

APPLICATION FOR DELISTING

On the application of

M. Stephane Portha, of [REDACTED], of French nationality, residing at [REDACTED], occupation the profession of video game designer.

Having for duly appointed lawyer

Alain Bensoussan SELAS, address etc.

Having for advocate

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1. The applicants

1. M. Stephane Portha is president of Eurocenter Games Limited (hereafter "Eurocenter Games"), a company formed in 1989 (originally under the name "Eurocenter") and specialising in the creation of online games on PC, Mac, and mobile platforms.

2. M. Stephane Portha has notably developed and published the online RPG "Graal Online," one of the flagship games of Eurocenter Games.

2. Object of the application

3. M. Stephane Portha and the company Eurocenter Games have stated that the placing online, on the internet site www.kiwifarms.net, of pages containing grave views against them, and of which the content, which has no evidence of any goal other than to harm their image and their interests, is strongly prejudicial to them.

4. These contents are accessible at the following URLs.

5. For the reasons hereafter given, M. Portha and Eurocenter Games find themselves constrained to seek redress from M., Mme. le Président of the First Instance Court of Paris in the form of an application to delist the internet pages containing the damaging opinions to their gain.

3. The contents giving rise to damage

3.1 Publications

6. The internet site www.kiwifarms.net is a discussion forum, in English, bringing together internet users from the entire world to engage in doxing and trolling. (* "Le doxxing" is a practice consisting of researching and revealing online personally identifiable information regarding the identity and private life of a user with the intention of harming them. Revealed information can include their identity, address, social security number, bank account details, etc.)

7. This site allows to users to create, under cover of anonymity, "threads" ("threads of conversation" or "subjects" in French) to submit to users:

- Links aiming at a press article, a multimedia file such as an image or a video or even content published on some other platform, or
- Simple messages or questions to launch discussions.

8. These threads are classed by category. The most popular category is the category "Lolcows," which are defined as "persons or groups whose eccentric or stupid attitude should be unveiled in order to derive from them amusement or mockery." (TN: *This is what he has translated our definition into. Note the difference.*)

9. Users can post commentaries in each thread.

10. In this way, many users on the side have published commentaries on a thread named "Stephane 'Unixmad' Portha," which was created on 10 August 2015 by a user whose pseudonym is "CIA."

11. Reproduced below are many screencaps and extracts from the oral evidence taken by the Court bailiff (TN: *In a French court, the "huissier" is the official who takes evidence on behalf of the Court from a witness or party, amongst other things. It's France. For context, a Judge can be described as a "magistrate of the bench" and a prosecutor as a "magistrate of the floor." Don't ask.*)

3.2 The site Kiwi Farms

12. Active since 2007, this internet site became globally known for the virulence of the opinions held by its users and the numerous legal proceedings launched by its victims to have deleted that content which poses affrontery to their dignity, in the absence of any ability to have the publisher delete it.

13. Pushing the provocation ever further, the publisher of the site has even in supposed good faith dedicated an entire section of the forum, named "Get that the fuck off the internet" (TN: *that's how they translated it*), to calls and legal proceedings seemingly brought to his attention and of which a screencap is reproduced below.

14. The site www.kiwifarms.net is hosted by the company Cloudflare and its registrar is Dreamhost LLC. Its publisher names himself Joshua Moon, director of the company Lolcow LLC registered at 913 Beal Parkway NW, Suite A1017, Fort Walton Beach, FL, USA.

15. These informations are confirmed by the publisher himself, in a section (reproduced and liberally translated below) on a page of the site listing the legal proceedings that would have been reported, with texts of the judgement attached.

16. The character of Joshua Moon is the object of an internet page which retraces his career and, though they are not proven, his alleged criminal acts including death threats, rape threats, xenophobic opinions, and paedopornography.

17. The policy of Joshua Moon, reproduced and translated below, on the removal of illicit conduct is clear: i) no demand will be accepted to remove content other than in the cases of paedopornography or the violation of intellectual property, and ii) content on persons is, with rare exceptions, never removed.

18. M. Stephane Portha has, without success, attempted to enter into contact with the publisher of the site to have removed the views he has encountered and this, despite the policy for deletion of content reproduced above, let him presume a categorical refusal from the publisher.

19. M. Stephane Portha has thus been constrained to contact directly Google to make use of the right to be forgotten and obtain the delisting of two pages from its eponymous search engine.

20. Google rejected without consideration the request of M. Stephane Portha since despite the content concerning his private life, it maintained that "the URL in question reports questions concerning a particular interest to the public as regards your professional life. For example, they could be of interest to persons seeking to retain your services, whether they are those who intend to or already use it. The information concerning your jobs or recent places of professional activity can equally present an interest to persons seeking to retain your services, whether they are those who intend to or already use it. For these reasons, the reference to this document in the search results bearing your name is justified in the greater public interest."

21. This was in respect of the content relating to the private life and without link to the professional activity or M. Portha or indeed that of Eurocenter Games.

22. M. Portha has in any event brought litigation before the CNIL (*TN: French information commissioner*) which has still not, to date, attended to his dossier.

3.3 The damaging character of the content

3.3.1 Legal regime of affront to dignity

23. The principle of human dignity is placed at the first rank of the indivisible and universal values of the EU just as much as it is placed in the preamble to the Charter of Fundamental Rights of the EU.

24. Chapter 1 of the Charter is entirely dedicated to the principle of dignity.

25. Freedom of expression is envisaged much further down, at article 11 of the Rights set out by chapter II of the Charter.

26. This principle of dignity should be respected by all content placed online.

27. At this title, article 1 of the law of 21 June 2004 for confidence in the digital economy (*TN: yes, this is the official title of all French Acts; the law of [date] relating to [whatever], they can't give them useful names because that would be logical. France.*) sets out that "the communication to the public by electronic means is free", and specifies that, in any event, the exercise of this liberty cannot be limited

other than in such measure "as is required to prevent affronts to respect for the human dignity of persons."

3.3.2 Application

28. The publication of these comments has occasioned and continues to occasion to M. Stephane Portha and to Eurocenter Games a considerable damage.

29. Under cover of publishing a discussion space free of taboos dedicated to informing internet users of dubious practices, the publisher of the site in reality tolerates the publication of totally false information upon, amongst others, the person of M. Stephane Portha, denigrating the quality of his competences and going so far as to accuse him of being a paedophile and possessing computerised files of a paedopornographic character.

30. As such, the user named "CIA" accuses openly M. Stephane Portha:

- of being known for his commercial practices devoid of ethics.
- of being a paedophile in that M. Stephane Portha would threaten minor players of the game Graal Online if those latter refused to send him photographs of themselves.
- to have voluntarily stolen a video game named "Abuse" to sell under his own name in a virtual storefront without permission and without reference to its true authors.

31. The user named "DrJonesHat" qualifies M. Stephane Portha as a "world class asshole."

32. The internet user of whom the pseudonym is "CatParty" published a photo showing a computer desk with a folder visible, containing files of which the titles would indubitably suggest a paedopornographic content and which, according to him, belonged to M. Stephane Portha.

33. A user named "Valiant" estimates that M. Stephane Portha has the small satisfied smile of a paedophile in reference to the photograph published in introduction of the first post in the thread.

34. A user named "Spider Jerusalem" estimates that M. Stephane Portha is a "giant cretin."

35. These publications put gravely in doubt the morality, integrity, and probity of M. Stephane Portha and of Eurocenter Games.

36. The affront to the dignity of M. Stephane Portha is particularly grave.

37. These commentaries are just as damaging to M. Stephane Portha as they are to Eurocenter Games as they realise together their activity on the internet. However, their partners and together the internet community as a whole are susceptible to having knowledge of this site and the views spread there, as it is immediately accessible without login or password.

38. This prejudice is aggravated because in typing in the key words "Stephane Portha" to Google, the site appears on the first page of search results, which leads one to believe that the publisher of the site has invested heavily in improving the visibility of the site.

3.4 The difficulties in acting against the publisher of kiwifarms.net

3.4.1 Editorial anonymity

39. The publisher of the site acts seemingly under cover of anonymity.

40. Joshua Moon and his company Lolcow LLC, which are presumed to be American in origin, can only be empty shells behind which the true publisher of the site hides.

41. This anonymity is similarly reinforced by the host of the site, the American company Cloudflare, which is reputed never to disclose the identity of the sites that it hosts.

42. Furthermore, the internet site being hosted by an American company, legal notices are exempted from all mentions regarding the publisher of the site as demanded by article 6 III-1 of the law of 21 June 2004 for confidence in the digital economy.

43. Anyhow, no element may permit to M. Stephane Portha the true identity of the publisher of the site, which abuses the anonymity permitted to it by users of online services to frustrate any action which aims to engage its responsibility.

3.4.2 Risks of aggravating prejudice

44. The application do not seek direct redress against the publisher of the site because all such calls addressed to him are published on the site and this is in order to further ridicule a bit more the victims of defamatory views.

45. The applicants fear legitimately that such calls or legal action would be published in the view of all to provoke a Streisand effect.

46. In fact, alerted by the creation of a new thread relating to the demands of the applicants, internet users from the first time round can achieve a malign pleasure in reviving the damaging accusations against them and proffering new ones also.

47. The meanest new commentary posted on the thread dedicated to M. Stephane Portha, of which the last post was 12 August 2015, will automatically replace (* = This is what we call familiarly a "bump") the thread to the top of the forum, placing it once more in the visibility of all.

48. It is in this context, at once psychological and legal, that M. Stephane Portha and Eurocenter Games have no option but to seek redress from the competent jurisdiction.

4. Demand for delisting

49. M. Stephane Portha and Eurocenter Games request that it be ordered of Google, who develops and exploits the eponymous search engine, to proceed with the delisting of the pages of the Internet site www.kiwifarms.net referred to herein.