

Legislating for Online Hate Speech

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Overview

- Factors to consider when legislating for hate speech

PROTECTION OF VICTIMS

v.

FREEDOM OF EXPRESSION

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- Distinction between hate crime and pure hate speech offences
- HATE CRIMES = underlying criminal behaviour targeting specific individual/s + hate
 - I hate you Kylian Mbappe, I'm going to come and kill you, you b*****
 - I hate you Kylian Mbappe, I'm going to come and kill you, you **black** b*****

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- ‘pure’ hate speech offences criminalise otherwise legal speech *because it expresses hatred towards a group based on their protected characteristics*
- ‘AC Milan supporters are a scourge on our nation. They’re stupid, they’re dirty and rape our women.’
- NOT a criminal offence BUT if we replace ‘AC Milan’ with ‘Afghan refugees’ then it becomes a hate speech offence

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- Important distinction as freedom of expression concerns not as serious with hate crime offences because you are not criminalising the behaviour
- More serious, however, for pure hate speech offences

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- Criminal law the most problematic - should be used sparingly
- Intrinsic to the Additional Protocol
- All 4 offences criminalise only 'intentional' behaviour
- Article 4 - criminalises 'threats'
- Article 5 - deals with 'insult'
- Reservation for Article 5 but not Article 4

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- Also envisages use of non-criminal measures
- Article 3(2) - distinguishes between speech
 - Promoting hatred and violence (criminalisation)
 - Promoting 'discrimination' (other measures also envisaged)

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- What is different about online hate speech? Factors that might affect the balancing act
 - Publicness
 - Reach
 - Permanency
 - Speech is instantaneous
- Algorithms determine most of what we see
 - 70% of what you see on youtube has been recommended by the algorithm
 - Not really to do with freedom of expression!
- Children have easy access to online material
 - Freedom of expression doesn't include the right to have a platform of millions or for your speech to be accessible by everyone - including children

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- Holding social media companies (SMC) responsible not about holding individuals responsible so freedom of expression concerns are not as great
- But again depends on how you propose to do this
 - Removal of illegal material?
 - Regulation of the algorithm?
 - Architecture of platform

Summary

- Freedom of expression is important, but it's not a trump card. The discussion must be nuanced
- Lots of different ways to legislate - no one measure will solve the problem