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Court shields Yahoo from French laws

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update Yahoo does not have to comply with a French court decision that requires the company to block Nazi-related material from French consumers, a federal judge ruled on Wednesday.

The French order, which was issued last year, violates Yahoo's First Amendment rights, said U.S. District Court Judge Jeremy Fogel of the Northern District of California. Fogel's ruling blocks the League Against Racism and Anti-Semitism (LICRA) and the Union of Jewish Students, which successfully sued Yahoo in France, from enforcing a judgment against the Sunnyvale, Calif.-based company.

"Although France has the sovereign right to regulate what speech is permissible in France, this court may not enforce a foreign order that violates the protections of the United States Constitution by chilling protected speech that occurs simultaneously within our borders," Fogel wrote in his decision.

Yahoo representatives praised Fogel's ruling, saying it would protect U.S. Web site operators from foreign court decisions that might ban material that is legal in the United States.

The ruling means that "we don't have to operate our sites to the lowest common denominator of laws and content," said Greg Wrenn, deputy general counsel at Yahoo.

But San Francisco attorney Ronald Katz, who represented the French organizations, said he would likely appeal the decision on the grounds that Fogel had no authority to make his decision. The French organizations had no presence in the United States and had made no efforts to enforce the French court's decision, Katz said.

"No other court has decided what this court decided on jurisdiction," Katz said. "If you don't have jurisdiction, then the court shouldn't be saying anything."

LICRA sued Yahoo in French court last year, charging that sales of Nazi-related material on Yahoo's U.S.-based auction site violated French law because the material was available to French citizens. The court ruled in favor of the anti-racism group and ordered Yahoo to block French citizens from accessing auction listings or Web pages on its site that contained anti-Semitic or Nazi-related material.

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Although Yahoo objected that instituting such a block would be technologically impossible, the court later affirmed its ruling and threatened to fine Yahoo 100,000 francs (about \$13,600) a day if it didn't comply. Yahoo responded to the decision by **filing** to block its enforcement in the United States and by **barring** the sale of Nazi materials and Ku Klux Klan memorabilia on its site.

The dispute between Yahoo and the anti-racism organizations is one of the first to consider whether a country's laws can be **extended** to a company whose only interaction with that country's citizens is over the Internet. The case is also one of the first to consider how the global Internet has affected the various national laws governing speech and publishing.

The dispute between Yahoo and LICRA is only the first among a number of cases that will resolve some of these issues, said Mark Radcliffe, an intellectual property attorney with Gray Cary Ware & Freidenrich.

"This was a relatively easy case to decide" because of the First Amendment issues involved in it, Radcliffe said. "Cases where you've got some economic regulation or copyright issue are going to be a lot tougher to justify," he added.

Although Fogel's decision only applies to the Northern District of California, where his court is based, and could be overruled by an appeals court, it could set a precedent because there have been so few court decisions on these issues, said Lee Tien, senior staff attorney with the Electronic Frontier Foundation, which sided with Yahoo in the case.

"Courts are still not as sure of themselves with the Internet as they are in other contexts," Tien said. "This doesn't have any binding, precedential value, but it will have more influence than an ordinary district court case would have."

But Katz noted that the case won't set any precedents until it is over.

"I think this will be reversed in short order," Katz said. "We have to get it to the 9th Circuit (Court of Appeals). The Supreme Court may even want to take a look at this one."

For its part, Yahoo is confident that the decision will be affirmed on appeal, and it plans to continue the case on "principle," Wrenn said. However, regardless of how the case turns out, the company does not plan to lift its ban on sales of hate-related items, he said.

"As a practical matter, you're not going to see a change in our day-to-day business operations," he said.

The sale of hate-related materials such as Adolph Hitler's "Mein Kampf" and "The Turner Diaries" on Web sites such as Amazon.com, eBay and Yahoo have repeatedly drawn criticism from anti-hate groups. Earlier this year, eBay **announced** its own global ban on the sale of hate-related items. The move extended a previous **ban** that had permitted the sale of such items on eBay's U.S. site if they had historical value.

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