



United States Mission to the OSCE

U.S. Perspectives on Hate Speech and Government Regulation

As prepared for delivery by Ambassador Julie Finley
at the Conference on Hate Speech,
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Thank you, Mr. Haraszti.

The title of this conference seems to imply that there is a well-defined category of "hate speech" and that we all agree on what it includes. Yet the reality is that different people with different perspectives and life experiences will inevitably come to different conclusions. Who will define it? How can we ensure that efforts to restrict "hate speech" don't in fact turn into a tyranny of the majority over minority voices?

In my country, free speech is an essential part of the checks and balances that keep democratically elected governments accountable to their citizens.

We Americans always go back to the First Amendment to the U.S. Constitution as our basic guideline to freedom of speech. That fundamental clause of our nation's legal framework states that:

"Congress shall make no law respecting ... or abridging the freedom of speech, or of the press."

Again Justice Potter Stewart explained in his famous 1974 speech, the "primary purpose" of the First Amendment was, "to create a fourth institution outside the government as an additional check on the three official branches."

When the First Amendment was drafted by our founding fathers, they probably never dreamed of how it would be used in modern times. To them, the idea was simple: Freedom to state your political and religious beliefs and opinions publicly, free from the fear that these beliefs and opinions could land you in jail or worse. Our societies are more diverse now -- ethnically, religiously, and politically -- and the spectrum of things we talk, write and communicate about, as well as the spectrum of people we communicate *with*, is much broader. But this does not change the fundamental maxim: in the U.S., the legislature may not pass any law that restricts a person's ability to speak his or her mind.

Modern means of communication and organization have evolved over the years and the true meaning of those first Amendment strictures have been challenged on many occasions. Do offensive neo-Nazi skinheads have the right to propagate their odious ideology via the internet? Our courts have answered that they do. Can the same people march publicly down a street in a predominantly Jewish neighborhood including many Holocaust survivors chanting vile slogans and denying the very Holocaust that forever changed those people's lives? Our courts once again decided that they can. Does a person have the right to publish potentially offensive material that can be viewed by millions of people? Here again, the answer is of course.

The same protections for those who espouse odious ideas also exist for those whose ideas are considered progressive. There was a time when talking of equal rights for racial minorities, or equal rights for women, was offensive to some. Yet, by talking, writing, and communicating these issues, we paved the way to ensure rights for people who, at that time, did not have the vote or any other means of making their voices heard.

Attempts to restrict the right to publish material that might be considered offensive risks the possibility that vague laws may be applied selectively or used by governments as a guise of silencing opposition voices and cementing its own hold on power. It is this logic which leads Turkmenistan's authorities to restrict access to the Internet. Belarus adopts restrictive laws on libeling the President. Uzbekistan expels journalists for writing about what they see. All in the name of public decency or an officially-accepted version of what is right or wrong.

Yes, it is true that absolute freedom of expression opens the door for expression that spreads intolerance and hatred. In our modern era, this danger is magnified through electronic media and the Internet, which globalizes any message in a split second. But how do we control this? Do we let governments decide for us? Do we let governments "protect" us by eliminating what the current majority considers to be harmful, offensive or dangerous? Do we voluntarily give up our freedoms and let the governments take us to a safe course?

Americans throughout history have chosen not to give up our freedom of expression. We fear censorship much more than we fear offensive speech. It is well established by the United States Supreme Court that, "the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." Thus, even hate speech is accorded a degree of Constitutional protection in the United States. Despite the best intentions of those in charge, experience teaches us that the authority to restrict expression is rarely used in a judicious manner. Efforts to restrict hate speech represent a clear and present danger to robust political debate. Once we start down the slippery slope, trying to define a nebulous term like "hate speech," we are heading for the potential for abuse.

I am not saying that the U.S. condones hate speech. Quite the opposite. We all need to speak out against expressions of intolerance and hatred whenever they occur. We need to educate people – especially young people – so that they do not develop intolerance or hatred toward any group. The long-term solution is not to stifle the voices of hatred but to change people's hearts. When neo-Nazis marched through the streets of Skopje, Illinois, their route was flanked by hundreds of people who decried their hateful ideology. And between the two were rows of police, protecting the rights of both sides to peacefully express their ideologies. That, in the American view, is the proper role of government in a free society.

Even in America, there is a limit to this doctrine of free speech. But it is a very restricted and exceptional area. When speech constitutes an actual threat, true harassment, or is an incitement to imminent lawlessness, such speech is no longer entitled to full protection of the law.

Regulating hate speech does not eliminate the sources of hatred. Precisely because of the possibility that intolerance can lead to hate crimes or violence, it is in society's interest to know where and to what extent it exists. Prohibiting the expression of hatred can drive those sentiments beneath the surface, allowing them to fester in the darkness and creating a false

picture of societal tranquility, an illusion that will inevitably be shattered by ugly incidents of violence yet to appear.

In almost all cases, therefore, the answer to bad speech is not suppression, but more speech. The “marketplace of ideas” is where hateful and wrong ideas are exposed to the light of day and revealed as corrupt. I support the market economy of ideas. Bad ideas will continue to be countered simply by good and reasonable ones.

That is why, when it comes to the recent controversy over the caricatures of the Prophet Mohammed published in some European newspapers, I come down firmly on the side of the right to publish such cartoons, even though I find them offensive. I also strongly support the right -- indeed obligation -- of people who find the cartoons offensive to speak, write, and otherwise peacefully communicate their opposition to these cartoons.

I think I have talked enough and it’s time for Yves who is actually good at this stuff. I leave you momentarily with a quote from one of Yves’ countrymen, Voltaire, “ I may not agree with what you say, but I will defend to the death your right to say it.” That pretty much sums up where I come down on all this.

Thank you.