

PRESS RELEASE

OVERSEAS LIABILITY FOR WEB PUBLISHING

Websites, whether they be .uk or .com or under any other country domain are effectively accessible from anywhere in world. As a result if they contain material offensive to any jurisdiction in the world the website proprietor could face legal action anywhere in the world. It is, however, obvious that no one, other than a global business, would have the resource or desire to ensure that its website complies with all legal requirements worldwide.

Indeed some of those requirements could be contradictory making world wide compliance impossible.

Two recent cases before the European Court of Justice (ECJ) *eDate Advertising GmbH v X Case C-509/09, 25 October 2011* and *Olivier Martinez and another v MGN Ltd, Cases C-509/09 and C-161/09, 25 October 2011* have provided examples of how this works in the European Union.

The first case was a reference to the ECJ from the German Federal Court of Justice which asked the ECJ to rule on matters of jurisdiction—in other words which countries' courts were entitled to hear the case before them. In their case an individual was seeking to restrain eDate Advertising GmbH, a German website proprietor, from publishing his name in connection with a criminal case in which he had been convicted.

The second case, referred by the French court and decided at the same time, concerned a claimed infringement of “personality rights” by a web publisher and concerns the principle of freedom to provide information society services across borders.

The ECJ ruled as follows:

- A company or individual bringing a claim relating to on-line publishing had the choice of bringing proceedings in the state where the publisher is established, in the state where the claimant is established or in any state in which the claimant suffered damage.
- If the claim is brought otherwise than in the website proprietor's state the court hearing the claim cannot apply rules stricter than those which apply in that state.
- If the claim is brought in the website proprietor's or the claimant's state the

claimant can obtain a remedy in respect of all states where damage was or could be suffered.

- If the claim is brought in another state the claimant can only obtain a remedy in respect of damage in that state.

Whilst this is largely only of interest to the claimant's lawyers—in deciding where to bring the claim, it is also of relevance to UK website publishers in clarifying how to assess their potential liability for the contents of their website.

Any such claim is likely, however, to be very expensive, win or lose. Facing a claimant in eg a German court arguing a case in German, under German law and having to convince the Richter (judge) that he cannot apply various parts of German law because they are stricter than the equivalent provisions of English law would not be easy.

Of course this is only relevant to EU based claimants. Different rules will apply when the claimant is based outside the EU.

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