

# Cyber-Speech and Online Antisocial Activity

## Class 4

25 February 2020

# Information Technology Law in the Global Society (Course JurZ5318)

University of Latvia Faculty of Law

Shawn Sullivan (sullivan@sullivanlaw.net)



## Course JurZ5318

[HOME](#) [CLASS 1](#) [CLASS 2](#) [CLASS 3](#)



AUDITORIJA 7, OTRDIENA  
10:30

## Information Technology Law

in the Global Society

\*\*\*

Juridiskā fakultāte  
Latvijas Universitāte  
Shawn Sullivan  
[sullivan@sullivanlaw.net](mailto:sullivan@sullivanlaw.net)  
Tel. +371 26129290

<https://itlawcourse.online/>

# Chapter 5 of Textbook

---

- Conflicts between national norms regarding the limits of freedom of expression.
- Relatively new ability of any Internet user to reach a global audience from anywhere in the world.
- Growing power of states to reach conduct and speech beyond their borders.
- Remember one of the premises of “cyberlibertarianism” in Chapter 4:
  - Regulatory arbitrage—Internet users can “seek the shelter of” the least restrictive jurisdiction to which they are subject.
  - Is this true?

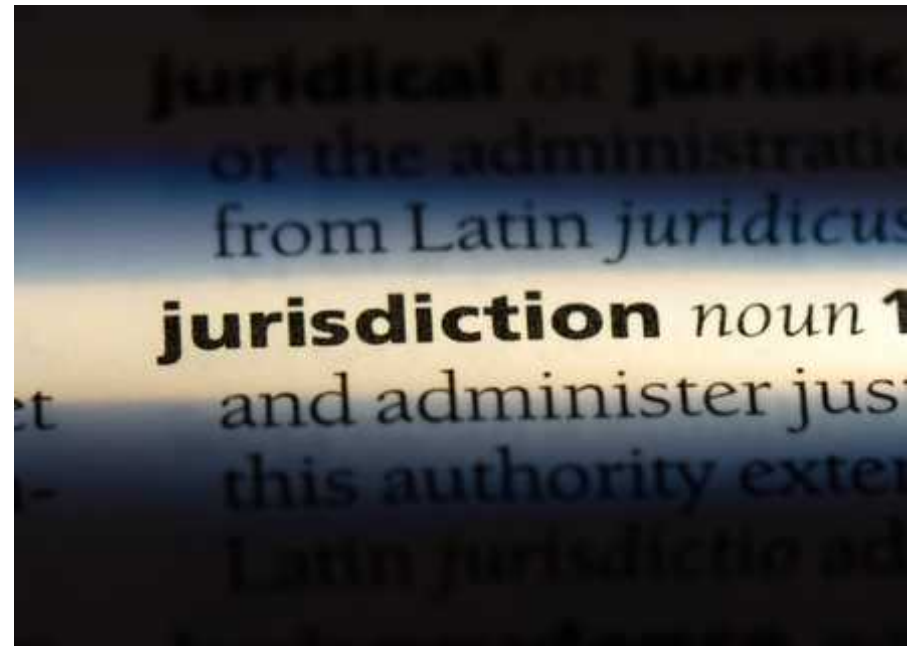




# Jurisdiction

# Prescriptive Jurisdiction under International Law

- **Prescriptive Jurisdiction:** A country's ability to make its law applicable to persons, conduct, relations, or interests.
- Five recognized bases for asserting prescriptive jurisdiction:
  - Territoriality
    - Conduct taking place within the country's territory, or
    - Designed to have effects within the country's territory.
  - Nationality (conduct performed by the country's nationals).
  - Passive personality (conduct having the country's nationals as its victims)
  - Protective principle (conduct directed against a country's vital interests)
  - Universality (conduct recognized by the community of nations as of "universal concern").
    - Application limited to a criminal acts so grave that any nation may put on trial and, upon conviction, punish him or her. Exercised against "common enemies of humankind" *hostis humani generis*).
    - Piracy, slavery, genocide, torture.





## Differing Ideas of Freedom of Speech and Its Limits



# UN Universal Declaration of Human Rights

## Article 19

“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”



# International Covenant on Civil and Political Rights (1966)

## Article 19

1. Everyone shall have the right to hold opinions without interference.
2. **Everyone shall have the right to freedom of expression**; this right shall include freedom to seek, receive and impart information and ideas of all kinds, **regardless of frontiers**, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. **The exercise of the rights** provided for in paragraph 2 of this article **carries with it special duties and responsibilities**. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - a) For respect of the rights or reputations of others;
  - b) For the protection of national security or of public order (ordre public), or of public health or morals.

Emphasis added.

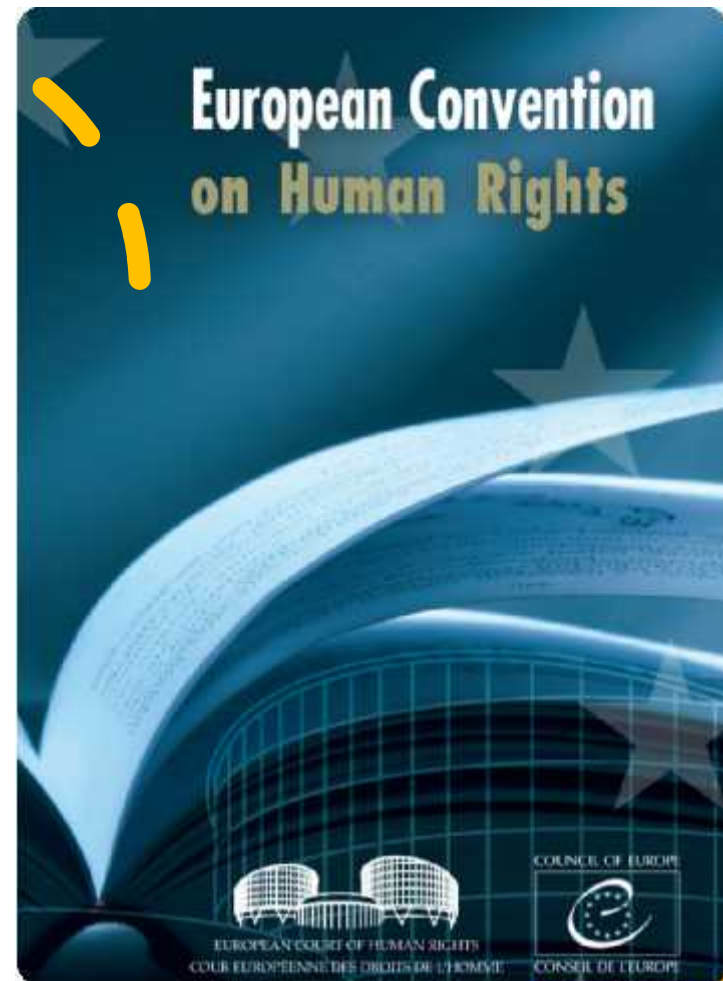




# European Convention on Human Rights (1953) Article 10

1. **Everyone has the right to freedom of expression.**  
This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....
2. The exercise of these freedoms, since **it carries with it duties and responsibilities**, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Emphasis added.





# Latvia

## Satversme

### Article 100

1922, Reinstated in 1991

Ikvienam ir tiesības uz vārda brīvību, kas ietver tiesības brīvi iegūt, paturēt un izplatīt informāciju, paust savus uzskatus. Cenzūra ir aizliegta.

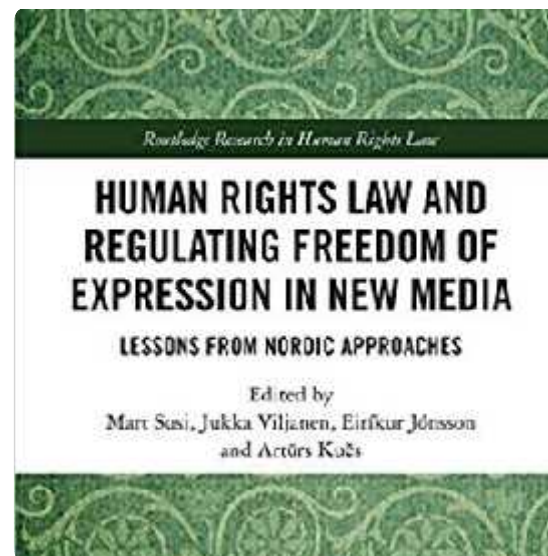
---

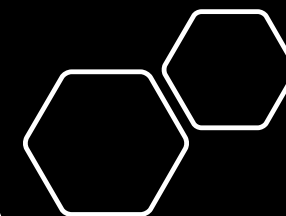
Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his or her views. Censorship is prohibited.

# Very Good English Language Resource on Latvian Regulation of Online Media

## 7 Regulation of online media in Latvia

*Lolita Bērziņa, Linda Bīriņa,  
Laura Jambuševa and Artūrs  
Kučs*





Three weeks  
ago...



Constitutional Court of  
the Republic of Latvia



Latvijas Republikas  
Satversmes tiesa



2013 Ruling: “Article 100 of the Constitution envisages not only the right of freely expressing one's viewpoint and distributing information but also the right to freely receive it.”

The Court’s rulings are significantly influenced by the decisions of the European Court of Human Rights.

# Latvian Law on the Press and Other Mass Media

## Section 7. Information not for Publication

It is prohibited to publish information which is an official secret or other secret especially protected by law that promotes violence and the overthrow of the prevailing order, advocates war, cruelty, racial, national or religious superiority and intolerance, and incites to the commission of some other crime.

Materials from pre-trial investigations shall not be published without the written permission of the prosecutor or the investigator. Publication of materials that violate the presumption of innocence shall not be permitted in the reporting of judicial proceedings. During open court sittings journalists may make recordings by means of technical devices if these do not hinder the course of judicial procedures.

It is prohibited to publish the content of correspondence, telephone calls and telegraph messages of citizens without the consent of the person addressed and the author or their heirs.

The use of mass media to interfere in the private life of citizens is prohibited and shall be punished in accordance with the law.

It is prohibited to publish information that injures the honour and dignity of natural persons and legal persons or slanders them.

It is prohibited to publish information concerning the state of health of citizens without their consent.

It is prohibited to publish business secrets and patent secrets without the consent of their owners.







# The Basic Law for the Federal Republic of Germany (1949)

## Article 5: Freedom of expression

1. Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship.
2. **These rights shall find their limits in the provisions of general laws**, in provisions for the protection of young persons, and in the right to personal honour.
3. Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution.

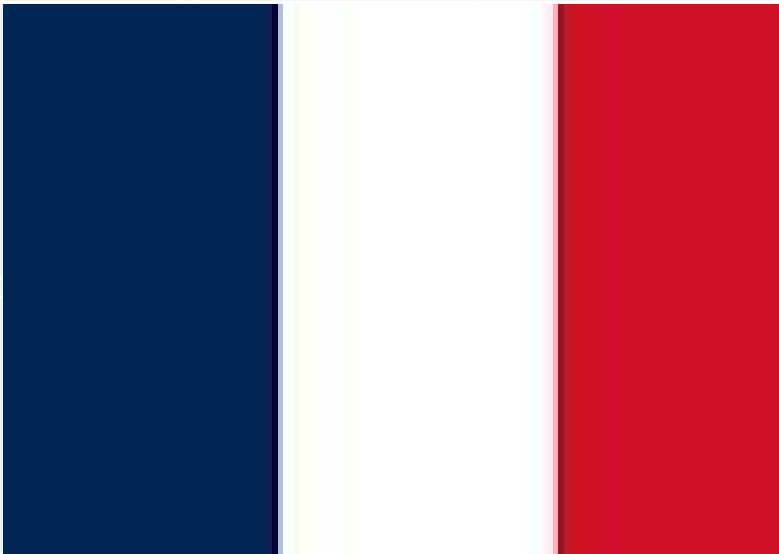
Emphasis added.



---

## French Constitution of 1958

### Declaration of the Rights of Man and the Citizen (1789)



La libre communication des pensées et des opinions est un des droits les plus précieux de l'homme : tout citoyen peut donc parler, écrire, imprimer librement, sauf à répondre de l'abus de cette liberté dans les cas déterminés par la loi.

The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law.

# Limits on Freedom of Expression in France



GOUVERNEMENT.fr

**But this freedom has limits:**

**Racism, anti-Semitism, racial hatred, and  
justification of terrorism are not opinions.  
They are offences.**

## **Public defamation**

on the grounds of an actual or assumed membership or non-membership to a specific ethnic group, nation, race or religion.

## **Incitement to terrorism**

which must be a direct and explicit incitement, not only in its spirit but also in its terms, to commit physically determined acts. Since 2014, it is punishable by **7 years of incarceration** when it occurs online. It does not need to be public to be punished.

## **Public provocation to hatred**

violence or racial discrimination.

## **Public justification of terrorism**

which consists in presenting or commenting on acts of terrorism while justifying them, praising them, idealising their goals or their methods, or passing a favourable moral judgement. Since 2014 it is also punishable by **7 years of incarceration** when it occurs online.

## **Disputing crimes against humanity.**

## **Public slander**

on the grounds of an actual or assumed membership or non-membership to a specific ethnic group, nation, race or religion.

# U.S. Constitution Amendment 1 (1791)



**“Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging the freedom of speech, or of the press;** or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Emphasis added.




Photo:dbking / CC BY (<https://creativecommons.org/licenses/by/2.0>)

## General U.S. Rule on Government Restrictions Based on Content of Speech


- Content-based restrictions "are presumptively unconstitutional regardless of the government's benign motive, content-neutral justification, or lack of animus toward the ideas contained in the regulated speech."
- Restrictions that require examining the content of speech to be applied must pass "strict scrutiny."
  - Legislature must have passed the law to further a "compelling governmental interest," and must have narrowly tailored the law to achieve that interest.



- 
- Sometimes used as an economic analogy in speech cases.
  - Let all voices be heard and compete in the “marketplace of ideas.”
  - Too much faith in human ability to discern truth?



Marketplace  
of Ideas

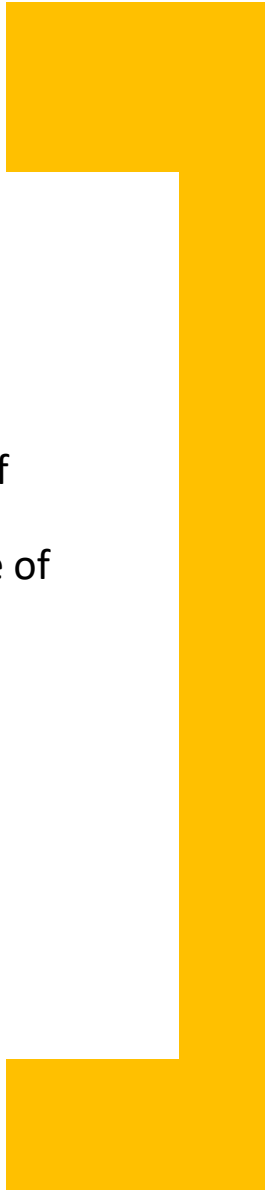
An American flag is shown in the process of being burned. The flag is partially visible, with the stars and stripes clearly seen. Bright orange and yellow sparks are falling from the top of the flag, and flames are visible at the bottom. The background is dark, making the fire and the flag stand out.

US Supreme Court in  
*Texas v. Johnson*, 491  
U.S. 397 (1989), held (5-  
4) that flag burning  
constitutes symbolic  
speech that is protected  
by the First Amendment.

---



# Anonymous Speech

- US Supreme Court has upheld the right of people to speak anonymously when the speech is otherwise lawful and disclosure of identity would chill exercise of speech.
- 

# Application of 1<sup>st</sup> Amendment Online

A provision of the Communications Decency Act criminalized the exchange of “indecent” information between adults and minors.

1<sup>st</sup> Amendment is fully applicable to online communications.

While the “indecency” provisions were vague and overreaching, the government had a legitimate interest in restricting “obscene” material.

*Reno v. ACLU*, 521 U.S. 844 (1997).





## U.S. Obscenity Test Under First Amendment

1. “The average person, applying contemporary community standards”, would find that the work, taken as a whole, appeals to the prurient interest.”
2. The work depicts or describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by applicable state law.
3. The work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

The work is considered obscene only if all three conditions are satisfied.

*Miller v. California*, 413 U.S. 15 (1973)







## Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (2003)

**Article 2(1):** "racist and xenophobic material" means any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors.

**Art. 3(1):** Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.

**Art. 5(1):** Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct:  
insulting publicly, through a computer system, (i) persons for the reason that they belong to a group distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors; or (ii) a group of persons which is distinguished by any of these characteristics.

**Art. 6(1):** Each Party shall adopt such legislative measures as may be necessary to establish the following conduct as criminal offences under its domestic law, when committed intentionally and without right: distributing or otherwise making available, through a computer system to the public, material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity, as defined by international law and recognised as such by final and binding decisions of the International Military Tribunal, established by the London Agreement of 8 August 1945, or of any other international court established by relevant international instruments and whose jurisdiction is recognised by that Party.

THE CUBE

## Germany seeks to extend laws on online hate speech | #TheCube

COMMENTS

By Euronews with agencies • last updated: 19-02-2020



German Cabinet members attend a press conference on hate crime online in Berlin, 2019. Copyright © Heinrich Heine / AP Photo - Markus Schreiber



The German Cabinet has approved a bill that requires social networks like Facebook and YouTube to report hate speech to the police.

Social media companies are already required to delete harmful content in Germany within 24 hours.



# Krimināllikums / Latvian Criminal Law



## 78.pants. Nacionālā, etniskā un rasu naida izraisšana

(1) Par darbību, kas vērsta uz nacionālā, etniskā, rasu vai reliģiskā naida vai nesatricības izraisšanu,

soda ar brīvības atņemšanu uz laiku līdz trim gadiem vai ar īslaicīgu brīvības atņemšanu, vai ar piespiedu darbu, vai ar naudas sodu.

(2) Par tādu pašu darbību, ja to izdarījusi personu grupa vai valsts amatpersona, vai uzņēmuma (uzņēmēj sabiedrības) vai organizācijas atbildīgs darbinieks vai ja tā izdarīta, izmantojot automatizētu datu apstrādes sistēmu, —

soda ar brīvības atņemšanu uz laiku līdz pieciem gadiem vai ar īslaicīgu brīvības atņemšanu, vai ar piespiedu darbu, vai ar naudas sodu.

(3) Par šā panta pirmajā daļā paredzēto darbību, ja tā saistīta ar vardarbību vai draudiem vai ja to izdarījusi organizēta grupa, —

soda ar brīvības atņemšanu uz laiku līdz desmit gadiem un ar probācijas uzraudzību uz laiku līdz trim gadiem vai bez tās.

## Section 78. Triggering of National, Ethnic and Racial Hatred

(1) For a person who commits acts directed towards triggering national, ethnic, racial or religious hatred or enmity,

the applicable punishment is the deprivation of liberty for a period of up to three years or temporary deprivation of liberty, or community service, or a fine.

(2) For a person who commits the same acts, if they have been committed by a group of persons or a public official, or a responsible employee of an undertaking (company) or organisation, or if they have been committed using an automated data processing system,

the applicable punishment is the deprivation of liberty for a period of up to five years or temporary deprivation of liberty, or community service, or a fine.

(3) For committing the act provided for in Paragraph one of this Section, if it is related to violence or threats or if it is committed by an organised group,

the applicable punishment is the deprivation of liberty for a period of up to ten years, with or without probationary supervision for a period of up to three years.



## Hate Speech Under U.S. First Amendment

---

“Speech that demeans on the basis of race, ethnicity, gender, religion, age, disability, or any other similar ground is hateful; but the proudest boast of our free speech jurisprudence is that we protect the freedom to express “the thought that we hate.” *United States v. Schwimmer*, 279 U. S. 644, 655 (1929) (Holmes, J., dissenting).”

*Matal v. Tam*, 137 S. Ct. 1744 (2017).

## Tensions between European and U.S. Approaches to Freedom of Speech

---

The Union of Jewish Students and the International League Against Racism and Anti-Semitism (LICRA) filed a lawsuit against Yahoo! and Yahoo! France accusing them of allowing access to websites auctioning Nazi memorabilia.

Yahoo! and auction operators were domiciled in USA, where display & sale of these items was lawful.

French law prohibits the sale or display of items that incite racism.

22 May 2000: A Paris court rules that Yahoo! must block access to the websites from France.

Photo of Nazi memorabilia by Joe Mabel, CC BY-SA 3.0, <https://commons.wikimedia.org/w/index.php?curid=7698078>

# YAHOO!





Ministère  
de la justice

TRIBUNAL DE  
PARIS

French Court

- Yahoo! must filter access to site auctioning Nazi paraphernalia





# U.S. District Court Ruling

- Yahoo! Took its case to U.S. District Court for the Northern District of California.

*“Although France has the sovereign right to regulate what speech is permissible in France, this court may not enforce a foreign court order that ... chills protected speech [occurring] simultaneously within our borders”*





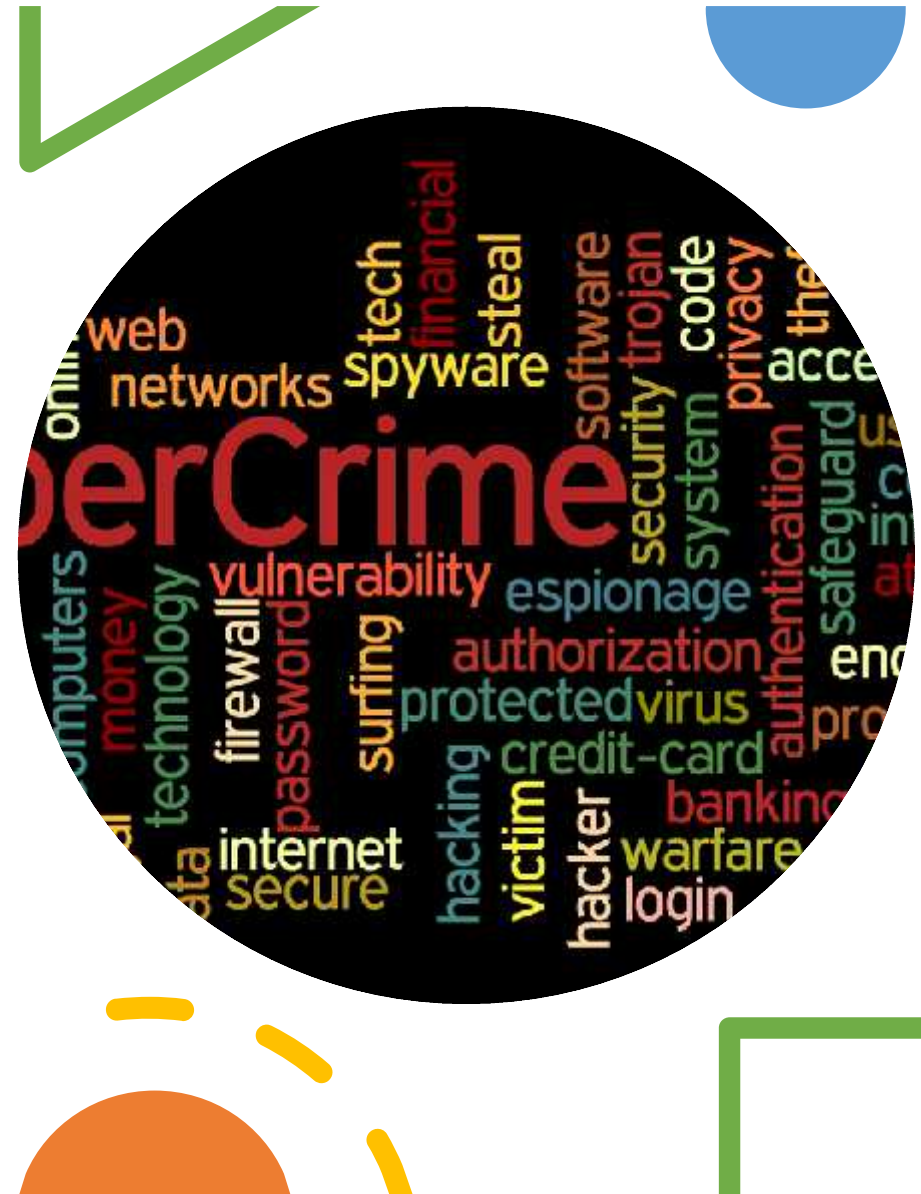
**“SPEECH IS AN ESSENTIAL MECHANISM OF  
DEMOCRACY, FOR IT IS THE MEANS TO HOLD  
OFFICIALS ACCOUNTABLE TO THE PEOPLE.”**

**CITIZENS UNITED V. FEC, 2010**

## Online Political Speech

- Textbook discusses at some length UK mechanisms for regulation of political advertising and somewhat shaky attempts to apply those mechanisms to political bloggers.
- US approach in *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).
  - US Supreme Court overruled *Austin v. Michigan Chamber of Commerce* (1990), which had allowed different restrictions on speech-related spending based on corporate identity, as well as a portion of *McConnell v. FEC* (2003) that had restricted corporate spending on electioneering communications.

# Chapter 6 – Antisocial Conduct Online



# Injunctions to Prevent Publication of Private Information

- Textbook identifies several English cases in which courts enjoined publication of private information.
  - *CTB v News Group Newspapers Ltd* [2011] EWCH 1232.
    - Details of extramarital affairs.
- United States:
  - *New York Times v. United States*, 403 U.S. 713 (1971).
    - Supreme Court permitted New York Times & Washington Post newspapers to publish Pentagon Papers without risk of government censorship or punishment.



# U.S. Federal Law against Hacking Offenses

- Computer Fraud and Abuse Act (“CFAA”), 18 U.S.C. § 1030
  - Prohibits accessing a computer without authorization, or in excess of authorization.
    - 18 U.S.C. § 1030(a)(1): Computer espionage.
    - 18 U.S.C. § 1030(a)(2): Computer trespassing, and taking government, financial, or commerce info
    - 18 U.S.C. § 1030(a)(3): Computer trespassing in a government computer
    - 18 U.S.C. § 1030(a)(4): Committing fraud with computer
    - 18 U.S.C. § 1030(a)(5): Damaging a protected computer (including viruses, worms)
    - 18 U.S.C. § 1030(a)(6): Trafficking in passwords of a government or commerce computer
    - 18 U.S.C. § 1030(a)(7): Threatening to damage a protected computer
    - 18 U.S.C. § 1030(b): Conspiracy to violate (a)
    - 18 U.S.C. § 1030(c): Penalties





# Fake News

- A loosely-used term but a real issue.
  - Not just anything a politician doesn't like.
- Political & Geopolitical.
  - Election interference.
  - Attempts to undermine sovereignty.
  - Some level of consensus is required for self-government. What if the consensus is formed on the basis of falsehoods?
- Racial / Ethnic Hatred.
- Health.
  - Anti-vaccine movement.
  - Quack medical treatment.
- Who can police fake news?
- What's the difference between this and opinion?





# Latvian police liquidates fake news site www.aumytests.net. Employee detained

BNN  
February 20, 2020 (No Ratings Yet)



Latvian State Police has detained a 2001-born young man for reporting fake news, BNN was informed by police.

Police explain that officers have detained a 2001-born young man for intentional reporting of false news related to security risks on a website that resulted in disrupting public order and operations of state and municipal institutions.

EURACTIV

The Capital

2020 Lookahead

Log in / Register

EURACTIV network

Agrifood

Digital

Economy & Jobs

Energy & Environment

Global Europe

Health

Politics

Transport

## Fighting 'fake news' online: How soldiers in Latvia got fooled by bots

By Helmut Heine | der Tagesspiegel | translated by Germanish | Oct 2, 2019 updated Oct 3, 2019

If many comments and images being posted at the same time, it could mean that bots are being used. If commentators systematically comment on very different topics such as elections in Brazil and Latvia's football league, this could also mean that bots are being used. (Photo: Reuters)

Language: Deutsch

Comments

When NATO's Centre for Strategic Communication in Riga discovered how easy it was to dope its soldiers online, it has started looking for ways of countering false information, which comes, in large part, from Russia. EURACTIV's media partner der Tagesspiegel reports.

The Latvian forest, not far from the Russian border. Thousands of soldiers from different NATO member states are training there to ensure continued military presence in Eastern Europe.

But during manoeuvres that spanned several days, some soldiers who were winding down with their mobile phones stumbled across a well-done website claiming to be designed by and for soldiers. On there, the men chatted about the army, the weather and life in general. A few of them also ordered T-shirts on the site, for which they agreed to give their home address for delivery.

On Tinder, a popular dating app, some even communicated with a woman, sending pictures of themselves in uniform. One evening, two soldiers even arranged to meet the virtual woman. They both left their post for her, a move which proved to be a mistake.

The website and the Tinder profile turned out to be a trap – a test carried out by a team of NATO experts on behalf of the Latvian army in the summer of 2018 to identify weaknesses in its own prompted to send their addresses, spread photos of a mannequin and even with false offers.

Supporter

Georgia

From Twitter

Tweets by @georgia\_ga

Stark Takeaway

Great days in #Kazauli with family and friends.

Report of a soldier in Georgia

Georgian Film "Golden Thread"

by legendary Lina Dugobitska screened yesterday in the town hall of #Kazauli

# Latvian State Police request criminal prosecution of fake news portal owner

BNN  
July 16, 2019 (No Ratings Yet)



July 2019 marked the end of State Police investigation of a criminal process launched last year in relation to distribution of fake news. One Niks Endziņš was arrested as a result of the criminal process in 2018.

The investigation revealed that the crime in question was committed by a group of three to obtain monetary benefits. Police have successfully put an end to committed illegalities and have acquired sufficient evidence to prosecute the group in question. On 12 July, Riga Court Region's Prosecutor's Office presented charges to the persons made suspect in the criminal process, as confirmed by State Police Public Relations Office senior specialist Gita Gžbovska.



Home / News / Digital / Media / UK broadcasting watchdog proposed as online harms regulator

## UK broadcasting watchdog proposed as online harms regulator

By Samuel Stoltan | EURACTIV.com

Feb 12, 2020 (updated: Feb 13, 2020)



Britain's Secretary of State for Digital, Culture, Media and Sport Nicky Morgan arrives to attend a cabinet meeting at 10 Downing Street in London, Britain, 22 October 2019. [EPA-EFE/NEIL HALL]

Supporter



Democracy and Digital: trusted media and platform regulation

