

OSCE Conference on the relationship between racist, xenophobic and antisemitic propaganda on the Internet and hate crimes in Paris, June 16 –17, 2004.

Introduction in session 1: Legislative Framework, Including Domestic and International Legislation Regarding Propaganda on the Internet and Hate Crimes

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I'm very honoured and proud to be here and would like, on behalf of the INACH network, to express our gratitude, foremost to the French delegation, who supported us from the moment we brought the subject of hate on the Net up in the OSCE, and to the Bulgarian chairmanship for making this conference possible.

The Internet has provided the world with a fast communication system and the greatest source of information on any topic you can think of. While the medium itself has an unique 'equalizing' quality, it is being used by hate-mongers, to not only nullify that equality but to abuse the possibilities of the Internet for incitement to hatred and violence In Real Life.

For this session I will address 2 issues, which seem to be large stumbling blocks for a common approach to tackling racist propaganda on the Internet.

- 1. The perceived 'Atlantic divide' on Freedom of speech.**
- 2. Jurisdiction.**

"Everyone has the right to freely express and disseminate their opinion by speech, writing and pictures and is free to inform themselves using generally accessible sources. Freedom of the press and freedom of reporting by radio and motion pictures are guaranteed. There shall be no censorship. These rights are limited by the provisions of the general laws, the provisions of law for the protection of youth and by the right to inviolability of personal honor".¹

¹ Article 5 German constitution

"There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."²

"Any person who publicly or with the intention of dissemination to a wide circle of people makes a statement or imparts other information threatening, insulting or degrading a group of persons on account of their race, color, national or ethnic origin, belief or sexual orientation, shall be liable to a fine, simple detention or imprisonment for a term not exceeding two years."³

What I just read to you were, in random order, article 5 of the German constitution, section 266 b of the Danish penal code and part of the judgment of Chaplinsky versus New Hampshire in the USA. What do these quotes have in common? They were all taken from National legislation or jurisprudence. They all recognise freedom of speech as an important value in any democratic society. They all acknowledge there is a difference between freedom of speech and the dissemination of hate.

Of course each state has their own definition of what constitutes hate speech and what is considered everyone's right to freedom of expression.

Article 19 of the UN International Covenant on Civil and Political Rights⁴ phrases this as follows:

Everyone shall have the right to hold opinions without interference. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

Up to now 152 states, including all OSCE participating states, have ratified this International Covenant.

So, legal instruments to combat hate speech and racist propaganda on the Internet are in place.

² Chaplinsky v. New Hampshire, 315 U.S. 568 (1942)
<http://www.freedomforum.org/templates/document.asp?documentID=13718>

³ Section 266 b of the Danish Penal Code (1995)

⁴ 1966, signed and ratified by 152 countries as of 3 June 2004.
See http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

And although each country has their own interpretation of the terms hate speech and racist propaganda, which is reflected in national legislation, this doesn't have to hinder international cooperation to combat cyberhate.

Legal instruments, in particular penal codes can be used in other ways than strictly to prosecute and penalize perpetrators of hate speech. Of course, in severe cases when an expression on Internet can be directly linked to hate crimes in real life or the expression in itself is of such an extreme nature that the repercussions for society at large or for individual victims are obvious, perpetrators should be penalized to the full extent of the law.

In other areas of illegal content, such as child pornography, this is done and rightly so. However in the case of hate speech, there is a lot more to take into consideration, it isn't as cut and dried. Legislation varies, context plays an important role, letter and intention of the law, all these factors play a part.

The Dutch Complaints Bureau for Discrimination on Internet⁵ (MDI) aims primarily at getting discriminatory content removed by the users that put it online⁶.

We believe in the responsibility of Internet users for their actions. That is why we do not generally approach Internet Service Providers to remove material or hold them responsible.

Going from the premise that the user that puts the discriminatory content on line or, in case of web forums the owner/ moderator of the forum is held responsible and not the service provider sorts out a lot of the questions of jurisdiction.

In our view, jurisdiction lies at country from where the material is placed on the Internet.

Although the MDI prefers to have racist content removed by the responsible user, this is not possible in all cases, for instance most web forums don't allow individuals that post on a forum to remove their contributions, therefore the owner or moderator of the forum becomes responsible for its content. Another situation where the warning/request for removal is not sent to the user is when the offensive content (in Dutch and/or directed at the Netherlands) is hosted on a server in another country. Usually this is the case when people are perfectly aware that their material falls under the Dutch anti-discrimination laws, so they go jurisdiction shopping. Sending a warning to those users makes no sense; therefore MDI sends a request to the provider to remove the material, based on their Terms of Service. Of course a lot of jurisdiction shoppers wind up in the United States. What many people don't realise is that the first amendment states: "congress shall make no law..." which does limit the possibilities for prosecution, however this does not prevent providers from prohibiting the use of their servers for disseminating hate. In fact most regular

⁵ <http://www.meldpunt.nl/indexe.php3>

⁶ Since the start of the MDI in 1997, 7012 discriminatory expressions were reported to us, of which 3519, after assessment by the MDI, were deemed in violation of the Dutch Penal code. After receiving a warning/request to remove, 2141 of these were indeed removed. The MDI has secured 4 verdicts on Internet and incitement to hatred.

American providers and free providers have in their Terms of Service something about disseminating hate, the ToS of Geocities (one of the largest free providers) states:

You agree to not use the Service to:

“(a) upload, post or otherwise transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically or otherwise objectionable;”⁷

So no problem there, in most cases you can get the material removed. What is left are providers that do not have relevant Terms of Service and racist providers. A prime example of this is Stormfront.org owned by Don Black, a prominent white supremacist. Everything he hosts is protected by America's first amendment. Even though a lot of the content is in other languages, clearly directed at other countries⁸. You cannot get Don Black, an American living in America, convicted on the basis of the Dutch Penal Code. However, the Stormfront Netherlands and Flanders forum is moderated and used by Dutch and Belgium people, living not in the United States but in the Netherlands and Belgium, countries where the American constitution doesn't apply. Therefore the matter of jurisdiction is very clear, if a person contributes illegal content from the Netherlands, this person, if found, can be prosecuted in the Netherlands. It doesn't matter that the material winds up on a machine in America. We had a case of two regular posters on the Dutch part of the Stormfront web forum, which used the forum to spout hatred mainly against Muslims in the Netherlands. By research on the Internet and in cooperation with the local Anti-Discrimination Bureau in the area they were living in, the MDI pieced together their full identities of the users.

Charges were filed against them and they were convicted⁹ for incitement to hatred, discrimination, and the dissemination of discriminatory content through Stormfront.org and their personal websites¹⁰.

They were clear about their intentions:

“And because I'm having not much luck in life I'm thinking about becoming a suicide Commando like some Muslims are, and then blow up a Mosque for the cause. My live for my honour and nation! –14-, Sieg Heil!”

and:

“Muslims are scum, the nazis of our time! Europe wake up, it is time to fight! Take care that your wife is not being raped, hit a migrant before he expects it”

⁷ Terms of Service <http://docs.yahoo.com/info/terms/geoterms.html>

⁸ Stormfront Netherlands and Flanders <http://www.stormfront.org/archive/f-22>

⁹ The State versus “Masta & Tehalon”, Decision district court Zaandam, Youth Chamber, The Netherlands, April 14, 2003.

¹⁰ Defendant 1 was sentenced to 40 hours community service. On August 14, 2003, defendant 2 was sentenced in a separate Youth chambers session of the Zaandam court to a suspended youth detention of two weeks with a probationary period of 2 years.

The defendants, aged 16 and 18, were active in the neo-nazi scene. One of them was a chemistry student who also used the Internet to swap recipes for homemade explosives.

Often we can get material removed in cooperation with the members of the International Network Against Cyber Hate in other countries, getting rid of hate that, for purpose of evading authorities or regulating bodies, is being mirrored in several jurisdictions at the same time. Last year we received a complaint about Sluitjeaan, (*JoinUs*) a Dutch site that called for *Jihad*, recruited young people for the jihad and included antisemitic material like the notorious 'Protocols of the Elders of Zion'. The site was originally hosted in Carolina in the US. After it was removed there, it popped-up on a server in Malaysia and on 5 mirror-sites in the United States, hosted by free providers. The co-operation with our colleagues from Jugendschutz. Net in Germany and the Anti Defamation League in the U.S. ensured that the site and all it's mirrors were brought down within two weeks.

So you see, freedom of speech and jurisdiction issues do not hamper international co-operation in combating hate speech. A flexible and practical approach in dealing with hate on the net, geared towards existing possibilities rather than pointing the finger at each others legislation is quite successful, as the work of the INACH-network shows.

Concluding, I would like to make the following recommendations:

1. Use of existing domestic and international anti-discrimination and hate crime legislation, with as general rules that:
 - a. material which is illegal offline is also illegal online,
 - b. action should be taken in the country from where the material is placed on the Internet.

And for those of you who can to

2. Sign and ratify the Council of Europe - Additional Protocol to the Convention on Cybercrime , concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

And lastly I would ask you to focus on the things we have in common, rather than what divides us. I think we agree on 85% let work with that.

Thank you for your attention.