

Web2Rights

International Issues and Liability FAQs

1. What happens regarding liability in a Web2.0 international environment?

Web 2.0 technologies and content within and on Web 2.0 technologies are, unless specifically limited, available to users worldwide. This means that if content infringes a law in another country then those making the content available could be sued in that other country, and found liable there. For example, if content was made available on a Web 2.0 technology in the UK and was lawful here, but infringed defamation law in the US, it would be possible for those publishing the content to be sued there where the standard to be applied would be US law. Equally, if content was lawful in one country, it could be unlawful in another, and those downloading the content could be found liable in that other country. For example, content protected by copyright the use of which falls under the US fair use provisions might be made available in the US. If that content is then reproduced in the UK where the fair use provisions ("fair dealing") are much more narrowly drawn, its reproduction could infringe copyright law in the UK.

2. Should the possibility of liability under different legislations, stop me from engaging with Web2.0 technologies, software and content?

The potential for liability in many jurisdictions can often seem daunting to those engaging in Web 2.0 projects. However it should be stressed that there have only been a handful of instances in which cross border cases have been raised and heard in court. These cases are the exception rather than the norm. Examples are given below of cases involving Nazi memorabilia; defamation and anti-circumvention measures.

Nazi Memorabilia: Licra v Yahoo!

This refers to a French case which concerned the sale of Nazi memorabilia on Yahoo!'s (?) servers in the US and available in France. Action was taken against the CEO of Yahoo! in France under the French penal code. Yahoo! was found liable and ordered to take all appropriate measures to deter and prevent access to auctions of Nazi memorabilia on its site by French residents. Yahoo! argued that it could not block access to only French residents – that it was technically impossible. Subsequently Yahoo! blocked all sales of Nazi memorabilia. Action was taken in the US to declare the French order unenforceable in the US in part on the grounds that the French courts had no jurisdiction. The US Appeals court held that the French court did indeed have jurisdiction noting in particular that it had only sought to deal with those transactions that took place on French soil.

Defamation: Beresovsky v Forbes

Beresovsky, a Russian businessman sued the American publishers of the Forbes magazine for making allegedly defamatory comments. The publication was put on the Internet in the US – but available all over the world. Beresovsky sued in England where the action was limited to the damage to his reputation arising in England. On appeal, the English court accepted jurisdiction noting that Beresovsky had a strong business reputation and significant connection with the jurisdiction.

Anti-circumvention measures: US v Elcom & Sklyarov.

A Russian computer programmer, Dmitry Sklyarov, wrote a program that could decrypt the controls surrounding Adobe's e-book reader. He wrote this program when in Russia and made it available on the web such that it could be accessed anywhere in the world, including in the US. He travelled to the US to present a paper at a conference and was arrested on arrival. Eventually the criminal charges against Sklyarov were dropped in return for his employing company, Elcom, standing trial. Ultimately the company was found not guilty because the jury found there had been no intent to circumvent the controls.

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3. What can I do to reduce the risk of liability of my project across different jurisdictions?

Any project developing and deploying Web2.0 technologies and software, and using such platforms to make content available, needs to have a robust but fair notice and take down procedure in place. While this may not shield the participants from all liability (such as the Nazi memorabilia example) in many cases involving other forms of liability, including defamation and copyright infringement, properly implemented it will serve to mitigate the risks of being sued both at home and abroad.