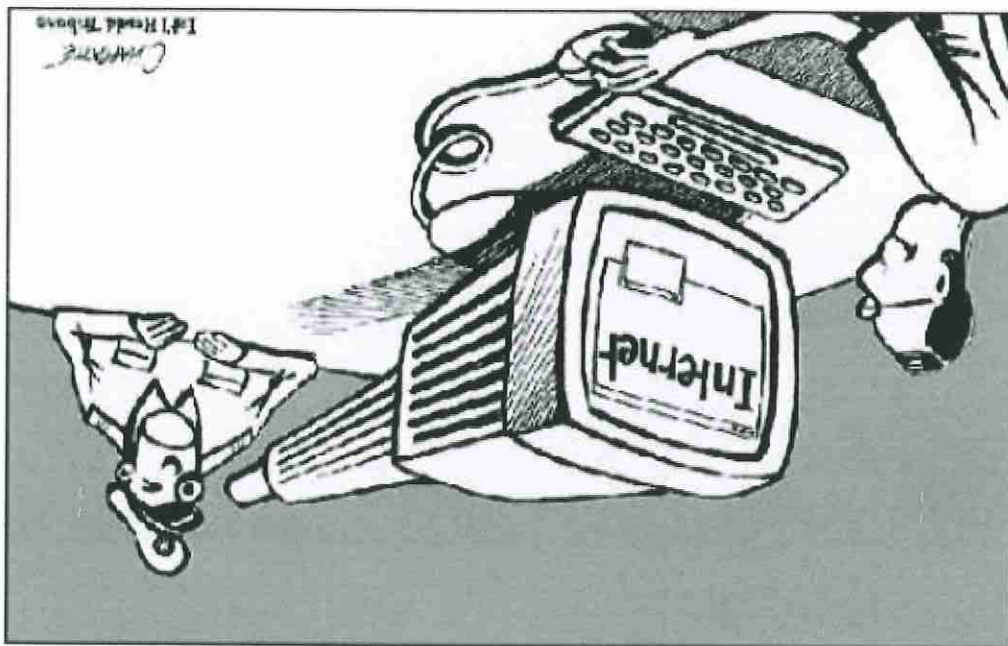


Internet surfing in the European context: Enjoying the open sea whilst avoiding the risk of the big waves.

Cyberspace governance versus freedom of expression.



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Abstract

Freedom of expression on the Internet is necessary for European Democracies. It guarantees the efficiency of political dialogue, communication of ideas and Human Rights promotion. However, European States, members of the Council of Europe (CoE) and the European Union (EU) tend to apply restrictions with regards to two types of content of speech: child pornography and racist/hated Speech on the grounds of protection of minors on the one hand, and equality, anti-discrimination, human dignity on the other hand.

Nevertheless, the role of the European State concerning cyberspace regulation needs to be re-defined, in a way that ensures that restrictive measures can be justified in their interference with the right to freedom of expression of the European Convention on Human Rights. The problem is analysed from a content, an actor and a technique of intervention perspective. Therefore, case-studies of chosen European States on child pornography on the Internet and racist/hated speech are critically examined, in light of both domestic legislation and legal instruments deriving from the CoE and the EU.

Whereas on the one hand, child pornography is widely recognised as an illegal type of content, and therefore, needs to be prohibited, on the other hand, criminalisation of the accessibility of adult pornography on the Internet cannot be justified. Moreover, it is preferable to deal with the problem of the virtual depiction of children in sexually explicit conduct by insisting on self-regulatory measures of protection. Nevertheless, it is essential for an order of jurisdictions to be integrated to the CoE Cybercrime Convention, in order to solve the conflict when more than one States are involved.

In the case of racist Speech, even in the case of a 'militant democracy' that fights against intolerance, criminalisation of the specific content would undermine the pluralism of voices that freedom of expression, as not only a civil but also a political right, wishes to guarantee.

The Internet Industry can only have a limited responsibility if its criminal intention is proven. The democratic accountability of restrictions to freedom of expression has to be increased.

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