



United States Mission to the OSCE

**Remarks of Matthew Berry
Senior Counsel, Office of Legal Policy,
U.S. Department of Justice**

**Prepared for delivery at the OSCE Representative
on Freedom of the Media's Conference on
Guaranteeing Media Freedom on the Internet
August 27, 2004**

I would like to thank the Office of the Representative on Freedom of the Media both for organizing this conference as well as for the kind invitation to participate in this panel discussion. A couple of months ago in Paris, the Government of the United States was pleased to actively participate in the OSCE Meeting on the Relationship Between Racist, Xenophobic, and Anti-Semitic Propaganda on the Internet and Hate Crimes. As the United States delegation made clear at that meeting, the Government of the United States strongly condemns any expression of hatred and bigotry and stands ready to work with participating States and NGOs on concrete measures to combat prejudice and promote the values of tolerance and mutual respect.

At the same time, however, the United States delegation at the Paris Meeting also reiterated our nation's fundamental commitment to the free exchange of ideas and our opposition to any attempt by government to censor speech simply because of disagreement with a particular viewpoint, no matter how odious that viewpoint may be. Rather than restricting racist, xenophobic, and anti-Semitic speech and driving such views into the shadows, we indicated that such expression instead must be confronted in the light of day and answered with more speech. In addition, the United States delegation set forth our view that, notwithstanding the rhetoric of some, the Internet is not an instrument to be feared. On the contrary, the Internet holds enormous potential to promote the acquisition of knowledge and foster dialogue, thus erasing the ignorance and misunderstanding that produces intolerance. We are therefore especially pleased that the Representative on Freedom of the Media has chosen to organize a conference focused on the critical goal of Guaranteeing Media Freedom on the Internet.

In this session, we have been asked to focus on the topic of hate speech and the marketplace of ideas. The title of this panel, however, implicitly presupposes that there is a well-defined category of expression entitled "hate speech". This, however, is far from the case. Admittedly, there are certain examples of speech that everyone in this room would likely categorize as racist or anti-Semitic, and unfortunately there is no shortage of these examples to be found on the Internet today. But in many other instances, "hate speech", like beauty, is in the eye of the beholder. What appears to one person to be a comment inciting hatred on the basis of race will not be seen that way by another person. Different people with different perspectives and life experiences will inevitably evaluate comments differently.

This extraordinary difficulty in defining the boundaries of “hate speech” strongly counsels against any attempt by government to restrict such expression. At a minimum, it is imperative that speech restrictions, when they must be enacted, be clearly and precisely drawn so that they do not chill lawful speech. But hate speech, by its very nature, defies such clear and precise line drawing. The amorphous and ill-defined nature of hate speech, moreover, renders laws restricting such expression ripe for abuse. Unfortunately, for example, these vague laws may either be hijacked or applied selectively and thereby used by government as a guise for silencing opposition voices and cementing its own hold on power.

For a moment, however, let’s leave these problems aside and assume that it is somehow possible both to clearly define the category of “hate speech” and to draft laws restricting “hate speech” in a precise manner that would eliminate the potential for abuse. Even if both of these things were true, and these are both enormous “ifs”, it would nonetheless still be a fundamental mistake for government to restrict racist, xenophobic, and anti-Semitic expression.

To begin with, so long as hate exists in the world, it is in society’s interest to know where and to what extent it exists. Prohibiting the expression of bigotry and prejudice does not eliminate those sentiments. Rather, at best, it merely drives those sentiments beneath the surface, allowing them to fester in the darkness and creating a false picture of societal tranquility, an illusion that will be inevitably shattered, perhaps by ugly incidents of violence or by disturbing election results.

The better course of action is for government to allow bigotry and prejudice to be expressed in the open. While listening to such speech may be painful, it is well worth the cost. If our goal is to change people’s minds and hearts, this cannot be done by government fiat or speech restrictions. Rather, it can only be done through openly confronting hate and engaging in honest dialogue and educational efforts.

A society with confidence in its values and ideals has little to fear from the expression of dissenting views, no matter how repugnant those views may be. As a result, the restriction of hate speech sends entirely the wrong message. Such laws imply that we cannot successfully defeat the purveyors of bigotry in the marketplace of ideas, and that if large segments of the populace are exposed to hateful ideas, those ideas will win large numbers of converts. Unfortunately, this is a message that only serves to make hate more appealing to some. In addition, barring those harboring prejudice from the marketplace of ideas also has the side effect of causing many of these individuals to turn their energies and efforts into alternative and far more dangerous means of conveying their views.

A self-confident society welcomes the expression of dissenting views and uses such speech as an opportunity to explain why such views are flawed. Those expressing bigotry and prejudice, therefore, should be allowed to speak but should also be confronted and challenged at every turn. Their fallacious arguments should be answered by truthful counterarguments. Their attempts to foment hatred and division should be met with calls for tolerance and mutual respect. It is by this process, and not by censorship, that we will truly make progress in reducing racism, xenophobia, and anti-Semitism.

In addition, government efforts to censor hate speech set a troubling precedent and pose a significant danger to robust political debate. Once government is given the power to restrict

expression simply because of the viewpoint being expressed, history teaches us that the free speech rights of all individuals are placed at risk, particularly those belonging to opposition political parties or religious minorities. This is especially true with respect to those nations lacking an extensive liberal democratic tradition.

Attempts by government to stifle the exchange of views and the free flow of information in the marketplace of ideas must be resisted vigorously. Thanks in large part to the Internet as well as the march of freedom and democracy around the globe, the marketplace of ideas is more crowded and vibrant throughout the world today than at any other point in human history. Never before has so much information been accessible at the stroke of one's fingertips; never before has it been easier for people around the world to communicate with each other; and never before has it been easier for citizens to participate in the public discourse and make their voices heard.

We are now living in a time when access to the public square is being rapidly democratized. The Internet, for example, has made it much easier for like-minded individuals to meet, join forces, and raise money in support of their political views. In the United States, major political organizations started within the last few years owe their existence almost entirely to the opportunities afforded by the Internet. The Internet has also created unprecedented opportunities for individual citizens to influence the political debate. Just twenty years ago, if you wanted to disseminate your views widely, your options were rather limited. It was all but impossible for the average person to start his or her own television network, newspaper, or magazine. The Internet, however, has changed this situation dramatically as virtually anyone is able to establish a website that can be read throughout the world. In the United States, tens of thousands of individuals from all across the political spectrum have taken advantage of this opportunity to set up weblogs, where they regularly voice their unedited views on issues of the day and focus on almost every subject under the sun. Many of these weblogs are widely read, and some, in fact, have readerships that rival or exceed those of many newspapers.

This phenomenon, of course, has dramatic implications when one considers the topic of this conference, which is "Guaranteeing Media Freedom on the Internet." In order to figure out how to best guarantee media freedom, we must first define the term "media," and given the reality of the Internet, the scope of that term is quite broad. To be sure, the media presence on the Internet includes the websites of traditional media outlets, such as CNN, the BBC, or *Der Spiegel*. But it also includes the websites of individual desktop publishers who convey information or express their views through their own personal weblogs. Some of these sites enjoy significant readership; others do not. But when we speak of guaranteeing media freedom, it must be clear that we are not only speaking of the freedom of traditional media outlets but also the freedom of the average citizen to voice his or her views through his or her own website.

The Government of the United States believes that the proliferation of information and communication on the Internet is a development to be welcomed and encouraged because it empowers individuals with knowledge and ideas and helps to bring the people of the world closer together. It is therefore the policy of the United States to promote the continued development of the Internet and to encourage as many Americans as possible to enjoy Internet access.

Unfortunately, however, some governments around the globe are frightened by the free flow of information and expression of opinion facilitated by the Internet, and therefore seek either

to deny their citizens access to the Internet or to limit such access by strictly filtering those websites which their citizens may visit. Such policies are seriously misguided and threaten to prevent the Internet from realizing its full potential.

Participating States in the OSCE should choose a different path. They should instead aim to expand the reach of cyberspace by taking action to foster Internet access both in homes and in schools. They should also implement policies aimed at ensuring that the Internet is an open and public forum for the airing of all viewpoints. To achieve this goal, it is imperative that government regulation is kept to a minimum, and the fundamental freedoms of speech, expression, and the press are respected. Unfortunately, however, international efforts to restrict hate speech on the Internet, such as the Additional Protocol to the Convention on Cybercrime Concerning the Criminalisation of Acts of a Racist and Xenophobic Nature Committed Through Computer Systems, are fundamentally inconsistent with this objective, and this is why the United States opposes such initiatives.

In closing, protecting free expression and combating bigotry and prejudice are not mutually conflicting goals. Rather, they go hand in hand. Instead of focusing on ways to censor hate speech, we must concentrate on answering such expression with more speech for the battle against intolerance cannot be won through government regulation or legislative action. Rather, it is a fight that will be won or lost in the marketplace of ideas.

Thank you very much for your attention, and I look forward to listening to the other presentations through the conference.