

Race hate and the internet

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On 17 September 2002, the Federal Court ordered a South Australian organisation, the Adelaide Institute, to remove from its website material rendered unlawful by section 18C of the *Racial Discrimination Act (Cth)* 1975. This is the first internet-based racial discrimination complaint to be upheld by an Australian court.

Justice Branson, upholding the complaint of Jeremy Jones, president of the Executive Council of Australian Jewry, ordered that Frederick Toben, director of the Adelaide Institute, remove from the website, and be restrained from publishing, material conveying the imputation that:

- (1) there is serious doubt that the Holocaust occurred;
- (2) it is unlikely that there were homicidal gas chambers at Auschwitz;
- (3) Jewish people who are offended by and challenge Holocaust denial are of limited intelligence; and
- (4) some Jewish people, for improper purposes, have exaggerated the number of Jews killed during World War II and the circumstances in which they were killed.¹

The Court acknowledged that the internet is now an important tool which many people may be expected to utilise when searching for information. As such, the placing of material, whether text, graphics, audio or video on a website that is not password protected is an act which causes words, sounds, images or writing to be communicated to the public, as they are communicated to any person who utilises a browser to gain access to that website. The fact that a web search using terms such as "Jew" and "Holocaust" could lead the searcher to the Adelaide Institute website meant that the placing of the material in question on the website was an act done other than in private. The Court determined that the

imputations of this material were calumnious, and challenged and denigrated a central aspect of the shared perception of Australian Jewry of its own modern history. This would be reasonably likely to expose members of the Jewish Australian community to attacks on their pride and self-respect, and, in all of the circumstances, offend, insult, humiliate and intimidate them.

It is estimated by some that around 4 000 websites considered racist currently exist, including 2 500 in the US.² The Federal Court decision indicates that racist material on Australian websites is subject to the same legal standards as other forms of communication,³ and will be censored accordingly. Websites considered racist are also censored in countries such as France and Germany, where it is illegal to publish Holocaust denials and similar material, since it is considered that such material incites racial hatred.⁴ By contrast, in the US, the First Amendment guarantees free speech.

The difficulty with internet censorship lies in reconciling domestic laws, intended to be applied within national borders, with the global nature of the web.⁵

In December 2000, in another case involving Frederick Toben and Holocaust denials on the Adelaide Institute website, the German Federal Court of Justice ruled that German legislation prohibiting racial hatred applies to all material on the internet, regardless of whether or not the material originated in Germany. The decision was criticised as an attempt by the German Federal Court to act as the world's policeman for the internet.⁶

In November 2000, a French Court ordered Yahoo to take all necessary measures to dissuade and make impossible French access to the yahoo.com auction sites, where Nazi memorabilia was allowed to be sold.⁷ Yahoo France, in accordance with

French law prohibiting the purchase of any item that could be construed as pro-Nazi,⁸ had already banned the sale of pro-Nazi items from its auction site, but was further ordered by the court to install warnings informing users of yahoo.com's illegal content.⁹

In January 2001, Yahoo announced that it would no longer allow hate-related items to be displayed on its auction sites.¹⁰ However, Yahoo also successfully appealed the French decision in November 2001 in a Californian court. Judge Jeremy Vogel ruled that the First Amendment protects content generated in the US from being regulated by authorities in countries with more restrictive freedom of expression laws.¹¹

Similarly, Google recently removed from its French and German listings, google.fr and google.de, websites deemed to be anti-Semitic or pro-Nazi. However, these websites are still listed on the US website google.com.¹²

Proponents of free speech point out that the legitimate purpose of the internet is to benefit and empower online users, lowering the barriers to the creation and the distribution of expressions throughout the world. They argue that internet censorship places unreasonable burdens on well established principles of free speech.¹³ The Australian Human Rights and Equal Opportunity Commission recently observed that the issue of online race hate raises questions about retaining the internet's enormous capacity to share information freely and provide a public space to discuss controversial issues, and about the responsible use of that public space in a manner which does not undermine basic human rights.¹⁴ In addition, advocates of free speech claim that countries in which freedom of expression legislation is less strict should not have to be subject to the lowest common denominator, whereby the least tolerant countries, such as Germany and France, set the standard.¹⁵

On the other hand, it is argued that while the role of the internet is to facilitate global communication, it also provides people with a powerful means to support racism and enables them to disseminate easily and widely expressions containing such ideas.¹⁶ As such, the internet should not be a free-for-all or a paradise for proponents of hate ideology. The Council of Europe recently adopted a measure banning material that advocates, promotes or incites hatred based on race.¹⁷ However, there is concern that legislation of this nature will lead hate groups to hide behind the protection of the First Amendment and set up 'virtual shop' in the US,¹⁸ resulting in the US internet becoming a dumping ground for the world's racists.¹⁹

The internet undoubtedly has great utility as a medium of expression throughout the world. However, space may be virtual, but responsibility is real,²⁰ and should be borne by internet users, who reap the benefits that the internet provides. Without any regulation, the internet would be no place to conduct discourse of any kind.²¹ International cooperation is necessary to reconcile the US predilection for freedom of speech with the European reluctance to give a platform to racists. Between the all or nothing extremes lies a broad spectrum of possibilities, and if governments and the internet industry worldwide are prepared to address and discuss them, an acceptable compromise may perhaps be reached.

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 - 3 "Landmark Decision on Race Hate and the Internet" <http://www.scoop.co.nz/stories/W00209/S00188.htm>.
 - 4 "Google excludes race hate, religious sites" <http://www.zdnet.com.au/news/tech/ebusiness/story/0,2000024981,20269353,00.htm>.
 - 5 Akdeniz Y, "Case Analysis of *League Against Racism and Antisemitism (LICRA), French Union of Jewish Students v Yahoo! Inc (USA), Yahoo France*, Tribunal de Grande Instance de Paris (The County

- Court of Paris), Interim Court Order, 20 November 2000" http://www.cyber-rights.org/documents/yahoo_ya.pdf.
 - 6 "Gold S, "German landmark Nazi ruling" <http://www.computeruser.com/news/00/12/14/news5.html>.
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 - 8 Kanoho P, "A Victory for Yahoo! - The United States cannot enforce French censorship of actions". <http://www.internetlawjournal.com/content/litigationheadline01300201.htm>
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 - 12 "Google excludes race hate, religious sites" <http://www.zdnet.com.au/newstech/ebusiness/story/0,2000024981,20269353,00.htm>.
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 - 14 "Internet race hate laws 'incoherent'" <http://australianit.news.com.au/articles/0,7204,5344329%5e15342%5e%5enbv%5e15306-15319,00.html>.
 - 15 Akdeniz Y, "Case Analysis of *League Against Racism and Antisemitism (LICRA), French Union of Jewish Students v Yahoo! Inc (USA), Yahoo France*, Tribunal de Grande Instance de Paris (The County Court of Paris), Interim Court Order, 20 November 2000" http://www.cyber-rights.org/documents/yahoo_ya.pdf.
 - 16 Scheeres J, "Europeans outlaw net hate speech" <http://www.wired.com/news/business/0,1367,56294,00.html>.
 - 17 Scheeres J, "Europeans outlaw net hate speech" <http://www.wired.com/news/business/0,1367,56294,00.html>.
- Representatives of the 44 European countries on the European Council must decide whether to adopt or reject the measure during the next Parliamentary Assembly session in January 2003.
- 18 Scheeres J, "Europeans outlaw net hate speech" <http://www.wired.com/news/business/0,1367,56294,00.html>.
 - 19 "Regulating the net" <http://www.guardian.co.uk/theissues/article/0,6512,353264,00.html>.

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