

**Internet Governance Forum
Vilnius, 14-17 September 2010**

Joint OSCE/CoE Open Forum on

“Balancing the governance of hate speech and freedom of expression / the free flow of information on the Internet”

Wednesday, 15 September, 11:30 to 13:30, Room 1

**Speech by Ms Dunja Mijatović,
OSCE Representative on Freedom of the Media**

Good morning ladies and gentlemen, I am happy to see you all here at this – I think – very first joint OSCE – Council of Europe open forum at an IGF. And I am also happy that I can open it together with Ms. Maud Boer-Bucquicchio, the Council of Europe’s Deputy Secretary General.

The first meeting organized by the OSCE to explore the issue of online hate and its relationship to hate crimes was convened in June 2004 in Paris. This meeting was followed by an OSCE Permanent Council Decision, which was titled “*Promoting Tolerance and Media Freedom on the Internet*”. The decision asked the participating States to fight intolerance and hate speech and to also ensure that the Internet remains an open and public forum for freedom of opinion and expression and the member States agreed to foster access to the Internet. A difficult task, as we know. A balance has yet to be reached as there are major disagreements as to whether and how to regulate online information and hateful content. There also is a debate as to what kind of content should be regulated, meaning that there is no standard definition of hate speech.

The mentioned OSCE decision also tasked my Office to promote both freedom of expression and access to the Internet. This included the task to issue early warnings when laws or other measures prohibiting speech motivated by racist, xenophobic or other related biases are enforced in a discriminatory or selective manner for political purposes. The aim is – of course – to prevent that the expression of alternative opinions and views is impeded.

All in all, the OSCE – like other international organizations active in this field, aimed at identifying of effective approaches for addressing the issue of hate speech on the Internet that do not endanger the freedom of information and expression.

This OSCE decision is just one of many internationally agreed texts that aim to tackle the problem. In addition, numerous countries have adopted national legislation: to protect the user and society from potentially harmful content, to protect freedom of speech, or both. The effectiveness of Internet legislation aimed at fighting the dissemination of hateful and racist content is being questioned, however. And besides all efforts undertaken so far, the problem persists and solutions – at least global or regional solutions – seem not to be in reach.

Needless to say, all societies recognize that free expression has its limits. We should not tolerate those who incite others to violence, engage in and promote child sexual abuse and exploitation, terrorism and human trafficking. We should recognize the legitimate role of government to take steps to protect privacy, personal data and the ownership of intellectual property. However, legal frameworks, needed as they are to protect these rights, should be designed in a manner that furthers freedom and should not go beyond what is necessary in a democratic society.

The topic: “Hate speech versus freedom of expression” is doubtless a very challenging topic. But how do we tackle the challenge without it becoming an excuse for governments to violate the rights of those who use the Internet for satire and political criticism? Where and how to apply the proportionality principle?

The last years have shown that a number of questions remain unanswered; have not yet been asked or even identified. It is also to be studied whether the adoption of new hate-speech legislation has led to a decrease of online hate. Its effect on the free flow of information is still to be critically studied.

The questions to be asked are in particular: To what extent do recommended measures specifically addressing hate on the Internet fulfil their purpose? And what is their possible impact on freedom of expression?

One must also assess the value and consequence of suppressing harmful content on the Internet, perceived or actual, and ask whether in cases of suppression, (meaning blocking, not deleting) of such content moves it underground, thus making it more difficult for law-enforcement agencies to track and for society to challenge.

To what extent does the blocking of unwanted content contribute to reducing the dissemination of hateful content via the Internet? What is the downside of this measure – regarding responsibilities of ISPs, the possible impact on the free flow of information or misuse of the measure by authoritarian systems?

To what extent does the take down of websites or content promoting hateful and racist content contribute to reducing its dissemination? What are, the advantages and disadvantages of this measure?

Of course, these questions are not entirely new nor will we comprehensively answer them here today, but I do think that besides trying to find solutions we should take stock of what has been achieved so far, how and with what results.

In this respect, I would like to see this forum also exchange successful examples of self- or co-regulation of common and practical approaches combating hate speech. All the efforts of the last years have, to a certain degree, shown that a fragmented approach is needed. It will not be governments or the industry or hotlines alone that will be able to fight this problem successfully.

In this respect we need to ask what forms of self- or co-regulation exist and what their advantages and disadvantages are.

Any hate crimes and criminal incitement to violence on the Internet should be fully investigated and prosecuted. However, this needs to be done under existing legislation and while guaranteeing due process appropriate legal-appeal mechanisms.

But the global nature of the Internet requires us to look beyond government regulation to apply a multi-level approach to combat and reduce hate crimes and address hate speech that might lead to hate crimes. Neither individual States nor inter-governmental organizations can tackle this issue successfully without close co-operation with other actors, particularly civil society and media, but also the Internet industry. It is unlikely that we will find a “one-size-fits-all” model. Different national and cultural settings will require different approaches. It would be naïve and also dangerous to think that the problem could be left for either governments or, even worse, ISPs or content providers to solve it single-handedly. Unless we talk about “notice-based” liability, ISPs can not be held liable for the information they carry, even less so can they be asked to monitor content going through their networks.

In my view, combating negative stereotypes is best achieved through education and training, through counter-speech and dialogue that aims at increasing mutual understanding. Education, in general and on the Internet in particular, should be a priority, complementing any legislative measures.

A critical and literate individual is less likely to fall for intolerant ideologies. It should not be forgotten that the Internet offers a unique basis for understanding. This educative potential of the Internet – I have the feeling – has not yet been fully explored and needs more attention.

Another important element, which is at times disregarded in this discussion and which my mandate requires me to point out, is that both offline and online media are reflections of society, of political discourse. Media are often and one-sidedly seen as part or cause of the problem of hate speech. However, media, unfortunately, are not always more professional than political discourse when it comes to shaping pictures and portraying the other side. Of course, this is not a *carte blanche* for hateful reporting, but it is important to state that political authorities and parties also at times misuse media, including online platforms, for their political propaganda. While identifying how to minimize online hate, the roots of hate speech need to be addressed – including political discourse. This, in turn, is a lot easier to achieve in any society through and with independent media. Free media and the protection of the fundamental right to free expression are at the very core of the development of more tolerant and more respectful societies.

Only independent journalists and media can be credible and powerful vehicles for conveying messages of truth, trust and tolerance and any fight **against** intolerance must include the fight **for** the right to freedom of expression.

If these two are separated, we will not move forward.

With this I would like to hand over to Ms. Maud Boer-Bucquicchio.

Thank you very much.