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# Web hosting cos are liable for any damage to your site

Pavan Duggal, TNN Jul 17, 2005, 01.42am IST

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I have a website with a hosting company based in Kottayam, Kerala. Recently, the company undertook major alteration in the server without informing me. Due to this I have lost most of my data, including important contact informations. The company insists they are not responsible for the data, and that I should have created a back up.

The question is, how can the hosting company make changes in the server without asking the customer to keep a back up? At least, they should have informed their customers. Please help me out in this regard. Are there any laws related to this case?

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You have raised an extremely pertinent question, which impacts many people using hosting services. Recently, we've seen an indifferent and careless attitude emerging in the business transactions of various service providers.

All that I can say is that these service providers adopt such an attitude at their own peril and cost. This is so because they have been straddling various obligations under the Indian cyberlaw, which treats them as intermediaries.

Since a network service provider has been made responsible for all third party data made available by him, he has to be very careful. He can disclaim his liability for the third party information if he is in a position to prove that he had no knowledge of any contravention of the law or that despite the exercise of all due diligence, he could not prevent the commission of any offence under the law. The concept of due diligence envisaged by the law is indeed vast and includes within its ambit, very little exceptions.

In the light of the facts and circumstances of your case, it is clear that your web-hosting provider is is a network service provider and that he is liable for all your data. If he wanted to do major alterations in the server or reconfigure it, he should have given prior notice to all his customers so that they could take all necessary steps to prevent the loss or damage of any data.

He is definitely not allowed to act in the manner he did and then say that the customer should have taken a back up of his data. While having back ups is the right thing to do, the reality is that the law casts a specific responsibility on the service provider of exercising "all due diligence". There's no way he can escape that.

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