

ELSA International
Online Hate Speech Competition
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essay competition
online hate speech:
right or crime?

Our Everyday Internet: A Medium for Harm or Harmony?

List of Abbreviations

ECHR	European Court of Human Rights
ECRI	European Commission against Racism and Intolerance
OSCE	Organization for security and Co-operation in Europe
<i>Et al</i>	et alii
<i>Id.</i>	Idem
p.	page
pp.	pages
<i>v</i>	versus

Introduction

Most Internet users check their email first thing in the morning. The most comfortable way of obtaining information is through the Internet. With such a wide participation in our lives, it gains more and more importance.

But what happens if suddenly we find a bundle of violent rattle about one cause or another? Is paternalistic behavior necessary? Does the Information Age need censorship? What is now considered to be hate speech?

Hate Speech and Freedom of Expression

Although it is a frequently used term, there is no universally accepted definition of hate speech. Generally, when referring to a discourse that amounts to hate speech, one takes into consideration the following points: its target (the ideas or the group of people it refers to), the content (the information it dissipates), the tone of the written or spoken text and its possible consequences¹.

One of the most precise definitions of the term is given by the Council of Europe's Committee of Ministers Recommendation, where hate speech covers

“all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin”².

Perhaps a more authoritative approach is given by the European Court of Human Rights (ECHR) references to the term. Even though the Court does not explicitly defines it, it refers to it as

“forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance)”³.

The OSCE Handbook refers to hate speech as speech that advocates violence⁴. Even though definitions differ, they clearly refer to the essential characteristic of hate speech: incitement to violence.

¹ *More on this at* Titley, Gavan *Hate speech Online: considerations for the proposed campaign*, p. 15.

² Council of Europe, Committee of Ministers – Recommendation No. R (97) 20, Scope.

³ ECHR, *Gündüz v Turkey*, Application no. 35071/97, Judgment, [40].

The lack of definition appears to be more of an advantage than a disadvantage. Being a wide-spread concept that is not tolerated by the international community, hate speech cannot pass-by unsanctioned. Without a rigid definition, it keeps a flexible structure that can adapt to different situations, thus covering a broader range of possibilities, keeping a balance between the two eventual abuses: the abuse of freedom of expression and the abuse in limiting it.

The prohibition of hate speech is a limitation of the right to freedom of expression. Limitations are permissible⁵ and must meet the general criteria of being prescribed by law, proportionate in accordance with a legitimate purpose and necessary in a democratic society by being a pressing social need⁶. Since it interferes with the respect for human dignity and the protection of the reputation or the rights of others⁷, hate speech is an illicit conduct that meets the criteria set by the European Convention and ECHR.

Also, the Court takes into consideration the possible consequences of the discourse and it finds that identifying persons by name, stirring up hatred for them and exposing them to the possible risk of physical violence justifies an interference with the right to freedom of speech and is considered hate speech⁸. Analyzing the Court's decisions, we notice that great emphasis is put on these consequences. Without an actual risk or an imminent danger, the right to freedom of expression cannot be limited⁹. The Court also states that ideas or information that “*offend, shock or disturb*” will not be prohibited¹⁰.

Internet Innovations

How does the Internet change the problem?

The digital revolution has given birth to new times - the Information Age. The phenomenon is characterized by a digital industry that creates a knowledge based society. The Internet is the tool for making information easily accessible to everyone.

⁴ Election Observation Handbook: Fifth Edition – OSCE, p. 46.

⁵ European Convention on Human Rights, art. 10(2).

⁶ ECHR, *Lingens v Austria*, Application No. 9815/82, Judgment, [39], [40]; Macovei, Monica *Freedom of expression. A guide to the implementation of Article 10 of the European Convention on Human Rights*, Human Rights Handbooks, No. 2, 2001, p.29;

⁷ *Supra note 3*, Principle 3.

⁸ ECHR, *Sürek v Turkey* (No. 1), Application no. 26682/95, Judgment, [62].

⁹ ECHR, *Erbakan v. Turkey*, Application No. 59405/00, Judgment, [68].

¹⁰ ECHR, *Handyside v. United Kingdom*, Application No. 5493/7, Judgment, [49].

People do not need access to mass-media to speak anymore¹¹. The Internet offers a cheap way of expressing opinions and exchanging information, where the users can reach the audiences directly, without intermediaries. In this way, the Internet can be considered a means of promoting democracy¹². From the publishers' point of view, it constitutes an opportunity to communicate with a worldwide public of millions of readers, viewers, researchers, and buyers¹³.

Anyone with a computer can access this network. Information is often appropriated, commented upon and innovated in creative ways. The right to disseminate and receive it is a basic human right¹⁴. Citizens decide themselves what to access on the Internet and new forms of censorship must not be developed¹⁵.

In 1996, the European Commission noted:

“A unique characteristic of the Internet is that it functions simultaneously as a medium for publishing and for communication. Unlike in the case of traditional media, the Internet supports a variety of communication modes: one-to-one, one-to-many, and many-to-many. An Internet user may “speak” or “listen” interchangeably. At any given time, a receiver can and does become content provider, of his own accord, or through “re-posting” of content by a third party. The Internet therefore is radically different from traditional broadcasting. It also differs radically from a traditional telecommunication service.”¹⁶

The Internet cannot be perceived as a new type of mass-media, but, more likely, is a new communicative sphere¹⁷. It is governed by other rules than the classic media, the users having no limit in choosing the method or time of communication and information is often recycled. The “glomming on” strategy is a very popular way of appropriating data, even from mass-media, commenting on it, criticizing it and constructing innovatory versions of it¹⁸.

¹¹ Balkin, Jack M. *Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society*, 79 New York University Law Review 1 2004, p. 32.

¹² Supra note 9, p. 29.

¹³ Reno, Attorney General of the United States et al. v. American Civil Liberties Union et al., Case No. 96-511, 26 June 1997, Supreme Court of the United States.

¹⁴ OSCE, Amsterdam Recommendations, Freedom of the Media and Internet, 14 June 2003.

¹⁵ Supra note 11.

¹⁶ European Commission, *Illegal and Harmful Content on the Internet* (1996), p. 8.

¹⁷ Jørgensen, Rikke Frank *Internet and Freedom of expression*, European Master Degree in Human Rights and Democratization 2000-2001, Raoul Wallenberg Institute, p. 32.

¹⁸ Supra note 11, p. 11.

Statistics show that in the year 2012, 34.3% of the world's population use the Internet, a growth of 566.4% since the year 2000¹⁹. Considering that the digital technology is in a continuous progress, we may presume that in, maybe, 10 years time, there would be almost a 100% worldwide usage of Internet. This hypothesis emphasizes the importance that the Internet now has for inter-personal communication. In Europe, 63.3% of the population already uses the Internet²⁰. It clearly is a dominant medium in nowadays culture.

Human Behavior

Since the ECHR gives great importance to the consequences of a discourse when assessing if it qualifies as hate speech or not, we must then ask ourselves a question: do Internet postings have dangerous consequences in real life? Or does the idiom “*all bark and no bite*” applies?

An interesting theory on this aspect is the “pressure valve argument”²¹. By containing hate, the violence in the speaker's behavior increases. Therefore, by releasing it in a speech, the speech acts like a pressure valve, relieving the speaker of tension and rendering him harmless of doing material acts of violence. The argument is a paternalistic approach, protecting the targets of hate speech by convincing them to oppose censorship or too strict rules prohibiting hate speech in order to prevent the actual violence.

On the other hand, it has been noticed that people tend to follow what they are being told, without a thorough assessment of the situation. For example, in the Hofling hospital experiment, nurses were ordered by doctors to administer an overdose of a medicine to patients, a dose they knew was lethal. Shockingly, 21 of the 22 nurses obeyed²². Also, the well known Milgram experiment shows the participants' obedience to authority figures when instructed to perform acts that conflict with their personal conscience²³. The participants were required to administer increasingly severe electric shocks to another person in the context of a learning experiment. 26 out of 40 subjects administered deadly shocks. Or perhaps the most revealing study is the Stanford prison experiment. A group of

¹⁹ <http://www.internetworldstats.com/stats.htm>

²⁰ *Id.*

²¹ Delgado, Richard & Yun, David H. *Pressure Valves and Bloodied Chickens: An Analysis of Paternalistic Objections to Hate Speech Regulation*, p. 4.

²² Hofling, CK et al. *An Experimental Study of Nurse-Physician Relationships*, *Journal of Nervous and Mental Disease* (1966) 143, pp. 171-180.

²³ Milgram, S. *Behavioral Study of Obedience*, *Journal of Abnormal Social Psychology* 67, 1963, pp. 371-378.

students were randomly assigned roles of prisoners and guards in a mock prison²⁴. The results of the experiment demonstrate the impressionability and obedience of people when provided with a legitimizing ideology.

In this context, would an influential person's Internet post affect and determine other people to take a severe attitude? Also, on the Internet people have a tendency of considering all sources reliable, without undertaking a critical evaluation²⁵. The Internet has facilitated the spread of memes, namely ideas or behaviors that spread throughout a community by imitation²⁶. Whenever such an idea would become popular, the term used for this phenomenon is 'viral', a term that clearly suggests the tactics and the effect of the information spreading through this strategy. Therefore, allowing information to spread without any control can have a great influence on a large group of people's perception.

In fact, there have been situations of violence in which the Internet played an important part. For example, the 2009 Iranian revolution, also known as "the Twitter Revolution", has had its beginning in Twitter postings²⁷. The prime minister of the United Kingdom stated that by making information available to public rapidly and, therefore, making possible the connection with people from tensed areas, the Internet can prevent violent events such as the Rwandan genocide²⁸. Following this logic, the bloody events from the Iranian revolution could have been prevented if the participators would have posted more about it, making the international community aware of the problem²⁹. But if so, what is to be said of the Google pull out from China³⁰? Or how much access do we have into the North Korean society?

Perhaps as a result of the freedom that the Internet offers, the anonymity and ease of access, users don't feel responsible for what they post or comment. As a consequence, statements are not taken seriously and extreme attitudes are often ridiculed. Some consider that it's not the anonymity offered

²⁴ <http://www.prisonexp.org/> - the official website.

²⁵ Gough, Jim *The Critical Evaluation of Bibliographic Web Sources*, College Quarterly, Volume 11 Number 1 Winter 2008, pp. 1-6.

²⁶ Dawkins, Richard *The Selfish Gene* (Oxford University Press: 2nd edition, 1989), p. 192.

²⁷ Morozov, Evgeny *The Net Delusion. The Dark Side of Internet Freedom* (New York: Public Affairs, 2011), p. 3.

²⁸ <http://www.guardian.co.uk/politics/2009/jun/19/gordon-brown-internet-foreign-policy>

²⁹ See supra note 28, p. 4.

³⁰ See supra note 31, p. 21.

by the Internet that encourages antinormative behavior, but the identification with a social group that has an attitude or a behavior that creates media of hate³¹.

On the other hand, social behavior is known to decrease criminality rates³². Encouraging the maintenance of a social medium is better than encouraging antisocial behavior. Increasing self awareness has also shown results. The method used was the effect of mirrors, the subjects being exposed to their own reflection while listening to their own tape-recorded voice³³. Much research has demonstrated its effect in decreasing antinormative behavior³⁴.

The bombardment of information and opinions that the network provides does make users less sensitive, hence harder to convince. The diversity created by the Internet could increase tolerance. People are not easily shocked or offended, an attitude encouraged even by the ECHR in its decisions³⁵, and will one way or the other accept postings or opinions with which they disagree.

Also, there are mechanisms of information filtering in order to protect categories of people³⁶. In order to reach certain information, one must search for it, therefore it is their own will that conducts them to a certain topic. Moreover, websites usually contain pre-warnings, which prevent accidental access³⁷.

Fighting against hate

Generally, the campaigns against hate speech are of three types: awareness campaigns (that aim to alert the public about hate speech), affirmative campaigns (that present the targeted groups in a positive way in order to avoid discrimination) and obstructive campaigns (that are trying to restrict or obstruct the activity)³⁸.

It is argued that confronting individuals that promote hate on the Internet dissipates the feeling of security created by the membership of a community that shares their views. By posting points

³¹ Foldi, Laszlo *Mapping study on campaigns against hate-speech online*, p. 94.

³² *Id.*

³³ Diener, E. & Wallbom, M. *Effects of self-awareness on antinormative behavior*, Journal of Research in Personality, Volume 10, issue 1 (March, 1976), pp. 107-111.

³⁴ *Supra* note 26, p. 95.

³⁵ See *supra* note 10.

³⁶ Dutton, William H.; Dopatka, Anna; Hills, Michael; Law, Ginette; Nash, Victoria *Freedom of Connection Freedom of Expression: The Changing Legal and Regulatory Ecology Shaping the Internet* (Paris: UNESCO, 2011), p. 52.

³⁷ *Supra* note 17, p. 52.

³⁸ *Supra* note 26, p. 97.

confronting these views, other readers might become aware themselves of a different attitude. Also, by exposing bias or ignorance, one can contribute to the removal of the feeling of security created by the abusive group. Such a strategy of explaining and creating counter-arguments could be more effective than simply blocking a site or a user³⁹. Others argue that a humorous approach is as effective, by deflecting and defusing the abuse⁴⁰.

Also, the European Commission against Racism and Intolerance (ECRI) has held the view the national legislation against racism and racial discrimination has its role and it is necessary to combat the phenomenon effectively⁴¹. This view has been consolidated by the development of an Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems⁴².

Nevertheless, there is no single solution to the problem, each culture needing a different approach. For example, The United States chose to fight hate speech through an open exchange of ideas, while Germany chose to suppress it⁴³.

Some argue that hate speech should not be banned since an unknown enemy is more dangerous than a known one. This argument was developed in the context of college campus incidents over racism or sexism and it argues that a hateful assertion can constitute a basis for discussion or institutional examination, enabling the discriminated members to attack it when it surfaces⁴⁴.

All things considered, the harm caused by hate speech matters and the freedom of speech cannot be brought to the extent of being a “license to harm”⁴⁵. If freedom of speech is considered for the majority to be a guarantee of democracy, what happens when it silences others⁴⁶?

Conclusion

³⁹ British Institute for Human Rights, *Mapping Study on Projects Against Hate Speech Online*, p. 69.

⁴⁰ Supra note 29, about www.wipeouthomophobia.com, p. 73

⁴¹ Commission on Human Rights, *Stocktaking on efforts to combat racism on the Internet*, 62nd session, Jan. 2006, p. 42.

⁴² Supra note 26, p. 92.

⁴³ Supra note 26, p. 91.

⁴⁴ Delgado, Richard & Yun, David *The Neoconservative Case Against Hate-Speech Regulation*, 47 *Vanderbilt Law Review*, 1994, p. 1817.

⁴⁵ Mahoney, Kathleen E. *Hate Speech: Affirmation of Contradiction of Freedom of Expression*, 1996 *University of Illinois Law Review*, 1996, p. 793.

⁴⁶ Supra note 39, p. 794.

All rights come with their responsibilities. Freedom of expression is a very important part in our development, but knowing how to use it is even more valuable. Conflicts and tensions appear in any community, but the way we handle them is essential.

The Internet has only provided us with the possibility to express ourselves. It shows what people have always thought and it crystallizes conflicts that have existed for a long time. The Internet should be treated as the new “playground” since it is the first of all media that reflects a new tendency or a new trend. It changes the problem of hate speech only in that of means and mass of communication. “It takes with one hand but gives with another”, as it also offers solutions to the problem. Campaigns are being led, actions are being taken – people want to temper hate speech. Spreading the news regarding a certain event so rapidly also offers the possibility to intervene in due time.

Online hate speech is not any different to other types of violent discourse. It is solely the modern version and must be treated with the required attention.

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