



October 5, 2012

Treasury Solicitor's Department
One Kemble Street, London, WC2B 4TS
By email: BK@tsol.gsi.gov.uk

To Whom It May Concern:

We are in receipt of your letter dated 5 October 2012.

Concerning the jurisdictional issues raised by your letter, we have prepared what we feel will be a helpful visual aid, enclosed as figure A. In this figure, the area approximately representing the UK has a white background. The grey shading represents those areas of the Earth that are not the UK. Please observe that the relative locations of the Treasury Solicitor's Department and NFSN, Inc. are marked in the white and shaded areas, respectively.

On the general subject of badgers, we definitely do see cause for concern. It is at this point well-known among frequent Internet users -- including us -- that the rapid proliferation of "badger, badger, badger" leads -- inevitably -- to mushrooms and, if left unchecked, a very frightening snake, in a vicious cycle with no apparent end. That definitely seems like a concern worthy of the attention of a large UK government agency like DEFRA. We have and offer no official position on the proposed DEFRA response to the badger menace that you outline in your letter.

With respect to the site referenced in your letter, we have no firsthand knowledge of the site content and take at face value your claim that the site has posted contact information for UK government officials and exhorts the public to "contact all the people involved as frequently as you can." We did find your repeated claims that encouraging people to contact their government officials to express their opinions on (apparently) controversial issues equates to illegally inciting harassment in your country very disappointing and more than a little disturbing.

It brings to mind a quote from John Basil Barnhill, who wrote in 1914, "Where the people fear the government you have tyranny. Where the government fears the people you have liberty." Perhaps coincidentally, this phrase did not gain wide recognition until adapted by a popular fictional character with a distinctive mask as he conducted his own somewhat more direct struggle against a tyrannical British government.



As the first amendment to our Constitution is all too frequently elided to simply “freedom of speech,” you may not be aware that its text explicitly recognizes the right of the people to seek redress of grievances from their government. The word “recognize” here, rather than “confer” or “grant” is intentional. The right to freedom of speech, like all human rights, is inalienable, ordained by God to all the people of the Earth whether a particular government -- such as yours -- adequately recognizes it or not.

In that context, the website content as you describe it would appear to be in the finest American tradition of peaceful dissent. But, tyranny or otherwise, certainly you are in a much better position to know the laws of your country than we are. However, with respect to the applicability of those laws to our company, we must refer you again to figure A.

We are aware of no such law against publishing the contact details of government officials in our country. Our president, for example, lives at 1600 Pennsylvania Avenue in Washington DC, and our citizenry does contact him at that address on a daily basis on a broad spectrum of matters of concern to them. That’s merely one example that I happen to know off the top of my head. In fact, it is quite routine for the home addresses people in our country, government official or otherwise -- including mine -- to be a matter of public record. Speaking personally and as a recipient of death threats myself, I do not consider the public availability of my home address as a source of concern. Of course, I do embrace our Constitution’s second amendment as enthusiastically as I do the first; perhaps that contributes to my peace of mind.

Furthermore, you state that the site encourages as its supposedly malevolent goal to “beat [the UK government] with a sense of humor.” As you have wasted no other opportunity to portray it in the most unflattering possible light, if anything about this site encouraged any form of harassment or malicious action more dire than humor we are confident you would have mentioned it. You state that it is “clear” that such activity is illegal, but that you “do not wish” to cite the relevant law. I am happy to do so. The US Supreme Court found in *Brandenburg v. Ohio* 395 U.S. 444 (1969) that “the constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action.” According to your own letter, the actions advocated are neither violent (unless we have sorely misunderstood the nature of British humor) nor imminent. Therefore, we find your argument clear only in the sense that we can see right through it. Again we acknowledge that British law may differ, and again we refer you to figure A.

If any genuine harassment is occurring -- a conclusion unsupported by your letter -- we are sorry to hear that and hope it can be rapidly resolved. But that would be a UK problem with UK citizens and a matter for UK laws as enforced in the UK. We refer you



one last time to figure A. NFSN, Inc. is not located in the UK, is not subject to UK jurisdiction, has no assets anywhere in the UK, is not a participant in any harassment, and is not the publisher or author of any content of the web site you name. We are, however, one of the many thousands of web hosting companies in the US alone that anyone could use to set up this web site or an exact copy in a matter of minutes. Consequently, pursuing this any further with us, regardless of outcome, will be neither rapid nor resolution.

You also write frequently about publishing. We would like to make sure you understand that with regard to the NearlyFreeSpeech.NET interactive computer service, NFSN, Inc. does not act as an information content provider. All information content hosted by NearlyFreeSpeech.NET customer sites is provided by an independent information content provider, whether it be the operator of the site or another source. As such, US federal law forbids us from being treated as the publisher of that content and furthermore grants us what one judge described as, "federal immunity to any cause of action that would make service providers liable for information originating with a third-party user of the service."

To address your concern about our finances, we appreciate that concern, and you are correct that we did previously advise your private-sector colleague that we do have limited resources. However, that was in the context of a random lawyer writing to us over the Internet obviously getting paid by the hour to harangue us on the matter. We definitely do have limited resources -- mainly time -- for that sort of thing. Please be assured that we are always ready, willing, and able to defend ourselves against actual litigation, so your concerns on that account are entirely misplaced.

We also appreciate your attention to our Terms & Conditions of Service. You are certainly entitled to hold (and, happily, to express) your opinion on how they should be interpreted. However, since we wrote the Terms & Conditions of Service, we are familiar both with what they say and with how they are intended to be applied. We reserve to ourselves final judgement on all such matters, and note only that our Privacy Policy explicitly prohibits us from discussing how those Terms & Conditions of Service apply to a specific site hosted by a customer of ours with anyone but that customer.

Most troubling to me is the claim that you intend to "put the very future of [our] organisation at risk" if we "choose not to assist [you] in this matter." You appear to be blatantly threatening to use the resources of the UK government to destroy a private company in another country by overwhelming it with "significant costs" in the form of excessive legal bills related to something that, as a practical and legal matter, has absolutely nothing to do with it.



The crux of that threat, however, is not the part about putting us at risk, or significant costs, or even enforcement actions. The crux is that you recognize that you can make no persuasive argument and bring no viable case, and thus resort to threats. You want us to choose to censor our customer's web site content?

No.

With that question settled, should you wish to bring this matter to these shores and pursue it with us in court, I can offer you only one piece of advice: Do your worst, for I will do mine.

Sincerely,

Jeffrey D. Wheelhouse
President
NFSN, Inc.

Figure A

