

OSCE Meeting on the Relationship between Racist, Xenophobic and Anti-Semitic Propaganda on the Internet and Hate Crimes, Paris, 16 – 17 June 2004

OSCE/FOM side event

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Why discriminatory speech on the internet cannot – and should not – be banned

Objections pertaining to constitutional rights and the law

- Racism is not easy to identify. It took Dutch and Flemish courts years to penalize the Centrumpartij and Vlaams Blok, both of them parties that identify themselves as extreme nationalists.
- Requiring ISPs or co-regulation bodies to assess (parts of) web sites or usenet postings and giving them the right to remove expressions that are judged to be examples of hate speech, places them in a position equal to of the court, without simultaneously giving the accused the rights that s/he has within the penal system (the right to an attorney and the right to appeal). Moreover, court verdicts are public, which allows for transparency and accountability. ISPs or co-regulation bodies lack both.

Objections pertaining to the nature of the internet

- There are no unified laws to define hate speech. What is accepted in one country, is not acceptable in the other. The global nature of the internet makes it impossible to prevent people who engage in discriminatory speech from conducting their activities from within the framework of the countries that pose the least resistance.
- The internet is not one media: there are many different protocols (http, irc, smtp). There is quite a difference between a discriminatory web site and a similar remark in a chat; the first one has a more 'permanent' character while the second is more 'fleeting'. Proposals to legislate hate speech usually lump everything together.
- The phenomenon of spam prove that people will find ways and means to publish banned material. Anti-spam laws have not decreased the amount of spam being pumped around: it has made it more difficult to track those responsible.

Objections pertaining to current anti-discriminatory hotlines

- At least some of these hotlines have proved themselves to be severely slanted, taking anti-semitism much more serious than any other discriminatory speech (such as anti-gay or anti-muslim speech).
- Hotlines make themselves insufficiently accountable. Many of them fail to publish statistics, hardly any of them publish the whys and hows of the individual cases that they have dealt with. Some of them are self-appointed; some of them engage in what can only be referred to as 'management by slander': going to the press and publicly characterizing certain web sites as hate sites, while the prosecutor can find no reason to start a case. Ironically, that practice can be labelled as hate speech too...