

1. Introduction

Racism was a pressing social problem long before the emergence of the digital age. The advancement of digital communication technologies such as the Internet has, however, added a new dimension to this problem by providing individuals and organisations with modern and powerful means to support racism and xenophobia. The use of the Internet as an instrument for the widespread dissemination of racist content is outlined in this introductory chapter. A typology of racist content on the Internet will also be provided.

There is no generally agreed definition of “hate speech” or “racist content”. Generally, speech that incites or promotes hatred towards individuals, on the basis of their race, colour, ethnicity, gender, nationality, religion, sexual preference, disability, and other forms of individual discrimination can constitute “hate speech”. In 1997, a Council of Europe recommendation on hate speech stated that the term “hate speech” should be understood as covering “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”.¹ The European Court of Human Rights refers to “all forms of expression which spread, incite, promote or justify hatred based on intolerance (including religious intolerance)”² as “hate speech” but “only statements which promote a certain level of violence qualify as hate speech”.³ Racism, on the other hand, is described by the European Commission against Racism and Intolerance (ECRI) as “the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons”.⁴ It should, however, be noted

1. Council of Europe, Committee of Ministers, Recommendation No. R (97) 20.

2. *Gündüz v. Turkey*, Application No. 35071/97 judgment of 4 December 2003, para. 40. See further European Commission for Democracy through Law (Venice Commission), Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008), CDL-AD(2008)026, at [www.venice.coe.int/docs/2008/CDL-AD\(2008\)026-e.pdf](http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-e.pdf).

3. *Ibid.*

4. European Commission against Racism and Intolerance (ECRI) General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, adopted by ECRI on 13 December 2002.

that “such speech does not necessarily imply the expression of ‘hate’ or emotions. Racial discourse may be concealed in statements that at first sight appear rational or routine.”⁵

However, disagreements and variations exist on these definitions, and the content of “hate speech” or “racist content” could be broader based upon cultural, political, moral and religious differences around the world, and perhaps more evidently within the European region. Such differences, combined with historical, legal, and constitutional background, often lead into the adoption of different legal measures to deal with such content, and variations also exist with regards to what constitutes criminal conduct. While states such as France, Germany, Austria, and Belgium criminalise the denial of the Jewish Holocaust, other European states such as the United Kingdom, Ireland, and Italy do not have similar criminal provisions.

Racism and the dissemination of ideas based on hatred and racial superiority were a pressing social problem prior to the emergence of the information age and digital communications. Long before the Internet entered our homes, racist groups made use of other communication tools including the telephone networks as far back as the 1970s. For example, the Western Guard Party, a white supremacist neo-Nazi group based in Toronto, Canada, had a telephone answering machine which was used to propagate hatred,⁶ and was the subject matter of a long legal dispute in the late 1980s.⁷ The advancement of digital communication technologies such as the Internet has, however, added a new dimension to this problem by providing individuals and organisations “with modern and powerful means to support racism and xenophobia.”⁸

Historically, concerns about “digital hate” date back to the mid 1980s and relate to the documented use of computers, computer bulletin boards and networks to disseminate racist views and content.⁹ According to the Simon Wiesenthal

5. See Council of Europe Steering Committee for Human Rights (CDDH), Committee of Experts for the Development of Human Rights (DH-DEV), Working Group A, Report on “hate speech”, document GT-DH-DEV A(2006)008, Strasbourg, 9 February 2007, at www.coe.int/t/e/human_rights/, para. 4.

6. Canadian Human Rights Commission, *Hate on the Net* (Ottawa: Association for Canadian Studies, Spring 2006) at 4, at www.chrc-ccdp.ca/pdf/HateOnInternet_bil.pdf.

7. *Canada (Human Rights Commission) v. Taylor* [1990] 3 S.C.R. 892 (Prohibition on telephone hate messages in section 13(1) of the Canadian Human Rights Act, S.C. 1976-77, c. 33 was justifiable). See also *Canada (Human Rights Commission) v. Canadian Liberty Net* [1998] 1 S.C.R. 626 and *Canada (Human Rights Commission) v. Heritage Front* [1994] F.C.J. No. 2010 (T.D.) (QL).

8. Council of Europe, Committee of Ministers, Explanatory Report of the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems, (2002) at para. 3, at <http://conventions.coe.int/>.

9. See “Neo-Nazis Inspire White Supremacists”, *The Washington Post* (26 December 1984) (dissemination of racist comments through computer bulletin boards in North America). See also Anti-Defamation League, Report, “Computerized Networks of Hate” (January 1985).

Center's "Online Terror and Hate: The First Decade" report,¹⁰ George Dietz, a West Virginia neo-Nazi, was already using the original computer bulletin boards systems (BBS) in 1983, and Dietz's postings served as a model for later websites. Louis Beam's Aryan Liberty Net was subsequently launched in the US BBS in 1984, as well as the militia movement.¹¹ In Germany, the "right-wing extremist organisations first used bulletin board systems and other electronic communication systems in the early 1990s".¹² The BBS movement quickly jumped on the Internet in the mid 1990s and white supremacist website StormFront was launched in 1995 in the US by former Ku Klux Klan member Don Black with the intention of creating a community around the white power movement, while Ernst Zündel's Holocaust Denial website was launched during 1998 in Canada.

New methods of dissemination of anti-Semitic and revisionist propaganda about the Holocaust (including video games, computer programs and the Minitel system in France) were noted by a United Nations Secretary-General report in 1994,¹³ and the growing use of modern electronic media in international communications between right-wing radical groups (computer disks, databanks, etc.) was recorded in 1995.¹⁴ Officially the use of electronic mail and the Internet was first observed as a growing trend amongst racist organisations to spread racist or xenophobic propaganda in 1996.¹⁵ The UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance in his 1997 report declared that:

The Internet has become the new battleground in the fight to influence public opinion. While it is still far behind newspapers, magazines, radio and television in the size of its audience, the Internet has already captured the imagination of people with a message, including purveyors of hate, racists and anti-Semites.¹⁶

10. The Simon Wiesenthal Center, iReport: "Online Terror and Hate: The First Decade", May 2008, at www.wiesenthal.com/ireport.

11. Ibid.

12. Council of Europe, Octopus Programme, *Organised Crime in Europe: The Threat of Cybercrime: Situation Report 2004* (Strasbourg, 2005), Council of Europe Publishing, p. 138.

13. Secretary-General, *Elimination Of Racism And Racial Discrimination*, UN GA, 49th Sess., UN Doc. A/49/677 (1994).

14. Maurice Glélé-Ahanhanzo, Implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination – Report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, CHR Res. 1994/64, UN ESCOR, 51st Sess., UN Doc. E/CN.4/1995/78 (1995).

15. Secretary-General, *Elimination of Racism and Racial Discrimination: Measures to combat contemporary forms of racism, racial discrimination, xenophobia and related intolerance*, UN GA, 51st Sess., UN Doc. A/51/301 (1996).

16. Maurice Glélé-Ahanhanzo, Implementation of the Programme of Action for the Second Decade to Combat Racism and Racial Discrimination – Report of the UN Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, CHR Res. 1996/21, UN ESCOR, 53rd Sess., UN Doc. E/CN.4/1997/71 (1997).

Although the majority of online racist content was disseminated through North America in the mid 1990s, it was accurately predicted that this would change with the rapid growth of Internet use around the globe. Easy and inexpensive access to the Internet, as well as the development of the World Wide Web, provided new and ready opportunities for publishing and this extended to material of a racist and xenophobic nature.¹⁷ Flyers and pamphlets that had traditionally been distributed locally by hand and had limited visibility could be distributed and accessed globally through the Internet. In fact, the “slow, insidious effect of a relatively isolated bigoted commentary ... has now changed to a form of communication having a widespread circulation”¹⁸ around the globe.

Quantifying the nature of online hate

There is strong documented evidence to show that racist organisations and individuals are currently using the Internet to disseminate racist content. Furthermore, since the 11 September terrorist attacks in the United States, terrorist organisations have started to make use of the Internet for spreading propaganda¹⁹ and inciting violence.²⁰ The resurrection of Nazi ideology in Europe²¹ and violent radicalisation²² across the world are also partially blamed on Internet publications as information and publications associated with such movements are easily and freely available on the Internet.

While there was only a single racist website in April 1995, the Simon Wiesenthal Center estimated that there were more than 5 000 websites in 2005 in a variety of languages which promote racial hatred and violence, anti-Semitism and xenophobia around the world.²³ The Center’s study, entitled “Digital Terrorism & Hate

17. See generally Kenneth S. Stern, *Hate and the Internet* (2004), American Jewish Committee, at www.ajc.org.

18. *Warman v. Harrison* [2006] CHRT 30 at para. 46. See further *Canada (Human Rights Commission) v. Canadian Liberty Net* [1998] 1 S.C.R. 626.

19. See generally Gabriel Weimann, *Terror on the Internet: The New Arena, the New Challenges* (Washington: US Institute of Peace, 2006).

20. See *Threats to international peace and security caused by terrorist acts*, SC Res. 1617, UN ESCOR, 2005, UN Doc. S/RES/1617. See also Anti-Defamation League, *Jihad Online: Islamic Terrorists and the Internet* (2002), at www.adl.org/internet/jihad_online.pdf.

21. Council of Europe, PA, 2006 Ordinary Sess. (Second Part), *Combating the resurgence of Nazi ideology*, Texts Adopted, Res. 1495 (2006). See also Council of Europe, PA, 2003 Ordinary Sess. (Fourth Part), *Racist, xenophobic and intolerant discourse in politics*, Texts Adopted, Res. 1345 (2003).htm. See further Council of Europe, PA, 2003 Ordinary Sess. (Fourth Part), Report of the Committee on Legal Affairs and Human Rights, Documents, Doc. 9904 (2003). All of these texts can be found at <http://assembly.coe.int/>.

22. Council of the European Union, *The European Union Strategy for Combating Radicalisation and Recruitment to Terrorism*, 14347/05 JAI 414 ENFOPOL 152 COTER 69, Brussels (25 November 2005).

23. Canada NewsWire, “Digital Terrorism & Hate 2005 Report Shows 25 Per Cent Increase In Hate Sites”, 7 October 2005.

2005", reported a 25% increase in such websites compared to 2004 indicating that the problem of racism and xenophobia over the Internet was growing. The estimated number of websites which promote racial hatred and violence reached over 6 000 in May 2006 according to the "Digital Terrorism & Hate 2006" report.²⁴ A 17% increase was witnessed during 2007 with the estimated number of websites reaching almost 7 000.²⁵ In May 2008, in a report entitled "Online Terror and Hate: The First Decade",²⁶ the Simon Wiesenthal Center identified 8 000 websites and Internet postings that carried racist content as well as terrorist propaganda. This represented a 30% increase over the Center's 2007 findings. The Center's 2008 report provides an interactive snapshot into the many spheres of the global problem of Internet hate, exposing the inner workings of such notorious groups as al-Qaeda, Hamas, Hezbollah, Combat 18 and the Ku Klux Klan among others. While assessing the growing number of websites and forums that are associated with known racist and terrorist organisations the report states that "the Internet's unprecedented global reach and scope combined with the difficulty in monitoring and tracing communications make the Internet a prime tool for extremists and terrorists".²⁷ More recently, in May 2009, the Simon Wiesenthal Center in a report entitled "Facebook, YouTube +: How Social Media Outlets Impact Digital Terrorism and Hate" claimed that the number of websites and Internet postings carrying racist content, and terrorist propaganda surpassed 10 000.²⁸

The nature of online hate

While anti-Semitism is a prevalent theme among online extremists, no group is immune from attack and at the same time, no group is immune from having online extremists in their midst. Catholics, Muslims, Hindus, homosexuals, women, immigrants are some of the most targeted groups.²⁹

Several controversial publications of a racist nature, or publications which encourage violence, are currently disseminated through a number of websites, blogs, and newsgroups. For example, a considerable number of websites disseminate

24. The Simon Wiesenthal Center, "Digital Terrorism & Hate 2006", available through www.wiesenthal.com.

25. The Simon Wiesenthal Center, "Digital Terrorism & Hate 2007", available through www.wiesenthal.com. See further the *Vancouver Sun* (British Columbia), "Hate mongers flock to the net; More than 7 000 websites said to be 'direct-marketing' racism and violence", 11 August 2007.

26. The Simon Wiesenthal Center, iReport: "Online Terror and Hate: The First Decade", May 2008, at www.wiesenthal.com/ireport.

27. Ibid.

28. Release of Simon Wiesenthal Center, "Facebook, YouTube +: How Social Media Outlets Impact Digital Terrorism and Hate" (New York Tolerance Center 5/13/09). Press release available through www.wiesenthal.com.

29. Ibid., pp. 8-9.

anti-Semitic materials³⁰ including the fraudulent document known as the *Protocols of the Elders of Zion*³¹ “which purports to be the actual blueprint by Jewish leaders to take over the world.”³² Although several other controversial publications of a racist nature or that encourage violence are available over the Internet, none are as widely available as this anti-Semitic forgery which “refuses to die.”³³ The *Protocols of the Elders of Zion* was first published in Russia in 1905 and is available through a number of websites including Hamas Online (website of the Palestinian Sunni Islamist militant organisation) and is still a bestseller in print format in many Muslim countries.³⁴ There are also several websites which deny the existence of the Holocaust or which try to minimise or justify the Nazi atrocities of the Second World War. The distribution of literature which promoted such ideas was largely limited until the mid 1990s but since then several, including the infamous Zundelsite, came to existence, and pamphlets such as *Did Six Million Really Die?* are freely available to download from these websites.

During the mid 1990s Andrew MacDonald’s *The Turner Diaries*,³⁵ which has been considered by the US Justice Department and the FBI as the bible of right-wing militia groups, was also made available widely over the Internet and is believed to have provided the blueprint for the Oklahoma City bombing. Similarly, the *Encyclopaedia of the Afghan Jihad*, a manual of Jihad in 10 or 11 volumes, details how to make and use explosives and firearms, and how to plan and carry out assassinations and other terrorist acts. The *Encyclopaedia* is regarded as the “blueprint for terror” and is also available over the Internet in Arabic,³⁶ and it bore a “dedication to Osama bin Laden, among others, and suggested Big Ben and the Eiffel Tower as targets for attack, the prosecution alleged. The manual urged that plans ‘should be laid out’ to hit buildings such skyscrapers, ports, airports, nuclear plants and football stadiums, the prosecution said, and it talked about attacking large congregations of people at Christmas.”³⁷ Other often-cited publications of

30. See UK Parliamentary Committee Against Antisemitism, *Report of the All-Party Parliamentary Inquiry into Antisemitism* (London: The Stationery Office Limited, 2006), at <http://thepeaa.org/>.

31. Sergius Nilus, *The Protocols of the Meetings of the Learned Elders of Zion With Preface and Explanatory Notes* (Honolulu: University Press of the Pacific, 2003).

32. Will Eisner, *The Plot: The Secret Story of the Protocols of the Elders of Zion* (New York: W.W. Norton & Company, 2005). See further Norman Cohn, *Warrant for Genocide: The Myth of the Jewish World Conspiracy and the Protocols of the Elders of Zion* (Serif Publishing, 2005); and Hadassa Ben-Itto, *The Lie That Wouldn't Die: The Protocols of the Elders of Zion* (Mitchell Vallentine & Company, 2005).

33. Edward Rothstein, “The Anti-Semitic Hoax That Refuses to Die”, *The New York Times*, 21 April 2006.

34. Phillip Adams, “Mel Gibson’s affliction seems hereditary”, *The Australian*, 8 August 2006.

35. Andrew MacDonald, *The Turner Diaries: A Novel* (Fort Lee, N.J.: Barricade Books, 1996).

36. The US Department of Justice made available an English version as a PDF document a few years back. See *The Register*, “Download al Qaeda manuals from the DoJ, go to prison?” 30 May 2008, at www.theregister.co.uk/2008/05/30/notts_al_qaeda_manual_case/.

37. “Abu Hamza trial: Islamic cleric had terror handbook, court told”, *The Guardian*, London, 12 January 2006.

concern include the infamous *Anarchist's Cookbook*, *The Al-Qaeda Manual*, *The Mujahideen Poisons Handbook*, *The Terrorists Handbook*, *Women in Jihad*, and *Essay Regarding the Basic Rule of the Blood, Wealth and Honour of the Disbelievers*,³⁸ possession of which could potentially lead to a possession charge under the Terrorism Act 2000 in the United Kingdom.³⁹

More recently blasphemous cartoons of Prophet Muhammad were published in *Jyllands-Posten*, a Danish newspaper based in Aarhus on 30 September 2005, and were subsequently published in several European newspapers. The publication of the cartoons has caused outrage and violent protests among the Muslim community around the world. Electronic versions of these cartoons were also circulated on the Internet and they currently remain accessible over the Internet. This caused, for example, the Supreme Court of Pakistan to order the government to block Internet sites displaying the blasphemous cartoons, including the popular blogging service Blogger⁴⁰ in March 2006.⁴¹

Evolving nature of online hate and Web 2.0 technologies

In time, this type of content would be presented in more attractive high-quality formats including that of online racist videos,⁴² cartoons, music,⁴³ radio, and audio-visual transmissions in a variety of languages. Furthermore, games such as the US National Socialist Movement's *ZOG's Nightmare*, the National Alliance's *Ethnic Cleansing*, in which ethnic cleansing is the main theme,⁴⁴ and the modified version of an old racist game *KZ (German for Concentration Camp) Manager*, which involve the Turkish minorities in Germany, are freely available to download from a number of websites on the Internet.

38. See generally the UK case of *R. v. Malik* [2008] All ER (D) 201 (Jun) at <http://cyberlaw.org.uk>.

39. Section 57 of the Terrorism Act 2000 has been recently used in the UK for a number of prosecutions. Note BBC News, "Boy in Court on terror charges", 5 October 2007; BBC News, "Bomb suspect 'not into politics'" 20 October 2008; BBC News, "Teenage bomb plot accused cleared", 23 October 2008.

40. See www.blogger.com.

41. See "Supreme Court directs strict steps for banning blasphemous web-sites", *The Pakistan Newswire* (2 March 2006); "Pakistan Blocks Anti-President, 'Blasphemous' Blogs", *BBC Monitoring International Newswire* (6 March 2006); "Web Sites Carrying Blasphemous Images Blocked, Supreme Court Told", *Pakistan Press International* (20 March 2006); and "SC orders case against cartoon publishers", *Daily [Pakistan] Times* (18 April 2006).

42. See, e.g., "Videos of hate flout curbs on Islamists", *The Sunday Times* (London) (16 July 2006). The story covers the hate videos published on the website of Ahlus Sunnah wal Jamaah (ASWJ), a splinter of al-Muhajiroun.

43. Note that more than 600 CDs containing racist music are available for purchase through the US National Socialist Movement's website <http://nsm88records.com>.

44. A considerable number of such games were documented in the Simon Wiesenthal Center report "Digital Terrorism & Hate 2006" which is available online at www.wiesenthal.com.

In May 2008, the Simon Wiesenthal Center's "Online Terror and Hate: The First Decade" report pointed out that "extremists are leveraging 2.0 technologies to dynamically target young people through digital games, Second Life scenarios, blogs, and even Youtube and Facebook style videos depicting racist violence and terrorism".⁴⁵ Web 2.0 is a recent term which refers to new technologies designed to be used on the World Wide Web with the intention of enhancing information sharing, and collaboration among users rather than simply retrieving information with interactivity taking centre stage. Well-known examples include the development and evolution of web-based communities and hosted services such as the popular social networking sites Facebook and MySpace, video-sharing application YouTube, photo-sharing application Flickr, extremely popular blogging sites and communities such as Wordpress and Blogger, and user-driven multilingual, web-based, free content encyclopaedia project Wikipedia, and tag and share web pages using social bookmarking services such as del.icio.us and Digg.

Following the extreme popularity of these free-to-use Web 2.0 technologies, racist organisations and individuals have started to use Web 2.0 technologies and applications such as YouTube and other on-demand video and photo sites to disseminate audio-visual content involving hatred,⁴⁶ and to "dynamically target young people".⁴⁷ For example, it was documented in Germany that YouTube hosted controversial videos such as *Jud Süß* (The Jew Süß), a 1940 anti-Semitic propaganda film, as well as content from banned German rock band Landser which depicts Nazi military operations in their music video clips. It was reported by the London *Sunday Times* that the Central Council of Jews in Germany was planning to bring criminal charges against YouTube with regard to the availability of this particular Nazi propaganda video on YouTube.⁴⁸ YouTube subsequently removed the video clips concerned but the council complained that there were several other Nazi propaganda clips that were not removed by YouTube and Google. Jugendschutz.net, the German Internet hotline which tackles the problem of online hate, documented about 700 videos with right-wing content on YouTube during the course of 2007. Jugendschutz.net reported in their 2007

45. The Simon Wiesenthal Center, iReport: "Online Terror and Hate: The First Decade", May 2008, at www.wiesenthal.com/ireport. Note further Agence France Presse, "Web 2.0 gives new tools to hate groups: experts", 18 November 2008.

46. *The International Herald Tribune*, "Putting a box around the tube; Governments see risk in Internet sharing sites," 23 April 2007; *The People*, "Mein Space; Exclusive Revealed. How Sick UK Nazis Target Your Kids on Cult", 23 September 2007, p. 31; *The Jerusalem Post*, "Neo-Nazi gang 'had been operating for 2 years'. One indicted member was electrician in PM's office", 12 September 2007; *The Voice*, "Myspace and YouTube prime targets for bigots", 12 September 2007, at www.voice-online.co.uk/; Wolf, C., "The Web fuels hate speech", *The International Herald Tribune*, 16 November 2007.

47. The Simon Wiesenthal Center, iReport: "Online Terror and Hate: The First Decade", May 2008, at www.wiesenthal.com/ireport.

48. *The Sunday Times*, "Nazi videos on YouTube spark legal challenge", 2 September 2007.

annual report that other video-sharing platforms based on YouTube with neo-Nazi themes have been developed during 2007. Similarly, Austria's Defence Ministry launched an investigation following media reports suggesting that a particular YouTube video clip showed Austrian soldiers making Hitler salutes in Austrian army barracks.⁴⁹

In April 2008, a *New York Times* article revealed that "among the millions of clips on the video-sharing Web site YouTube are 11 racially offensive Warner Brothers cartoons that have not been shown in an authorised release since 1968".⁵⁰ According to the *New York Times*, the cartoons, known as the "Censored 11", have been unavailable to the public for forty years. Subsequently, the majority of these offensive videos were removed but some are still accessible through YouTube.

A French Jewish group, the National Bureau of Vigilance Against Anti-Semitism (BNVCA), announced in August 2008 that it would take legal action against YouTube and Dailymotion over a clip showing a host of Jewish public figures to the soundtrack of a pre-war anti-Semitic song.⁵¹ The clip shows a slideshow of more than 150 French politicians, TV stars, journalists, writers, philosophers, actors, singers and comedians with the sound of a song recorded before the Second World War, called *Rebecca's wedding*, which describes the guests at a Jewish wedding as dirty, rude and dishonest. The French group decided to take legal action due to the anti-Semitic nature of the video clip.

Racist ideas and content are also disseminated through MySpace⁵² and Facebook.⁵³ The presence of the racist British National Party (BNP) on Facebook prompted a major boycott of Facebook by high-profile companies including Vodafone, and Virgin Media, who pulled their advertisements from Facebook. An investigation by a campaign group, Unite Against Fascism, discovered that there were Facebook profile images of Ku Klux Klan members posing with a sword under the subtitle "Local BNP meeting, blacks welcome".⁵⁴ More recently, the National Education, Health and Allied Workers Union in South Africa condemned the racist content and comments posted by a group of University of North West students on a Facebook site.⁵⁵ There were also reports to suggest that white supremacist groups

49. Associated Press, "Austrian defence minister investigates video of soldiers in Nazi salutes", 4 September 2007.

50. *The New York Times*, "Cartoons of a Racist Past Lurk on YouTube", 28 April 2008.

51. See AFP, "French Jewish group to sue YouTube", 14 August 2008.

52. New Media Age, "MySpace gets tough to keep ads away from extreme pages", 16 August 2007.

53. *The Calgary Sun* (Alberta), "The new face of hate: The swaggering skinheads and marching jackboots have all but vanished, but make no mistake: The poisonous ideology of white supremacy is alive and well in Canada", 23 September 2007.

54. *The Evening Standard* (London), "Facebook told: Outlaw racist BNP user groups", 17 August 2007; *Nottingham Evening Post*, "MP joins call for Facebook ban on BNP", 16 August 2007; Press Association, "Petition calls for Facebook ban on BNP", 15 August 2007.

55. "Call for action on Facebook racists", *The Mercury* (South Africa), 8 October 2008.

created the networking site Eurspace based on the popularity of social networking sites.

More recently, in November 2008, Facebook removed “several pages from its site used by Italian neo-Nazis to incite violence after European politicians accused the Internet social networking site of allowing a platform to racists”.⁵⁶ The media reports suggested that seven different Facebook groups had been created with titles advocating violence against Romani people. Following complaints Facebook, which does not pre-screen content going on its system, stated that it would “remove any groups which are violent or threatening”,⁵⁷ and which therefore violate its terms of use which bans users from posting anything which is hateful, or racially, ethnically or other-wise objectionable.⁵⁸ The existence of such groups was described as “repulsive” by Martin Schulz, Socialist leader in the European Parliament, who lodged a complaint with Facebook based in California. The Simon Wiesenthal Center, instead, asked Facebook to create technology to filter out hate speech and racist content.

Furthermore, it was reported that even Internet-based virtual gaming worlds such as Second Life⁵⁹ and World of Warcraft have been used by certain groups to disseminate racist content and to create presence on such virtual fantasy environments.

Close relationship between racist discourse and racist violence

The relationship between hate speech on the Internet and hate-motivated violence has not been investigated in a comprehensive manner, but numerous cases strengthen the assumption that there is a link under specific circumstances.⁶⁰

According to a recent report of the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE), “the intersection of racist discourse on the Internet and racist violence was a theme that received increasing attention in 2006, including the use of the Internet to identify particular individuals as targets for violence and to disseminate their personal information”.⁶¹ For example, according to the report, “explicit

56. Reuters, “Facebook Pulls Italian Neo-Nazi Pages After Outcry”, 14 November 2008.

57. Ibid.

58. See Facebook’s terms of use at www.facebook.com/home.php#/terms.php?ref=pf.

59. Washington Internet Daily, “Online Hate Speech Deserves More Attention, U.S. Helsinki Commission Hears”, 16 May 2008.

60. ODIHR, Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2006, OSCE/ODIHR (2007), p. 83.

61. ODIHR, Hate Crimes in the OSCE Region: Incidents and Responses, Annual Report for 2006, OSCE/ODIHR (2007), p. 64.

instructions for racist attacks on particular individuals in Russia were found on the websites of skinhead groups".⁶²

The ODIHR report also pointed out that "instructions for racist, anti-Semitic, and homophobic violence were found on a Redwatch website hosted in the United States that was maintained by a right-wing organisation in Poland".⁶³ Redwatch, originally produced by "Combat 18", started publishing the names and addresses of anti-racist campaigners in Britain in print format in 1993, almost ten years before they set up their website.⁶⁴ It now has branches in Germany and Poland and the Polish version, which was hosted in the United States, "posted the names, addresses, and telephone numbers of representatives of Jewish, anti-racism, and left-wing organisations and encouraged violence against them" according to the ODIHR report. In June 2006, the Polish police arrested two individuals for ties to the website and charged eight others with collaborating on the site. Polish authorities also asked the United States for help in closing down the website.⁶⁵ The ODIHR report claims that following the arrests and prosecutions, the Polish version was closed down, but despite various attempts the UK version is still up and running, and that since 2004, the "number of extremist websites posting hit lists has been on the rise".⁶⁶ The UK version shows photographs of anti-racist activists, many taken during protests against the British National Party, alongside the slogan: "Remember places, traitors' faces, they'll all pay for their crimes."

Similarly, it was reported by *Der Spiegel* in July 2008 that neo-Nazi groups in Germany are "trying to intimidate left-wing politicians and activists by publishing their names, photos and addresses on Web sites, often accompanied by increasingly blatant threats".⁶⁷ According to *Der Spiegel*, "calls for violence against left-wing activists, trade unionists and journalists are becoming increasingly blatant on the approximately 1 700 far-right Web sites in Germany".⁶⁸ Several examples of neo-Nazi websites revealing personal details and addresses and calling for violence were cited by *Der Spiegel* including the following:

- A Bavarian group of neo-Nazis set up an online dossier of almost 200 men and women living in and around Nuremberg. It published photos of them that it had secretly taken at demonstrations.

62. Ibid.

63. Ibid.

64. See "RACE magazines publish names and addresses of 'Red' Activists", *The Guardian*, 20 February 1993; and "Rapid increase in racial attacks 'Widely Ignored'", *The Guardian*, 20 February 1993.

65. BBC News, "Polish Police Make Four Arrests in Swoop for Fascist Group", 1 June 2006.

66. ODIHR, *Hate Crimes in the OSCE Region: Incidents and Responses*, Annual Report for 2006, OSCE/ODIHR (2007), p. 83.

67. *Der Spiegel*, "Neo-Nazis Using Web Sites to Threaten Opponents", 24 July 2008, at www.spiegel.de.

68. Ibid.

- One website mocks the sister of an anti-Nazi activist for frequently spending her holidays in Turkey.
- A judge in the northern city of Kiel who had sentenced a member of the far-right National Democratic Party to pay a heavy fine was hit even harder. Neo-Nazis published his address on a website, revealed how many children he had and that “some of our readers would relish the opportunity to slay a judge or public prosecutor in the wild”.
- Neo-Nazis in the western state of Hesse published maps showing the locations of left-wing politicians or members of anti-Nazi citizens’ groups.

As in the case of the Redwatch UK website, the German efforts to remove some of these websites proved to be hopeless. The majority of these websites are based outside German jurisdiction and they are usually hosted in the United States.

Seeking solutions

The Internet has thus become the medium of choice for propaganda, disseminating hatred,⁶⁹ recruitment,⁷⁰ training,⁷¹ fundraising,⁷² and for communications⁷³ by racist as well as terrorist organisations.

Obviously there is major concern about the availability of racist content, hate speech and terrorist propaganda on the Internet, and many governments and international and regional–international organisations, including the Council of Europe, the European Union, the UN and the OSCE are in agreement that racism and manifestations of racism through the Internet should not and will not be tolerated. However, the major question that is being faced by international organisations and state-level regulators is how to regulate the flow of racist content over the Internet. The question becomes even more complex by the fact that different political, moral, cultural, historical and constitutional values exist between different states. This undoubtedly complicates efforts to find an “appropriate balance between the rights to freedom of opinion and expression and to receive and impart information and the prohibition on speech and/or activities

69. Note the study conducted by Glaser, J., Dixit, J., Green, D.P., “Studying Hate Crime with the Internet: What Makes Racists Advocate Racial Violence?” (2002) *Journal of Social Issues* 58(1) spring, pp. 177-193.

70. Hylton, H., “How Hizballah Hijacks the Internet,” *Time Magazine*, 8 August 2006, at www.time.com/.

71. Publications such as *Mujahideen Explosive Handbook* and the *Encyclopaedia of the Afghan Jihad* are some of the publications disseminated and distributed through the Internet. Note “Terror law vague, accused to argue”, *The Globe and Mail* (Canada), 30 August 2006 and “Abu Hamza trial: Islamic cleric had terror handbook, court told”, *The Guardian*, London, 12 January 2006.

72. Note the Communication from the European Commission to the European Parliament and the Council concerning terrorist recruitment: addressing the factors contributing to violent radicalisation, Brussels, 21.9.2005, COM(2005) 313 final.

73. See “Foiled plots”, *The Globe and Mail* (Canada), 11 August 2006.

promoting racist views and inciting violence".⁷⁴ That balance is yet to be attained at an international level, and "in today's multicultural context, striking the right balance is becoming increasingly important, but at the same time more difficult".⁷⁵

It has become clear during the policy discussions of the last ten years that, in particular, the United States of America opposes any regulatory effort to combat racist publications on the Internet on freedom of expression grounds based upon the values attached to the First Amendment of the US Constitution. At the same time, there are other organisations or states which regard harmonised national legislation and international agreements as the way forward. For example, ECRI believes that "national legislation against racism and racial discrimination is necessary to combat these phenomena effectively".⁷⁶ This view, supported by many member states of the Council of Europe, led to the development of an Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems between 2001 and 2003. The US Government wholeheartedly supported the development of a cybercrime convention within the Council of Europe region and ratified the convention as an external supporter, but decided not to support or get involved with the development of the Additional Protocol to the Convention on Cybercrime. Hence, fundamental disagreements remain as to the most appropriate and effective strategy "for preventing dissemination of racist messages on the Internet, including the need to adopt regulatory measures to that end".⁷⁷

Despite these fundamental differences, the growing problem of racist content on the Internet has naturally prompted vigorous responses from a variety of agents, including governments, supranational and international organisations as well as from the private sector. A detailed overview of these regulatory and non-regulatory initiatives will be provided in this book.

74. Report of the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action on its fourth session (Chairperson-Rapporteur: Juan Martabit (Chile)), E/CN.4/2006/18, 20 March 2006, at <http://daccessdds.un.org/doc/>.

75. ECRI, Expert Seminar: Combating racism while respecting freedom of expression, Conference Proceedings, Strasbourg, 16-17 November, 2006, p. 5.

76. Note within this context the ECRI General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination, CRI (2003) 8, adopted on 13 December 2002, at www.coe.int, para. 1 of the explanatory report.

77. The meeting on the relationship between racist, xenophobic and anti-Semitic propaganda on the Internet and hate crimes held by the OSCE in Paris on 16-17 June 2004.