

# Internet Issues

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# Introduction

- The benefits that the Internet has brought are almost universally recognized.
- It has made access to all sorts of information much easier.
- It has made it much easier for people to communicate with each other, on both an individual and a group basis.

- It has simplified and speeded up many types of commercial transactions. And , most importantly, these benefits have been made available to very many people , not just to a small and privileged group although, of course, the Internet is still far from being universally available, even in developed countries .
- Inevitably , a development on this scale creates its own problems.

- We shall be looking at three topics –pornography, defamation and spam –that are a matter of concern to every one professionally involved in the Internet, as well as to many other people.
- There are social, cultural and legal issues that must all be considered
- Different Countries approach these issues in very different ways but the internet itself knows no boundaries

# Internet Service providers

- The central issues we need to consider is how far an ISP can be held responsible for material generated by its customers.
- In Europe , the position is governed by the European Directive 200/31/EC. In the UK this directive is implemented through the Electronic Commerce regulation 2002. These regulations follow the EC Directive in distinguishing three roles that an ISP may play: mere conduit, caching and hosting.

- The role of mere conduit is that in which the ISP does no more than transmit data; in particular, the ISP does not initiate transmissions, does not select the receivers of the transmissions, and does not select or modify the data transmitted.
- The caching role arises when the information is the subject of automatic, intermediate, and temporary storage, for the sole purpose of increasing the efficiency of the transmission of the information to other recipients of the service upon their request.

- An ISP acting the caching role is not liable for damages or for any criminal sanction as a result of a transmission provided that it:
  1. Does not modify the information
  2. Complies with conditions on access to the information;
  3. Complies with any rules regarding the updating of the information, specified in a manner widely recognized and used by industry;
  4. Does not interfere with the lawful use of technology, widely recognized and used by industry, to obtain data on the use of the information; and
  5. Acts expeditiously to remove or to disable access to the information he has stored upon obtaining actual knowledge of the facts that the information at the initial source of the transmission has been removed from the network, or access to it has been disabled, or that a court or an administrative authority has ordered such removal or disablement.

# Law Across National Boundaries

- How law operates across national boundaries is a difficult and intensely technical topic.

## Criminal Law

- Suppose a person, X commits a criminal offence in country A and then moves to country B Can country A ask that X be arrested in country B and sent back to A so that he can be put on trial? Or can X be prosecuted in country B for the offence committed in country A?



- The answer to the 1<sup>st</sup> of these questions is that, provided there exists an agreement between the two countries. , then in principle X can be extradited that is , arrested and sent back to face trial in A, However, this can only be done under the very important proviso that the offence that X is alleged to have committed in A would also be an offence in B.
- In general , the answer to the second question is that X cannot be prosecuted in B for an offence Committed in A.

- What does this mean in the context of the Internet?  
Suppose that you live in country A and on your website there you published material that is perfectly legal and acceptable in country A, but which it is a criminal offence to publish in country B. Then you cannot be prosecuted in country A and it is very unlikely that you would be extradited to country B.
- You might, however, be unwise to visit country B voluntarily

# The International Convention on Cyber crime

- In 2001, the Council of Europe approved a draft convention on “cybercrime” .
- It deals with child pornography on the internet, criminal copyright infringement. Computer related fraud and hacking.
- There is an additional protocol relating to incitement to religious or racial hatred, to which signatories to the protocol may also sign up.

# Civil Law

- There are some parts of the civil law where the position is reasonably clear cut.
- Any contract that involves parties from more than one country should, and usually, will state explicitly under which jurisdiction it is to be interpreted.
- Where intellectual property law is concerned, there are international agreements to which most countries are signatories so that there is a common framework. Even if it can be very difficult to enforce the rights in certain countries

# Defamation

- A university provides internet services for its students and allows them to mount personal web pages. One student, who is a passionate fan of Llanbadarn United football club, believes the referee in their last game made a bad decision that caused them to lose the match. He believes that the decision was so obviously wrong that the referee must have been bribed. He puts a statement on his web page saying that the referee is corrupt. Someone draws the referee's attention to this allegation. The referee believes that his reputation has been badly damaged by this and he wants compensation

- This situation is covered by the law of defamation.
- Defamation means making statements that will damage someone's reputation, bring them into contempt, make them disliked& so on

## **Pornography**

- More or less every country has laws concerned with pornography.

- What is considered pornographic varies widely from country to country.
- What is accepted as normal by one country may be considered pornographic in another country.
- In some countries the possession of pornography may be a criminal offence, in others possession is not an offence but distribution and/or publications are

- There is one important difference between laws regarding defamation and laws regarding pornography. In most instances of defamation, any legal action will be under the civil law and will be initiated by the person or the organization who is the target of the defamation.
- In most cases concerning the publication of pornography, action will be under the criminal law and will be initiated by state prosecution services on the basis of information provided by the police.



# The law in the UK

- In England & Wales, the law relating to pornography is based on the obscene Publications Act 1959.
- This Acts states that:
  - An article shall be deemed to be obscene if its effect or the effect of any one of its items is, if taken as a whole , such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

# The regulation of pornography in the USA

- The First amendment to the US Constitution famously states that,
  - Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech , or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances

# The Internet Watch foundation

- In the UK, the Internet watch Foundation (IWF) was set up in 1996 to monitor and, where desirable and possible, take action against illegal and offensive content on the UK internet. It has the support of the UK government, the police and the ISPs.
- It can act against websites, newsgroups and online groups that,
  - Contain images of child abuse, originating anywhere in the world
  - Contain adult material that potentially breaches the Obscene Publications Act in the UK
  - Contain criminally racist material in UK

# The Internet Content Rating association

- The Internet Content Rating Association (ICRA) is an international independent organization whose mission, it claim, is 'to help parents to protect their children from potentially harmful material on the internet, whilst respecting the content providers' freedom of expression,
- Its board includes representatives from the major players in the internet and communication market. , including AOL,BT, cable and Wireless, IBM, Microsoft and Novell.

# SPAM

- Spam is best defined as ‘unsolicited email sent without the consent of the addressee and without any attempt at targeting recipients who are likely to be interested in its contents’
- Any regular user of email will be familiar with spam.

- There are some technical means of fighting spam , for example:
  - Closing loopholes that enables spammers to use other people's computer to relay bulk messages;
  - The use of machine learning and other techniques to identify suspicious features of message headers;
  - The use of virus detection software to reject emails carrying viruses;
  - Keeping 'stop lists' of sites that are known to send spam

# European legislation

- The European Community Directive on Privacy and Electronic Communications (2002/58/EC) was issued in 2002 and required member nations to introduce regulations to implement it by December 2003 . In the UK , the directive was implemented by the Privacy and Electronic Communication regulations 2003.

- The directives addresses many issues that are not relevant here, but its essential features relating to unsolicited email are:
  - Unsolicited email can only be sent to individuals if they have previously given their consent
  - Sending unsolicited email that conceals the address of the sender or does not provide a valid address to which the recipient can send a request for such mailing to cease is unlawful.
  - If an email address has been obtained in the course of the sale of goods or services, the seller may use the address for direct mailings, provided that the recipient is given the opportunity, easily and free of charge, with every message, to request that such mailing cease.



# Legislation in the USA

- A superficially similar Act came into force in the USA at the start of 2004. This is the Controlling the Assault of Non-Solicited Pornography and Marketing Act 2003, otherwise known as the CANSPAM Act. Unfortunately, the Act has fundamental weaknesses, of which the main one is that it is legal to send spam provided that.
  - The person sending the spam has not been informed by the receiver that they do not wish to receive spam from that source; and
  - The spam contains an address that the receiver can use to ask that no more spam be sent.

# Registration

- Both the USA and the UK operate successful schemes that allow individuals to register their telephone numbers as ones to which unsolicited direct marketing calls must not be made .
- On the face of it this should act as a model for preventing spam; indeed, the CANSPAM Act specifically requires the Federal Trade Commission to produce plans for such a register within six months