



Wired News - 1999-12-17

<http://www.wired.com>

Article URL:

<http://www.wired.com/news/business/0,1367,33159,00.html>

'Be Grateful for Etoy'

by Steve Kettmann

BERLIN -- John Perry Barlow, former Grateful Dead lyricist and co-founder of the Electronic Frontier Foundation, is calling on the entire Internet community to rally behind the Zurich-based artists of etoy in their potentially historic domain-name battle with www.eToys.com.

"This is the battle of Bull Run," Barlow said. "This is the point where people begin to realize there is a difference between the Internet industry and the Internet community, and the Internet community needs to bind itself together and find a common voice."

Barlow entered the battle officially on Thursday as part of an etoy "Crisis Advisory Board" that also includes Infoseek Japan chairman Joichi Ito, and author and National Public Radio commentator Douglas Rushkoff.

Public figures such as these are only part of a groundswell of support for etoy, widely admired in the Internet art world. Etoy previously told Wired News that it distanced itself from any hostile attacks on the www.eToys.com Web site -- and Barlow expanded on that theme.

"I think hacks are likely to happen and I think that will be counterproductive in the long run," he said. "It plays into their hands. It makes them look responsible. And they are not responsible."

Barlow went on to say that eToys' action against etoy flies in the face of the development of the Internet, as overseen by such major figures as Jon Postel, the key authority on domain names until his death last October.

"If Jon Postel were alive, he'd be in tears," Barlow said.

"He was a very principled, decent man. He knew that the spirit of fairness was best served by a policy of first-come, first-served. It wasn't served by a policy of 'who has the largest and meanest legal firm wins.' He also made a sincere effort to abstract names of companies in the real world from domain names, because domain names are not like trademarks. They are different than trademarks.

"Let's say there were Etoy, Nebraska. EToys wouldn't be in a position to go to Etoy, Nebraska and say they have to have a different name."

Late last month, a Los Angeles Superior Court judge responded to eToys' lawsuit by issuing a temporary injunction, preventing the award-winning Internet artists from using their www.etoys.com Web site. This was done even though they were on the Internet two years before www.eToys.com, a billion-dollar toy business. The two sides have another court date in Los Angeles later this month.

Last Friday, Network Solutions stepped in and shut down the domain name etoy.com for the time being, cutting off etoy's email and stirring up more outrage among its supporters, Barlow included.

Network Solutions spokeswoman Cheryl Regan declined to comment on Barlow's remarks, and said that Network Solutions' business affairs department was in the process of trying to contact etoy in Zurich. Results so far have been unsuccessful.

"I received an inquiry on Tuesday from etoy corporation," Regan said. "We're trying to reach them to respond. We are a neutral third party. We try to leave it up to the two disputing parties to work it out. Does etoy give up the domain name to eToys? We don't know what will happen."

No one else does either. But experts on the appropriate law argue that www.eToys.com's case against etoy is weak.

"Shame on eToys for misusing the law in this way," EFF's director of legal services Shari Steele wrote in an email.

"There's no confusion here; people wouldn't think they were on the eToys site when they accessed etoy. This is a clear-cut case of a business bullying a group of artists, just in time for the Christmas shopping rush."

Barlow said the EFF would probably take some sort of action, but wasn't precisely sure what that would be.

"This is where the front lines really come down between traditional business practices and the practices that are born in cyberspace," he said. "It's really where we decide if we're going to make cyberspace a better place. I don't think it's idealistic to think we have the opportunity to start fresh -- if we don't blow it."

"Human nature will assert itself, and I'd very much like to see certain behavior curtailed. EToys is engaging in that sort of behavior here. What they are doing is extremely predatory and wrong."