



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 delivered by Professor Ronald Rychlak,
University of Mississippi Law School
Session on Legislative Framework, Including Domestic and International Legislation
Regarding Propaganda on the Internet and Hate Crime
Paris, June 16, 2004

Thank you, Mr. Chairman.

The delegation from the United States of America joins with representatives of all assembled nations in condemning hate crimes and associated violence. In recent years, our federal government and almost all of our state governments have added enhanced penalties to crimes that are motivated by hatred directed toward people because of their race, religion, national origin, or other protected categories. Many police units have also directed new resources toward the investigation of such crimes. These efforts have resulted in the arrest, prosecution, and conviction of numerous perpetrators.

Reflecting its resolve to combat hate crime, the United States has ratified the Convention on the Elimination of All Forms of Racial Discrimination. At the same time, the American government listed certain reservations, including one for protection of free speech. This reflects the American determination to protect free expression on the Internet and elsewhere, even when the content of that expression is objectionable. That determination is deeply rooted in the moral and legal traditions of the American society.

The First Amendment to the United States Constitution provides that: "Congress shall make no law... abridging the freedom of speech." This is not just a simple matter of law, nor is it an empty constitutional promise. Free speech is a societal value that cuts across party boundaries from one end of the American political spectrum to the other. It is well established by the United States Supreme Court that: "the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers." Thus, even hate speech is accorded Constitutional protection in the United States.

Tolerance of diverse speech is so ingrained into the American fabric that virtually every school boy and girl knows Voltaire's famous statement: "I may not agree with what you say, but I will defend to the death your right to say it."

Americans fear censorship much more than they fear offensive speech. Despite the best intentions of those in charge, experience teaches us that the authority to restrict expression is rarely used in a judicious manner. History also shows us that those with the least power, the supposed beneficiaries of the regulations on expression, are often the victims when this power is later abused. This is a particularly likely outcome when a society tries legislatively to define and

prohibit a nebulous term like “hate speech,” which may touch upon religious and other deeply held convictions.

The protection of free expression in an era of hate speech requires vigilance on the part of police authorities. When speech crosses the line and becomes more than speech -- when it presents a clear and present danger -- the authorities must be prepared to step in and take legal action. At that time, the speech may constitute an actual threat, true harassment, or be an incitement to imminent lawlessness. Such speech is no longer entitled to full protection of the law. Fortunately, those hate groups that attempt to spread their message on the Internet are much easier to monitor and control than those that operate under a veil of complete secrecy.

In almost all cases, the answer to bad speech is not suppression, but more speech. The “marketplace of ideas” is where hateful and wrong ideas are exposed to the light of day and revealed as corrupt. Americans tolerate hate speech precisely because we have seen that bad ideas, once carefully examined, are tested and rejected. Fortunately, the Internet facilitates not only the dissemination of hate speech, but its refutation as well.

The United States Supreme Court has held that the best way to protect liberty is not to punish those with whom we disagree. It is to persuade them that they are wrong. So it is with those who hate. The long-term solution to assure peace is not to stifle their voices but to change their hearts.

When debates regarding bias and prejudice are carried out in the open, they are less likely to erupt into violence. The forced anonymity that results from censorship does not permit discussion of the underlying causes of bigotry; it only allows the hatred to fester under the cover of darkness. Left unexposed, those underlying causes are much more likely to erupt into violence.

Out of hundreds of millions of users of the Internet, only a small minority actually spread hatred. Moreover, their speech usually does not imply any physical harm and is unlikely to cause immediate violence. It is pure speech. There are better ways of dealing with speech than by attempting legislatively to prohibit certain types of it.

We believe that all viewpoints should be tolerated in cyberspace, even those with which we strongly disagree. The right to free speech means nothing if it applies only to that speech which offends no one. As others have said: “the more technology changes, the more free speech issues remain the same.”

Thank you, Mr. Chairman.

Recommendations:

1. Participating States should take action to ensure that the Internet remains an open and public forum for the airing of all viewpoints.
2. Participating States should vigorously investigate and, where appropriate, prosecute criminal threats of violence transmitted over the Internet.
3. The OSCE Representative on Freedom of the Media should study whether laws prohibiting bias-motivated speech are being misused in any nation as a means of silencing government critics and suppressing political dissent.

4. Participating States should study the effectiveness of laws regulating Internet content, specifically with regard to their effect on the rate of racist, xenophobic, anti-Semitic or racist crimes.
5. Participating States should collect information concerning incidents of bias-motivated crimes and publish a report on an annual basis summarizing this data.
6. Participating States should vigorously prosecute those engaging in bias motivated violence to the full extent of the law.