

WIRED NEWS

Etoy: Don't Forgive, Don't Forget

by [Steve Kettmann](#)

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BERLIN -- Etoy is likely to have its etoy.com Web site operational again as soon as next week, but the Internet artists want everyone to know they're still taking nothing for granted.

In late December, eToys said it was prepared to drop its domain-name copyright lawsuit and offered to pay the US\$25,000 in legal costs incurred by the Zurich-based artists.

See also: [Etoy Balks at Olive Branch](#)
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In a letter from eToys attorney Robert Klieger obtained by Wired News, the company also said it wouldn't attempt to place any restrictions on etoy content.

"Based on our telephone conversation yesterday afternoon, I understand that there has been some confusion concerning whether eToys seeks to exercise some degree of content control over the etoy corporation Web site as a condition of our December 29, 1999 settlement proposal...." the letter read. "Our settlement proposal is not contingent upon etoy corporation agreeing to restrict the content of its web site in any fashion."

Etoy responded to that by taking a couple of weeks away from the public battles to work on the online game it has now posted at [toywar.com](#) (eToys employees not welcome). An etoy spokesman calling himself Zai said on Friday that they were reluctant to consider the fight definitely over until the lawsuit is officially dropped and the Web site etoy.com reactivated.

"We don't trust them at all," he said of the Santa Monica-based toy company. "Our lawyers are talking to them. We had two weeks where we reduced pressure. Many people think it is over and we made a deal, and that's why we haven't been speaking out. But we just had to let room for our attorneys to talk about solutions."

Just what the attorneys are discussing remains somewhat unclear, but it appears to amount to a white flag that eToys will in effect hoist when the two parties reach agreement and the lawsuit is officially dropped. That will mean that the temporary injunction a Los Angeles Superior Court judge issued two months ago against etoy's use of the domain name will no longer be in effect.

"There are little details that the attorneys are talking about," Zai said. "A big point is how they announce this. We don't want to hear that this was a misunderstanding. They tried to squeeze us and it didn't work out. We all know why it didn't work out, because the community lined up behind us. They can say now it was a misunderstanding, but of course they know better than anyone that they expected to destroy us."

Etoy sounds ready to give up its earlier demand for an apology, however.

"Big corporations don't apologize, but what we're discussing is fixing the mess they made," said Chris Truax, etoy's key lawyer these days. "You don't sue someone, drop the suit, and then turn around and pay the legal fees without admitting they shouldn't have filed it in the first place. We're going to put

everything back where it was before."

Not that the story ends there. Unlike battles fought in newspapers or on TV, which disappear once the media loses interest in them, those waged on the Internet will be around for awhile. Anyone doing a search for "etoy" or "etoys" will find plenty to read -- much of it unflattering to eToys.

Whether the whole thing was merely a "cause celebre," as it was characterized by *The New York Times*, or a critical fight to determine who eventually controls the Internet remains to be seen.

Most online advocates consider the *Times* view to be condescending. As highly visible etoy supporter John Perry Barlow put it: "I think there was a tone of 'Look what the woolly-headed Internet freaks have gotten themselves into now.'"

Whatever the perception, some lessons might have been learned.

Other companies, for example, will notice that eToys, as wealthy a company as it is, decided to back down rather than fight, even though it meant publicly admitting defeat.

"Maybe," Truax said, "it will make the next big corporation think twice before they try something like this."

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