

RESPONDING TO EXTREMIST SPEECH ONLINE

10 FREQUENTLY ASKED QUESTIONS

1. WHY CAN'T THE GOVERNMENT BAN USE OF THE INTERNET TO SPREAD HATEFUL AND RACIST IDEOLOGY IN THE UNITED STATES?

The Internet is probably the greatest forum for the exchange of ideas that the world has ever seen. It operates across national borders, and efforts by the international community or any one government to regulate speech on the Internet would be virtually impossible, both technologically and legally.

In the United States, the First Amendment to the Constitution guarantees the right of freedom of speech to all Americans, even those whose opinions are reprehensible. In a number of recent decisions, the Supreme Court has reaffirmed that our government may not regulate the content of Internet speech to an extent greater than it may regulate speech in more traditional areas of expression such as the print media, the broadcast media, or the public square. While courts may take into account the Internet's vast reach and accessibility, they must still approach attempts to censor or regulate speech online from a traditional constitutional framework.

2. WHAT KIND OF HATE SPEECH ON THE INTERNET IS NOT PROTECTED BY THE FIRST AMENDMENT?

Internet speech that is merely critical, annoying, offensive or demeaning enjoys constitutional protection. However, the First Amendment does not provide a shield for libelous speech or copyright infringement, nor does it protect certain speech that threatens or harasses other people. For example, an E-mail or a posting on a Web site that expresses a clear intention or threat by its writer to commit an unlawful act against another specific person is likely to be actionable under criminal law. Persistent or pernicious harassment aimed at a specific individual is not protected if it inflicts or intends to inflict emotional or physical harm. To rise to this level, harassment on the Internet would have to consist of a "course of conduct" rather than a single isolated instance. A difficulty in enforcing laws against harassment is the ease of anonymous communication on the Internet. Using a service that provides almost-complete anonymity, a bigot may repeatedly E-mail his victim without being readily identified.

Blanket statements expressing hatred of an ethnic, racial or religious nature are protected by the First Amendment, even if those statements mention individual people and even if they cause distress in those individuals. Similarly, denial of the Holocaust -- though abhorrent -- is almost never actionable under American law. The Constitution protects the vast majority of extremist Web sites that disseminate racist or anti-Semitic propaganda.

3. HAS ANYONE EVER BEEN SUCCESSFULLY PROSECUTED IN THE UNITED STATES FOR SENDING RACIAL THREATS VIA EMAIL?

There is legal precedent for such a prosecution. In 1998, a former student was sentenced to one year in prison for sending E-mail death threats to 60 Asian-American students at the University of California, Irvine. His E-mail was signed "Asian hater" and threatened that he would "make it my life career [sic] to find and kill everyone one [sic] of you personally." That same year, another California man pled guilty to Federal civil rights charges after he sent racist E-mail threats to dozens of Latinos throughout the country.

4. HAS ANYONE EVER BEEN HELD LIABLE IN THE UNITED STATES FOR ENCOURAGING ACTS OF VIOLENCE ON THE WORLD WIDE WEB?

Yes. In 1999, a coalition of groups opposed to abortion was ordered to pay over \$100 million in damages for providing information for a Web site called "Nuremberg Files" which posed a threat to the safety of a number of doctors and clinic workers who perform abortions. The site posted photos of abortion providers, their home addresses, license plate numbers and the names of their spouses and children. In three instances, after a doctor listed on the site was murdered, a line was drawn through his name. Although the site fell short of explicitly calling for assault on doctors, the jury found that the information it contained amounted to a real threat of bodily harm.

5. CAN HATE CRIMES LAWS BE USED AGAINST HATE ON THE INTERNET?

If a bigot's use of the Internet rises to the level of criminal conduct, it may subject the perpetrator to an enhanced sentence under a state's hate crimes law. Currently, 40 states and the District of Columbia have such laws in place. The criminal's sentence may be more severe if the prosecution can prove that he or she intentionally selected the victim based on the victim's race, nationality, religion, gender or sexual orientation. However, these laws do not apply to conduct or speech protected by the First Amendment.

6. MAY COMMERCIAL INTERNET SERVICE PROVIDERS (ISPs) PREVENT THE USE OF THEIR SERVICES BY EXTREMISTS?

Yes. Commercial ISPs, such as America Online (AOL), may voluntarily agree to prohibit users from sending racist or bigoted messages over their services. Such prohibitions do not implicate First Amendment rights because they are entered into through private contracts and do not involve government action in any way.

Once an ISP promulgates such regulations, it must monitor the use of its service to ensure that the regulations are followed. If a violation does occur, the ISP should, as a contractual matter, take action to prevent it from happening again. For example, if a participant in a chat room engages in racist speech in violation of the "terms of service" of the ISP, his account could be cancelled, or he could be forbidden from using the chat room in the future. ISPs should encourage users to report suspected violations to company representatives.

The effectiveness of this remedy is limited, however. Any subscriber to an ISP who loses his or her account for violating that ISP's regulations may resume propagating hate by subsequently signing up with any of the dozens of more permissive ISPs in the marketplace.

7. MAY UNIVERSITIES PREVENT THE USE OF THEIR COMPUTER SERVICES FOR THE PROMOTION OF EXTREMIST VIEWS?

Because private universities are not agents of the government, they may forbid users from engaging in offensive speech using university equipment or university services. Public universities, as agents of the government, must follow the First Amendment's prohibition against speech restrictions based on content or viewpoint.

Nonetheless, public universities may promulgate content-neutral regulations that effectively prevent the use of school facilities or services by extremists. For example, a university may limit use of its computers and server to academic activities only. This would likely prevent a student from creating a racist Web site for propaganda purposes or from sending racist E-mail from his student E-mail account. One such policy -- at the University of Illinois at Champaign-Urbana -- stipulates that its computer services are "provided in support of the educational, research and public service missions of the University and its use must be limited to those purposes."

Universities depend on an atmosphere of academic freedom and uninhibited expression. Any decision to limit speech on a university campus -- even speech in cyberspace -- will inevitably affect this ideal. College administrators should confer with representatives from both the faculty and student body when implementing such policies.

8. HOW DOES THE LAW IN FOREIGN COUNTRIES DIFFER FROM AMERICAN LAW REGARDING HATE ON THE INTERNET? CAN AN AMERICAN CITIZEN BE SUBJECT TO CRIMINAL CHARGES ABROAD FOR SENDING OR POSTING MATERIAL THAT IS ILLEGAL IN OTHER COUNTRIES?

In most countries, hate speech does not receive the same constitutional protection as it does in the United States. In Germany, for example, it is illegal to promote Nazi ideology. In many European countries, it is illegal to deny the reality of the Holocaust. Authorities in Denmark, France, Britain, Germany and Canada have brought charges for crimes involving hate speech on the Internet.

While national borders have little meaning in cyberspace, Internet users who export material that is illegal in some foreign countries may be subject to prosecution under certain circumstances. An American citizen who posts material on the Internet that is illegal in a foreign country could be prosecuted if he subjected himself to the jurisdiction of that country or of another country whose extradition laws would allow for his arrest and deportation. However, under American law, the United States will not extradite a person for engaging in a constitutionally protected activity even if that activity violates a criminal law elsewhere.

9. WHAT ARE INTERNET "FILTERS" AND WHEN IS THEIR USE APPROPRIATE?

Filters are software that can be installed along with a Web browser to block access to certain Web sites that contain inappropriate or offensive material. Parents may choose to install filters on their children's computers in order to prevent them from viewing sites that contain pornography or other problematic material. ADL has developed a filter ([ADL HateFilter™](#)) that blocks access to Web sites that advocate hatred, bigotry or violence towards Jews or other groups on the basis of their religion, race, ethnicity, sexual orientation or other immutable characteristics. [HateFilter™](#), which can be downloaded from ADL's Web site, contains a "redirect" feature which offers users who try to access a blocked site the chance to link directly to related ADL educational material. The voluntary use of filtering software in private institutions or by parents in the home does not violate the First Amendment because such use involves no government action.

There are also some commercially marketed filters that focus on offensive words and phrases. Such filters, which are not site-based, are designed primarily to screen out obscene and pornographic material.

10. MAY PUBLIC SCHOOLS AND PUBLIC LIBRARIES INSTALL FILTERS ON COMPUTER EQUIPMENT AVAILABLE FOR PUBLIC USE?

The use of filters by public institutions, such as schools and libraries, has become a hotly contested issue that remains unresolved. At least one Federal court has ruled that a local library board may not require the use of filtering software on all library Internet computer terminals. A possible compromise for public libraries with multiple computers would be to allow unrestricted Internet use for adults, but to provide only supervised access for children.

Courts have not ruled on the constitutionality of hate speech filters on public school library computers. However, given the broad free speech rights afforded to students by the First Amendment, it is unlikely that courts would allow school libraries to require filters on all computers available for student use.