

Internet e-ethics in Confrontation with an Activists' Agenda: Yahoo! on Trial*

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ABSTRACT. A prolonged confrontation between Yahoo! Inc. and French activists who demand the removal of Nazi items from auction sites as well as restricted access to neo-Nazis sites is described and analyzed. We present the case up to the decision of Yahoo! Inc. to remove the items from yahoo.com following a French court's verdict against the firm. Using a business ethics approach, we distinguish legal, technical, philosophical and managerial issues involved in the case and their management by Yahoo! We conclude on the difficulty of governing relations with society from corporate and legal affairs departments at the headquarters level, and on the clash of two visions over the regulation of social freedom.

KEY WORDS: auctions, e-business, e-ethics, freedom of expression, Internet regulation, legal compliance, media crisis

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Introduction

The crisis which shook Yahoo! Inc. and its French subsidiary in the early spring of 2000, when a Paris-based activist launched a media and judicial attack on its business practices – specifically, the sale of Nazi items on auction sites – can with hindsight be seen as inevitable. When it erupted, concern over dubious website content was evident worldwide. Yet the Yahoo! case marked the first time that the Internet generated a profound conflict between a U.S. company and a foreign country.

The case can be read as a landmark in a trend toward rising pressure on business to assume responsibility for social consequences of commercial activities. It raises issues including: multi-jurisdictional compliance, the technical specificity of the Internet, opposing conceptions of freedom of expression, the nature of e-business, coordination between headquarters and a foreign subsidiary, leadership, and relations with domestic and international media.

We contend that a business ethics approach can provide valuable insight into these issues. By a “business ethics approach”, we mean an effort to understand the social responsibility of firms *beyond the simple respect of legal constraints*. In this case, the laws governing the protagonists, like their ethical positions, were in conflict. It is thus of little use to contend that a firm in such a situation may simply go about making profits within the law. It may be more useful to ask whether the firm concentrates on respecting its principles or on gaining a practical benefit, and



whether it is confronting or aligning itself with social pressure.

It is crucial to note that the company's actions cannot be explained solely by a search for profits. Our research suggests, on the contrary, that Yahoo! based its strategy on a sincere belief that it was participating in the making of a new (and better) society. Yet the principal results of this stance were sustained damage to the firm's brand, and a humiliating defeat in the French courts.

In Part One, we review the context and history of the affair. In Part Two, we analyze Yahoo!'s responses to the different issues raised by the case, in terms of principled versus pragmatic attitudes, and conflict or alignment with social pressure. Two questions concern us: Could Yahoo! have handled this affair in a way that generated less social conflict? And can a firm balance the defense of its principles with its economic interests – especially when, as in this case, the threatened principles embody the firm's vision of its future?

Part one: Yahoo! versus Licra: History of a clash

1.1. *Protests against hate for sale on the web, August 1999–February 2000*

At the end of the last decade, the appearance of objects with a Nazi provenance in e-commerce sites became an object of outraged protest. Thus online booksellers Barnesandnoble.com and Amazon.com stopped selling Adolf Hitler's *Mein Kampf* to German customers in August 1999, after the Simon Wiesenthal Center of Los Angeles notified the German Ministry of Justice that the companies might be violating the Federal Republic's laws against hate literature.¹ Three months later the Wiesenthal Center attacked what it called the U.S.-based online auctioneer eBay's "current policy of marketing Nazi memorabilia" to the German consumer. Executives at eBay argued that its German subsidiary "adheres to German law and does not allow the posting of Nazi items" – which is legal in the U.S. – and that they were "hesitant to perform the role of censor."² But in February 2000,

following protests over items related to the Ku Klux Klan, eBay changed policy and announced that its site "will not become a platform for those who promote hatred toward their fellow man."³

Yahoo! Inc. also felt the rising heat. On February 23, 2000, the U.S.'s Anti-Defamation League (ADL) denounced Yahoo! Inc. for hosting an entire category of "White Pride and Racialism" clubs. Noting that Yahoo!'s "Terms of Service" agreement prohibited users from posting content of a "racially, ethnically or otherwise objectionable" nature, the ADL demanded that Yahoo! cease to "ignore its own policy and us." Two days later, Yahoo! acceded to some of the ADL's demands.

The responses of Yahoo! and eBay reflected an emerging consensus among Internet leaders, to deal with offensive materials through a policy of "notice and take down." While refusing to establish broad pre-emptive standards for user-generated content, Yahoo! and eBay removed materials that aroused protests from spokespeople for legitimate causes. Thus Internet companies could hope to avoid both government regulation and accusations of censorship.

1.2. *The public and governments intervene against hate on the Web, January–February 2000*

Meanwhile, the issue of Internet hate steadily widened into judicial and political spheres around the world. In January 2000, the United Kingdom's Internet Watch Foundation (IWF: www.iwf.org.uk), an industry self-regulatory group, announced that it was extending its authority to investigate complaints by Internet users to hate materials.⁴ On January 27, 2000, German Chancellor Gerhard Schroeder, inaugurating the first International Forum on the Holocaust in Stockholm, asked for international cooperation to keep neo-Nazis off the Internet.⁵ In France, a proposed "Law on the Liberty of Communication" held Internet service providers (ISPs) responsible for illegal content that transited by their servers.⁶ The daily newspaper *Libération* remarked that ISPs "are trapped, at once guarantors of the freedom of expression and subject to the pressure of plaintiffs."⁷ This was

the precise quandary into which Yahoo! was now plunged.

1.3. *An activist sounds the alert: February 2000*

Marc Knobel, a Paris-based researcher for the Wiesenthal Center, had become convinced that the Internet was changing the landscape of hate for the worse.⁸

The Internet didn't invent anything. These groups existed, they distributed their propaganda, forged bonds among themselves, met with each other. That hasn't changed. But before Internet, they were largely confined to specific geographical zones. What's new is the very great ease which allows me today to connect to the web pages and sites created by these groups, and to see what they distribute, who they are, what they're doing, and to have access to their very essence.

He acknowledged that this shift had greatly facilitated his own research. And yet, said Knobel, "I would prefer, frankly, to never see a site that was created by the extreme right. Every time we leave open ground to the extreme right, it moves in."⁹

In February 2000, alerted by an American friend, Knobel discovered 800 Nazi-related items for sale on yahoo.com. He was particularly shocked by a box of Zyklon-B, the poison gas used at Auschwitz, identified as a "museum-quality replica."¹⁰ In conjunction with a lawyer, Stéphane Lilti, he decided to pressure Yahoo! to stop these auctions, through the media:

I said to myself, "They're Americans, they'll understand that the French see this differently, that it isn't good to sell this stuff. It's their responsibility and it's in their power to do something." And I said to myself – not to them – "Maybe they will. I'll give them two months."

A press campaign by the UEJF (Union of Jewish French Students), and the LICRA (International League Against Racism and Anti-Semitism), where Knobel sat on the executive board, began on February 17, 2000 in the weekly *Paris-Match*.¹¹ The article ended with a threat from

Knobel: "It's up to Internet companies to regulate themselves. If not, we'll launch a boycott [of Yahoo!]."¹² A subsequent article in *L'Express* was forwarded by Yahoo! France's general director, Philippe Guillanton, to Yahoo! Inc. No contact was made with the LICRA. On April 5, 2000, Yahoo! France received a registered letter from the LICRA, warning that if the auctions of Nazi objects did not cease within eight days, charges would be filed in Paris. The letter was forwarded to Yahoo! Inc. for reply. Three days later, Yahoo! France learned from the press that it and its parent were being sued.

1.4. *Yahoo! Stands accused: April–May 2000*

Under a special procedure which allows a judge to ordain preventive measures without a full trial, the plaintiffs demanded that Yahoo! be fined 100,000 Euros (\$90,000) for every day the sales of Nazi objects continued. Further demands included removing all links to "negationist" (Holocaust denial) websites from Yahoo! France, and eliminating two sites, including one in French, that offered the text of *Mein Kampf* on Yahoo! Inc.'s geocities.com subsidiary.

Yahoo! Inc.'s associate general counsel for international affairs, Greg Wrenn, immediately faxed LICRA president Patrick Gaubert, taking a principled stance:

Yahoo! applauds the mission of your organization and in no way does Yahoo! endorse anti-Semitism or racism of any sort. In fact, as you may recall, Yahoo! France has cooperated extensively this year with LICRA regarding your concerns about Nazi-related sites. . . .¹³ Within the bounds of the law of the 23 different countries in which our international properties are located, we promote freedom of expression and choice and Yahoo! believes it should not act as a political censor . . . in the U.S., the removal of such items would be considered censorship and treated by many as more offensive than the isolated postings themselves.

French online media, notably Transfert.net, began what turned into extensive coverage of the affair, including the posting of judicial

documents. But outside France, coverage was non-existent, with the significant exception of a major Israeli newspaper, the *Jerusalem Post*.¹⁴ Yahoo! Inc. indirectly contributed to the silence, by following its established policy of refusing to comment on ongoing judicial proceedings.

1.5. *The first hearings: May 15–22, 2000*

At the first hearing in the *Tribunal de Grande Instance de Paris* on May 15, defending counsel Christophe Pecard argued that “Internet users who go to Yahoo.com undertake a virtual voyage to the U.S.,” and so no offense could be said to take place in France. In any case, it would be technically impossible for Yahoo! to block all access to its sites from France, noted Pecard. Consequently, he declared, “The plaintiff [is] putting Internet on trial instead of neo-Nazi propaganda.”¹⁵ Lilti counter-attacked that “Yahoo! Inc. has not seen fit [. . .] to remedy the problems that were denounced, which it maintains in full awareness.”¹⁶

On May 22, Judge Jean-Jacques Gomez¹⁷ ruled that though “the unintentional character [of Yahoo!’s ‘fault’] is evident”, the sales were nonetheless “an offense to the collective memory of a nation profoundly wounded by the atrocities committed in the name of the Nazi criminal enterprise.” Moreover, he observed that “the genuine [technical] difficulties encountered by Yahoo! do not constitute insurmountable obstacles.” He ordered Yahoo! Inc. to “take all measures of a nature to dissuade and to render impossible all consultation on Yahoo.com of the online sale of Nazi objects and of any other site or service that constitutes an apology of Nazism or a contestation of Nazi crimes.”¹⁸

Media coverage now became international, with alarming implications for the Yahoo! brand. As Wrenn said, “We’re a global brand, not just a U.S. brand. And a lot of people just kept seeing ‘Yahoo!-Nazi.’”¹⁹ Other content providers, he added, “were not publicly behind us, because of the Nazi issue.” Yahoo! was isolated.

1.6. *The Chief Yahoo! Speaks*

On June 16, 2000, an interview with Yahoo! co-founder and “Chief Yahoo!” Jerry Yang appeared in *Libération*, under a bold-faced quote that Yahoo! executives say was taken out of context: “*The French court is very naïve.*” The introduction presented Yang in an aggressive, defiant light: “Okay, he’ll respect the laws that apply to his foreign subsidiaries, but it’s not okay to intervene on the site of yahoo.com [in] the United States. Not unless an American court so orders.” In fact, this was not far from Yang’s remarks as reported: “This court wants to impose a judgment in a jurisdiction over which it has no control. . . . Asking us to filter access to our content according to the nationality of an internaut is very naïve.” Yang then made an emotional plea for an open, free cyberspace: “I would like people to understand: We can’t favor one group of users over another.”²⁰ The interview was widely quoted in the French press, with sensibly negative effects on relations with Judge Gomez and the public.

1.7. *Inside Internet technology: Summer, 2000*

On July 24, Christophe Pecard informed Gomez that “Yahoo! Inc. cannot obey the order of May 22,”²¹ adding that the order ignored that “the very nature of the Internet” as “a space of freedom without central control.” Pecard offered a compromise: Yahoo! would advise French internauts that content on the U.S. site might violate their laws, and would encourage users to monitor sites, in order to “make actors and users more responsible”.²² But Yahoo! Inc. refused to “act in one way or another as a censor.”²³

Following the hearing, Wrenn invited Knobel and Lilti for a beer, and attempted to reach a settlement:

I said, “If what you’re trying to do is get racism off the Net, even if you win and shut down Yahoo!, that won’t solve the problem . . . the sites will pop up elsewhere. What you need to do is win the battle for people’s minds, and get out your message, and let them know the tools they can use

to stop their children from seeing this. Why don't we talk about ways to get your ideas out. . . ." Marc [Knobel] said, "No, you'll find a way to do this blocking, and that's what we want."

On August 11, Judge Gomez named a "college of experts" to study the technical issues, including Vinton Cerf, an American considered among the founders of the Internet, François Wallon, a French Internet authority, and English Web expert Ben Laurie. In court on November 6, they agreed that no technical measures could ensure that Yahoo! would succeed in keeping *all* French Internauts away from Nazi writings or objects.²⁴ Though the experts conceded that up to 80 percent of French visitors could be identified through various techniques, under questioning, Vinton Cerf implied that the solutions envisioned by the court were futile and dangerous, especially for the privacy of Internauts.

Prosecutor Pierre Dillange, representing the State, asked the court to retreat: "French justice should rule within the limits of what is possible and doable."²⁵

1.8. *The Judge's last word: November 20, 2000*

On November 20, Judge Gomez ruled that Yahoo! was avoiding "a moral and ethical exigency that all democratic societies share."²⁶ Yahoo! Inc. was again directed to satisfy the terms of Gomez's previous order within three months, or pay a fine of \$13,900 per day thereafter.²⁷

The ruling was international front-page news, often accompanied by a headline linking the words "Yahoo!" and "Nazi." Yahoo!'s belief that the affair was central to the future of the Internet was amplified by editorial commentators in major newspapers.²⁸ Yahoo! executives dismiss the notion that fluctuations in the stock price were related to its judicial woes.²⁹

1.9. *Yahoo! Changes jurisdiction: November 2000–January 2001*

Assuming that Gomez ruled against Yahoo! again, should the company appeal his decision in

France? It was decided to forego an appeal and file a complaint for declaratory relief before the U.S. courts, which hold the sole power to enforce foreign judgements against an American corporation's U.S. assets. Noted Wrenn, "Our First Amendment case is as strong as it gets. . . . If U.S. companies can be threatened by judgements in other countries, that has a chilling effect on free speech." Thus Yahoo! could shift the debate away from Nazism, and toward the rights of Americans. A suit was filed in U.S. District Court on December 21, 2000.³⁰

On January 6, 2001, Yahoo! Inc. announced the removal of all objects related to Nazism from its auction sites, except some 140 collectible coins, stamps, and anti-Nazi books and films. However, another French group, the Association of Friends of the Deported of Auschwitz and the Camps of High Silesia, filed charges against Tim Koogler, CEO of Yahoo! Inc., for "justifying war crimes, crimes against humanity, or crimes of collaborating with the enemy [and] for having deliberately maintained auctions of Nazi objects"³¹ through January 5. As Vinton Cerf told *Libération*, "We're at the beginning of ten years of conflicts."³²

Part Two: A multi faceted analysis: Comparing principles with reality

Yahoo!'s position on the legal issues began with the argument that local sites should be governed by local laws, a principle that may seem self-evident. However, for the activists, Internet hate is inescapably a *universal* problem – and that is also how Judge Gomez treated it in his rulings. The court never denied that Yahoo! could host any content it wished in the U.S.; instead Gomez refused Yahoo!'s right to distribute those materials to the French. It was therefore Yahoo!'s responsibility to restrict access.

On the technical issues, Judge Gomez's initial demand that Yahoo! "render impossible all consultation" of the contested services from France was indeed unfeasible.³³ But Yahoo! argued that since no technical solution could be guaranteed as completely effective, the firm could not reasonably be expected to implement *any* solution.

The college of experts' (predictable) opinion that a partial solution could nonetheless be implemented thereby allowed Gomez to accuse Yahoo! of failing to demonstrate "even a little good faith."

Denials of technical feasibility are often an early response to demands that a firm modify its behavior. Questions of sincerity aside, in general it is extremely difficult for any company to innovate in ways that restrict its own activities. In Yahoo!'s case, it appears that it was particularly difficult to view the technical issues in any but an ideal sense, because leaders like Jerry Yang thought that it is *in principle* ethically wrong to try to restrain the Internet's free development. Thus technical solutions that might partially satisfy the judge's demands were not worth considering.

Yahoo! views itself and the Internet *as media freely created by their users*, and was prepared to fight for that concept. This stance resides on classic U.S. free speech doctrine, which holds that offensive speech is the price a society must pay for freedom of expression.³⁴ In recent years the U.S. Supreme Court has extended First Amendment protection to the Internet in particularly strong terms.³⁵ In the U.S., Yahoo!'s position may be said to align with society, rather than being socially controversial. The problem is that from a French perspective, the exact same stance appears merely idealistic. European free speech doctrine incorporates the belief *and experience* that certain ideas can destroy public order, and with it any semblance of debate – and they must therefore be banned. From that standpoint, defending free speech cannot justify tolerating or diffusing neo-Nazi propaganda. Yahoo!'s credibility on this issue was further damaged when Jerry Yang candidly admitted to *Libération* that in operating Yahoo! China, "on Chinese soil, we respect censorship, including political matters." Knobel later cited that passage to us from memory.

Yahoo! never communicated specifically on the business dimensions of this affair, beyond observing that its auction site charged no fees or commissions (in contrast to eBay). But it is not necessary to earn money directly from online auctions for them to have important business

implications.³⁶ Advertising revenues are crucial to auction sites, and in particular for Yahoo!, which in 1999 earned 90 percent of its overall revenues from advertising.³⁷ Auctions help to sell ad banners: The average visit on eBay lasts 50 minutes, compared to 20 minutes for conventional online retailers.³⁸

Knobel, who suggested that reporters ask Yahoo advertisers what they thought about the Nazi goods, perfectly understood these facts. Lilti told us flatly: "We're not talking about free speech, we're talking about commerce."³⁹ Clearly, a firm's ethical stance does not alter the fact that its fundamental role is to make profits. Consequently, attempts by a company to portray its position as socially responsible may be – and in this case, were – regarded as mere hypocrisy.⁴⁰ The business dimension of the case was implicitly acknowledged in November 2000, when Yahoo!'s international leadership decided that auctions would henceforth be a paying service, and Yahoo! would decide what was proper for sale. Meanwhile, the issue was pervasive, continuous, and unfavorable to the firm.

Though Yahoo! France was consulted on such matters, the subsidiary had little control over the case. When Philippe Guillanton first contacted Yahoo! Inc. to discuss the matter, headquarters replied that the company received "five letters like that every day," implying there was no major cause for concern. Knobel said he was astonished that Yahoo! made no attempt to contact him during the press campaign that preceded his legal assault.

One reason for this oversight may lie in a legal approach to the relation between business and society, which regards any initiative that follows the direction set by activists as a potentially dangerous precedent. But that may preclude the opportunity to use activists as objective allies, who provide early warning of social concerns. Clearly, centralizing decisions at the corporate legal affairs level hampered Yahoo! from responding adequately to concerns voiced at the local level. Note that activists learn to play on such structural weaknesses. Several Yahoo! executives commented on the superb publicity skills of Knobel, without realizing that he lacked

any prior experience of such confrontations. In effect, Yahoo! was training him.

Similar blind spots appear in Yahoo!'s relations with the media. Recall that in the early stages of the case, Yahoo! Inc. avoided public comment. Jerry Yang's interview in *Libération* was intended to regain the initiative lost through this policy. It is, of course, standard procedure for a company leader to step forward in a crisis. However, while to an American his words might have seemed refreshingly frank, for the French – and notably to Judge Gomez – they could appear merely brutal. Once again, Yahoo!'s good-faith efforts diminished its alignment with its social environment.

Conclusion

If Yahoo! had removed the offensive items from its auction site in February 2000, there would have been no case and no damage to the company. In theory, a company can neither respond to, nor give in to all pressures arising from society. But in practice, failure to appreciate the character of specific social concerns can have serious consequences.

The Yahoo! case illustrates how the emergence of new technologies creates an array of problems that executives, as well as legislators and lawyers, do not yet know how to solve. Often the absence of precedents leaves them ill-prepared to respond to pressure groups or societal demands. The same vacuum invites corporations and their leaders to sharpen their awareness of ethical dilemmas (particularly when operating in a *multi-cultural* global environment). If this case is a harbinger, approaches based on compliance may no longer be adequate to such dilemmas.

The case leads us to identify a conflict between two ideological stances. The first, reflected by Yahoo!, could be summarized as *Good comes by itself, and this process should not be constrained*. The second, explicit in the activists' position, is that *Evil occupies any vacuum, and this process must be constrained*. An ethical manager should avoid principles that lock him into one of these positions; a wiser course would be to navigate between the two. Principles are indeed necessary

to guide such navigation. But the principles advanced by Yahoo! were not accepted by all parties, nor were they efficient in terms of the firm's economic interests. A company can lose both the moral high ground and profits by acting within limits imposed by principles that others may neither understand nor share.

Notes

* This paper is an abridged version of *UPF Working Paper 577* and *INSEAD Working Paper 2001/91/EPS/ABA*. We would like to thank Beatrix Biren, Roger Darlington, Nathalie Dray, Soumitra Dutta, Jean-Jacques Gomez, Philippe Guillanton, Marc Knobel, Stéphane Lilti, Scott Morris, Shelley Steiner, Greg Wrenn for their participation in the making of this research.

¹ It is worth noting that a skilled Internet user could nonetheless find alternate sources for these materials, as the online magazine *Salon* reported: "While German extremists can't buy their books from the Internet's biggest vendors, they can find them if they dig a little deeper." (See Craig Offman, "Hate Books Still for Sale on the Web." *Salon.com*, August 17, 1999.) Indeed, the impossibility of enforcing absolute censorship on the Internet is a given among experts interviewed for this article, including all protagonists in the Yahoo! affair.

² One eBay manager compared the Center, known for pursuit of war criminals, to "a Nazi Gestapo force [that wants to] police everything that goes on the market." Needless to say, the irony of his remark was not appreciated. See Ed Ritchie, "No Tolerance for Nazi Items." *Auctionwatch.com*, December 1, 1999.

³ The company's new policy attempted to balance the interests of legitimate collectors against the concerns of protestors: "Relics of groups such as the KKK or Nazi Germany may be listed on eBay, provided that they are at least 50 years old, and the listing is not used as a platform to glorify or promote the organization or its values . . . eBay will judiciously disallow listings or items that promote hatred, violence or racial intolerance, including items that promote organizations with such views. eBay will review listings that are brought to its attention by the community, and will look at the entire listing to determine whether it falls within this rule."

⁴ For British civil liberties activists like Chris Ellison, founder of Internet Freedom, the IWF's goal was to "extend their ability to censor," at a moment when

the Blair government sought to improve its “politically correct” image. See Lakshmi Chaudry, “British ISPs Crack Down on Hate.” Libertarian Alliance, January 25, 2000 (via www.codoh.com). Useful information can be found on the personal site of the chairman of the IWF, Roger Darlington: <http://www.rogerdarlington.co.uk>. See also his interview with the authors in Le Menestrel et al. (2001a, exhibit 1).

⁵ Kim Gamel, “Forum: Keep Neo-Nazis From Web.” Associated Press, January 27, 2000.

⁶ This is the substance of Article 43 of the Loi du 1er août 2000 “relative à la liberté de communication”. Even before the law was passed, a leading French access provider, altern.org, had paid ruinous damages when French model Estelle Hallyday discovered her photographs on an unauthorized site that used altern.org's server and sued. In effect, the new law confirmed and extended that jurisprudence.

⁷ Florent Latrive, “Les hébergeurs priés de sévir”. *Libération*, April 7, 2000 (via www.liberation.com).

⁸ Marc Knobel's quotes are drawn from an interview with the authors, February 6, 2001, and from follow-up telephone calls, unless otherwise indicated.

⁹ France's National Front and its more radical satellites, for example, were the first political forces in France to establish a presence on the Internet. The promotional power of their websites can be disputed, but their utility as a communications tool within the movements seems clear (see Le Menestrel et al., 2001a, exhibit 2 and Hunter, M., 1998).

¹⁰ Comments Greg Wrenn, Yahoo associate general counsel for international affairs: “The vendors didn't say, ‘Throw this at your Jewish neighbor and scare him.’ Nothing to indicate they were offered by Nazi supporters – or not offered to legitimate collectors who don't want to forget the atrocities committed in World War Two.” Interviewed by telephone, March 29, 2001.

¹¹ The weekly announced its “discovery” of Nazi goods on the Internet – “nearly 500 on Yahoo!, and over 3,500 on eBay.” An illustration of a Waffen SS, a member of the Nazi party's armed forces, was captioned: “On Yahoo! Auctions: A mouse pad glorifying the SS troops.”

¹² François Labrouillère and Laurent Léger, “Quand Yahoo et eBay deviennent les supermarchés des souvenirs nazis”, *Paris-Match* No. 2647, February 17, 2000.

¹³ Prior to Knobel's press campaign, Wrenn had contacted Inktomi, which provides Yahoo! France with web page search results, to ensure that the subcontractor would remove sites considered illegal in

France from its index. “It's an automatic system – they'd find French-language sites and index them,” explained Wrenn. “They don't do human reviews.” The group at the origin of the complaint, which was successfully resolved, was the LICRA.

¹⁴ This statement is based on a review of the Lexis-Nexis database. Internet searches show that only scattered online media, like ZDNet News, picked up the Reuters coverage, while other leading online news sources, like *Hotwired*, remained silent. Market analysts in London and New York apparently saw no significance in the case, which appeared in not a single analyst's report through the spring. It is interesting to note that in an April 17 story on “Weaving the Web in Paris,” *Business Week* found it more interesting that in France, unlike Silicon Valley, “the locals smoke cigarettes in Internet cafés.” Likewise, when CNN's Internet-savvy “New Show” discussed the international strategies of Yahoo! and eBay on April 25, the Paris affair never came up.

¹⁵ Christian Pecnard's quotes are drawn from “Conclusions pour la Société Yahoo! Inc., A Monsieur le Président du Tribunal de Grande Instance de Paris”, Audience de référé du 15 mai 2000, pp. 4–10.

¹⁶ “Conclusions en réplique de L'Union des étudiants juifs de France, A Monsieur le Président du Tribunal de Grande Instance de Paris”, Audience de référé du 15 mai 2000 (via www.juriscom.net).

¹⁷ Interview with the authors, March 2, 2001.

¹⁸ Tribunal de Grande Instance de Paris, UEJF et LICRA c. Yahoo! Inc. Et Yahoo! France, Ordonnance de référé, 22 mai 2000 (via www.juriscom.net). A date of July 24 was set for Yahoo!'s presentation of those still-undefined “measures.” In the meanwhile, Gomez ordered Yahoo! to pay the costs of the hearing, including the legal fees of the plaintiffs' lawyers, plus \$1,390 in provisional damages to the LICRA and the UEJF.

¹⁹ Interview with the authors, March 2, 2001.

²⁰ A complete translation of the interview is available in Le Menestrel et al. (2001b, exhibit 2).

²¹ “Conclusions pour la Société Yahoo! Inc., A Monsieur le Président du Tribunal de Grande Instance de Paris”, Audience de référé du 24 juillet 2000, pp. 5–6.

²² *Ibid.*, p. 26.

²³ *Ibid.*, p. 27.

²⁴ Looking back on the event, Ben Laurie wrote that the use of current techniques offered nothing more than a “solution [that] is half-assed and trivially avoidable” by an experienced Internaut. The text is online at <http://www.apache-ssl.org/apology.html>.

²⁵ Julie Krassovsky, "Procès Yahoo!, les experts, stars d'un jour." www.transfert.net, November 6, 2000.

²⁶ "Conclusions pour la Société Yahoo! Inc., A Monsieur le Président du Tribunal de Grande Instance de Paris", p. 18.

²⁷ *Ibid.*, pp. 20–21.

²⁸ The *International Herald Tribune* called the ruling "certain to reverberate through the uncharted world of the Internet". The *Financial Times* quoted Nigel Hickson, head of the e-business unit at the Confederation of British Industry: "Despite the obnoxious nature of the [Nazi] material, this ruling sets a very bad precedent for the future development of services on the Internet." An accompanying editorial warned that "similar cases in other countries. . . . Would be a sure way to hinder the growth of Internet business." The *Wall Street Journal* saw "disastrous implications for free expression around the world," and an open door "for other countries to hold independent web site publishers or large corporations outside their borders responsible under strict rules about illegal content." See Victoria Shannon, "French Court Tells Yahoo to Block Nazi Items on Site." *International Herald Tribune*, November 21, 2000, p. 1; Jean Eaglesham and Robert Graham, "French Court Ruling hits Yahoo!" *Financial Times*, November 21, 2000, p. 1; Anon., "Offensive Ruling." *Financial Times*, November 21, 2000, p. 20; Mylène Mangalindan and Kevin J. Delaney, "Yahoo! Is Ordered to Bar Nazi Material." *Wall Street Journal*, November 21, 2000, p. 1.

²⁹ The day following the ruling, Yahoo!'s share price on the Nasdaq exchange dropped from \$48.87 to \$41.68, and again to \$38.18 on November 22. It rebounded to over \$40 on November 27, and then slid below \$37 the following day, simultaneous with the announcement that a Munich prosecutor was investigating charges that Yahoo! Deutschland had sold copies of *Mein Kampf*, banned in Germany. The curve of Yahoo!'s share price corresponds closely to that of the Nasdaq exchange in general, and of rivals like eBay. Some more details can be found in Le Menestrel et al. (2001b, exhibit 1).

³⁰ Yahoo! asked for a ruling that Gomez's orders "are not recognizable or enforceable" in the U.S., plus recovery of Yahoo!'s court costs and an injunction to prevent the French plaintiffs "from enforcing or attempting to enforce the Paris Court's [rulings in the U.S.]." See "Complaint for Declaratory Relief, Yahoo! Inc., a Delaware corporation, v. La Ligue contre le Racisme et l'Antisémitisme, a French Association, and l'Union des Etudiants Juifs de France, a French Association," U.S. District Court for the

Northern District of California, San Jose Division, December 21, 2000, pp. 12–13.

³¹ Citation directed devant le Tribunal Correctionnel de Paris (17ème Chambre), à la requête de l'Association amicale des déportés d'Auschwitz et des camps de Haute Silésie, p. 8. The copy provided by Marc Knobel is undated, suggesting that he possessed a copy before the suit was filed.

³² Laure Noualhat, "Nous sommes à l'aube de dix ans d'affrontements". *Libération*, November 10, 2000 (via www.liberation.fr).

³³ Blocking techniques based on the IP (internet protocol) addresses of net surfers – a method suggested by the judge – would not satisfy the order as written, as the college of experts noted. Yahoo! rightly pointed out that blocking methods based on keyword searches would mostly penalize sites favorable to the cause of the struggle against racism and anti-semitism, because they were indexed by the same keywords used by neo-Nazis.

³⁴ On the regulation of the Internet, see R. Darlington's views on <http://www.rogerdarlington.co.uk/Internetethics.html> and the paper presented by L. Fekete during the 14th Annual EBEN conference in Valencia (Fekete, 2001).

³⁵ Further About the free speech in the U.S. and in France, see Le Menestrel et al. (2001a, exhibit 3); Taylor (2000).

³⁶ In January 2001, Forrester Research reported that online auctions in Europe had passed the billion-Euro landmark, and would attain 8.8 billion Euros by 2005, with 62 percent of transactions taking place in C2C sites. See Hellen K. Omwando et al., "Europe's Online Auction Prize: SME's." Forrester Research, January 2001, pp. 1, 2, 6.

³⁷ According to its quarterly SEC filings, Yahoo! Inc. earned \$799 million through the first nine months of 2000, of which \$722.8 million came from advertising.

³⁸ *Op. cit.*, Omwando, pp. 3, 4.

³⁹ To some extent, public suspicion about such attempts appears justified. As shown by Litman (1999), free speech is hardly a working standard for e-business in the United States. Far from sacrificing business interests in the defense of freedom of expression, New Economy companies act in concert with the government to pass laws that restrict free speech and protect their interests.

⁴⁰ On the ambiguity of communicating about ethics when making profitable activities, see Le Menestrel (2002).

References

- Akdeniz, Y., C. Walker and D. Wall: 2000, *The Internet, the Law and Society* (CyberLaw Research Unit, University of Leeds, Longman Pearson).
- Diamond, E. and S. Bates: 1995, 'Law and Order Comes to Cyberspace', *Technology Review*. Available at <http://209.58.177.220/articles/oct95/Diamond.html>.
- Farhoomand, A.: 2000, *Multi-jurisdictional Compliance in Cyberspace* (Center for Asian Business Cases, School of Business, The University of Hong Kong).
- Fekete, L.: 2001, 'Rights, Rules and Regulation in the Cyberspace', paper presented during the 14th Annual EBEN conference, Valencia, Spain.
- Hunter, M.: 1998, *Un Américain au Front: Enquête au sein du Front National* (Stock, Paris).
- Le Menestrel, M.: 2002, 'Economic Rationality and Ethical Behavior. Ethical Business between Venality and Sacrifice', *Business Ethics: A European Review* **11**(2), 157–166.
- Le Menestrel, M., H.-C. de Bettignies and Mark Hunter: 2001a, 'Business e-ethics: Yahoo! on Trial', INSEAD Case Study No. 4956 (A). Available at ECCH.
- Le Menestrel, M., H.-C. de Bettignies and Mark Hunter: 2001b, 'Business e-ethics: Yahoo! on Trial', INSEAD Case Study No. 4956 (B). Available at ECCH.
- Litman, J.: 1999, 'Electronic Commerce and Free Speech', *Ethics and Information Technology* **1**, 213–225.
- O'Reilly & Assoc. and H. T. Kung: 1997, *The Internet and Society* (Harvard University Press).
- Taylor, T.: 2000, *The Internet: The New Free Speech Battleground*. Available at <http://www.cosc.georgetown.edu/~denning/cosc450/papers/taylor.html>.

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