



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
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Session on the Nature and Extent of the Relationship between Racist,
Xenophobic and Anti-Semitic Propaganda on the Internet and Hate Crime
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Thank you, Mr. Chairman.

Communications technologies, including the Internet, have transformed the way people worldwide live their lives, do business, and share their ideas and beliefs. Infrastructure now in place gives people virtually anywhere the ability to send information instantaneously, at any time, for relatively little -- or no -- cost. And the Internet allows cheap, virtually untraceable, instantaneous, uncensored worldwide distribution that -- once materials are posted -- can be downloaded and reposted in multiple places. As the Internet's important and significant benefits expand, the possibilities to use this medium for unlawful activity or spreading hatred grow as well.

The Internet has become a new frontier in spreading hateful materials. This meeting by the OSCE raises the important question of how hateful materials online may influence hate crimes offline, or may themselves be hate crimes. There have been only a small number of cases litigated in the United States that show how some instances of hateful materials online have crossed the line into criminal conduct. These cases are exceptions, and most hateful expression is protected speech in the United States under the First Amendment to the U.S. Constitution -- unless the speech contains a direct, credible threat against an identifiable individual, organization, or institution -- at which point it may cross the line into criminal conduct. The Internet has been used to intimidate and harass individuals on the basis of their race, religion, sexual orientation, or national origin -- and hate speech containing criminal threats is not protected by the First Amendment.

The definition of what constitutes a hate crime varies from state to state and under U.S. Federal law. Hate crime offenders may be prosecuted under Federal or state

criminal and civil rights laws. For federal crimes, a defendant's sentence is enhanced if the court at sentencing determines beyond a reasonable doubt that the defendant "intentionally selected any victim or any property as the object of the offense of conviction because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person." *See, e.g.*, U.S.S.G. § 3A1.1. Like hate crime penalty enhancement statutes that now exist in 46 states and the District of Columbia, this law increases sentences for bias-motivated federal crimes. With respect to the Internet, a prosecutable hate crime in the United States is almost always a threat.

There are also examples of hate crimes committed in the "offline" world that show how the Internet has apparently influenced some people to commit actions in the "real world." However, the materials that may have generally inspired a person to commit a hate crime are not, in and of themselves, illegal. Prosecutors, if these materials are found to have a direct link to the commission of a hate crime, might be able to introduce them as evidence to gain an enhanced hate crime penalty.

The Internet is also used by entities designated as terrorist organizations by the Government of the United States for coordination of their activities, sharing of information and knowledge, a seemingly endless stream of propaganda; and even to raise funds for these organizations.

Overall Internet use has increased exponentially in recent years, and the open structure and low overall cost of the Internet make this medium especially inviting for individuals and organizations that seek to spread hatred. For the bias-motivated user, this combination is tantalizing, as the user can both send a threatening message and, theoretically, remain unknown to the recipient. These factors, among other technicalities, make prosecutions and investigations of hate crimes on the Internet difficult.

Increased attention should be paid to how the Internet is being used to assist the commission of hate crimes, and how it has been used as an actual vehicle for hate crimes.

Recommendations:

1. An extensive study should be conducted, including a detailed overview of specific cases of online hate crimes or hate crimes that can be definitively linked to hate materials online -- noting that sections of the report will be specific to the laws of each participating State and understanding the differences and nuances between participating States' laws in this area will influence what examples are provided. Such a study would give participating States a better understanding of the scope and depth of this problem.
2. A system should be developed where NGOs and other private organizations involved in the monitoring and tracking of hateful materials online can share information and developments in cases of hate crimes being committed online, to better ensure participating States will have up-to-date information on developments in this area as they occur.
3. Participating States should acknowledge that there appears to be a growing, disturbing trend to use the Internet to intimidate and harass individuals on the basis of their race, religion, sexual orientation, or national origin. When speech contains a direct, credible threat against an identifiable individual, organization, or institution, it crosses the line to criminal conduct. Government officials should vigorously investigate and, where appropriate, prosecute threats of violence transmitted over the Internet. Because of jurisdictional dilemmas, the anonymity of the Internet, and the complexity of gathering and preserving electronic evidence, these crimes present especially difficult challenges for law enforcement officials and prosecutors. Government prosecutors should be trained in how to investigate and prosecute hate crimes on the Internet.