



Organization for Security and Co-operation in Europe
The Representative on Freedom of the Media
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“OSCE Conference on the relationship between racist, xenophobic and anti-Semitic propaganda on the Internet and hate crime.”

Paris 16 – 17 June 2004

Session 3: Public and Private Partnership in the Fight Against Racism, Xenophobia and anti-Semitism on the Internet – Best Practices

Introduction

While the Internet is rapidly getting more widespread and accepted, so are attempts to curtail this new form of freedom of expression. However, no matter what technical means are used to channel the work of journalists to the public – be it TV, radio, newspapers or the Internet – the constitutional value of freedom of the media must not be questioned, as the OSCE Representative on Freedom of the Media (RFoM) expressed in the Amsterdam Recommendations.

An important challenge for the RFoM is to identify ways in which to prevent hate speech and crime without restricting freedom of expression on the Internet and without curtailing the civil rights of Internet users. A number of conferences and documents have shown that there is a need to counter hate speech on the Internet, but that there is a considerable degree of uncertainty about how to tackle this problem. A seminar on 30 June 2004 in Vienna organized by the Representative will begin to evaluate the reasons for this uncertainty, provide detailed information, initiate strategy proposals and highlight best practices to guarantee freedom of the media on the Internet in the future.

Public and Private Partnership in Regulation Issues

We find it inevitable that groups victimized by hate speech come forward with complaints, and we welcome all forms of societal action to counter hate speech that are constructive and educational and make use of the means the Internet offers without censoring or restricting

speech. Here a public-private partnership is possible, provided transparency, accountability and the right to appeal are observed to at least the same degree as in the classic media (print and/or broadcast) and the decision on what constitutes illegal content remains with judicial courts. Pure self-regulation, however, is endangering freedom of expression as it is often transferring court decisions to private companies, and does so arbitrarily and without any notice to the public.

The report *How Liberty Disappeared from Cyberspace* by the Programme in Comparative Media Law and Policy at Oxford University (PCMLP) shows how ISP simply remove what is referred to as illegal content when they are notified, without giving serious consideration to whether it is in fact illegal, or offering content providers with adequate rights of appeal.¹

Conclusions

With regard to co-regulation a number of points must be ensured to further guarantee media freedom on the Internet. Some of them have been raised during a presentation at the Paris Conference (Session 3):

- The Internet can be used to counter hate speech and to promote tolerance:
 - Civil society has a number of means to counter hate speech without censoring. Grass root action like ‘Wikipedia’ or ‘Sponsored Links’ is ‘used freedom’ without limiting freedom of expression.
- Petitioning industry to block or filter sites is highly problematic:
 - It is not countering hate speech in an educative way, but forces the industry to censor. However not everything that is ‘unwanted’ for commercial reasons is indeed illegal.
 - Filtering can be easily circumvented and the blocking of arbitrarily chosen singular sites does not solve the problem as such.
- Decisions on whether content is illegal or not must be made by the judiciary and not by industry and companies:
 - Authors of disputed content must have the right of appeal.
- The biggest unused potential for countering hate speech lies in explaining, awareness raising and education.

¹ In order to test these concerns, researchers (Christian Ahlert/Chris Marsden) set up a website, and enlisted J.S. Mill's help. After posting sections of his classic *On Liberty* on a fan site, a complaint was made which claimed that the site infringed copyright. To everyone's surprise, only the second ISP contacted removed the site immediately. They had taken no time to examine whether the complaint was justified. Had they chosen to do so, they would have realised that it was ridiculous, as the text is too old to be protected by copyright (Damian Tambini).