



## United States Mission to the OSCE

### **OSCE Meeting on the Relationship between Racist, Xenophobic and Anti-Semitic Propaganda on the Internet and Hate Crimes**

As prepared for delivery by Markham Erickson, Net Coalition  
Session on Promoting Tolerance on and through the Internet – Best Practices to Educate  
Users and Heighten Public Awareness  
Paris, June 17, 2004

Thank you, Mr. Chairman.

It is an honor and a privilege to participate both as a public member of the United States delegation and as a representative of the Internet industry, in a conference on such an important subject. NetCoalition is a public policy association of some of the world's most innovative and widely visited Internet companies, and we strongly support the goals of combating racist, xenophobic, and anti-Semitic propaganda and hate crimes.

It is hard today to imagine the world without the Internet. This dynamic, relatively new medium provides an open, democratic and international means of communication. Any user can surf or engage in a transaction with literally millions of different web sites that represent everything from large corporations, governments, and public interest sites to individuals, social organizations and families. The Internet connects the people of the world in a manner, scope, and ease that would be impossible anywhere but online.

It provides a voice for even the most modest members of society to disseminate ideas on a scale traditionally reserved only to the most powerful. Today, any of the Internet's more than 500 million users worldwide can become a publisher, set up an online business, create a web log (or "blog"), organize a chat room, and communicate his or her ideas anywhere in the world almost instantaneously. There is no other communications medium that permits such diverse and useful activities.

And yet, we know that very the qualities that make the Internet an indispensable tool for worldwide commerce and communication also attract those with less than honorable intentions. The Internet can provide an inexpensive, fast, and convenient medium for those persons who seek to spread ideas that the world community finds despicable and uniformly condemns.

So it is not surprising that the Internet has been used by those who seek to disseminate hateful ideas. This is a price we pay for the greater benefit of allowing a universally accessible medium to flourish. And in the United States, it is a cost that we have defended from our nation's inception, because we believe that the government should not prohibit or suppress ideas—no matter how objectionable the majority in society finds them. We have learned during our nation's history that a healthy debate in the marketplace of ideas will promote progressive

thinking. This concept is endorsed in Article 19 of the Universal Declaration of Human Rights, which states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

G.A. Res. 217 (A)(III), U.N. OHCHR, U.N. Doc. A/810, at 71 (1948)

Subsidiaries of U.S. Internet companies that operate in other countries fully comply with the domestic laws of their host nations. This includes complying with laws that criminalize or regulate certain objectionable speech, even while this speech may be protected in the United States.

The First Amendment to the United States Constitution guarantees freedom of speech, but our Supreme Court has held that this protection is not absolute. Certain categories of speech do not rise to constitutional protection, such as speech involving certain incendiary statements, threats and harassment.

In the seminal Supreme Court case, *Brandenburg v. Ohio*, 395 U.S. 444 (1969), the Court held unanimously that the guarantees of free speech do not apply to communications that are directed to incite or produce imminent lawless action and that are likely to produce such action. Similarly, threats of physical injury generally do not receive Constitutional protection in our system. Consequently, racially motivated speech on the Internet that does not promote ideas but is intended to incite or threaten violence may be and should be prosecuted in appropriate instances.

The Government of the United States and members of NetCoalition believe that the best practice to combat hateful speech, however, is not for governments to prohibit ideas. We simply do not believe that the most effective tool to combat speech is suppression or regulation. As others have said, the best way to combat speech is to guarantee the opportunity for more speech.

The members of NetCoalition have found that the most effective way to control Internet conduct is not to hold service providers liable for the content or conduct of persons who use their systems. Some have proposed holding a service provider civilly or criminally liable unless it takes certain steps to police its network, including: monitoring user activity, blocking access to illegal content on other networks, disconnecting service to alleged violators of the law, or taking down content based upon notice from law enforcement or an unspecified third party. They believe Internet companies should be much more aggressive in monitoring Internet content and conduct and want service providers to censor the vast flow of information on the Internet, checking large numbers of Web sites and chat rooms, and even monitoring personal communications such as e-mails and instant messaging.

Not only would such activities trample user expectations of privacy online, but even if attempted, it is technologically impossible. There is simply no effective way to monitor such a large quantity of information flowing over the Internet.

Similarly, proposals have been raised that would require service providers to prevent users from reaching both domestic and foreign sites that contain objectionable content. Under this approach, Internet companies would be responsible for taking the necessary steps to ensure that users would be unable to access the offending site from their network. Companies would be expected to create a list of prohibited sites or web addresses. Every time that a person logged on the Internet or wanted to change web sites, a service provider would be required to delay each transmission until it had determined that the new address was not prohibited, a process that would take considerable time as various jurisdictions added new sites to the prohibited list. It would not take long before the speed and efficiency of the Internet were dramatically reduced.

Finally, some have advocated the use of automatic blocking software that is based on key or code words. In the United States, such an approach, if government-mandated, would likely fail the Supreme Court's strict test for restricting speech on the Internet. Such software also would likely prove ineffective as a practical matter, as the infrastructure of the Internet is designed to facilitate the flow of information even where there are hurdles to reaching a destination. And, Web site owners can employ relatively inexpensive technological measures to enable users to circumvent blocking software.

A third category of proposals would require a service provider to terminate the account of a customer who is violating the law or to remove illegal material posted to a service provider's computer server. Today, almost every service provider expressly prohibits illegal activities by users, voluntarily removes content, and cuts off the accounts of users proven to be using the service provider's network for criminal activity.

All of the members of NetCoalition include terms of service that put their users on notice that they, the service providers, retain the right to remove objectionable and offensive material from their systems. Our members routinely do so. However, mandating that service providers perform this function without a court determination that illegal activity has actually occurred raises serious due process concerns under United States law that do not exist when this activity is voluntary or based on principles of contract. And, mandating such removal for objectionable content that does not rise to the level of criminal conduct also would violate Constitutional protections of free speech in the United States.

In addition, there is a danger that government-imposed restrictions on speech will encourage those countries that seek to restrict political or religious speech to impose similar restrictions on ideas those regimes seek to suppress. While there is no doubt that the Internet can be an incredibly powerful tool in promoting democracy and freedom, forms of Internet regulation can also be used by those governments seeking to suppress liberty and to use the Internet as a vehicle for promoting only government-approved points of view.

Though we may disagree on the concept of government-imposed regulation of speech on the Internet, hopefully we agree that if allowed to flourish, the Internet can serve as a most effective

tool in the fight against racist, xenophobic, and anti-Semitic propaganda on the Internet. Every day, several hundred million people around the world use the Internet to communicate. Today, there are blogs, chat rooms, and web sites devoted to every conceivable subject matter. The relevantly recent phenomenon of Internet blog sites is just one example of an exciting trend on the Internet.

As you may know, a blog is basically an interactive diary or log on the Internet that allows persons to post their ideas for public consumption. In many instances, blogs generate multiple-person discussions around various subject matters. Sometimes these spin off into chat rooms and clubs to further pursue various subject matters.

A recent Pew Research Center study concluded that in the United States, up to 7 percent of online U.S. adults, or 8.8 million people, now blog. That represents an almost 75 percent increase in blogging from a year ago. Similar studies suggest that there may be double that number or 16 million bloggers around the world. Blogs allow a single individual to reach a potentially worldwide audience, and the rate of growth of this medium raises exciting possibilities.

Similarly, search engines and web portals provide a tremendous opportunity to discover new content. Leading search engines in the United States perform over 625 million searches every day. To date, these search engines have catalogued literally tens of billions of web pages, and yet, we estimate that only a fraction of the Web has been catalogued to date. Again, there is tremendous opportunity for growth.

Because education is so important in combating hate speech, search engines can play a tremendous role in directing users to sites that provide information to help fight racism. Search engines can take users to a myriad of good and effective sites such as the Anti-Defamation League's site, which includes educational materials on the legal aspects of hate online as well as practical advice on how to recognize and combat hate speech. The site also includes a free download of software called "HateFilter," which allows parents to block access to World Wide Web sites of individuals or groups that advocate hatred, bigotry, or even violence toward Jews and other groups based on their religion, race, ethnicity, sexual orientation or other such characteristics.

Search engines can take you to the Southern Poverty Law Center site, which includes an online course on how to recognize and respond to hate crimes. The Internet also allows anyone, no matter his or her location, to find the Jewish Internet Association site, which provides practical advice in responding to offensive Web sites.

Yes, search engines can direct users to objectionable sites. In most cases, search engines perform their functions based on a complex set of algorithms that return objective results and are independent of the beliefs and preferences of those who provide the search technology.

The members of NetCoalition are committed to working with the international community to fight racist, xenophobic, and anti-Semitic propaganda and hate crimes on the Internet while respecting the power of an open and vibrant Internet to promote ideas that will overcome such views.

## Recommendations—

- Participating States should adopt policies that allow the Internet to flourish—to continue to be an open and democratic medium for the expression of ideas. Ultimately, we believe that in the marketplace of ideas, the vast majority will promote understanding and tolerance, which can overcome ignorance and hate.
- NGOs, other private organizations, and individual citizens should vigorously monitor the Internet for hate speech and raise public awareness of such speech. NGOs also perform a valuable service by bringing such materials to the attention of ISPs and the public.
- ISPs should put their consumers on how parents can exercise greater supervision and control over their children’s use of the Internet and protect them from viewing objectionable material. For example, filtering software is widely available that can provide parents with a tool to protect their children from accessing hate on the Internet.