





COMMENTARY


The EU's crackdown on online hate speech: too little, too late?

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THE EU'S CRACKDOWN ON ONLINE HATE SPEECH; TOO LITTLE, TOO LATE?

Hateful, racist or sexist comments on the internet: you've probably seen them. Many people try to ignore these messages. But actually, it's better to take action and flag illegal hate speech. The European Commission and IT companies know that we can't shelter everyone and especially our children from illegal hate speech online. Thus, instead of trying to focus only on parental blockers, the higher-ups have put the tools in our own hands to combat the illegal hate speech, by flagging and reporting it. It is then examined by IT companies and they provide a swift response to racist and xenophobic hate speech content notified to them. By collectively tackling hate speech, it is hoped to stop the spread and prevalence of hate speech online.

Background

In 2016 a European survey showed that 75% of those following or participating in online debates had come across episodes of abuse, threat or hate speech aimed at journalists.¹ Nearly half of these people said that this deterred them from engaging in online discussions. These results show that illegal hate speech should be effectively removed from social media, as it might limit the right to freedom of expression.

"Illegal hate speech online is not only a crime, it represents a threat to free speech and democratic engagement," explained Věra Jourová, (European Commissioner for Justice, Consumers and Gender Equality).²

Illegal hate speech is defined in EU law³ (Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law) as "the public incitement to violence or hatred directed to groups or individuals on the basis of certain characteristics, including race, colour, religion, descent and national or ethnic origin." Hate speech as defined in this Framework Decision is a criminal offence, when it occurs online and offline.

In May 2016, the phenomenon of online hate speech was flourishing at an unprecedented rate without any consequences. Responsible IT companies (Facebook, Snapchat etc.) were not seen to be doing enough to react and counter this alarming growth and in some cases going to court and fighting to state that they were not liable for what their users say⁴. In response, to prevent and counter the spread of illegal hate speech online, in May 2016, the European Commission agreed with Facebook, Microsoft, Twitter and YouTube a "[Code of conduct on countering illegal hate speech online](#)". The code was envisioned to help users notify illegal hate speech on social platforms and to improve the support to civil society as well as the coordination with national authorities.⁵ The code's design includes, a general part on measures applicable to all types of illegal content and a specific part addressing the special actions that platforms would need to take to address terrorist content. In terms of the rules applicable to all types of illegal content the code includes clearer 'notice and action' procedures, more efficient tools and proactive technologies, stronger safeguards to ensure fundamental rights, and closer cooperation with authorities.⁶

Censorship?

However, many people feared that this would impact on the right to freedom of expression and possibly be the precursor to censorship. Firstly the lines between legal and illegal offensive or controversial statements are blurred. For example the expression 'I hate you' in itself would not

¹ http://ec.europa.eu/information_society/newsroom/image/document/2016-47/sp452-summary_en_19666.pdf

² http://europa.eu/rapid/press-release_MEMO-18-262_en.htm

³ <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV:133178>

⁴ <https://globalfreedomofexpression.columbia.edu/cases/muwema-v-facebook-ireland-ltd/> & <https://www.eversheds-sutherland.com/documents/global/ireland/defamatory-posts.pdf>

⁵ http://ec.europa.eu/justice/fundamental-rights/files/hate_speech_code_of_conduct_en.pdf

⁶ http://europa.eu/rapid/press-release_MEMO-18-1170_en.htm

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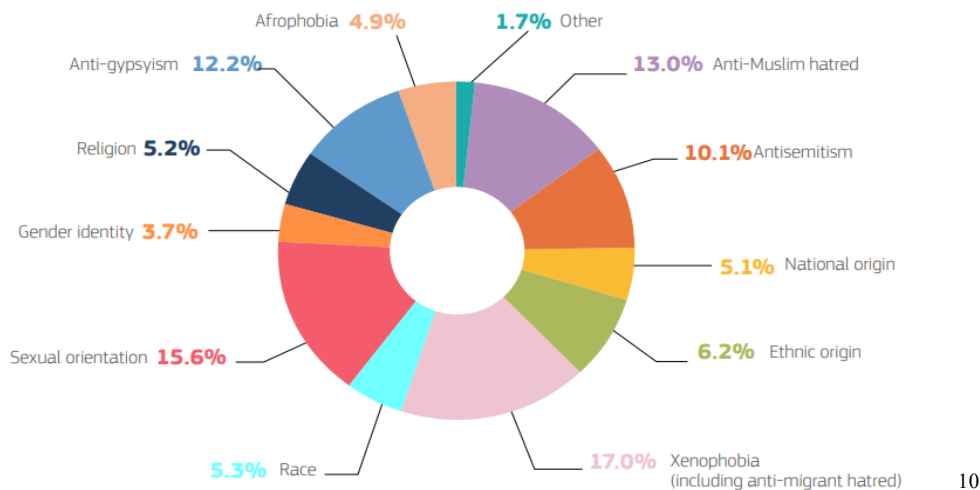
qualify as illegal hate speech. However, its combination with other statements threatening violence and referring to race, colour, religion, descent and national or ethnic origin, etc. could make it illegal. Assessing what could be illegal hate speech includes taking into account criteria such as the purpose and context of the expression.

As the European Court of Human Rights said, 'freedom of expression ... is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population'.⁷ Therefore, in the Code, both the IT Companies and the European Commission stress the need to respect and defend the right to freedom of expression.

State of Play

On February 4th 2019 the European Commission 4th evaluation on the EU Code of Conduct showed that this Commission initiative is delivering successful results. IT companies are now assessing 89% of flagged content within 24 hours and 72% of the content deemed to be illegal hate speech is removed, compared to 40% and 28% respectively when the Code was first launched in 2016.⁸ Facebook received the largest amount of notifications flagging hate speech (1882), followed by Twitter (1314) and YouTube (889).⁹ However, just as important as the magnitude of notifications, is the speed at which the notifications are seen to and evaluated. In 88.9% of the cases the IT companies assessed the notifications in less than 24 hours, an additional 6.5% in less than 48 hours. The longer the comments are left unevaluated the more damaging they can be. On top of that, more and more of these online platforms that host millions of people are becoming more responsible with five new companies deciding to join the Code in the course of 2018: Google+, Instagram, Snapchat, Dailymotion and Webedia.

Grounds of hatred



We are seeing some great achievements being made in the fight of illegal hate speech resulting in the internet becoming a safer place to explore. Companies are removing illegal content more efficiently and rapidly, yet at the same time Commissioner Jourová stresses that this isn't leading to over-removal. The removal rate of 72% indicates that the review made by the companies continues to respect freedom of expression. The EU commission always stated that they would not wish for a

⁷ https://www.echr.coe.int/Documents/FS_Hate_speech_ENG.pdf

⁸ http://europa.eu/rapid/press-release_IP-19-805_en.htm

⁹ https://ec.europa.eu/info/sites/info/files/code_of_conduct_factsheet_7_web.pdf

¹⁰ "Code of Conduct on countering illegal hate speech online- Grounds for hatred"

https://ec.europa.eu/info/sites/info/files/code_of_conduct_factsheet_7_web.pdf

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removal rate of 100%. In the IT companies' evaluation of flagged material "if there is doubt, do not delete because freedom of speech must always remain the primary principle," said Jourová. From the start, the Commission didn't want illegal or flagged material to be evaluated by 'automation or algorithms'. This persistence meant that companies had to hire hundreds of new employees to combat illegal hate speech.¹¹

Controversy

This 4th evaluation comes on the heels of recent controversial instances of online bullying and claims of its link to suicide. According to scientific experts young victims of cyberbullying are twice as likely to attempt suicide and self-harm.¹² Many people have now said that illegal hate speech can constitute a form of cyberbullying and are calling on this aspect to be recognised by our watchdogs and policymakers. The EU Code of a Conduct has been hailed as a step in the right direction by some while others have questioned whether it goes far enough in terms of cyberbullying and addressing the rising numbers of deaths said to relate to social media platforms. People believe that both the EU and social media platforms should be doing more, that at-risk individuals will not be safe until Facebook et al assume the responsibilities that come with their role as global corporations and communications platforms.¹³

A UK family recently came forward and accused Instagram of being responsible for their daughter's suicide. They believed that the young girl took her own life due to pressure from the social media platform algorithms. Italy has seen a significant increase in anti-immigrant hate speech particularly on social media.¹⁴ In January, a man committed suicide after his request for a residency permit was refused. Yet, instead of an outpouring of sympathy this tragedy sparked vile online comments.¹⁵ This is no isolated scenario. Anti-immigrant rhetoric has been building amongst all circles, including the country's top-tier politics and the online world is certainly no exception. Hate speech online has the potential to incite the violence that we see occurring each day in the real world. If people continue to witness the massive amount of hate speech online, they will become inured to its derogatory nature and believe it is normal and acceptable. The danger of this happening is increased all the more if people hear their own politicians spouting hate speech, which is already the case in many countries.

The Code of Conduct *has* made some progress and has succeeded in establishing partnerships between civil society organisations, national authorities and IT platforms on awareness-raising and educational activities. What remains to be seen now, however, is whether the EU can build on this step and secure IT companies' continued co-operation on matters relating to the platforms' content, algorithms and influence in order to protect European citizens, both young and old.

Commissioner Věra Jourová has responded by stating that she doesn't like "fragmented legal framework across the Member States especially digital legislation, that once closely examined these types of extreme incidents can be uniquely specific to internal issues in the member state itself (related to its history/culture) and therefore we believe it should be pro-actively dealt with at the member state level using national legislation."¹⁶

¹¹ <https://ec.europa.eu/avservices/focus/index.cfm?sitelang=en&focusid=3293>

¹² John A, Glendenning AC, Marchant A, et al. Self-Harm, Suicidal Behaviours, and Cyberbullying in Children and Young People: Systematic Review. *J Med Internet Res*. 2018; 20(4):e129. Published 2018 Apr 19. doi:10.2196/jmir/ilyAis.9044 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5934539/>

¹³ <https://www.theguardian.com/technology/2019/feb/07/instagram-bans-graphic-self-harm-images-after-molly-russells-death>

¹⁴ <https://www.theguardian.com/world/2019/feb/01/nigerian-man-kills-himself-italy-residence-permit-denial>

¹⁵ <https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I167234>

¹⁶ <https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I167235>

Conclusion

“The internet is a place people go to share their views and find out information at the click of a button. Nobody should feel unsafe or threatened due to illegal hateful content remaining online” stated Commissioner Jourová on February 4th.¹⁷ The afore-mentioned fight against illegal hate speech, though, is far from over.

At the very core, the EU Code of Conduct ensures a swift counter-response to illegal hate speech online. Since its launch in 2016, the Code of Conduct has delivered continuous progress, and the recent evaluation confirms that IT companies provide a swift response to racist, xenophobic and other hate speech content notified to them. However, companies still need to improve their mechanisms for providing feedback to users who have flagged illegal content and provide more transparency on flagged content, its notification and removal.

Today, after two and a half years, it can be said that the EU are on track and have adopted a successful approach that has allowed for the establishment of a standard across Europe on how to tackle this serious issue, while fully protecting freedom of speech. The EU, its Member States, social media companies and other platforms, all share a collective responsibility to promote and facilitate freedom of expression in the online world. At the same time, all these actors have a responsibility to ensure that the internet does not become a free-for-all and a breeding ground for violence, hatred and intolerance.¹⁸

This is a pivotal moment for the tech sector and its giants; either they prove that they can play fair and embrace the rules that exist in the online and offline world or they will face regulatory action on many fronts. It is high time to balance *the power and the responsibilities* of online platforms and social media giants and this is exactly what the Code of Conduct is trying to do.

**In the UK, the Samaritans can be contacted on 116 123. In the US, the National Suicide Prevention Hotline is [1-800-273-8255](tel:1-800-273-8255). In Australia, the crisis support service Lifeline is on 13 11 14. Hotlines in other countries [can be found here](#).*

¹⁷ <https://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I167234>

¹⁸ https://ec.europa.eu/newsroom/just/item-detail.cfm?item_id=54300

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