

XOOPS sues Herko Coomans, its former Project Manager - XOOPS

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NEWS_PDF_DATE: 2009/12/22 20:30:00

It is always a sad moment when an organization/community is being forced to initiate legal steps against a former leader to find justice.

Unfortunately, this is the situation between XOOPS Community and [Herko Coomans](#), our former Project Manager and Chairman of "Stichting XOOPS" in Netherlands, who is being sued by XOOPS in the **District Court of Zwolle-Lelystad** in Netherlands for return of funds (around €15,000) that belong to XOOPS community and are currently held by "Stichting XOOPS". We are represented by [Dorhout Advocaten](#).

What can the XOOPS Community do?

1) **Sign today our [on-line petition to the Court in Netherlands](#)**, and ask your XOOPS friends to do the same.

Quote:

I undersigned here, am informing the District Court of Zwolle-Lelystad, in Netherlands, that I am in full support of the XOOPS Council and

1) their decision to remove Mr. Herko Coomans from the Board of Directors of "Stichting XOOPS" and

2) their request to either appoint by the XOOPS Council new "Stichting XOOPS" Directors from within the XOOPS Community, or dissolve the "Stichting XOOPS" and transfer the XOOPS Funds to "XOOPS Foundation", a non-profit organization registered in Ohio, USA.

The current XOOPS Council and "XOOPS Foundation" have my full support as the representative of XOOPS Community and its interests.

Let's show that we as an Open Source community stand united in our outrage about Herko Coomans' refusal to resign from Stichting XOOPS and to return the money back to the XOOPS Community.

[See here who has already signed the petition](#)

2) Sometimes broad public support helps people to realize that they are on the wrong track, so feel free to discuss it here and express your support for XOOPS! This is probably the first ever case of Open Source project funds being held by a former leader who refuses to give it back to the community, while at the same time engaging in what in our opinion is embezzlement! Other Open Source projects should learn about it, so they will be more careful how they set their Foundations to avoid situations like ours.

3) Of course, lawyers are very expensive, therefore we're asking the XOOPS Community to [support XOOPS financially via donations](#) so we can create a **XOOPS Legal Fund** and fight for justice for XOOPS.

As we've mentioned before, members of this Council were always for financial transparency and we are committed to keep it this way, and keep you posted about the legal process. In early January we'll publish our 2009 Financial Report. You can see our [2008 Financial Report here](#).

4) Also, based on this experience we're currently redesigning the organizational structure, so we never get into this kind of situation. We hope to present it for a public discussion and feedback in the next week or two.

It is definitely a bitter and very sad experience for us, as it is probably for all people who support Open Source, but we believe in XOOPS and we'll keep moving forward. With the great support from the our wonderful XOOPS community that we're getting, we know that XOOPS will succeed!

How did we get here?

1) Herko was a Project Manager from August 2003 — March 2006, when he got into disagreements with Skalpa, the Project Leader, after which [he resigned from his position](#).

2) While a Project Manager, in 2004 Herko Coomans suggested to create a XOOPS Foundation. Originally it was going to be set in the USA, but after [Herko claimed that it was too difficult and too expensive](#) (which is absolutely not correct), he was able to convince XOOPS community to set it in Netherlands where he lives, under the name "**Stichting XOOPS**".

On April 22, 2006, [Herko Coomans agrees](#) that while officially it's not possible to have Directors directly elected by XOOPS project, he agrees that it shouldn't be any problem with Steering Committee "recommending" the Board Members by adding "regulations about this recommendation, to make sure that it happens properly". He also acknowledges that it's up to the Steering Team and the Community to let him continue as the Chairman of the Stichting XOOPS, and thus that the Stichting XOOPS reports to the Steering Team and the Community:

Quote:

And if the Steering Committee and community allows me to, I'd like to remain as Chairperson of the Foundation for a longer period. Both for practical reasons, and

because I'd enjoy that.

....

But, only if you agree.

3) "Stichting XOOPS" publishes [2005 Year Report](#) and [2006 Year Report](#).

Sometime in 2007 the departed Board Members are replaced by **Marc-André Lanciault (Marcan)** and **David Ledbury (davidl2)**.

4) In Fall 2007 the Community started asking for the XOOPS Financial Report, but all what we've got were [empty promises from Herko](#). What we didn't know was that [Marcan, David and Herko started to plot against XOOPS](#), together with **James Morris**, [who just few months ago hijacked XOOPS servers](#), which we were able to get back only thanks to Onokazu, our Founder, and our Hosting company. By plotting against XOOPS, Marcan, David, and Herko clearly violated their fiduciary duties as Directors of Stichting XOOPS, which is a sufficient cause for dismissal.

When [confronted](#), Marcan [acknowledges conflict of interests and resigns](#).

5) After Marcan resigns in December 2007, we've learned that David Ledbury resigned in January 2008 from the Board. However, Herko Coomans refused our request for resignation.

6) In Spring 2008 Herko Coomans puts <http://www.xoops.com> on sale, and redirected it to a Domain Selling Website. The [asking price was \\$500](#)

7) After that the [XOOPS Council](#) (at that time: Phppp, Mamba, Kris_fr, Runeher, Irmtfan) voted unanimously to remove Herko Coomans from the Board of Stichting XOOPS

Our position was that legally:

Quote:

Officers and directors owe three basic fiduciary duties to a nonprofit organization: the duties of obedience, loyalty and due care.

The duty of obedience forbids acts outside the scope of corporate powers. The governing board of the organization must comply with state and federal law, and conform to the organization's charter, articles of incorporation and bylaws.

The duty of loyalty dictates that officers and directors must act in good faith and must not allow their personal interests to prevail over the interests of the organization.

The duty of care requires directors and officers to be diligent and prudent in managing

the organization's affairs. The individuals charged with governing must handle the organizational duties with such care as an ordinarily prudent person would use under similar circumstances.

As we explained in [Letter to Herko sent on August 26, 2008](#), it was our opinion that he violated his fiduciary duties, and therefore we've voted to remove him from the Stichting XOOPS. We also informed him that he is not allowed to make any financial decisions on behalf of XOOPS. At the same we were still hoping for amicable agreement so all of us could move forward.

8) Herko Coomans refused and directed us to his lawyer. His lawyer made an offer:

Quote:

A) Stichting Xoops will transfer the following to Xoops Foundation without any charge:

- the domain name <http://www.xoops.com>;
- all intellectual property rights currently in its possession in connection with – including but not limited to – the domain name and brand name Xoops;
- the currently present financial means which are estimated to be an amount of 10.000,-- euro.

B) After the aforementioned means/rights have been transferred client shall proceed to dissolve Stichting Xoops.

Client [i.e. Herko Coomans] is only willing to perform the activities as described under A) and B) under the explicit condition that Xoops Project Council or Xoops Foundation or any other party affiliated to Xoops shall declare to refrain from (now and in the future) any negative allegations regarding Stichting Xoops and/or Mr. H. Coomans, under penalty of a directly payable fine in the amount of 5.000,-- euro for each separate violation of this condition.

9) We knew that on August 2007 we had around €16,000, which was confirmed by [Herko Coomans in his posting](#) that the financial records from August 2007 [quoted here](#) were correct, i.e. there was over €15,000 in the Stichting XOOPS account.

By offering us only € 10,000, it was clear that something was wrong here. Therefore we've hired a lawyer, who met with Herko and his lawyer and was able to look into the account bank statements ending at Nov. 11,2008, where there was € 13,485.25 and \$3,758 in the accounts. The US\$ amount was then transferred to the Euro account. We've also learned that the part of the missing money that Herko didn't want us to ask about in his previous offer was €4,000 that he used to purchase <http://www.xoops.com> domain from himself. So basically Herko decided that the Stichting XOOPS will pay to his private pocket €4,000. This, of course, is a clear conflict of interest, and in our opinion a clear case of embezzlement, since the Article 6 of ["Stichting XOOPS" Bylaws](#) states very clearly:

Quote:

e. The members of the governing board will enjoy no reward for their activities. They are entitled, however, to compensation of the expenses made by them in exercising their task.

Herko purchased this domain in September 2003 for \$18.95, when he was the XOOPS Project Coordinator, and as we see from [Mithrandir on June 23, 2005](#), it was done on behalf of XOOPS Project:

Quote:

"We have registered <http://www.xoops.com> because we could - and we did not want some unrelated website hog the XOOPS name by putting up something else on <http://www.xoops.com>."

Also confirmed by [David Ledbury on the same day](#)

Quote:

"The domain name has been purchased so it doesn't get used by a porno site or something!"

Herko sold the domain to [Stichting XOOPS for €4,000 on Nov. 22, 2008](#), i.e. AFTER we've informed him that he has been removed from "Stichting XOOPS" as a Director and informed that he is not allowed to make any financial transactions on behalf of "Stichting XOOPS". And since he was at the time the only person with access to Stichting XOOPS accounts, he basically gave himself 4,000 Euro from Stichting XOOPS, which in our view is embezzlement and violation of Bylaws, since he was only entitled only to "compensation of the expenses", i.e. \$18.95

10) Still hoping that we can get at a amicable solution, we've suggested he simply returns all the money, and we'll pay our lawyer and half of his lawyers fees, and just simply move on.

11) Unfortunately, our offer has been rejected by Herko Coomans, so the only way for us was to go to court.

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