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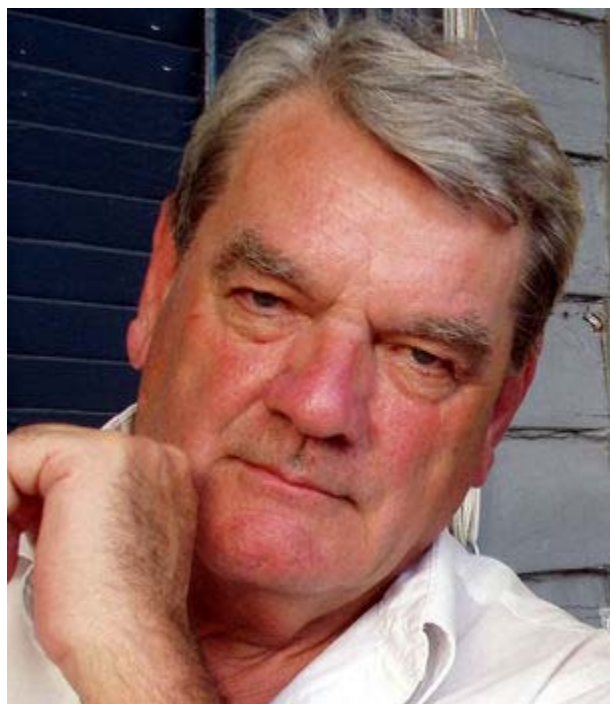
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## A Web of hate: European, U.S. laws clash on defining and policing online anti-Semitism

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David Irving

There are many laws on Holocaust denial in Europe, including in Germany, Belgium, and Austria, where British Holocaust denier David Irving—who is pictured here—was convicted and imprisoned in 2006. On the Internet, however, anti-Semitism online has proven difficult to define and to police.

Last October, the hashtag #unbonjuif (#agoodjew) was trending as the third-most tweeted subject in France. Users jumped on the chance to tweet phrases like “a good Jew is a dead Jew,” ultimately forcing the French Jewish students’ union (UEJF) to file a lawsuit against Twitter for allowing that content to appear.

When a French court decided this January that Twitter must reveal the identities of users who sent out those anti-Semitic tweets, a cross-continental debate ensued on the difficulty of defining and policing anti-Semitism online.

The French incident was hardly the first case of hate in social media and on the Web. The Simon Wiesenthal Center’s 2012 Digital Terrorism and Hate Report found more than 15,000 websites, social networks, forums, online games and apps that disseminated hateful content. Also in Europe, a report this month by Community Security Trust showed that the number of anti-Semitic incidents via social media in the United Kingdom

grew nearly 700 percent in the past 12 months.

“Social media is becoming more and more of a problem for us if you look at anti-Semitism,” Ronald Eissens, co-founder of the Dutch anti-racism group Magenta and the International Network Against Cyber Hate (INACH), which works to counter cyber-hate and has 21 members in 20 countries, told JNS.org. “There’s a lot of it around. Prosecution is a lot harder because most social media are based firmly in the U.S.”

In France, the Gayssot law of 1990 was passed to repress racist, anti-Semitic or xenophobic acts and criminalizes Holocaust denial. French Holocaust denier Robert Faurisson later claimed the law violated his right to freedom of expression and academic freedom, but the United Nations Human Rights Committee ruled against him. France punishes the dissemination of racist content online with fines and terms of imprisonment. These penalties increase if the dissemination was public—for example, on a website rather than in a private email—according to the American Jewish Committee (AJC).

“The French justice system has made a historic decision,” Jonathan Hayoun, president of the UEJF, said in a statement about the French court’s recent Twitter ruling. “It reminds victims of racism and anti-Semitism that they are not alone and that French law, which protects them, should apply everywhere, including Twitter.”

France has faced off against an American online giant before. In 2000, France prosecuted Yahoo! for selling Nazi memorabilia online. In France, it is illegal to display such items unless they are in a theatrical or museum setting. A French court ruled at the time that Yahoo! had to make the auction site inaccessible to French users or pay a fine. Although it never legally accepted the French ruling, Yahoo! eventually chose to remove the auction.

Then, in 2012, Twitter, Facebook and YouTube complied with German law by either taking down material posted by a neo-Nazi group or by blocking users in Germany from access to the content, according to the New York Times.

Additional broad laws have been passed on racism and cyber-hate. The Council of Europe’s Additional Protocol to the Cybercrime Convention was passed in 2003 and became enforceable in 2006 after receiving the required number of signatures. The protocol criminalized racist and xenophobic acts committed through computer systems. The European Framework Decision on Combatting Racism and Xenophobia was then passed in 2008.

In 2005, the European Union Monitoring Centre on Racism and Xenophobia (EUMC)’s Working Definition of anti-Semitism was released, defining the phenomenon as “a certain perception of Jews, which may be expressed as hatred toward Jews.”

“Rhetorical and physical manifestations of anti-Semitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities... More specifically, manifestations could also target the state of Israel, conceived as Jewish collectivity,” the definition reads.

Though that definition was never legally binding, various international bodies, several law enforcement agencies and European courts have used it in their investigations. It is essentially meant to “help police forces who are monitoring anti-Semitism on the ground to have a better understanding of what anti-Semitism is,” Kenneth Stern, the AJC’s specialist on anti-Semitism and extremism, told JNS.org.

Under the First Amendment, hate speech in the U.S. must be likely to cause violence or harm before it can be deemed criminal. But in the European Union, speech can be prohibited even if it is only abusive, insulting or

likely to disturb public order, noted Talia Naamat, legal researcher at the Kantor Center for the Study of Contemporary European Jewry in Jerusalem.

There are many laws on Holocaust denial in Europe, including in Germany, Belgium, and Austria, where British Holocaust denier David Irving was convicted and imprisoned in 2006. In Spain, Holocaust denial was a criminal violation until 2007, when a court ruled in the case of neo-Nazi activist Pedro Valera that Holocaust denial could not be punished with imprisonment because the act falls within free speech. But in January, Spain's justice minister proposed a new bill that would make Holocaust denial a criminal offense if it incites violence. The bill is expected to be approved later this year.

"I believe this case best encapsulates the debate (in Europe) between freedom of expression versus incitement to hatred, as well as the varying degrees of protection from hate speech," Naamat told JNS.org. But frequently, such European laws appear as part of a broader "incitement to racial, ethnic or religious hatred or discrimination," or as part of the general prohibition of genocide, she said.

In the Netherlands, the Dutch penal code includes a broad anti-discrimination provision, "so, anti-Semitic content in essence will be prosecuted if it's brought to the prosecutor as falling under the anti-discrimination legislation," Eissens said.

Three cases were recently filed against Jeroen de Kreek, a Dutch Holocaust denier who posted his material on several websites. Having already lost one case, he will face the other two this spring. In this case, Kreek is likely to be convicted as "his material is blatantly anti-Semitic," according to Eissens.

The UK has only general legislation regarding harassment and discrimination, The Public Order act of 1986, which states that "a person who uses threatening words or behavior, or displays any written material which is threatening, is guilty of an offence if he intends thereby to stir up religious hatred." Other laws, the Protection from Harassment Act, the Malicious Communications Act, and the Racial and Religious Hatred Act, were passed in subsequent years.

"Our perspective is that things which are illegal offline should be illegal online," Dave Rich, spokesman for Community Security Trust, which conducted the February survey on social media anti-Semitism in the UK, according to the International Business Times. "Racial abuse laws were made from incidents in the street, not online."

European laws on the issue, however, are not uniformly applied across the EU. Even the European Court of Human Rights does not offer an accepted definition for "hate speech," instead offering only parameters by which prosecutors can decide if the "hate speech" is entitled to the protection of freedom of speech. Prosecutors therefore exercise a great amount of discretion, as do policemen, who must classify the act as a hate crime or not, and judges, who must assess which action or speech is likely to disturb public order. "That assessment can be subjective," Naamat said.

INACH's Eissens emphasized that prosecuting anti-Semitism is "a thing we do but not the only thing we do." The organization is also highly focused on counter-speech projects, education and prevention, though Eissens does believe that the law is necessary in some extreme cases.

"It's a bit like the police arrests 20 people this week and the same people are back on the streets doing it again one month later, or they're joined by another 40; it doesn't mean that the police has to stop working," he said.

Stern believes that it is generally "more effective to have hateful speech marginalized than censored," particularly by having high-ranking officials or politicians call it out. In 2005, Stern was part of a debate in

the U.S. between Jewish groups on the issue of anti-Semitism online. One school of thought was in favor of removing anti-Semitic content, the other side believed such content “is a way to train kids in this new medium,” on how to distinguish hateful speech from benign speech, he said.

The bigger problem, Stern said, is when anti-Semitism, online or otherwise, is expressed as normal, polite dinner conversation. “I’ll be less worried if it’s half a dozen neo-Nazis with tattoos sitting in a bar someplace,” he said.

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