

French court rules that Yahoo must block access to auction site

Mike Ingram

24 November 2000

A landmark ruling on Monday November 20 could have serious consequences for Internet freedom and privacy internationally.

Upholding a decision made in May this year, the French court said Yahoo must block French users from accessing sales of Nazi memorabilia on its US-based auction pages. The decision sets a precedent that Web companies operating on the global Internet can be required to tailor their practices to the laws of a particular country.

Anti-racism groups in France filed the case, arguing that under French law it is illegal to sell anything that can be deemed to promote racism, glorify the Nazis, or deny the holocaust. Yahoo countered that under American law it is not illegal to sell such items, and the act of removing them from the auction pages would constitute a breach of the US constitutionally guaranteed freedom of speech.

The Paris-based International League against Racism and Anti-Semitism (LICRA) and the Union of French Jewish Students (UEFJ), together with a third French anti-racist group that joined the action at a later stage, have all claimed the court ruling as a victory in the fight against racism and fascism. In reality, blocking access to, or even the complete removal of such items from the pages of Yahoo will do nothing to arrest or reverse the growth of right wing forces. The struggle against the right wing is of a political and not legal nature. The anti-fascist radicals are transposing a dangerously flawed perspective they have pursued for years in other ways, onto the Internet, and with serious consequences for civil liberties.

In the past, actions such as the banning of right wing groups or parties, or the suppression of racist literature, have always been the precursor to moves against the left and the opponents of fascism. There is no reason to

think things would be different in relation to the Internet. Moreover, the existence of laws preventing the distribution of Nazi memorabilia in both France and Germany have done nothing to prevent the rise of right wing and fascist forces, both outside and inside mainstream politics.

Whatever the intended target of LICRA and the UEFJ's action, its consequences are the further limiting of the Internet as a free and democratic mass medium. As many commentators have been quick to point out, with this as a legal precedent, it will not be long before it is cited by some right wing dictator demanding that material deemed adverse to the national interest be made inaccessible to his citizens.

In May, judge Jean-Jacques Gomez postponed his ruling that Yahoo block access to the auctions in order to gather evidence on the technological possibilities of what he was demanding. In Monday's ruling, Gomez gave Yahoo three months in which to install a keyword-based filtering system to block French citizens from viewing the Yahoo sites with Nazi material. If Yahoo fails to comply within 90 days, the California based company will face fines of almost \$13,000 a day.

Yahoo continues to argue that the implementation of this technology is extremely difficult. The company acknowledges that it is technically possible to block keywords such as "Nazi" on the Yahoo Web site, the accuracy is less than 50 percent. The company also claims that it would need to reprogram its Web site properties, from the message boards and news to auctions to facilitate keyword filters on only the auction site. If filtering were used across the whole of Yahoo for French visitors, this would mean that literary classics such as "The Diary of Ann Frank" would not be accessible. Indeed, were such filtering commonplace, much of LICRA's own material would

become inaccessible in France. Yahoo's associate general counsel for international affairs Greg Wrenn said, "Every time you mention Hitler in a memorial site for Holocaust survivors, it takes that site down."

In order to distinguish French users, the court is asking Yahoo to identify the computer address of all users visiting its Web Site. Not only does this constitute an invasion of privacy, it is also not very effective. An international panel of Internet experts appointed by the court testified earlier that no technical remedy could screen all French users and that only about 70 percent would be blocked. Yahoo disputes even that figure, pointing out that global Internet-service providers have computers set up in different locations world-wide to distribute their user traffic. This could mean that users outside France, who are not subject to French law, are denied access to material simply because their connection point to the World Wide Web happens to be located in France.

Conversely, America Online accounts for around 20 million Internet users in Europe, with many thousands located in France. There would not necessarily be anything to identify a computer accessing the Internet through AOL as being of French origin.

Yahoo have yet to say whether they will appeal the decision in Europe or wait until the case works its way through the US courtrooms. According to Wrenn, "In this case, what we believe we're being asked to do would be considered censorship in the United States. Since we're talking about a property run on US servers, targeting a US audience, we believe that US [laws are] what we need to apply."

The French ruling opens up a legal minefield, according to industry experts. It further exposes Internet Service Providers and Web site maintainers internationally to litigation. The French courts could hold a company liable for damages that was providing access to the targeted material in France. While it would be more difficult to impose penalties upon a company with no assets on French soil, the likelihood of such actions will lead to ISPs removing material or blocking access as soon as a challenge is made.

The French case provides succour for those seeking to shackle the Internet ever tighter under the control of big business and capitalist governments. Much of the legislation relating to the Internet introduced in the past decade has been pushed through on the basis of

emotive issues such as combating child pornography or racism.

In the Yahoo judgment, the case was brought not by a government, but by those claiming to be left-wing radicals. Socialist and progressive forces that may tend towards support for the French action should think again.

Banning the sales of fascist memorabilia cannot prevent the growth of extreme rightwing tendencies. Conversely, the strengthening of the state aids the very force whose policies are responsible for the growth of racism and anti-foreigner sentiments.

What is paramount is the formation of a coherent mass political movement against the right wing. As an international medium, free from the unchallenged control exercised over other mediums such as television and newspapers, the Internet can play a crucial role in this. From this standpoint, the actions of the French court and those who brought the case must be opposed.

See Also:

Yahoo granted reprieve in French court's attempt to block access

[16 August 2000]

French anti-racist group sets dangerous precedent in court action against Yahoo

[17 April 2000]



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