts which seem to have a more malign edge. Whether it be threats to campaigners, false bomb threats or threats to civic leaders such as the Crown or the Prime Minister the tendency is towards over-regulation and control. The Chambers case stands apart as a moment of clarity

from the Judiciary, a decision which perhaps had as much to do with the high profile the case achieved in the UK as much as a desire to set the law on a new path. Certainly while Lord Judge intended this to set a new standard, since then cases such as Criado-Perez have shown that the UK, like the Netherlands, tends to treat all threats as serious even when clearly many (such as the threat by Isabella Sorley, a female, to rape Ms. Criado-Perez, is impossible without an accomplice in English Law as the offence of rape requires the insertion of the penis, Sexual Offences Act 2003, s.1) are just puffs of fury roared into the digital night. Similarly the natural instinct to protect children, the most vulnerable of our society, has seen an advancement in the law of grooming in both states. In the Netherlands it was held in 2013 in the Court of Appeal for Arnhem-Leeuwarden that you could groom a child who did not exist, meanwhile the law of England and Wales is being amended to remove the two communications rule, intended to originally protect the innocent. While it is a laudable aim to protect children, one which we must support, the risk of eventually adults being cautious about speaking to children at all online is a concern. In a functional society adults must feel free to speak to children without fear of being branded a pedophile. Differences can be seen in the way the two states approach blocking systems for copyright infringement. The UK with a long history of blocking sites seems comfortable with the use of blocking technology to prevent copyright infringement. The Netherlands is less sure about a system which seems to interfere with free speech and freedom of trade. Across the board we see the risk of over-regulation is great. Similarly in the post Charlie Hebdo environment moves from leaders across Europe, and in particular in the UK, would see a crackdown on religious speech deemed extreme and in freedom to communicate without government surveillance. The risk of chilling is great, but at the same time clearly one cannot in a civilised society be allowed to make death threats, groom children for harm, defame others or infringe copyright. The balancing principles are essential if the internet is to remain at once free and civilised.

REFERENCES

Articles, Books and Reports

Allen Green, D. [2012], The High Court is unable to agree on Twitter Joke Trial appeal, *New Statesman*, 28 May 2012: <http://www.newstatesman.com/blogs/david-allen-green/2012/05/twitter-joke-trial-appeal-no-decision>

Angelopoulos, C [2013], Beyond the safe harbours: harmonising substantive intermediary liability for copyright infringement in Europe [2013] 3 *Intellectual Property Quarterly* 253.

Barlow, J.P., [1996], A Declaration of the Independence of Cyberspace, 8 February 1996. https://w2.eff.org/Censorship/Internet_censorship_bills/barlow_0296.declaration

Berg, T [2000], WWW.Wildwest.gov: The Impact of the Internet on State Power to Enforce the Law (2000) *Brigham Young University Law Review* 1305.

Bernal, P. [2014], A Defence of Responsible Tweeting, 19 *Communications Law* 12.

Doherty, B., [2004], John Perry Barlow 2.0: The Thomas Jefferson of cyberspace reinvents his body — and his politics', *Reason* (August–September 2004) <http://reason.com/archives/2004/08/01/john-perry-barlow-20>

Goldsmith, J. & Wu, T, [2006] *Who Controls the Internet?* Oxford, OUP.

Handman, L., Reid, E, and Balin, R., Libel tourism and the Duke's manservant - an American perspective, [2009] *European Human Rights Law Review* 303.

Johnson, D.R. & Post, D.G., [1996], Law and Borders: The Rise of Law in Cyberspace, 48 *Stanford Law Review* 1367 (1996).

Khan, S., [2012], The threat posed to reputation by the emergence of social web technologies, 23 *Entertainment Law Review* 126.

Lessig, L., [1999], *Code and Other Laws of Cyberspace*, New York, Basic Books.

Lodder, A.R. [2010], Schadelijke of ongewenste informatie op sociale netwerksites. *Computerrecht*, 2010(3), 107-114.

Lodder, A.R. & Meulen, N.S. van der (2013). Evaluation of the role of access providers. Discussion of Dutch Pirate Bay case law and introducing principles on directness, effectiveness, costs, relevance, and time. *Journal of Intellectual Property, Information Technology and E-Commerce Law*, 4(2), 130-141.

Look, J.J. [2001] Law and order on the wild, wild west (www) 24 *University of Arkansas at Little Rock Law Review* 817

Murray, A.D. [2013], *Information Technology Law: The Law and Society*, 2ed, Oxford, OUP.

Pink, A.S. [1995], Copyright Infringement Post Isoquantic Shift: Should Bulletin Board Services Be Liable, 43 *UCLA Law Review* 587.

Russell, A. and Smillie, M. [2005], Freedom of Expression v. The Multiple Publication Rule, 2005 *The Journal of Information, Law and Technology*: <http://www2.warwick.ac.uk/fac/soc/law2/elj/jilt/2005/1/russellandsmillie/>.

Savola, P., [2014] Blocking Injunctions and Website Operators' Liability for Copyright Infringement for User-Generated Links, 36 *European Intellectual Property Review* 279.

Wainwright, M. [2010], Twitter joke trial: Paul Chambers loses appeal against conviction, *The Guardian*, 11 November 2010: <http://www.guardian.co.uk/uk/2010/nov/11/twitter-joke-trial-appeal-verdict>

Cases

1967 Ltd. & Ors. v British Sky Broadcasting Ltd & Ors. [2014] EWHC 3444 (Ch).

A&M Records v Napster 239 F.3d 1004 (2001).

Chambers v DPP [2012] EWHC 2157.

Don King v Lennox Lewis & Ors. [2004] EWHC 168 (QB)

Dow Jones & Co. Inc. v Gutnick [2002] HCA 56.

DPP v Collins [2006] UKHL 40.

Dramatico Entertainment Ltd. & Ors. v British Sky Broadcasting Ltd. & Ors. [2012] EWHC (Ch.).

EMI Records Ltd & Ors v British Sky Broadcasting Ltd & Ors [2013] EWHC 379 (Ch).

Harrods Ltd. v Dow Jones & Co. Inc. [2003] EWHC 1162 (QB).

Jameel v Dow Jones & Co. Inc. [2005] EWCA Civ 75.

Johanna Kaschke v David Osler [2010] EWHC 1075 (QB)

Lord McAlpine of West Green v. Bercow [2013] EWHC 1342 (QB).

R. v Duffy [2011], unrpt., Reading Magistrates Court, 13 September 2011.

R. v G. [2010] EWCA Crim 1693.

R. v Nimmo and Sorley [2014], unrpt., Westminster Magistrates Court, 24 January 2014: <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/r-v-nimmo-and-sorley.pdf>

R. v Stacey [2012], Appeal No: A20120033, Swansea Crown Court, 30 March 2012: <http://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Judgments/appeal-judgment-r-v-stacey.pdf>

Sanders v Percy [2009] EWHC 1870 (QB)

Scarlet Extended SA v SABAM (C-70/10) [2012] ECDR 4.

Sweden v Neij et al., Stockholms Tingsrätt No B 13301-06, 17 April 2009

Twentieth Century Fox & Ors. v British Telecommunications [2011] EWHC 1981 (Ch).

Twentieth Century Fox & Ors. v Newzbin Limited [2010] EWHC 608 (Ch).

Universal Music Australia Pty Ltd v Sharman License Holdings Ltd [2005] FCA 1242.