

Sad news for XOOPS Community: Dutch court dismisses our claims against Herko Coomans - XOOPS

NEWS\_PDF\_AUTHOR: Mamba

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Very sad and disappointing news for our community!

As you know, in 2009, [we have filed a lawsuit](#) against our former Project Manager Herko Coomans for return of funds (around €15,000) that belong to XOOPS community and are currently held by "Stichting XOOPS"

We've been just informed by our lawyers in Netherlands that unfortunately the Dutch Court dismissed our claims. The verdict is clearly disappointing to us and we strongly believe that the District Court of Zwolle-Lelystad erred in its conclusion, and we are investigating a possible appeal.

For example, it is beyond our comprehension that the court could state that purchasing by Herko the domain <http://www.xoops.com> on behalf of XOOPS (as confirmed by others) for \$18.95 and selling it back to Stichting XOOPS for €4,000, while being approved by the same man who sells it (which is Herko Coomans himself), doesn't constitute a "personal enrichment", or as we would call it in the US: [Self-dealing](#). At a current exchange rate that's **\$5,330** profit for Herko, which he approved for himself out of XOOPS money!!! If you're puzzled by such a verdict, so are we!

[Edit]Especially since the **Dutch Supreme Court** is very clear in its decisions about "Conflict of Interest" ([see here](#))

**This case will be definitely a warning to other Open Source projects to avoid the Dutch "Stichting" legal form, and about the Dutch court that obviously doesn't understand the Open Source project idea.**

You can see the verdict in Dutch [here](#)

While we are investigating a possible appeal, the important thing for us as a community is to continue with our work and keep moving forward. Our XOOPS journey continues!

We appreciate all of your support in this legal matter and our most sincere "Thanks" goes to [all the 225 people who signed the petition!](#)

Below is the English translation done by Ghia. If there are any corrections needed, please let us know, and we'll improve it.

Quote:

## 2 Facts

2.1 XOOPS Foundation LLC is a formalisation of an internet community, that it occupies with the development of the XOOPS software. Hundreds of volunteers , worldwide are developing this software. Coomans was one of these voluntairs.

2.2 XOOPS Foundation LLC was founded on 9 november 2009.

2.3 Coomans has founded the Stichting XOOPS on 26 november 2004. The goal of the Stichting is the promoting of the open source use and development of the eXensible Object Oriented Portal System (XOOPS) Content Management System inside the borders of the General Public License.

2.4 By the users of the open source software are donations transferred to the Stichting. With these moneys, the Stichting organises lectures and hardware is procured, used for the development of the software of the XOOPS project.

2.5 On 21 september 2003 has Coomans the domain name xoops.com registered in his name.

2.6 Coomans has the domain name xoops.com in the first half of 2008 offered for sale on the internet. He sold and delivered the domain name on 14 november 2008 to the Stichting for an amount of 4000 EUR.

## 3 The Dispute

3.1 XOOPS Foundation LLC demands in primary and subsidiary variants - summarised - conviction of Coomans to payment to her, at least to defendant sub 2 of 4000 EUR plus the other damages to be listed and to equalise them following the law, added with interests and costs. XOOPS Foundation LLC also demands an explanation for justice, that Coomans has enriched himself with regard to defendant sub 2.

Also XOOPS Foundation LLC demands that Coomans, or at least the Stichting is forbidden to do further retirements of the activa, among which the domain names, of defendant sub 2 for private goals of Coomans, or for other goals then the statutory goals of the Stichting, on penalty of a recurrent fine. XOOPS Foundation LLC made its demands pro se or according to article 3.305a of the Civil Code

3.2 Coomans defends. On the statements of the parties, if of importance, will be comented hereafter.

## 4 Judgement

4.1 The dispute between the parties has, seen the location of XOOPS Foundation LLC,

an international character. Following article xxxxx is the Dutch judge authorised. Parties made both reference to the Dutch Civil Code and this is for the court a silent choice for the Dutch law. The court will therefore apply the Dutch law.

4.2 XOOPS Foundation LLC has the demands by means of a collective action posted following article xxx, as pro se

4.3 The court shall declare XOOPS Foundation LLC not submissible for sofar the demand is based on collective action. Following article xxx en following jurisdiction, such an action can only demanded by a legal entity, that following its statues and also effectively focus on the defending of the interests of the group that it represents and in general measurement is esteemed representative enough for to act in obligant cases as protecting the collective interests for the law, as eg a Consumer Organisation. That XOOPS Foundation LLC in these effective act to protect an enough representative group of the XOOPS internet community and especially in defending the interests of it, is motivated, disputed by Coomans cs and afterwards inadequate substanstiated. From the 8 by XOOPS Foundation LLC submitted declarations, where only 3 had a signature, of the XOOPS involved parties on the stated hundreds of volunteers, can this not be derived. The court can this also not establish on base of the other by XOOPS Foundation LLC stated productions. From the piece that as production 1 by the subpoena is given (Initial Articles of Incorporation), the court is only aware that XOOPS Foundation LLC is founded with the goal to promote the free use of the XOOPS software. It is not to the court to distillate the aledged same common defence of interests out of the English texts, but the XOOPS Foundation LLC has to state this explicitly and therby to point out the relevant parts of these pieces, which she has neglected.

4.4 Therby comes the court to the judgement of the demands for sofar the XOOPS Foundation LLC has made these demands pro se. XOOPS Foundation LLC substanstiates the demanded, summarised, with the statement that the Stichting has been founded in service of the internet community, whereby funds were raised for the needs of this internet community and that it seems that Coomans, via the Stichting, only serves his private interests and not the ones of the XOOP internet community, whereby personal enrichment comes up . Coomans cs have motivated disputed this.

4.5 In this case, it is a fact that the Stichting is founded by Coomans on 26 november 2004 en that he is the only chairman, while XOOPS Foundation LLC is founded on 9 november 2009. From the declarations of both parties follows that XOOPS Foundation LLC as Coomans cs have the goal of developing and promoting the free software, designated as XOOPS and make it accessible to the internet community, but that one of the parties has in this respect an exclusive right, that is not enough stated and it is not obvious to the court. That not the Stichting, but XOOPS Foundation LLC is the rightful claimant for the moneys donated by the users of the XOOPS software to the Stichting and that these activa must be transferred to XOOPS Foundation LLC is motivated, disputed by Coomans cs and is then insufficient substanstiated by the XOOPS Foundation LLC. There are no pieces submitted by XOOPS Foundation LLC were that explicitly makes clear, while tangible pieces that show an contractual relation between

Coomans cs and XOOPS Foundation LLC exists, that can be qualified as a legal relation between Coomans cs and XOOPS Foundation LLC and which brings obligations for these parties, are missing. Lacking other statements on that point, the court assumes it is up to the users of the software to determine if they donate money to either the Stichting or to XOOPS Foundation LLC, which activa then can be used to his sole discrecy of the receiver.

4.6 With respect to the domain name, the court establishes by the answer from production a, that Coomans has registered the name on his behalf and thus not for the XOOPS community. That XOOPS Foundation LLC has a right for the name and that Coomans cs has handled in dispute of that by selling the domain name is again motivated, disputed and afterwards not substanstiated by XOOPS Foundation LLC with enough tangible facts. This way, there can not be assumed that Coomans has enriched himselfes in disfavour of XOOPS Foundation LLC or has violated with XOOPS Foundation LLC made agreements on that point.

4.7 The conclusion is that the demands are to be denied.

4.8 XOOPS Foundation LLC shall as the put into wrong party judged to pay the proceeding costs.

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