

*Freedom of Speech
in Cyberspace :*

*ECHR's Legal Standards
as Landmarks*

OSCE 3rd Amsterdam Internet Conference
(17-18 June 2005)

Media Freedom on the Internet

Professionals Meet Amateurs

What happens to the Medias on the Internet ?



What Legal Standards ?

Privately-owned Means of Communication



- Private Actors Own the Internet
Technical Intermediaries (ISP)

- Property Rights on the Internet
<http://www.jeboycottedanone.com>

What Legal Standards ?



The European Court of Human Rights

- Sets Legal Standards for the Member States of the Council of Europe (46 States)
- Cases that open the way for solution (or at least discussion)

1. Freedom of Speech, the Press and Amateur Journalists

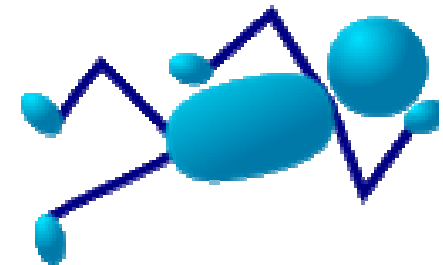
Freedom of the Press

- The press plays an essential role in a democratic society.
- its duty is to impart – in a manner consistent with its obligations and responsibilities – information and ideas on all matters of public interest
- Not only does the press have the task of imparting such information and ideas: the public also has a right to receive them.
- Were it otherwise, the press would be unable to play its vital role of "*public watchdog*."

1. *Freedom of Speech, the Press and Amateur Journalists*

The Press and the Internet

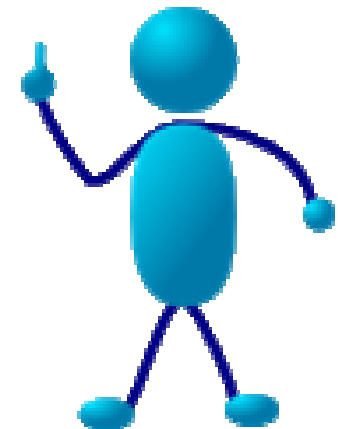
- Traditional Medias are online too



- A worldwide forum for everyone

Weblogs (example : warblogs)

Citizen journalism : « We the Media »



1. Freedom of Speech, the Press and Amateur Journalists

Freedom of Speech in Cyberspace

- Question : what protection for the Freedom of Speech of amateur journalists ?
- ECHR, *Steel & Morris v United Kingdom*, 15 Feb. 2005



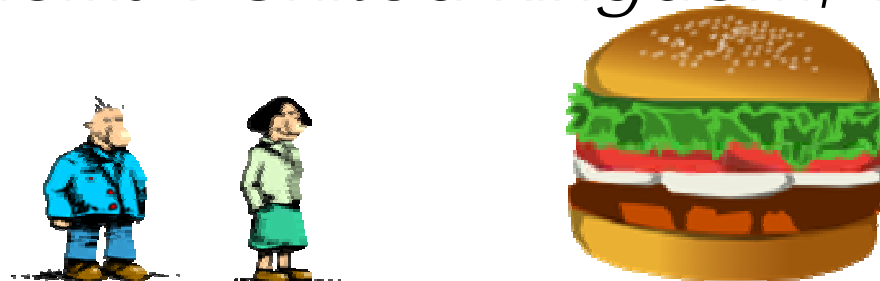
A leaflet : « What's wrong with McDonald's »

LIBEL

1. Freedom of Speech, the Press and Amateur Journalists

Freedom of Speech in Cyberspace

ECHR, *Steel & Morris v United Kingdom*, 15 Feb. 2005



- Gov't : " applicants are not responsible journalists"
- The Court :
 - " the safeguard afforded by Article 10 to journalists in relation to reporting on issues of general interest is subject to the proviso that they act in good faith in order to provide accurate and reliable information in accordance with the ethics of journalism and the **same principle must apply to others who engage in public debate.**"

1. Freedom of Speech, the Press and Amateur Journalists

Freedom of Speech in Cyberspace

ECHR, *Steel & Morris v United Kingdom*, 15 Feb. 2005



“It is true that the Court has held that journalists are allowed recourse to a degree of exaggeration, or even provocation
and it considers that **in a campaigning leaflet a certain degree of hyperbole and exaggeration is to be tolerated, and even expected.**”

1. Freedom of Speech, the Press and Amateur Journalists

Freedom of Speech in Cyberspace

ECHR, *Steel & Morris v United Kingdom*, 15 Feb. 2005



“The more general interest in promoting the free circulation of information and ideas about the activities of powerful commercial entities, and the possible “chilling” effect on others are also important factors to be considered in this context, bearing in mind the legitimate and important role that campaign groups can play in **stimulating public discussion.**”

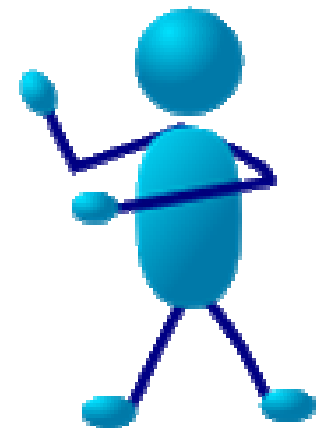
1. *Freedom of Speech, the Press and Amateur Journalists*

Freedom of Speech in Cyberspace

1. "There is little scope under Article 10 § 2 of the Convention for restrictions **on political speech or debates on questions of public interest...**"

Applies to online speech

2. Obligations and responsibilities of Journalists



2. Privately-owned means of communication

Private Actors

- Freedom of Speech benefits to the author, the editor, the publisher, and the owner of technical means of communication



That includes ISP's

- ISP's limited liability rules
 - *EC Directive : notice and takedown*
 - *The AAARGH case 2005*

2. Privately-owned means of communication

Private Actors

- ISP and private censorship

*Example : Multatuli Project
by Bits of Freedom (www.bof.nl)*



- Horizontal Effect of Art. 10 ECHR

*“Genuine, effective exercise of this freedom does not depend merely on the State’s duty not to interfere, but may require **positive measures of protection, even in the sphere of relations between individuals**”*

Horizontal effect before national courts



2. Privately-owned means of communication

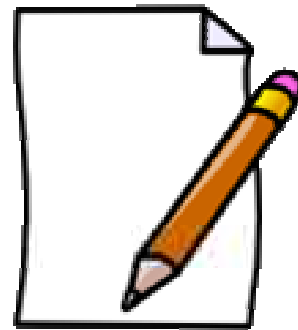
Property Rights

- Property Rights vs Freedom of Speech
Case of <http://www.jeboycottedanone.com>
- ECHR, *Appleby and Others v United Kingdom*,
6 May 2003

2. Privately-owned means of communication

Property Rights

- ECHR, *Appleby and Others v United Kingdom*, 6 May 2003



"The applicants can not claim that they were, as a result of the refusal of the private company, effectively prevented from communicating their views to their fellow citizens."

2. Privately-owned means of communication

Property Rights

- ECHR, *Appleby and Others v United Kingdom*, 6 May 2003

“Where the bar on access to property has the effect of preventing **any effective exercise of freedom of expression** or it can be said that **the essence of the right has been destroyed**, the Court would not exclude that a positive obligation could arise for the State to protect the enjoyment of the Convention rights by **regulating property rights.**”

2. Privately-owned means of communication

Property Rights

- ECHR, *VgT Verein Gegen Tierfabriken v. Switzerland*, 28 June 2001

“the Court observes that the applicant association, **aiming at reaching the entire Swiss public**, had **no other means** than the national television programmes of the Swiss Radio and Television Company at its disposal, since these programmes were the only ones broadcast throughout Switzerland.”

Conclusion

- Freedom of Speech benefits to anyone who wishes to contribute to debates of general interest

Amateur journalism

- Freedom of Speech applies to private censorship situations

ISP as censors

- Property rights cannot prevent effective exercise of freedom of speech

IP Rights

Conclusion



Pierre-François Docquir

<http://www.philodroit.be>