

## Chapter 27

# Sticks and Stones Will Break My Euros: The Role of EU Law in Dealing with Cyber- Bullying through Sysop-Prerogative

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### ABSTRACT

*“Sticks and Stones” is a well-known adage that means that whatever nasty things people say, they will not physically harm one. This is not often the case, as bullying, especially via the Internet, can be quite harmful. There are few anti-bullying laws emanating from the European Union, which is a trading block of 28 member states that have pooled their sovereignty in order to have common laws and practices to boost trade and peace. However, the common legal rules that exist in the EU have implications for those who run websites, including relating to cyber-bullying. These people, known as systems operators, or sysops, can be limited in the powers they have and rules they make through “sysop prerogative.” Sysop prerogative means that a systems operator can do anything which has been permitted or not taken away by statute, or which they have not given away by contract. This chapter reviews how the different legal systems in Europe impact on sysops and change the way in which sysop prerogative can be exercised. This includes not just from the EU legal structure, but equally the European Convention on Human Rights (ECHR), which also has implications for sysops in the way they conduct their activities.*

### INTRODUCTION

The famous European philosopher, Socrates, claims a wise person knows what they do not know, according to (Bazon, 1977). Bazon quoted this adage at the dawn of the microcomputer revolution. Bazon also admitted that they knew little about science and technology, and said most judges are the same. The English idiom of ‘Sticks and Stones’ existed in the 1970s and has

long been associated with human rights, including by authors such as Emilie Hafner-Burton, who thinks ‘naming and shaming’ is a way to enforce human rights (Hafner-Burton, 2008). The extent that cyber-bullying would evolve from microcomputers was probably not foreseen by Bazon, yet Hafner-Burton’s view of naming and shaming seems appropriate for dealing with cyber-bullies and Internet trolls. The European Union, which has grown in significance since the 1970s, now

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consists of a block of 28 sovereign states that have pooled their sovereignty for economic advantage. To achieve this advantage often requires 'approximation of law', which is where laws are created that are the same in every country in order to break down the barriers to trade between those countries. Even so, the European Union, analogously to the USA, experiences difficulties even when the laws are adopted in each member state (Jutla, Bodorik, & Dhaliwal, 2002). Something that is clear from the European Union (EU), also called 'The Common Market' from when it was originally created, is that its vastness is exceeded only by that of the Internet. As a legal jurisdiction, the EU has a number of implications for sysops, and the extent of their ability to provide services on a cross-border basis. The adage, 'Sticks and Stones,' is an appropriate one to discuss in relation to EU Law. The full version of this, 'sticks and stones will break my bones but words will never harm me.' is translated into French as, '*la bave du crapaud n'atteint pas la blanche colombe*' (A slime toad does not reach a white dove). As one can see the two idioms are not literal translations of one another, even if the meanings are both the same. That is why in the European Union the concept of 'proportionality' exists. This is where legislation and other law is interpreted on the basis of what it means and what was intended, rather than what is literally written. So under EU law, the French idiom on toads and white doves would be treated exactly the same as the 'sticks and stones' equivalent in English. This is generally the case regardless of whether law is being interpreted in the European Court of Human Rights, or the Court of Justice of the European Union.

The relationship between the European Convention of Human Rights (ECHR) and EU law has been somewhat fragmented. According to (Guild, 2004) no reference was made in the original EU treaty to the ECHR, as it was not expected that both would overlap as the European integration project grew. Emily Reid and others have argued that the European Union has not been ideally

set up to take account of human and civil rights, even with its own Charter of Fundamental Rights (Caracciolo di Torella & Reid, 2002). Indeed, it was not until The Maastricht Treaty that scholars began to see the EU as having any implications at all for civil liberties, human rights, or even the implications of the ECHR on domestic law of European countries (Gearty, 1997). The EU and ECHR have never had more relevance than in the age of the Internet. The plans of European countries to intercept e-mail and Internet calls, let alone to covertly tamper with private citizens' computers, contravene the ECHR, and many argue it should be enforced (Caloyannides, 2004). The European Commission claims that e-commerce in the European Union is hampered by lack of consumer trust, and clearly this does nothing to help (Jutla et al., 2002).

## **BACKGROUND**

The European Union as it is today is founded on the Treaty of Rome, which has been amended a number of times since the Single European Act in the 1980s. Since this re-negotiation of powers of the EU by Margaret Thatcher, there have been several re-negotiations of power, including one under John Major, three under Tony Blair and two under Gordon Brown. Further such re-negotiations have been promised by David Cameron. The common progression among all four leaders prior to David Cameron was a movement to a single legal identity for the European Union rather than the existence of various 'pillars.' This creation of a legal person subsequently led to the EU being awarded the Nobel Peace Prize under David Cameron.

The European Union consists of a number of institutions for the creation and enforcement of legislation and policy. The process under which legislation is usually created involves a proposal from the European Commission. Under the ordinary procedure this is considered by the Council

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