

directed at issues unrelated to the strict question of whether the GPL is enforceable, and no objection has been made to the allegation of copyright infringement that results from failing to abide by the terms of the GPL.

### Implications of the decision

In requiring Sitecom to comply with the terms of the GPL, the District Court of Munich has affirmed the validity of the GPL and the contractual bargain it creates. Harold Welte has observed that 'this clarifies the situation for commercial developers because they now have to take the GPL seriously.'<sup>16</sup> Whilst it is too early to predict the long term

implications of this decision, and there do not appear to have been any similar cases before Australian courts, this case is undoubtedly of great significance to the burgeoning open source software movement as it shows a clear willingness of at least one significant court to comprehensively enforce the terms of the GPL.

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1 'Copyleft' is generally defined as a method of copyrighting a work whereby the copyright holder grants an irrevocable licence to the recipient of a copy, generally permitting the free unlimited use, modification and redistribution of copies. The distinctive condition to that licence is that any modifications to the work, if redistributed, must carry the same permissions (ie licence terms) and be made available in a form which

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facilitates modification. For software, this means in source code.

2 As defined in clause 3(c) of the GPL

3 Sherrif, L 'Court slaps injunction on GPL infringer', *The Register*, 21 April 2004. Available at [www.theregister.co.uk/2004/04/21/licence\\_germany/](http://www.theregister.co.uk/2004/04/21/licence_germany/)

4 Shankland, S 'Attorney: More disclosure will end GPL case' *CNET News.com*, 23 April 2004. Available at [www.news.com.com/2100-7344\\_3-5198886.html](http://www.news.com.com/2100-7344_3-5198886.html).

5 Shankland, S 'Attorney: More disclosure will end GPL case' *CNET News.com*, 23 April 2004. Available at [www.news.com.com/2100-7344\\_3-5198886.html](http://www.news.com.com/2100-7344_3-5198886.html).

6 Welte, H 'An interview with Harald Welte, of the Netfilter Project', 27 April 2004. Available at [www.orangecrate.com/article.php?op=Print&sid=690](http://www.orangecrate.com/article.php?op=Print&sid=690)

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## Don King sues for internet libel

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A recent case involving Don King, the US boxing promoter, has confirmed that it is possible to sue for libel in the UK in relation to articles posted on US websites. King alleges that comments published in articles on two US boxing websites were defamatory and that they were published in the UK. Mr Justice Eady has given King the green light to pursue his claim for libel against Lennox Lewis, Lewis' lawyer and Lion Promotions L.L.C. The judge found that King has a substantial reputation in England and, as a result, has allowed the action to proceed in the UK, despite the majority of parties being US based. King is now allowed to claim for the damage to his reputation within England and Wales.

The action centres around comments made by US lawyer Judd Burstein, who represented Lennox Lewis and Lion Promotions in their action against Don King, Mike Tyson and others, over a re-match between Lewis and

Tyson. During interviews for the US boxing websites [www.boxingtalk.com](http://www.boxingtalk.com) and [www.fightnews.com](http://www.fightnews.com), Burstein was asked about highly unflattering comments made by King about Burstein. Burstein's response, which was also unflattering, was later published in articles on the websites.

Don King sued for libel in the UK and, in a preliminary hearing, Burstein, Lewis and Lion Promotions L.L.C. asked that the action be dismissed on the grounds that the English court did not have jurisdiction to hear the claim. Mr Justice Eady refused on the grounds that publication takes place where the defamatory words are published by way of being heard or read. He commented that the publication of an internet posting takes place when it is downloaded. As a result, King was entitled to rely on a presumption that the case should be heard in the jurisdiction where the libel occurred. In Mr Justice Eady's

opinion, an English court is the "natural forum for achieving vindication and assessing compensation" where a person wishes to protect their reputation within England and Wales.

This ruling strongly supports the similar judgment of the High Court of Australia in *Dow Jones & Company Inc. v Gutnick* [2002] HCA, where a wellknown Australian businessman was able to found a claim in Australia for libel in respect of statements published on Dow Jones' US web site. The idea, once so prevalent, that the world wide web is a lawless place, is now clearly dead. For web publishers, there now seems to be the potential not for too little law, but for too much.

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