

Claim no. KB-2024-001270

IN THE HIGH COURT OF JUSTICE
KING’S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

BETWEEN:

MR MATTHEW GARRETT

Claimant

-and-

(1) MR ROY SCHESTOWITZ
(2) MRS RIANNE SCHESTOWITZ
(aka RIANNE DIOLA)

Defendants

AMENDED DEFENCE AND COUNTERCLAIM OF THE DEFENDANTS

References to paragraph numbers are to those in the Particulars of Claim unless otherwise indicated.

Save as expressly admitted, the Claimant is put to strict proof as to all facts and matters alleged in the Particulars of Claim.

PARTIES

1. In respect of Paragraph 1:
 - 1.1. the first sentence is admitted, save that “expert” in the first sentence is a matter of the Claimant’s own opinion of himself;

- 1.2. the second sentence is admitted save for the Claimant's description of himself as having a "*global reputation (including in this jurisdiction)*" which is denied as being a good reputation, as to which paragraph 33 and subparagraphs below further refers;
 - 1.3. the third sentence is not admitted.
2. Paragraph 2 is admitted. The First Defendant has a PhD in Computer Science. He should have been properly referred to in the Particulars of Claim as Dr Roy Schestowitz.
3. Paragraph 3 is admitted. The Second Defendant **is** a computer science graduate. The heading of the Particulars of Claim uses the Second Defendant's maiden name, a name that she has not gone by, and has not been the Second Defendant's legal name, for over a decade. The Claimant has been told this but has taken no steps to amend his Particulars of Claim. The Defendants have both worked for many British governmental and public sector clients including the Home Office, Greater London Authority, Parliamentary Ombudsman, Food Standards Agency, Cabinet Office, NHS, several councils and several major universities.
4. Paragraph 4 is admitted.

BACKGROUND

5. Since about 2020 the Claimant has been conducting a campaign against the First Defendant. The Claimant carries out his campaign of vilification on websites, blog applications and other forums. The First Defendant asked the Claimant to stop his campaign but the Claimant persisted. The Claimant expanded his campaign to monitor and spy on the First Defendant on the First Defendant's Internet Relay Chat (**IRC**) network, and to cyber-stalk people close to the First Defendant. So far as the First Defendant is aware, the Claimant's campaign is rooted in the Claimant's willingness to promote the interests of 'big tech', and in particular Microsoft, which the Defendants oppose. The Defendants' belief is that at the heart of the Claimant's campaign is the First Defendant's opposition to proprietary Unified Extensible Firmware Interface (**UEFI**) technology. In that respect the Defendants are active proponents of free and open-source software

(**FOSS**). The Defendants write about such matters in the journalism on their websites Techrights and Tuxmachines (**the Websites**).

6. Part of the Claimant's harassing actions towards the First Defendant have been threats of legal action. Some three or four Letters of Claim were sent by the Claimant to the First Defendant between 2021 and 2024. These letters threatened claims in Defamation and other causes. The Claimant made these letters public on his website and disclosed them to the then webhost of the First Defendant's website with the intention of interfering with his website and his journalism. When the First Defendant ignored the threats from the Claimant, the Claimant began to send Letters of Claim by registered post to the Second Defendant despite the Claimant having no reason to do so.
7. The Claimant even launched attacks on the First Defendant's siblings, mother and grandparents, matters that were referred to the police.
8. Further, the Claimant has directed his abuse at many other people, as to which paragraph 33 and subparagraphs below further refers.
9. The Claimant's conduct on the First Defendant's IRC network forms the core of the defence of truth pleaded further below.

Words complained of

10. Paragraph 5 is noted.
11. Paragraph 6 is admitted.

Extent of Publication

12. Paragraph 7 is not admitted. Further:
 - 12.1. The first sentence of paragraph 7.1 is admitted. The second sentence is not admitted;
 - 12.2. paragraph 7.2 is not admitted.
 - 12.3. paragraph 7.3 is not admitted. Site analysis data is wiped after short periods of retention;
 - 12.4. paragraph 7.4 is not admitted. The Claimant's first name is not Michael;

12.5. paragraph 7.5 is not admitted. Whether or not there are a large number of people within the jurisdiction and globally who are interested in the GNU/Linux operating systems and similar content covered on the Websites, it does not follow that a substantial number of such people would have been directed to the publications complained of.

13. As to paragraph 8, paragraph 19 below further refers.

Natural and ordinary meanings

14. The Defendants deny that, in their full and proper context, the statements complained of in paragraph 6 conveyed the imputations alleged in paragraph 9 and its subparagraphs or any imputation defamatory of the Claimant.

15. Alternatively, if and insofar as the statements complained of conveyed any of the following imputations, they were at least substantially true. The imputations that follow are statements of fact save for those words underlined which are expressions of opinion:

15.1. Publication 1:

15.1.1. That the Claimant has abused and harassed many people by attacking them online, including by means of technical interference.

15.2. Publication 2:

15.2.1. That the Claimant's online conduct has been so appalling, including by campaigns of defamatory statements, that it warrants being described as cybercrime.

15.2.2. That there are grounds to investigate the Claimant for the commission of communications offences and of computer misuse.

15.2.3. That the Claimant is a user of crack cocaine.

15.2.4. That the Claimant has made subtle death threats to the Defendants.

15.3. Publications 3 and 4:

- 15.3.1. That the Claimant has attacked, harassed and abused users of the First Defendant's IRC network, including the Defendants, by the use of multiple accounts under different names by which he has posted highly unpleasant messages and account names which have included racist – including antisemitic – misogynistic, homophobic, ableist, humiliating, aggressive and violent messages and messages that celebrate illegal drug use and US domestic terrorism.
- 15.3.2. That the Claimant is a user of crack cocaine.
- 15.4. Publication 5:
 - 15.4.1. There are grounds to investigate the Claimant for the commission of communications offences and of computer misuse.
 - 15.4.2. That the Claimant is a user of cocaine.
 - 15.4.3. That the Claimant has made death threats to the Defendants .
- 15.5. Publication 6:
 - 15.5.1. That the Claimant has posted highly unpleasant messages and account names which have included racist, homophobic and ableist messages and messages that celebrate US domestic terrorism.
 - 15.5.2. That the Claimant has committed communications offences.
- 15.6. Publications 7 and 8:
 - 15.6.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Defendants, by the use of multiple accounts under different names by which he has posted highly unpleasant messages and account names which have included racist, transphobic, misogynistic, humiliating, aggressive and violent messages and messages that celebrate illegal drug use.

- 15.6.2. That the Claimant has made comments that to a reasonable person suggest that he is sexually attracted to minors.
- 15.7. Publication 9, including the embedded video:
- 15.7.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the First Defendant, by the use of multiple accounts under different names by which he has posted highly unpleasant messages and account names which have included racist, xenophobic and homophobic messages and messages that celebrate illegal drug use.
- 15.8. Publications 10 and 11:
- 15.8.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Second Defendant, by the use of multiple accounts under different names by which he has posted highly unpleasant messages and account names which have included racist and antisemitic messages and messages that celebrate illegal drug use and US domestic terrorism.
- 15.9. Publication 12:
- 15.9.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Defendants.
- 15.10. Publication 13, including the embedded video:
- 15.10.1. The Claimant is antisemitic.
- 15.10.2. That there are grounds to investigate the Claimant for the commission of communications offences and of computer misuse.
- 15.10.3. The Claimant has made death threats.
- 15.11. Publications 14 and 15:
- 15.11.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Defendants, by the use

of multiple accounts under different names by which he has posted highly unpleasant messages and account names which have included antisemitic messages.

15.11.2. That the Claimant is a user of illegal drugs.

15.12. Publication 16:

15.12.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Defendants, by the use of multiple accounts under different names and there are grounds to suspect that he has used such tactics on others.

15.13. Publications 17 and 18:

15.13.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Defendants, by the use of multiple accounts under different names by which he has posted highly unpleasant messages which have included antisemitic messages.

15.14. Publication 19:

15.14.1. That there are grounds to investigate the Claimant for the commission of communications offences and of computer misuse.

15.15. Publication 20, including the embedded video:

15.15.1. That there are grounds to investigate the Claimant for the commission of communications offences and of computer misuse.

15.16. Publication 21:

15.16.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Defendants.

15.17. Publication 22:

15.17.1. That the Claimant has attacked and harassed users of the First Defendant's IRC network, including the Defendants, by the use

of multiple accounts under different names by which he has posted highly unpleasant messages which have included antisemitic messages.

15.18. Publication 23:

15.18.1. That the Claimant's partner has exposed herself indecently.

15.19. Publication 24

15.19.1. That the Claimant has attacked and harassed people online by means of sock puppet accounts.

Particulars of Truth

15.20. The Claimant has since about 2020 persisted in posting on the First Defendant's IRC network. The Claimant adopted the username mjpg59_

15.21. The abusive and unpleasant messages posted by the account mjpg59_ led to the Claimant being the first and only IRC user to be 'muted' on the First Defendant's IRC channels.

15.22. The Claimant has since also used many 'sock puppet' accounts, i.e. accounts operated under other names, to mask his identity. The sock puppet accounts have included the usernames elusive_woman, nosecandy, reptilian_thighs, whitenigger, whitenigga, niggernigger, gangster_og, eightballz, dope_dealer, cocaine_barbie, cocaine_babie, MotherLover, HeilHitler, UnaBomber, violentj and DrAxe.

15.23. These sock puppet accounts have been used by the Claimant to make disgraceful and vile attacks on the Defendants and on others. These attacks have included horribly racist and antisemitic, violent, misogynistic, sexually repugnant, and other highly objectionable messages. The Claimant's sock puppet accounts on the IRC network have also glorified illegal drug use and US domestic terrorism.

15.24. The Claimant has sought to interfere with the First Defendant's work by falsely representing complaints to the First Defendant's webhost, including by creating an email account with the webhost's name in it to intimidate the webhost.

- 15.25. The Claimant has posted many hundreds of abusive, racist sexually repugnant and threatening messages on the IRC network under the sock puppet accounts.
- 15.26. The Claimant has used the Tor network, a technical means of hiding connection data that could identify a user, to try to mask his activities of trolling, harassing and abusing.
- 15.27. The Defendants can link the Claimant to these accounts as being behind them as their operator. The facts linking the Claimant to the sock puppet accounts include, on the IRC network:
- 15.27.1. simultaneous dropped connections to the mjpg59_ and elusive_woman accounts. This is so unlikely to be coincidental that the natural inference is that the same person posted under both names;
 - 15.27.2. the Claimant's overt switching between the name elusive_woman and others of his sock puppet account names;
 - 15.27.3. the Claimant's use of unchanged IRC settings showing that the usernames reptilian_thighs and elusive_woman were operated by the same person;
 - 15.27.4. after the First Defendant approached those running the Tor network about the Claimant's misuse of Tor, the sock puppet trolling and harassment subsided;
 - 15.27.5. the similar use of language in posts made by mjpg59_ and a sock puppet account, whitenigga;
 - 15.27.6. the use of the Irish language in a post by elusive_woman (the Claimant was raised in the Republic of Ireland). The Irish language has never otherwise been seen on the First Defendant's IRC network;
 - 15.27.7. the use of the first person by the sock puppet account, elusive_woman, when referring to an accusation made against the Claimant;

- 15.27.8. admission by the Claimant under the name mjpg59_ of expecting to “suffer the consequences of [his] actions”;
- 15.27.9. the admission by the Claimant under the name mjpg59_ that he was switching between machines while using the IRC network;
- 15.27.10. the admission by the Claimant that he impersonated other IRC users by adopting their usernames;
- 15.27.11. a post by a sock puppet operated by the Claimant about snorting cocaine from a 15-year-old actress’s buttocks;
- 15.27.12. Similarities in the themes and language used by sock puppet accounts and by the Claimant on his website and blog, concerning knives, axes, stabbing and murder;

15.28. If necessary the Defendants will rely on section 2(3) of the Defamation Act 2013.

Opinion

16. As to those underlined words of the meanings pleaded at 15.1 and 15.19 and their subparagraphs above, they are:

- 16.1. statements of opinion the basis of which was indicated and which could have been held by an honest person on the basis of existing facts;
- 16.2. true in substance and fact.

Particulars of Fact Upon Which Opinion Based and Particulars of Truth

- 16.2.1. Paragraphs 15.20 to 15.27 and subparagraphs above are repeated.

Publication on a matter of public interest (s.4 Defamation Act 2013)

17. Further or in the alternative, pursuant to s.4 of the Defamation Act 2013, the words complained of were, or formed part of, statements on a matter of public interest and the Defendants reasonably believed that publishing the words complained of was in the public interest.

The words complained of were a statement on or formed part of a statement on a matter of public interest

- 17.1. The statements complained of were all publications on a matter of public interest, namely the exposure of a vicious and persistent troll committing, among other wrongs, communication and harassment offences in an attempt by the Claimant to intimidate and obstruct promotion of computing standards argued for by the Defendants and that have wide significance within the field of computing.

The Defendants reasonably believed that publishing the words complained of was in the public interest

- 17.2. The Defendants had assembled, and published, **what they concluded after careful assessment to be** evidence of the Claimant's operation of sock puppet accounts by which he harassed and abused the Defendants and others. Paragraphs 15.20 to 15.27 and subparagraphs above are repeated.
- 17.3. The Claimant had denied his part in the abuse and harassment of the Defendants and others, such denials already having been reasonably dismissed by the Defendants as untrue but nevertheless published and commented on by the Defendants. The Defendants reasonably concluded that further contact with the Claimant as to his side of the story would have been pointless and would have been likely to provoke further abuse.
- 17.4. The Defendants reported the Claimant to the police for investigation, their awareness of the Claimant being behind the harassment and abuse being, **they believed after careful assessment**, well substantiated by the facts and matters pleaded in paragraph 15 and its subparagraphs above.
- 17.5. In all the circumstances, the Defendants reasonably believed that publishing the statements complained of was in the public interest.

Responsibility for publication

18. Paragraph 10 is admitted.

CLAIM IN LIBEL

19. As to paragraph 11, and by reference to paragraphs 7.5 and 8, the Claimant does not plead in which jurisdictions publication is complained of. The Claimant's pleading in that respect is embarrassing for want of particulars. The Defendants cannot properly respond to complaint of "global publication" as regards the equivalence of defamation law elsewhere with that of England and Wales. If publication in any jurisdiction other than England and Wales is substantial it is most likely to be publication in the United States of America (**the US**). It is denied that defamation law in the US is the same as English law. In any event, the Claimant is put to strict proof as to substantial publication in any particular jurisdiction.
20. Paragraph 12 is denied. Paragraphs 15 to 17 and their subparagraphs above are repeated.

Alleged serious harm

21. As to paragraph 13 it is denied that the words complained of have caused or are likely to cause serious harm to the Claimant's reputation. Further:
 - 21.1. In respect of paragraph 13.1 the Defendants have pleaded to the meanings alleged above.
 - 21.2. In respect of paragraph 13.2 paragraph 12 and subparagraphs above is repeated.
 - 21.3. In respect of paragraph 13.3 a pleading of the Claimant's good reputation is denied, as to which paragraph 33 and subparagraphs below further refer.
 - 21.4. In respect of paragraph 13.4, paragraphs 15 to 17 and subparagraphs above are repeated.
 - 21.5. Paragraph 13.5 is not admitted. The Claimant is put to strict proof as to the fact and effect of percolation.
22. Paragraph 14 is not admitted. Paragraphs 32 – 34 and subparagraphs below are repeated.

CLAIM IN DATA PROTECTION

23. The first sentence of paragraph 15 is admitted. In respect of the second sentence paragraph 1 and subparagraphs above is repeated.
24. Paragraph 16 is admitted, as to which paragraphs 28-31 below further refer.
25. Paragraph 17 is admitted.
26. Paragraph 18 is admitted.
27. Paragraph 19 is admitted.
28. Paragraph 20 is denied. The processing of the Claimant's personal data, including the criminal conviction data ("**Criminal Data**"), pleaded at paragraphs 20.1 to 20.5 and subparagraphs was lawful, as follows.
29. The processing by the Defendant was at all material times undertaken with a view to the publication of journalistic material. It is therefore denied that the Defendants have acted in breach of statutory duty, whether as alleged in paragraphs 15 to 22 of the Particulars of Claim or at all. Pursuant to Schedule 2, Part 5, Paragraph 26 of the Data Protection Act 2018 ("**the Journalistic Exemption**"), the Defendants have at all material times been exempt from the provisions of UK GDPR relied on by the Claimant.

Particulars

- 29.1. The content of the Websites is journalistic material that reports on matters of public interest concerning, in summary, computing, internet policy and development, the activities of 'big tech', FOSS and related subjects, including the activities of persons concerned with those subjects. The Defendants have been publishing such journalistic material for nearly 20 years.
- 29.2. The Claimant was reported on, accurately, in the course of the Defendants' journalism as an abuser and harasser of the Defendants and others within the context of the subject matter described in paragraph 29.1 above. Paragraph 15 and subparagraphs above is repeated.

- 29.3. At all material times the Defendants believed that the application of the provisions listed in paragraph 29.4 below would be incompatible with the special purpose of journalism and that, having regard to the special importance of the public interest in the freedom of expression, publication of the words complained of was in the public interest. Paragraph 17 and subparagraphs above is repeated.
- 29.4. In the premises, by operation of the Journalistic Exemption the Defendants' journalism in Publications 1 – 24 and in Additional Publications 25 – 49 is exempt from the requirements of Articles 5, 10, 11(2), 17 and 21 (among other provisions) of UK GDPR.
30. Paragraph 21 is denied. Paragraph 29 and subparagraphs above is repeated.
31. Paragraph 22 is denied, as follows.

Alleged damage

32. In respect of paragraph 23 and its subparagraphs:
- 32.1. of paragraph 23.1: paragraphs 14, 15, 16 and 17 and subparagraphs above are repeated. Paragraph 23.1 is denied accordingly. Alternatively, if it is true that the Claimant has experienced distress he has brought such distress upon himself, as he is fully aware of the truth of the statements complained of;
- 32.2. of paragraph 23.2: paragraphs 21 and 22 and subparagraphs above are repeated. Paragraph 23.2 is denied accordingly;
- 32.3. of paragraph 23.3: paragraph 12 and subparagraphs above is repeated. Paragraph 23.3 is accordingly not admitted;
- 32.4. of paragraph 23.4: it is denied that the Claimant has a good reputation. Paragraph 33 and subparagraphs below is repeated. As to distress, paragraph 32.1 above is repeated;
- 32.5. of paragraph 23.5: the Defendants have not engaged with the Claimant's correspondence because there is a history of the Claimant's sending pre-action correspondence merely to vex and harass the Defendants and of the Claimant making false denial to the Defendants of his misconduct on

the IRC network. Paragraphs 15 and subparagraphs and paragraph 17.3 above are repeated.;

32.6. of paragraph 23.6: the Defendants have nothing to apologise for. Paragraph 23.6 is denied accordingly;

32.7. of paragraph 23.7: paragraphs 15 and subparagraphs and paragraph 17.3 above are repeated.

33. If necessary, in extinction or mitigation of damages the Defendants will rely upon the following:

33.1. Each part of then pleas of truth that are established to be true.

33.2. The Claimant's general bad reputation in the eyes of readers of the Websites at the time of publication, as to which the following persons have experienced harassment and abuse from the Claimant and have spoken publicly of this harassment and abuse:

33.2.1. Linus Torvalds

33.2.2. Ted Tso

33.2.3. Bruce Perens

33.2.4. Alexandre Oliva

33.2.5. Richard Stallman

33.2.6. John Gilmore

33.3. The Defendants reserve the right to adduce further facts and matters as to the Claimant's reputation among his peers and others.

34. If necessary, the Defendants will rely on the following matters which are directly relevant background context which is directly relevant to the relevant sector of the Claimant's reputation and which, if ignored would lead to an assessment of compensation on a false basis:

34.1. Paragraph 33.2 above.

34.2. Any false statements found to have been made by the Claimant in bringing and pursuing this claim.

35. Paragraph 24 is denied. The statements complained of are at least substantially true and the Defendants should not be restrained from repeating them.
36. As to paragraph 25, paragraph 32.5 above is repeated.
37. As to the Prayer, the Claimant is not entitled to the remedies pleaded or to any remedies.

COUNTERCLAIM

38. From around 2021 and continuing up to the date of this Defence and Counterclaim the Claimant has pursued a course of conduct consisting of the matters described at paragraphs 15.20 to 15.27 above and further particularised ~~by example~~ in the Schedule of Harassment ("the Course of Conduct").
39. Both Defendants would have been aware of the very many harassing statements made by the Claimant, as the Claimant knew.
40. The Course of Conduct amounts to harassment of the Defendants contrary to ss.1(1), 1(A), 3(1) and 3A(2) of the Protection from Harassment Act 1997.
41. The Claimant will continue to harass the Defendants unless restrained by an Order of the Court.
42. As a result of the Claimant's conduct the Defendants have been caused anxiety, alarm and distress.

Particulars of harassment

43. The Defendants will rely on the matters pleaded at paragraph 15 and subparagraphs above and ~~by example~~ in the Schedule of Harassment. In particular:
 - 43.1. the Claimant's racist and aggressive sock puppet posts including, prominently, his antisemitic attacks, the First Defendant being (as the Claimant knows) Jewish, and his attacks on Asian people, the Second Defendant being (as the Claimant knows) Asian;
 - 43.2. the Claimant's many vile sexual comments directed at the Defendants and generally in the sock puppet posts;

- 43.3. the overtly violent references – many including reference to knives and stabbing – in the Claimant’s sock puppet posts;
- 43.4. the huge volume of objectionable posts by the Claimant;
- 43.5. the abusive, insulting and threatening nature of many of the Claimant’s sock puppet posts;
- 43.6. the fact that the Claimant persisted in the Course of Conduct despite efforts by the Defendants to ban him and his sock puppets from the IRC network.

AND the Defendants claim

- (1) Damages for harassment.
- (2) Interest pursuant to section 35A of the Senior Courts Act 1981 at such rate and for such period as the Court thinks fit.
- (3) An injunction to restrain the Claimant whether by himself, his servants or agents or otherwise howsoever from pursuing a course of conduct amounting to harassment of the Claimant contrary to sections 1, 1A, 3 and 3A of the Protection from Harassment Act 1997.
- (4) Further or other relief.
- (5) Costs.

JOHN STABLES

5RB

6 September 2024

2 January 2025

STATEMENT OF TRUTH

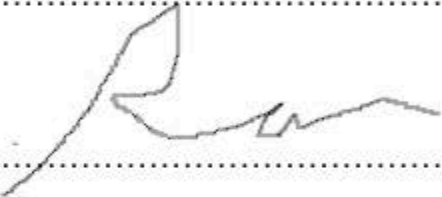
I believe that the facts stated in this Defence and Counterclaim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or

causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed.....

Name.....**Roy Schestowitz**.....

Date.....**22/01/2025**.....

Signed.....

Name.....**Rianne Schestowitz**.....

Date.....**22/01/2025**.....