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### Combating Global White Supremacy in the Digital Era

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## CHAPTER NINE



# Combating Global White Supremacy in the Digital Era

In cyberspace the First Amendment is a local ordinance.

—John Perry Barlow

In 2002 Tore W. Tvedt, founder of the hate group Vigrid and a Norwegian citizen, was sentenced to time in prison for posting racist and anti-Semitic propaganda on a website. The Anti-Racism Center in Oslo filed a police complaint against Tvedt. On Vigrid's website, Tvedt puts forward an ideology that mixes neo-Nazism, racism, and religion. Tvedt was tried and convicted in the Asker and Baerum District Court on the outskirts of Oslo. The charges were six counts of violating Norway's antiracism law and one count each of a weapons violation and interfering with police. He was sentenced to seventy-five days in prison, with forty-five days suspended, and two years' probation. Activists welcomed this as the first conviction for racism on the Internet in Norway. Following Tvedt's release from prison, his Vigrid website is once again online.<sup>1</sup>

In contrast to the Norwegian response, many Americans seem to view white supremacy online as speech obviously protected under the First Amendment. Senator Orrin Hatch (R-Utah) articulated this view following congressional hearings about hate crime on the Internet in September 1999:

We must be vigilant and prompt in our efforts to begin eliminating hate on the Internet, but we must also do so with exactitude. From this complicated maze

of issues, there is simply no simple answer, and with the First Amendment as our country's first premise, we know that any solutions that we endorse must recognize that the surest way to defeat the message of hate is to hold it under the harsh light of public scrutiny.<sup>2</sup>

The U.S. Senate's legislative response to those hearings was to adopt a series of technical approaches, such as filtering software, to block particular websites.<sup>3</sup>

Both the Norwegian and the American responses to online hate are notably from democratic nations theoretically committed to egalitarian ideals. In Norway, a man is arrested for creating a website filled with racist and anti-Semitic propaganda, even though the server for that website is located in the United States; ultimately, the man is released from jail and the website goes back online. In the United States, citing the protection of hate on the Internet as the country's "first premise," senators take a narrowly focused technological view of white supremacy online by attempting to mandate the use of software filters in public schools and libraries. These examples well illustrate John Perry Barlow's point (and this chapter's epigraph) that in the Information Age the First Amendment, which protects free speech, is a "local ordinance"—that is, one specific to the U.S. context. Barlow's views about Internet regulation, as well as critiques of his views from outside the United States and oppositional views from U.S.-based critical race theorists, can shed some light on these disparate democratic responses to white supremacy online.

John Perry Barlow, retired Wyoming cattle rancher, former lyricist for the Grateful Dead, and cofounder of the Electronic Frontier Foundation, is a widely known critic of Internet regulation. Barlow authored *A Declaration of the Independence of Cyberspace*,<sup>4</sup> an influential essay written in the polemical style of a manifesto and declaring the Internet a place that should remain free from control by "governments of the industrial world," which he refers to as "weary giants of flesh and steel." In that essay Barlow also writes that "we" (those people online in 1996) would "create a civilization of the mind in cyberspace. May it be more humane and fair than the world your governments have made before." Barlow variously describes himself as an anarchist<sup>5</sup> or cyberlibertarian<sup>6</sup> and believes that government should have no power over the Internet and that the "only thing that is dangerous is the one that is designed to stop the free flow of information." Barlow's views are acclaimed<sup>7</sup> and shared by most of cyberculture's leading writers and thinkers<sup>8</sup> in the United States. In fact, it could even reasonably be argued that within the United States the cyberlibertarian view of the absolute protection of free speech on-

line is one that is hegemonic—an idea so pervasive as to be taken for granted as a fundamental, unquestionable truth. In contrast to the cyberlibertarian view, critical race theorists have argued that interpretations of the First Amendment that categorize hate speech as protected speech effectively arm “conscious and unconscious racists—Nazis and liberals alike—with a constitutional right to be racist.”<sup>9</sup> My purpose here is to complicate both views in light of the research presented in the rest of this book about white supremacy online.

These two opposing views—one focusing on the Internet, the other on race—reflect the point I made earlier (chapter 2) that most theories about race do not take the Internet into account and most theories about the Internet do not take race into account. However, I can now add one small exception to that overarching observation: when it comes to hate speech online a number of critical race theorists have begun to explore the implications of this theoretical perspective for the Information Age,<sup>10</sup> and some cyberculture writers have thoughtfully considered hate speech in digital media. The discussion here is intended to contribute to this emerging literature by using a comparative, transnational perspective to understand the global response to white supremacy online.

In this comparative analysis I first take up a number of illustrative examples of responses to white supremacy online outside the United States and then contrast them with analogous responses inside the United States, returning to two cases discussed earlier in the book (e.g., Machado and Jouhari). The United States’ response to white supremacy online is markedly different from that of other democratic nations and has been referred to as the *cyberhate divide*. I explore the significance of this divide by examining the case of *France v. Yahoo! Inc.*, the California-based international Internet company. While others have focused on the case’s implication for American notions of free speech, what it reveals about transnational responses to white supremacy online is equally interesting.

I then shift from this comparative analysis using selected case studies and offer a more theoretical analysis. I locate the different responses between the United States and other democratic nations within the conceptually opposing views of cyberlibertarians and critical race theorists. In the last section, I analyze the connection between online extremist white supremacy and mainstream white supremacy through the lens of interpretation and implementation of the First Amendment and the Patriot Act in the United States. I place this comparison within the theoretical tradition of critical theory, drawing on Marcuse’s notion of *repressive tolerance* to clarify the links. Namely, the American absolutist interpretation of the First Amendment,

which views of white supremacy online as protected speech, is an interpretation born out of a white racial frame, rooted in colonialism, and stands at odds with the wider democratic global community.

### **Responses to White Supremacy Online in Transnational Perspective**

Efforts to combat white supremacy online extend across national boundaries.<sup>11</sup> In fact, according to one scholarly assessment there has been a “nearly unanimous international institution of regulations restricting online hate speech.”<sup>12</sup> While in the earliest days of the Internet many people imagined a borderless world in which the regulation of nation-states no longer mattered,<sup>13</sup> now that expectation is beginning to fade away.<sup>14</sup> Instead of a truly *global* network, the Internet is increasingly a collection of nation-state networks—networks still linked by the Internet protocol, but for many purposes separate.<sup>15</sup> Today national governments around the world can and do make laws that govern the content posted on the Internet (or sent via e-mail). Australia, Canada, Denmark, England, France, Germany, Israel, Italy, Norway, and Sweden are among the long list of nation-states that have taken such action.<sup>16</sup>

Governments in democratic societies are supposed to be responsive to their citizens, and this responsiveness should extend to considering white supremacy online. In the Norwegian case described at the beginning of this chapter, a citizen-led nongovernmental organization (NGO) prompted the government to take action against Tore W. Tvedt’s online white supremacy. The Anti-Racism Center in Oslo filed a complaint against Tvedt, citing his racist website, and since the Norwegian government had an existing antiracism law on the books that extended to white supremacy online, they honored their law and responded swiftly.

Individual citizens acting apart from any institutional or governmental affiliation can elicit government response. For example, Canadian citizen Richard Warman has, over the past six years or so, lodged fifteen different complaints with the Canadian Human Rights Commission against white supremacists who use the Internet to persecute Jews, blacks, and gays and lesbians, among others.<sup>17</sup> As with the Norwegian NGO, Warman’s complaints find traction in Canada, where antiracism laws, including prohibitions against white supremacy online, are already enacted. Such individual actions by citizens like Warman do not occur in a vacuum; they take place within specific national contexts with particular cultural and social histories, and of course, these contexts vary tremendously.

In Germany freedom of speech is a central tenet of their view of democracy, and their interpretation of this right includes bans on certain forms of white supremacy online. For example, the German ban on Nazi emblems, like the swastika, extends to the prohibition of the sale of such items on the Internet. To enforce this law, in March 2008 police in eight German states raided the homes of twenty-three suspects as part of a lengthy probe into the illegal sale of right-wing extremist literature and audio material. Another seventy suspects were identified in the investigation, which had begun in August of 2006 after the German unit of the U.S. online-auction company eBay Inc. reported the online sale of far-right material. Among the items seized were twenty-four computers, some fifty memory devices, and approximately 3,500 right-wing extremist CDs and LPs. According to a spokesperson for the Federal Crime Office (BKA), the raids were part of the ongoing “fight against right-wing extremism on the Internet. These raids demonstrate that the Internet is not a law-free zone.”<sup>18</sup> (Adjudication of this case is still pending as of this writing.) The Germany Constitutional Framework, embodied in the *Grundgesetz*, or Basic Law, became the foundation for the German constitutional system in the aftermath of World War II. Drafters of the Basic Law were careful to include broad guarantees of freedom of expression in order to prevent any recurrence of Nazi-style totalitarianism, with the Basic Law specifically noting that “there shall be no censorship.”<sup>19</sup> The *Grundgesetz* conditions all rights and guarantees to free speech on preservation of the right to “human dignity,” that constitution’s most highly prized value. It is within this framework that German legislators have established severe penalties for hate speech on the Internet. Even before the emergence of the Internet, German law prohibited speech that incited racial hatred,<sup>20</sup> so with the dawn of the Information Age, lawmakers extended the prohibitions to the Internet. Germany was the first among Western democratic nations to regulate white supremacy online with the 1995 passage of its Information and Communications Services Act (ICSA). The ICSA holds ISPs liable for knowingly making illegal content available, has established a cybersheriff who monitors the Internet for objectionable content, and makes it a crime to disseminate or make accessible materials deemed harmful to children.<sup>21</sup> In 1998 the general manager of California-based CompuServe Germany, Felix Somm, was prosecuted and convicted under the ICSA as an accessory to the dissemination of Hitler images and Nazi symbols. Somm’s conviction was overturned in 1999, but the case sent a powerful message to all ISPs that they can and will be held liable in Germany for the content on their servers.<sup>22</sup> Although the outcome of this one case remains unknown, it reflects a wider pattern of response from the German government. In 2002 the

German government adopted a broad strategy to combat right-wing extremism. The “four pillars,” as they are called, aim to educate all citizens of their human rights, strengthen civil society and promote civil courage, help integrate foreign nationals into society, and target suspected far-right extremists.<sup>23</sup> This approach acknowledges that it is important and possible to strike a balance between safeguarding human dignity and protecting freedom of expression in a democratic civil society. Germany embraces democratic ideals while seriously addressing the racist, anti-Semitic propaganda that threatens them. Other Western industrialized democratic nations take similar approaches, broadening the scope of their existing antiracism laws to address online racism.

In 2001 the Council of Europe (COE)’s Committee on Legal Affairs and Human Rights submitted a report titled “Racism and Xenophobia in Cyberspace.”<sup>24</sup> The COE (comprised of forty-seven nations) was founded in 1949 with the ideals of the European Convention on Human Rights as its basis. The report recommended the COE adopt a protocol that would define and criminalize the “dissemination of racist propaganda and abusive storage of hateful message(s).” In 2003 the COE passed the Additional Protocol to the Convention on Cybercrime, an agreement between member states “to ensure a proper balance between freedom of expression and effective fight against acts of a racist and xenophobic nature.”<sup>25</sup> There is disagreement among European nations as to how and when white supremacy online should be addressed at a governmental level (e.g., a Nazi symbol is illegal in Germany but not in Denmark). Still, transnational agreements between European Union (EU)<sup>26</sup> member nations address expressions of white supremacy and racism. In a 2007 vote EU ministers passed a broad antiracism law applying mainly to racist expressions offline. It took six long years to finalize the wording of the motion, and in the end some NGOs, like the European Network Against Racism, complained that the language was too weak.<sup>27</sup> The transnational dialogue is not perfect, but it is vital, and the cross-border work of such NGOs is critical to moving the discussion forward.

The Amsterdam-based International Network Against Cyberhate (INACH) is an NGO that organizes transnational efforts to fight online white supremacy ([www.inach.net](http://www.inach.net)). Established in 2002 as a foundation under Dutch law, INACH’s original mission was to connect online complaint bureaus in a number of different nation-states that were actively monitoring white supremacy online. INACH has since evolved to include a cross-national network with fourteen participating states called by one leading activist a “model for international cooperation in the fight against cyberhate.”<sup>28</sup> Since 2005 INACH has been administered by American Chris Wolf,

known as a leader in the practice of Internet law and as chair of the ADL's Internet Task Force. Each year INACH convenes an international conference of legal, academic, nongovernmental, and antiracism activist-leaders to address the issue of white supremacy online. Throughout the year, INACH connects the network nodes—or members—who actively monitor white supremacy online from Austria, Canada, Denmark, France, Germany, Latvia, Moldova, The Netherlands, Poland, Russia, Slovakia, Spain, Sweden, United Kingdom, and the United States (represented by the ADL). Within this coalition of nation-states, the United States represents something of an anomaly. While other democratic nations enshrine free speech as a fundamental right for each of their citizens, they have found ways to simultaneously preserve their citizens' right to human dignity.<sup>29</sup> The American view is quite different.

### **Responses to White Supremacy Online within the United States**

In 1999 Richard Machado was the first person to be convicted of using the Internet to commit a hate crime (discussed in chapter 3). Unlike Tvedt, the man in the Norwegian case, Machado did not publish a white supremacist website but rather sent threatening e-mails. White supremacy online forfeits its First Amendment protection in the United States only when it is joined with conduct that threatens, harasses, or incites illegality.<sup>30</sup> Yet even when this narrow prosecutorial standard is legitimately met, the law fails to be consistently applied.

Uneven prosecution of hate speech is rooted in racial inequality. The only individual prosecuted to date for white supremacy online is a Mexican American, which is disturbingly consistent with racial trends in the rest of the U.S. criminal justice system. There minority men are suspected, arrested, prosecuted, and incarcerated differently than are whites. In the lone conviction for Internet hate speech the victims were Asian and Asian American, who, because they are often stereotyped as *model minorities*, might be less likely to interpret and then condemn their harassment as part of systemic discrimination. The victims' lack of public recrimination only made it easier for those outside the case to ignore any connection it had to white supremacy.

When Bonnie Jouhari reported that she and her daughter were being targeted by Roy E. Frankhouser's online threats, local authorities in Reading, Pennsylvania, neglected to enforce the law, believing that to do so violated Frankhouser's right to free speech. Jouhari's biracial daughter and work at HUD assisting minorities made their household a target for white supremacist

harassment, and her gender situated her as a comparatively powerless member of society, thus rendering her initial attempts to get protection from the legal system ineffectual because her complaints were given less legitimacy. Interpretation of the First Amendment and what speech it protects is often in the hands of local law-enforcement officials, and so Jouhari was powerless when they refused to assist her. Eventually Frankhouser was prosecuted only after additional legislation was passed by Jouhari's employer, the Department of Housing and Urban Development (HUD), which moved to create new legislation to protect employees from racially-motivated harassment.

And though William A. White posted to his website threatening messages along with the names, addresses, and telephone numbers of the African American youth involved in the Jena 6 case, as of this writing he has not been prosecuted. Why White remains free is troubling, as he is well known to local and federal law-enforcement officials.<sup>31</sup>

The prosecution of white supremacy online<sup>32</sup> seems to rely on racialized notions of whose speech is protected (white supremacists Frankhouser and White) and whose is not (Mexican American Machado). Sadly, rather than prosecuting online white supremacy, the United States prefers to hide behind a technolegal stance and advocate filtering software.

## Technolegal Responses

In fall of 1999 the U.S. Congress held hearings on hate crime on the Internet (mentioned in the opening of this chapter). Following the hearings, legislators decided that mandating Internet-filtering software was the best way to deal with white supremacy online. Filtering software uses key themes or words (e.g., racial epithets) to block some websites from appearing in searches. With filtering software installed, a search-engine query for information that is on the blocked list will trigger a pop-up window to appear that informs the user that the site they are searching for is prohibited; none of the text or images from that site load into the user's browser. In 1999 Congress attempted to require public libraries to use filtering software capable of screening out white supremacist (and pornographic) sites on computers used by children. The proposed legislation would also have required Internet service providers (ISPs) to offer the necessary software to their customers free or at cost. The legislation also made teaching and demonstrating how to make explosives a crime. This bill failed to pass into law, largely opposed due to concerns about the First Amendment and protection of free speech. While national efforts have been unsuccessful, one state, Arizona, passed a law in 1999 that mandates public schools and libraries use filtering soft-

ware. In practice, even without that legislative requirement, most public libraries and schools in the United States frequented by children do use filtering software. Since 1999 the issue of white supremacy online has failed to receive national legislative attention,<sup>33</sup> an approach both deeply flawed and characteristically American.

For a number of reasons filtering software is grossly inadequate to addressing white supremacy online. First, it offers a technological solution to what is an inherently social problem, and such solutions are doomed to failure. Also, the software typically blocks only certain predetermined words and themes, which the deceptive cloaked sites will have no trouble sidestepping. Furthermore, filters frequently block sites not intended for censorship. For instance, a block programmed to exclude any sex-related sites will include terms that also appear on legitimate sites, filtering out any websites about breast cancer or other medical concerns in addition to pornographic sites. In a related issue, the filtering software infringes on the First Amendment rights of children. Chris Hansen, a senior lawyer with the ACLU who specializes in Internet matters, argues that children have the right to obtain material, such as sexual- and reproductive-health information—even if some adults find the information offensive. In addition, children who may be wondering about their own gender or sexual identity are usually blocked from exploring LGBTQ sites because gay civil rights organizations are included under the filtering umbrella of pornography.<sup>34</sup>

In the early days of the Internet, when Congress first held the hearings on hate crime and the Internet, anything associated with the online world elicited an air of panicked moralizing; managing online white supremacy with filtering software was a quintessentially American response. The decision was premised on an unwavering faith in American ingenuity to conquer all obstacles, completely ignored race as central to the problem, and included a market-based approach that relied on software companies to produce and sell filtering programs as the centerpiece in combating white supremacy online. If the proposed legislation had passed, it would have required *all* public schools and libraries to install filtering software. The one or few private companies who won those contracts would have enjoyed an economic windfall, yet white supremacist content online would have continued to proliferate, unchecked. And so passing legislation to mandate filtering software would have profited the few, confirmed the American can-do mythology, and entirely ignored white supremacy's racial component. Online white supremacy can be addressed, but not through a solution that relies exclusively on market-based strategies and benefits an elite few while discounting a racial analysis.

## Market-Economy Responses

The American approach to handling white supremacy online has routinely featured market-economy responses from leading companies in the Internet industry, most notably AOL (America Online) and Google. AOL, the Internet division of Time Warner, has emerged as the world's largest Internet service provider (ISP), with some 21.7 million subscribers in the United States and Europe as of 2005.<sup>35</sup> Unlike other ISPs, AOL's original business model was known as a walled-garden model—that is, they offered a proprietary network of content, online shopping, and other services to AOL paid subscribers only. This changed in June 2005 when AOL began offering free access to certain features and content. Even after this shift, AOL continues to advertise itself as a safe Internet environment. Jonathan Miller, the company's CEO, was asked in an interview whether or not there was still reason to subscribe. He said, "Yes, because AOL in part—in particular for kids—is very much tied up in providing a safe environment."<sup>36</sup> AOL has fairly aggressively marketed itself as a safe online space because of its vigilance against pornography, though they have paid comparatively little attention to racism online. The Rules of the Road, or Terms of Service (TOS) agreement, used by AOL prohibits attacks based on personal characteristics like race, national origin, ethnicity, or religion. Yet AOL provided hosting for the website of a KKK group, The Knights of the Ku Klux Klan—Realm of Texas, and did not regard the site as violating its terms of service. It was in this context that the Anti-Defamation League (the ADL) challenged AOL to adhere to its own TOS agreement, which states that AOL has the right to "remove content they deem harmful or offensive," and remove the Klan website.<sup>37</sup> AOL declined, arguing that even the KKK's racism is protected under the First Amendment, and pointed out that the AOL search engine does block the use of some terms. AOL prohibits the search of terms like *nigger*, *kike*, *slut*, and *whore* in their Member's Directory and its site. Nor can member profiles include such words.<sup>38</sup> While AOL has been criticized by activist groups like the ADL for its inconsistent enforcement of its own TOS agreement, white supremacists like David Duke see such enforcement as infringing on their constitutional right to free speech. Duke posted the following to his personal website in 2002:

The ADL works to ensure that commercial ISPs create terms of service that limit what their users can read or say. By lobbying commercial carriers to censor their users, the ADL achieves [sic] their aim of outlawing free speech

and expression without the constraints [sic] of the First Amendment's protections.<sup>39</sup>

Here Duke sounds like any other American concerned about encroachment on his civil liberties. Duke's rhetoric, when separated from the anti-Semitism in the rest of his post, fits seamlessly with that of others who would argue that the First Amendment is intended to protect his speech. Non-governmental organizations like the ADL can bring political pressure to bear on Internet-industry companies, like AOL, to get them to enforce their own TOS agreements. But when the First Amendment is popularly seen to protect white supremacy online, Internet companies are put in a difficult position. From the perspective of AOL, they are caught between upholding a constitutional right and removing content that is clearly offensive and in violation of their TOS agreement.

Google, the search engine company whose motto is "Don't be evil," has had its own encounters with white supremacy online. In 2004 Steven Weinstock (described in press accounts as "a real estate investor and former yeshiva student") did a Google search using the term *Jew* and was shocked to find that Frank Weltner's anti-Semitic website JewWatch.com appeared first in the Google search results. Weltner, you will recall, is the white supremacist who also published the cloaked sites soliciting donations for victims of Hurricane Katrina and maintains the cloaked American Civil Rights Review site (discussed in chapter 7). Weinstock began an online petition in an effort to get Weltner's site removed from the Google index that produces search results. He hoped that if he could amass fifty thousand requests to remove the site, Google would comply. Although his petition fell far short of this goal (he got about 2,800 signatures), it would not have mattered. According to Google spokesperson David Krane, the company "can't and won't change" the ranking for Jew Watch, regardless of how many signatures the petition attracts. Krane went on to say that "Google's search results are solely determined by computer algorithms that essentially reflect the popular opinion of the Web. Our search results are not manipulated by hand. We're not able to make any manual changes to the results."<sup>40</sup>

This is both true and not true. Google receives about thirty requests per month to remove specific pages from its search results, usually because of alleged copyright or trademark infringement, and Google complies with most of these requests, even though many of those pages are located on servers outside the United States.<sup>41</sup> When Google issued the statement through Krane, it was true that Google was not in the habit of altering the results of

their algorithm based on political content, but by 2006 Google had followed chief competitor Yahoo! Inc. into China. In order to receive permission from the Chinese government to gain access to its enormous market, Google would first have to restrict the results of their algorithm to block any sites about human rights, democracy, Tibet, Taiwan, and the Tiananmen Square uprising. At the World Economic Forum in Switzerland, Google CEO Eric Schmidt explained the decision-making process this way: “We concluded that, although we weren’t wild about the restrictions, it was even worse to not try to server those users at all. We actually did an evil scale.”<sup>42</sup> Google executives said that its approach in China would be to notify users when results had been blocked by the government.

Google applied a similar strategy to search results for *Jew*. Weltner’s Jew Watch site is still first in Google’s search-engine results, but in response to protests by Weinstock and intervention by the ADL,<sup>43</sup> above the result for Jew Watch is a message from Google warning of “offensive search results” ([google.com/explanation](http://google.com/explanation)), with small text on that page that reads “We’re disturbed by these results as well,” followed by an invitation to “Please read our note here.” For those who follow the link, Google offers a lengthy explanation with this central argument:

A site’s ranking in Google’s search results relies heavily on computer algorithms using thousands of factors to calculate a page’s relevance to a given query. Sometimes subtleties of language cause anomalies to appear that cannot be predicted. A search for *Jew* brings up one such unexpected result.<sup>44</sup>

The “subtleties of language” that Google attributes causality to here are the distinction between *Jew* and *Jewish* in common usage. Google’s explanation page points out the social and political context of the usage of these two words in which the former is “often used in an anti-Semitic context” and the latter is more likely used by members of the community talking about their faith. This acknowledgment of the anti-Semitic context marks a curious and impartial departure from the usual business of search engines in which information is presumed to be free of social and political context. It is curious, because there is no similar disclaimer above the search-engine results for a search for other common racial (or sexual) epithets, such as a common racial epithet for African Americans. And it is impartial because, along with Google’s disclaimer about anti-Semitism, the Google algorithm also returns related searches, including Jew jokes.

The responses to white supremacy online from Internet-industry giants AOL and Google may seem contradictory at first. AOL wants to provide a

safe environment yet allows KKK websites. Google claims the company operates according to its motto “Don’t be evil” though Jew Watch remains at the top of the search returns and the company blocks prodemocracy websites for users in China. These responses are not all contradictory when viewed through the lens of a cyberlibertarian interpretation of the First Amendment and neoliberal capitalism. The cyberlibertarian ethos that information exists apart from social and political context (e.g., information wants to be free) allows white supremacy online to continue unchecked and is beneficial to the Internet industry as a whole.<sup>45</sup> For Internet companies operating within the framework of a cyberlibertarian ethos and neoliberal capitalism, matters of race are always viewed as irrelevant unless and until they are seen to be interfering with the smooth operation of the market system. Of course, the supposedly free-market approach of neoliberal capitalism relies heavily on nation-states to operate. Nation-states, by maintaining the rule of law, provide the infrastructure necessary for companies like AOL and Google to operate. AOL and Google could not exist in the anarchy that prevailed in Russia in the 1990s or in the failed states of Africa, where the lack of basic public goods would make thriving Internet businesses impossible.<sup>46</sup> As long as the status quo of white supremacy online does not threaten the profits for those in charge of large corporations and their shareholders, racism will continue to be regarded as irrelevant.

If someone posted online their clear intention to violate the prohibition against discrimination in housing, guaranteed by the Civil Rights Act of 1964, then surely *that* would constitute a form of white supremacy online that the courts would address. Or so thought some activist lawyers in Chicago. It was this logic that prompted the Chicago Lawyers’ Committee for Civil Rights Under Law to file suit against the online classified advertising site Craigslist.org, arguing it violated the Fair Housing Act when real estate ads displayed racially discriminatory statements like “no minorities.” A judge in the Seventh Circuit Court of Appeals ruled that Craigslist.org was not responsible for the listings, as they were simply a messenger and should not be liable for the content of the ad. Furthermore, the judge in this case ruled that monitoring the ads for discriminatory language was “impractical,” due to the “complexity of the task.” And, indeed, the model developed by Craigslist founder Craig Newmark relies on an extremely small staff of people to run the site (fewer than twenty people), while users throughout the world do the bulk of the work of posting and responding to ads. Any user on any Craigslist can flag a post as inappropriate, but this is a far cry from the site itself eliminating racist ads in clear violation of the Fair Housing Act. In effect, the judge in this case ruled in favor of the market economy, giving

Craigslist a free pass because to do otherwise would be “impractical” and “complex.”<sup>47</sup> Given the expansion of white supremacy online, the simultaneous unwillingness of U.S. courts to address it, and the ineffectiveness of technolegal and market-economy responses, the task of responding to white supremacy online in the United States is left principally to three NGOs and the rare individual.

### NGOs in the United States Fighting White Supremacy Online

The effort to combat white supremacy online in the United States is led by three nongovernmental organizations: the Anti-Defamation League (ADL), the Simon Wiesenthal Center, and the Southern Poverty Law Center (SPLC). The ADL ([adl.org](http://adl.org)) is the oldest of these, founded in 1913 to “stop, by appeals to reason and conscience and, if necessary, by appeals to law, the defamation of the Jewish people.” Their mission includes monitoring and taking action against white supremacy online. Currently led by Abraham Foxman and headquartered in New York City (with twenty-nine offices across the United States), the ADL has an annual budget of over \$50 million.<sup>48</sup> Brian Marcus, a scholar and activist, serves as director of the ADL’s Internet Monitoring Unit, comprised of a team of investigative researchers and analysts who, since 1985, have gathered information about white supremacy online from their New York offices. Over the last twenty years the ADL has expanded their Internet monitoring to include the monitoring of extremists of all types, including Islamic terrorists. The ADL shares the information collected with law enforcement via a number of mechanisms, including published reports, e-mail newsletters, and professional trainings. A valuable source for law enforcement is the ADL Law Enforcement Agency Resource Network ([adl.org/LEARN](http://adl.org/LEARN)), an online resource that receives over a million visitors per year. The ADL is also the only NGO in the United States that is part of the International Network Against Cyberhate ([inach.net](http://inach.net)).

A major resource in the effort to combat white supremacy online and offline is the Simon Wiesenthal Center ([wiesenthal.com](http://wiesenthal.com)). The Wiesenthal Center is an international Jewish human-rights organization with a major presence in the United States, primarily in Los Angeles and New York, and an operating budget of just over \$35 million. The center includes a values-based educational effort aimed at confronting anti-Semitism, racism, and hate; teaching the lessons of the Holocaust for future generations; and confronting Islamic terrorism, a relatively new emphasis. The center’s educational efforts are administered primarily through the Museum of Tolerance in Los Angeles and the New York Tolerance Center. *Digital Terrorism and Hate*,

the annual interactive report (CD-ROM) produced by the center, analyzes over six thousand problematic website portals, terrorist manuals, blogs, chat rooms, videos, and hate games on the Internet that promote racial violence, anti-Semitism, homophobia, hate music, and terrorism. The report is based on data collected by a team of researchers led by scholar-activist Mark Weitzman, the director of Task Force Against Hate and Terrorism (Weitzman also serves as director of the New York Tolerance Center), and Rabbi Abraham Cooper, associate dean of the center. Translated into multiple languages, the report is distributed to government agencies, community activists, educators, and members of the media as part of the center's broader educational efforts to teach tolerance.

The Southern Poverty Law Center ([splcenter.org](http://splcenter.org)) based in Montgomery, Alabama, has an annual operating budget of around \$37 million and an endowment of approximately \$200 million. When founded in 1971, the SPLC was originally the small civil rights law firm of Morris Dees and Joe Levin, two lawyers committed to fighting for racial equality through the courts. Since 1981 the SPLC has been monitoring extremist white supremacist activity throughout the United States. Additionally, the SPLC has developed a K–12 curriculum for teaching tolerance and respect in U.S. schools. Dees and Levin pioneered the legal strategy of filing civil suits against white supremacists for activities offline that escaped the reach of criminal prosecution. One of the SPLC's notable lawsuits was in response to the murder by skinheads of an Ethiopian immigrant in Portland, Oregon. The skinheads who beat this man to death were acolytes of White Aryan Resistance leader Tom Metzger. In October 1990 attorneys for the SPLC won a civil case on behalf of murdered hate-crime victim Mulugeta Seraw's family against Tom Metzger and his son John Metzger for a total of \$12.5 million.<sup>49</sup> The SPLC, through the efforts of Mark Potok, who heads the Intelligence Project, is also actively engaged in monitoring white supremacy online, and they keep an extensive archive of websites, blogs, and chat rooms associated with extremist groups based in the United States.

It is worth briefly mapping out the conceptual differences between these three premier organizations. The ADL is a Jewish organization with a primary focus on anti-Semitism online as well as racism. As the Internet Monitoring division has expanded their work, they have broadened their scope to include all types of political extremism, such as Islamic extremists. Similarly, the Simon Wiesenthal Center is primarily focused on anti-Semitism and casts a wide net when collecting the six thousand "problematic" Web sources for their *Digital Hate and Terrorism* report, which includes white supremacists as well as Islamic terrorists. Of the three organizations, the SPLC is the most

narrowly focused on white supremacist groups in the United States. While the SPLC does not actively monitor Islamic extremists, it does include black separatist groups in its tracking data. There is, as far as I can tell,<sup>50</sup> some cooperation between the three organizations but very little, if any, strategically coordinated efforts at addressing white supremacy online. In part, this has to do with the different missions that overlap significantly but not completely or seamlessly. In part, the lack of strategic coordination has to do with the unique histories and constituencies of each organization. These divergent backgrounds mean that, for each organization, there is a slightly different definition of the problem that overlaps or diverges from the organizations' missions in various ways. In an ironic turn, the widening focus of the ADL and the Simon Wiesenthal Center to include Islamic extremists converges with the U.S. government's interest in fighting terrorism in the post-9/11 era. Similarly, the SPLC's widening scope to include black separatist groups converges with the long history of the U.S. government's interest in monitoring domestic black-nationalist groups. While Islamic extremists are certainly a source of violent anti-Semitism, it is difficult to see how black-nationalist groups pose a serious threat to a democratic society within the context of decades of targeted violence and harassment by the U.S. government itself. My point here in mapping out these areas of similarities and differences in strategies between and among these organizations is to illustrate how the understanding shifts depending on the lens: if the lens is extremists worldwide, with an emphasis on anti-Semitism, then Islamic extremists are included with white supremacists. If the lens is extremists solely in the United States with a focus on race, then black separatists are included. When mapped in this way, the efforts the ADL, Simon Wiesenthal Center, and SPLC set in sharp relief a broader failure within American society as a whole to address embedded white supremacy in a meaningful way within its cultural and social institutions.

### Individual Efforts within the United States

Some have argued that the most appropriate response to white supremacy online is for individual computer users to infiltrate white supremacist websites to try and change the discursive subculture.<sup>51</sup> Others have hacked hate websites to disrupt their Internet service.<sup>52</sup> Perhaps the most significant response from an individual activist in the United States to white supremacy online was that of David Goldman. Goldman, a Harvard Law School librarian, created a website in 1995 called Hatewatch, the first site to track white supremacy online. Goldman's Hatewatch attracted incredible media cover-

age and Web traffic, at one point attracting one million visitors a year.<sup>53</sup> It also attracted controversy. In 2000 film critic Roger Ebert launched a scathing public attack on Goldman at the Conference on World Affairs for linking to hate sites. Ebert argued that Hatewatch gave free publicity to haters, providing a “virtual supermarket” for those interested in finding white supremacy online. Ebert also criticized Goldman for his failure to offer any critical analysis of the racist propaganda at these sites (unlike the ADL and Simon Wiesenthal Center that point out the lies and distortions).<sup>54</sup> A year later, in 2001, Goldman stopped maintaining the site.<sup>55</sup> He said it was not because of the criticisms he had received but because he felt that the site had done its job. “We have succeeded in fulfilling the mission we set for ourselves,” he wrote in a farewell message posted on the site. Goldman was bolstered by news that “hate sites simply weren’t proving to be such powerful recruitment tools as many had feared.”<sup>56</sup> Goldman’s assessment is interesting in light of the earlier discussion about social-movement recruitment and the Internet. His view coincides with my own analysis that brochure sites with static displays of information are not effective mechanisms for social-movement recruitment. However, Goldman disbanded Hatewatch in 2001 just prior to the phenomenal increase in participation at Stormfront. Still, no one can blame Goldman for wanting to stop monitoring white supremacist websites after six years; it is difficult, sometimes courageous, and often thankless work. Individual approaches such as Goldman’s brave (if perhaps a bit misguided) actions ultimately offer limited effectiveness on a broad scale (and tend to be site-specific and small scale).

### Valuing Free Speech Differently

Free speech is among the most highly valued ideals in mainstream American culture. This ideal is tied to Enlightenment philosophical traditions of reason and tolerance. Yet this supposedly shared American value of free speech seems less than ideal when viewed by those who are targets of hate speech. For example, a 2005 Knight Foundation study of U.S. high school-aged students found that African American students (43 percent) and Hispanic students (41 percent) were more likely than white students (31 percent) to think the First Amendment “goes too far” in the rights it guarantees.<sup>57</sup> Such findings from public-opinion polling suggest that at an early age young African American and Hispanic people realize that the ideal of free speech does not apply to them equally; thus they evaluate the First Amendment less favorably than white youths. The findings also suggest an epistemology that begins with an understanding of racial inequality and an ethic of caring

(about the victims of hate speech) at the center of analysis. When divorced from this analysis of racial inequality and ethic of caring, however, it is clear that in the United States white supremacy online benefits from near absolute First Amendment protection.<sup>58</sup>

### **The Cyberhate Divide: How the U.S. Response Affects Global Response to White Supremacy Online**

Given the nearly unanimous international adoption of regulations restricting online hate speech, the United States stands alone in its support of free speech—including white supremacy online.<sup>59</sup> One scholar has called these divergent approaches to white supremacy online the *U.S./Europe cyberhate divide*.<sup>60</sup> Global efforts to combat white supremacy online are seriously undermined by the U.S. position in a number of ways.

The cyberhate divide also means that the United States becomes the location of choice for white supremacists worldwide who wish to post their hate speech online without fear of prosecution. This practice is what another scholar has referred to as “importing” hate.<sup>61</sup> It is possible to prosecute someone within one national jurisdiction for material on the Web that is hosted on a server in the United States, and this is what happened in the Norwegian case. Tvedt’s Vigrid website was hosted on a U.S. server, yet he was successfully prosecuted. Even so, because U.S.-based servers allow for such content, fighting white supremacy becomes an international game of whack-a-mole: hate material is quashed in one jurisdiction only to pop up in another. And this is exactly what happened in Tvedt’s case: after serving one year in prison and denied a Web presence for one year, Tvedt was released from jail and put his site back online.

In addition, the United States exports white supremacy via the Internet. The majority of white supremacist sites online are created by Americans and hosted in the United States. Given the global nature of the Web, these sites made in the United States are, then, available anywhere in the world, even in countries where the material is illegal.

An important example of the very literal way that U.S.-based understandings of First Amendment protections for white supremacy online get exported around the world is the *France v. Yahoo! Inc.* case.<sup>62</sup> In 2000 two French NGOs, the International League Against Racism and Anti-Semitism (LICRA) and the Union of Jewish Students, filed a complaint in the French courts against Yahoo! Inc., the Cupertino, California-based Internet company. LICRA and the Union of Jewish Students charged that Yahoo’s auction sites, available through the company’s French-based affiliate Yahoo.fr,

allowed Nazi memorabilia to be sold in France where such materials are illegal. The French courts ruled in May 2000 that Yahoo! Inc. was in violation of French law and must therefore “make it impossible” for Internet users in France to access any Yahoo! websites that auction anti-Semitic material. CEO Jerry Yang refused to comply with the judge’s decision, saying, “We are not going to change the content of our sites in the United States just because someone in France is asking us to do so.”<sup>63</sup> When Yang failed to comply, the French courts began levying fines against Yahoo! Inc., costing the company estimated millions.

What followed was a years-long legal battle between France and Yahoo! Inc. fought in both French and U.S. courts that hinged in a very central way on the ability of individual nation-states to control white supremacy online in a global context. On the one side were the antiracism activists who argued that French laws applied to Internet content. One lawyer representing the French groups said, “There is this naïve idea that the Internet changes everything. It doesn’t change everything. It doesn’t change the laws in France.”<sup>64</sup> On the other side were leading figures in the United States who adopted a cyberlibertarian approach, such as MIT’s Nicholas Negroponte, who said, “It’s not that the laws aren’t relevant; it’s that the nation-state’s not relevant. The Internet cannot be regulated.”<sup>65</sup> This “impossibility” argument was the main tenet of Yahoo! Inc.’s defense; they argued that to limit what Internet content users in one geographic location (e.g., France) could access on the Internet was an impossible technological request.<sup>66</sup> Yet this claim was at odds with the shifting technological and political reality of the Internet. A key turning point in the case was evidence introduced about new technology, referred to as geo-ID, that could identify and screen Internet content on the basis of geographical source.

In 2001 Yahoo! Inc. seemed to change course and embrace the geo-ID and governmental control of the Internet. Early in that year the company issued a statement that it would stop selling Nazi memorabilia on sites available in France, citing bad publicity rather than the judge’s ruling. Later in 2001 Yahoo! Inc. contracted with a geo-ID firm to target advertising to Web visitors in geographically specific locations. Then in the summer of 2002 they signed an agreement with China called the Public Pledge on Self-discipline for the Chinese Internet Industry. By signing this pledge Yahoo! Inc. won a lucrative contract to provide Internet services for China with the condition that it would block any content the Chinese government deemed objectionable, such as prodemocracy websites. Despite this seeming shift toward embracing the possibility of government control of the Internet, in 2005 Yahoo! Inc. filed a countersuit in California against the French government for the

decision in the Nazi memorabilia case, and the 9th U.S. Circuit Court of Appeals said it would rehear some arguments in the case.<sup>67</sup> As of this writing, there has been no decision in this case, but the lengthy court battle and Yahoo! Inc.'s conflicting stance on whether and when to cooperate with nation-states who want to control Internet content is telling. In the French case, Yahoo! Inc. resisted the French government's efforts to protect its citizens from Nazi memorabilia; in the Chinese case, Yahoo! Inc. was complicit in the antidemocratic wishes of the Chinese government to prevent its citizens from accessing texts about democracy. The decisions by U.S.-based Internet companies that operate globally have an impact well beyond the geographic borders of their home country.

The United States holds a disproportionate amount of economic resources and wields an extraordinary amount of cultural and military power in the global context. Therefore U.S. policies exert an enormous amount of influence over the rest of the world. In protecting white supremacy online the United States dramatically reduces the likelihood that nations who wish to regulate it will be able to do so.<sup>68</sup> For other democratic nations white supremacy online is viewed as an important human-rights issue, based on a collective awareness of historical inequality. Reflecting on past confrontations with Nazis and other extremists, most Europeans feel that their concerns about white supremacy online are more than justified.<sup>69</sup> In contrast, the prevailing view in the United States is one of intentional disregard and indifference, in which U.S. policymakers are virtually absent from the international scene. For example, in 2000 the United States failed to send any representatives to an international conference on Internet extremism hosted by the German justice minister.<sup>70</sup> This is not the first time that the United States has stood apart from the international democratic community on issues of human rights.

The United States hesitated for forty years before ratifying and implementing a key international UN human-rights convention. For years the U.S. Senate rejected human-rights treaties on the grounds that they diminish basic rights—including the First Amendment right to free speech—guaranteed under the U.S. Constitution. Among the other justifications for not ratifying the terms of the 1948 Genocide Convention was an assertion that the treaty would violate states' rights, promote world government, enhance communist influence, subject citizens to trial abroad, threaten the United States' form of government, and increase international entanglements. In 1988, after decades of work by Senator William Proxmire, the United States finally ratified and enacted into national law the Genocide Convention Implementation Act. At that point it became illegal under U.S.

law for any group or individual to “directly and publicly incite another” to violate the 1948 Genocide Convention, including inciting racial or ethnic hatred. To date, this is the only international human-rights norm with media consequences to be incorporated into U.S. law.<sup>71</sup> And it seems reasonable to suggest that this international law be leveraged to effectively fight white supremacy online transnationally. The biggest barrier to this is the United States, for not only is it indifferent to addressing this issue within the global democratic community, but it also simultaneously undermines such efforts abroad by operating as a safe haven for white supremacy online and serving as the primary creator of this content available globally.

The resistance to restricting white supremacy online betrays an ignorance about both the history and contemporary reality of racial inequality in the United States. Often the embrace of restrictions for white supremacy online in other countries is contextualized by reference to specific histories of oppression, from which the United States is presumably free. For example, in Goldsmith and Wu’s *Who Controls the Internet?*, the authors briefly offer an explanation for why some countries ban hate speech online. They write, “Germany bans Nazi speech for yet a different reason, the same reason that Japan’s Constitution outlaws aggressive war: it is a nation still coming to grips with the horrors it committed in its past, and it is terrified that they could happen again.”<sup>72</sup>

Here Goldsmith and Wu locate aggression, war, and “horrors” within *other* countries and within a distant past, far removed in time, distance, and political reality from the contemporary American context. The authors here also read a kind of neurosis into these national responses, saying Germany and Japan are *terrified* that this could happen again, not, say, that they are “taking reasonable precautions” or “learning the lessons of history.” Thus, while the history of fascism and totalitarianism is seen as relevant for understanding restrictions on white supremacy online in Germany and Japan, there is a tendency in the United States to ignore or downplay the formative effects of colonialism, slavery, ongoing and systemic racism, and the white racial frame on the acceptance of white supremacy online.

### **Free Speech, Freedom from Hate: Cyberlibertarians vs. Critical Race Theory**

Cyberlibertarians like John Perry Barlow view Internet regulation as antithetical to principles of freedom in cyberspace and in the U.S. Constitution. The cyberlibertarian view holds that “a select number of essential freedoms—including freedom of speech—are understood to be absolute

and not negotiable or subject to being balanced.”<sup>73</sup> For cyberlibertarians, white supremacy online is a trivial concern compared to the *regulation* of white supremacy online, which is viewed as a more serious threat. For those who adopt this view, the stories of the Norwegian man arrested for authoring a white supremacist website or the raid on Germans who used eBay to trade in Nazi memorabilia are cautionary tales about what happens when free speech gets trampled. Indeed, they view the regulation of the Internet as perhaps *the* most important threat to the civil rights in the digital age, to the exclusion of all other threats.

Mike Godwin,<sup>74</sup> author of *Cyber Rights: Defending Free Speech in the Digital Age*,<sup>75</sup> argues convincingly for the need to protect freedom of expression as a fundamental right for ensuring individual liberty in a democracy. In a chapter of his book called “When Words Hurt: Two Hard Cases about Online Speech,” Godwin takes on the critique of feminist legal scholar Catherine MacKinnon, who argues that words have power to harm.<sup>76</sup> Her argument, consistent with that made by critical race theorists, claims that beyond instances in which words *incite* people to act in violent ways, some words *enact* domination and oppression. Godwin takes this claim and uses it to shore up his assessment that free speech is to be valued above all other rights:

The reason freedom of speech matters is that words do have power—they can inspire both pleasant and unpleasant thoughts and feelings in the minds of others. If speech and expression didn’t matter—if they weren’t able to have such a strong effect on us much of the time—far fewer of us would feel the impulse to ban or restrict what other people say. But neither would so many of us defend free speech as vehemently as we do.<sup>77</sup>

Here Godwin acknowledges the power of words and reaffirms the need to protect free speech. Yet Godwin frames his analysis in this chapter in such a way as to trivialize<sup>78</sup> the power of words and the critique of that power offered by MacKinnon.<sup>79</sup> Godwin’s assessment of the importance of free speech rests on an analysis of the Internet, and the exchange of information it facilitates as existing apart from political and social context. Such an analysis does not take race into consideration and offers no mechanism for evaluating claims for racial or social justice against the protection of free speech.

Godwin’s cyberlibertarian frame of free speech as separate from a social and political context systematically disadvantages some members of society while it privileges others. For example, the lived experience of Bonnie Jouhari and her daughter illustrates the way this interpretation of free speech online can have real consequences for people’s lives. The ethos that “infor-

mation wants to be free” means that Bonnie Jouhari and her daughter are *less* free. Framing white supremacy online exclusively as a free-speech issue simultaneously enables the formation of a translocal white identity through the Internet and shifts focus away from any analysis of the human rights of those targeted by violent white supremacy online, people who are members of already marginalized groups. Arguments in favor of an absolutist interpretation of the First Amendment are the product of historically, socially, and culturally situated knowledge.

Many of the first-developed technological advances that gave rise to the Internet were created in Northern California, much of it in and around Palo Alto Research Center (PARC).<sup>80</sup> Following those technological innovations were a remarkable series of innovations in business that gave rise to a new industrial sector centered in San Jose, California, just south of San Francisco, in an area dubbed *Silicon Valley*. The inequalities of race, class, and gender of the broader social context were reinscribed within this newly developed industrial sector.<sup>81</sup> Given this confluence of cybertechnology and Internet industry in one geographic region, it is not surprising that a particular set of social and cultural commentators emerged alongside these milieux and shaped our view of cyberculture. Cyberlibertarians Barlow and Godwin are part of this cultural milieu, and their view of free speech is a product of this setting. Critics outside the United States, such as Richard Barbrook, have argued that beyond the “techno-mysticism” (for example, in Barlow’s *Manifesto*) is a legitimating ideology for a nineteenth-century form of nasty, brutish capitalism. Barbrook argues that those who share this perspective envision the Internet as a sort of unregulated marketplace usually found only in economics textbooks. Barbrook (with Cameron) writes, “Instead of supporting a caring society, they hope that technological progress into the twenty-first century will inevitably lead back to nineteenth-century ‘tooth-and-claw’ capitalism.”<sup>82</sup> While Barbrook’s critique errs in its hyperbole, the cyberlibertarian view of free speech does support an analogous cyberlibertarian model of business that is peculiar to a specific geographic, temporal, social, and cultural context. The cyberlibertarian view of the Internet is one rooted in a particular American geography imbued with a frontier ethos, tied to both a free-market analysis of the Internet and a very recent (mis)reading of the First Amendment as an absolute protection of all speech. Barlow’s pithy aphorism that in cyberspace the First Amendment is a “local ordinance” takes on new meaning when we consider the specific context of the emergence of an absolutist defense of free speech online. Of course, this is not a view of the First Amendment that is universally shared, even within the United States.

Critical race theorists take a different approach to the First Amendment. Writing from a critical-race perspective in the introduction to their volume *Words that Wound*, legal scholars Mari J. Matsuda, Charles R. Lawrence III, Richard Delgado, and Kimberle Crenshaw address those who defend an absolutist view of the free speech in the following:

Words like *intolerant*, *silencing*, *McCarthyism*, *censors*, and *orthodoxy* are used to portray women and people of color as oppressors and to pretend that the powerful have become powerless. . . . Stripped of its context, this is a seductive argument. The privilege and power of white male elites is wrapped in the rhetoric of politically unpopular speech.<sup>83</sup>

At the same time that critical race theorists argue that we should entertain the absolutist free-speech arguments, they also contend that we should place the stories of the victims, those on the receiving end of hate speech, at the center of our analysis. Indeed, when we reframe white supremacy online such that at the center of our analysis is the damage to the dignity of human beings, the issue looks quite different than when framed exclusively as an issue of free speech. This may be a more challenging task within the Information Age in which there is a plethora of multivocal stories to be heard; it is not impossible.

Critical race theory faces other, very real, challenges in the digital era. One particularly strenuous critique of the speech act perspective (the notion that speech constitutes action and a central feature of critical race theory) is Judith Butler's critique.<sup>84</sup> Butler incorporates MacKinnon's argument about speech *enacting* gender oppression with the critical race theorists' argument that *words wound* in the realm of racial oppression. Butler argues that when race and gender scholars emphasize the damage that words can do, they often fail to fully take into account the state's ability to powerfully enact words in a way that has the potential to harm real people in life-altering ways. In an analysis of white supremacy, such as the one at hand, it seems that the racist state, as David Theo Goldberg argues, is a powerful force for maintaining racial inequality.<sup>85</sup> Given that the racist state implements systemic racism, most notably through the criminal-justice system, the notion that the state might be an effective arbiter of white supremacy online seems deeply flawed. This is a different argument than the content-free version offered by cyberlibertarians. Furthermore, while critical race theory offers a powerful critique of racist hate speech, it inadequately addresses the more sophisticated forms of white supremacy online, such as cloaked sites and the vast

number of posts at Stormfront, many of which do not meet the legal standard of hate speech.

## Conclusion

The move from print to digital media marks a new, global and Internet-worked era of white supremacy online that requires global responses. Freedom of speech and the protection of equality are both fundamental to the preservation of human dignity. Within a global context, there is near-universal agreement among democratic nations that these human rights should be weighed against one another. The United States stands in stark relief against this global community, functioning as a haven and importer-exporter for white supremacy online. Yet even the type of antiracism legislation adopted in the rest of the world would be inadequate to address the kind of cloaked sites developed by white supremacists in the United States. In order to engage in a meaningful fight against white supremacy online and offline in a global context, we need a new strategy. In the Information Age old- and new-media white supremacy converge to undermine civil rights, meaning that we need better and more ways to think critically about the Internet, race, and multiple, intersecting forms of oppression. And it is to that need for an alternative that I turn in the next, last, chapter.

## Notes

1. Associated Press 2002. Also discussed in Goldsmith and Wu (2006).
2. U.S. Congress, Senate, Committee on the Judiciary 1999, 2.
3. There is mention of anti-Semitism online in a report made by the U.S. Department of State (2008). More about this report toward the end of this chapter.
4. Barlow 1996.
5. Jayakar 2000.
6. Goldsmith and Wu 2006, 17.
7. The acclaim for his views is evident in his recent appointment as a fellow at one of the nation's most prestigious institutions, Harvard Law School's Berkman Center for Internet and Society.
8. There is a long list of names that could go here, but most notable critics of the regulation of the Internet include Mike Godwin, Lawrence Lessing, and Howard Rheingold.
9. Matsuda et al. 1993, 13–14.
10. Esteban 2001. Ramasastry 2003. Smith 2002.

11. I leave out of this analysis many, many nations and parts of the world simply for lack of adequate space and time. In that sense, then, this is more accurately a transnational and comparative analysis than a truly global one.

12. Breckheimer 2002.

13. See Sassen (1996); and, perhaps more colloquially, John Perry Barlow (1996), who famously wrote, “We will create a civilization of the mind in cyberspace. May it be more humane and fair than the world your governments have made before.”

14. Goldsmith and Wu 2006.

15. Goldsmith and Wu 2006, 149.

16. Siegel 1999. Banton 1996. Heintze 2007, 51–63. Erel 2007, 359–75.

17. Butler 2007.

18. Reuters 2008.

19. Breckheimer 2002, 9.

20. Article 131 of the German Penal Code makes it illegal to write or broadcast anything that incites racial hatred or describes “cruel or otherwise inhuman acts of violence against humans in a manner that glorifies or minimizes such acts.” Furthermore, the publication or distribution of neo-Nazi or Holocaust-denial literature is a criminal offense (Breckheimer 2002, 10).

21. Breckheimer 2002, 10.

22. Breckheimer 2002, 10–11.

23. Reuters 2008.

24. Council of Europe (COE) 2001.

25. Council of Europe (COE) 2003.

26. The European Union (EU) and the COE are separate bodies with different mandates. The EU is a governing body of the nation-states within Europe; the COE is an institutionalized watchdog. For American readers, there is no U.S. equivalent of the COE. Although separate, the EU and the COE engage in joint initiatives, such as country-specific efforts aimed at facilitating institutional and legal reform. For more information, see the EU’s website: [http://ec.europa.eu/external\\_relations/coe/index.htm#join](http://ec.europa.eu/external_relations/coe/index.htm#join).

27. Spiegel Online 2007.

28. Marcus 2006.

29. Breckheimer 2002, 13.

30. Breckheimer 2002, 8.

31. White also maintains a public Web presence through a blogger account hosted by Google, yet no one at Google has acted to remove the site.

32. For a similar analysis of the disproportionate enforcement of bias crimes, see Lawrence (2003).

33. There is one mention of anti-Semitism online in the U.S. Department of State’s *Contemporary Global Anti-Semitism Report* (2008).

34. Kaplan 1998.

35. Richardson 2005.

36. Szalai 2005.

37. Anti-Defamation League 1997.
38. Chaudry 1999.
39. Duke 2002.
40. Becker 2004.
41. Goldsmith and Wu 2006, 75.
42. Vise and Malseed 2006, 278.
43. Anti-Defamation League 2004.
44. Google. *An explanation of our search results*. <http://www.google.com/explanation.html>.
45. Castells 2001.
46. Goldsmith and Wu 2006, 145.
47. International Network Against Cyberhate 2008.
48. Traub 2007.
49. See Dees and Fiffer (1993). The Metzgers did not have millions, thus the Seraw family only received assets from Metzger's \$125,000 house and a few thousand dollars. Metzger declared bankruptcy and stopped publishing his newspaper for the White Aryan Resistance. However, partly because of the relatively low cost of the Internet—and partly because of Metzger's tenacious commitment to white supremacy—Metzger's White Aryan Resistance became Resist.com (as discussed in chapter 6).
50. I have worked with all three organizations in doing research for both this book and my previous one.
51. Zickmund 1997, 185–205.
52. Marcus 2000.
53. Dixit 2001.
54. Ladd 2000.
55. The Hatewatch.com domain name is now owned by SPLC, and they use it in their work against white supremacy online and off.
56. Ladd 2000.
57. John S. and James L. Knight Foundation 2005.
58. Breckheimer 2002, 8.
59. Breckheimer 2002, 1.
60. Ramasastry 2003.
61. Breckheimer 2002, 13.
62. This account of *France v. Yahoo! Inc.* is drawn from reports published at the time the case was in court and draws on the excellent synthesis of the case by Goldsmith and Wu (2006, 1–10 and 183).
63. Goldsmith and Wu 2006, 5.
64. Goldsmith and Wu 2006, 2.
65. Goldsmith and Wu 2006, 3.
66. At the time, Yang was quoted as saying, "Asking us to filter access to our sites according to the nationality of Web surfers is very naïve" (Goldsmith and Wu 2006, 6).
67. Wired News Report 2005.

68. Breckheimer 2002, 14.

69. Breckheimer 2002, 14.

70. Breckheimer 2002, 14.

71. Facing History and Ourselves (*Raphael Lemkin: International law in the age of genocide*).

72. Goldsmith and Wu 2006, 150.

73. Nemes 2002, 193. See also Godwin (2003), Jordan and Taylor (1998, 2004), and Killick and Starr (2000, 2003).

74. Godwin is counsel to the Electronic Frontier Foundation (EFF), the organization Barlow helped found. The EFF is the leading organization that fights regulation of the Internet and advocates speech rights online.

75. Godwin 1998.

76. MacKinnon 1993. Matsuda et al. 1993.

77. Godwin 1998, 102.

78. This trivialization is evident in the opening and close of the chapter: In the opening, Godwin relates a story from his childhood in which he was hurt by words and goes on to offer the sticks-and-stones nursery rhyme; this situates the argument as being worthy of the concerns of a kindergartener. He later concludes the chapter by saying, “We have to learn as a society what we learned as children: words *do* hurt, yes, but learning to cope with those words rationally and without fear is part of what it means to reach maturity” (1998). Godwin uses this story to frame his discussion of hate speech, suggesting that once we “reach maturity” we will outgrow any silly insistence that words have the power to harm.

79. In a curious omission, Godwin’s book *Cyber Rights* (1998) never explicitly addresses race or white supremacy online its chapter on hate speech. Instead, MacKinnon’s feminist analysis stands in for all others who make this type of argument, including critical race theorists.

80. Mowery and Simcoe 2002.

81. Park 1999. Hossfeld 2001. Matthews 2003. Pitti 2003.

82. Barbrook and Cameron 1996.

83. Matsuda et al. 1993, 14–15.

84. Butler 1997.

85. Goldberg 2002.