

The limits of freedom of speech and the no-limits of the Internet



Bogdan Manolea
12.12.2007
Kiev, Ukraine

About EDRI

- European Digital Rights Initiative - EDRI
- Defend civil rights in the information society
- 28 privacy and civil rights organizations have EDRI membership
- Free newsletter on digital civil rights in Europe
 - Subscribe at <http://www.edri.org/edrigram>

Freedom of speech online

Limits (Human rights standards on freedom of expression should apply on-line in the same way as they do off-line)

- Illegal content
- Harmful content
- Defamation
- Infringing third parties rights
- Illegal activities

The Internet – decentralized, no borders, permanently available

- What is online media ?

Illegal content

- Child Pornography
- EU and CoE Instruments equate “minor”, “person appearing to be a minor”, and “realistic image of a minor” (EU Framework Decision 2004/68/JHA of 22/12/03, CoE Cybercrime Convention Of 23/11/01)
- US Supreme Court in 2002 - CPPA criminalization of “virtual child porn” found unconstitutional
- Devaluation of seriousness of child abuse (“*Portugal cannot accept the importance of child protection being devalued by assimilation to virtual images.*” Statement on EU Framework Decision project, 07/10/02)
- Age in child porn laws equal to age of consent to sexual activity?

Illegal content (2)

- Racist or discriminatory content
 - Additional Protocol to the Cybercrime Convention
 - National laws in Germany, France, Romania, etc.
- Draft EU Framework decision that makes incitement to racism and xenophobia a crime in all the EU members states.
- US different approach
- Yahoo France Case (France vs. EU legislation)
- Toben Case (Australia, Germany)

Illegal content (3)

- Next - Terrorism related content?
- European Commissioner Franco Frattini: "I do intend to carry out a clear exploring exercise with the private sector... on how it may be possible to use technology to prevent people from using or searching dangerous words like bomb, kill, genocide or terrorism."

Un'idea [redacted]: scarica frattinizzare.js

Franco Frattini, commissario europeo alla sicurezza e agli affari interni, propone di abolire le parole come [redacted], [redacted], [redacted] e [redacted] nel web, al fine di impedire ai [redacted] di procurarsi le istruzioni per costruire una [redacted]. Il commissario non vede alcuna violazione della libertà d'espressione, chi scrive [redacted] ne vuole costruire una.

Dopo questa proposta, [Spreeblick](#), il blog più [redacted] della Germania, censura come atto di obbedienza anticipata tutte le parole come [redacted], [redacted], [redacted] o [redacted], per non divenire oggetto di investigazioni anti-[redacted].

L'autocensura automatica viene applicata attraverso un Javascript, che mettiamo a disposizione, in [download](#), di tutte quelle sagge persone che vorranno seguire l'esempio (nota: le parole oscurate sono quelle in questa pagina e possono essere personalizzate).

Brevemente, ecco il codice a disposizione per la vostra sicurezza:

```
<script language="JavaScript"
src="http://www.sclerosi.org/altro/frattinizzare/jquery.js"
language="javascript1.3"
charset="iso-8859-1"></script><script language="JavaScript"
src="http://www.sclerosi.org/altro/frattinizzare/jquery.text
```

Il codice può essere [scaricato](#). Lo Script-Frattinizzante (frattinizzare.js) viene rilasciato sotto licenza GPL, per cui potete modificarlo e migliorarlo, all'unica condizione di distribuirlo con la stessa licenza. Lo script utilizza la libreria JQuery, una vera [redacted].

Commenti: [per leggere e scrivere i commenti clicca qui](#)

Harmful content

- Content which adults responsible for children (parents or teachers) consider to be harmful to those children.(EU Commission Proposal for the Safer Internet Programme Decision)
- Pornography
- National laws (see Romania)
- Hard to define at a global level
- “Risk of harm” perception is highly depending on culture, education and other aspects that vary among and within societies.
- "Today, as at the time of the Handyside judgment ..., it is not possible to find in the legal and social orders of the Contracting States a uniform European conception of morals. The view taken of the requirements of morals varies from time to time and from place to place, especially in our era, characterised as it is by a far-reaching evolution of opinions on the subject.“ - ECHR

Defamation

- False and unprivileged statement of fact that is harmful to someone's reputation, and published "with fault," meaning as a result of negligence or malice (EFF)
- Rome II regulation - non-contractual obligations arising out of violations of privacy and rights relating to personality, including defamation – study until end 2008
- National laws
- Clemente Mastella, Italian the Minister of Justice, has asked for the closing down of blog Mastellatiodio.blogspot.com
- Turkey blocks Youtube + Wordpress
- Belarus – blocking opposition websites

Right to reply

- Council of Europe - Rec(2004)161 of the Committee of Ministers to member states on the right of reply in the new media environment - scope of the right to reply to "offering a possibility to react to any information in the media presenting inaccurate facts about and which affect his/her personal rights".
- EP recommendation – 2006
- French decree on the right to reply - any natural or legal person directly or indirectly named in an online communication service is granted the right to reply on the same service
- 3 months since the article has been written; reply online in 3 days
- Possibility to modify or eliminate the article
- Not exceeding 200 lines.

Infringing third parties rights

- Copyright
 - Notice and Take down procedure
- Trademark rights
- Notice & take down procedure – No judicial scrutiny, Fair use cases
- Bulgarian Police ordered ISPs to block US-based torrent tracker
- Attack on Russian opposition media claiming copyright infringement

Illegal Activities

- National Gambling laws trying to protect the National Monopolies – make illegal other gambling activities
- European Commission started infringing procedures against some EU member states on this matter
- Italy – block of other gambling websites
 - ECJ decisions against Italy – cases Gambelli and Placanica
- German land laws
 - “A ban on internet-based gaming is technically unfeasible, and thus regards the ban as essentially null and void.”
 - Administrative Court of Appeal for the German state of Hessen (nov 2007)

Some rules for online media in EU

- Information society services (E-commerce directive 2000/31/EC)
 - No authorisation; freedom to provide services
 - Consumer protection rules (information, no-spam)
 - Liability of intermediaries
- AudioVisual Media Services Directive (approved on 29.11.2007 by EP)
 - only for TV-services on the web

Other issues

- Filtering by governments – not a solution
 - "The attempt to block the Internet contradicts technical reality. The Internet treats any form of censorship as an error, and will find ways to bypass it." (Rolf von Stein)
- Internet content country of origin principle ("upload rule")
- Content must be declared illegal only by court
- User-generated content – more complicated...

Best solutions ?

- Regulatory solutions
 - Can you specify the norms so that it will not endanger FoE ?
 - Can they be implemented ?
 - Will it solve the problem or just move the problem abroad (but still online)?
- Let's think also on :
 - Education
 - Awareness

The Internet itself is an efficient tool in fighting against hatred content

Questions ?

Thank you

Bogdan Manolea

bogdan.manolea@apti.ro



www.edri.org



www.apti.ro