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Mr. Jean-Jacques GOMEZ
First Vice-President of the Court of Paris

MR PRESIDENT,

The Internet has tremendous virtues. It is an awesome means of communication. It is also an outstanding tool and means of culture. It imposes itself as the almost necessary support to economic and financial activity growth. It gives each of its users the feeling of controlling things and events, far from conventional concepts.

But the feeling of freedom and absolute control over their action often encouraged by libertarian theories, may have generated, in some Internet users, the idea that the Internet would also help « to break free » from the body of rules that govern life in society, which are the fruit of numerous and necessary compromises.

Convinced that it was possible to do on the network whatever they wanted, these Internet users gradually settled, by belief or credulity, in a sort of absolute impunity feeling and that rapidly translated in attacks on privacy, on everyone's right to their own image, attacks on intellectual property rights, counterfeiting behaviours, activities of unfair competition and intrusions into computer programmes ...

These phenomenon were magnified by the multiplying and instantaneous effect of these actions on the network, since through a few clicks, one can go wherever he wants on this enormous web.

However, as all of you will agree, life in society has its constraints, to ensure respect for basic values and people protection. And gradually, in response to those uncivil, deviant or unlawful behaviours, emerged a request to return to respecting such values that are the basis of life in society, in each of our democratic countries in Europe and in the United states alike. Case law on these issues is a clear indication thereof.

To stalemate the pursuit of a democratic control of the Internet, some people devised to use, by abusing their purposes, the most favourable provisions found in democratic institutions, especially those relating to freedom of expression, by choosing, for instance, the country known to be the most open and flexible in the relevant area. It must be said that the architecture of the Internet and its operating mode allow and even support such actions, including in the area of site hosting.

Taking advantage of the constitutional guarantees mentioned in the First Amendment of the American constitution, many Internet users, many companies and other groups chose to settle or find a host server in the United States, where they thought that their activity, sometimes criminal (racism, terrorism, paedophile, prostitution...) would be protected against looks and reactions from other States.

And like often in such circumstances, they expended boundless ingenuity and tremendous technical and legal resources to resist the attempts from those States, supported in their action, as I mentioned earlier, by the credulity, naivety or lack of concern of many Internet users.

However, to use professor Reidenberg's expression, that was forgetting a little too fast that «though the Internet allows its users to reach a geographically scattered areas, they remain responsible for their conduct within their national borders». Because the Internet has not dissolved borders. It did not eliminate States. And each State is sovereign within its borders, subject to compliance with agreements and treaties it signed.

This is the context of the case referred to as Yahoo! Inc. whose free auction sale site included the sale of nazi objects. To us Europeans, and especially to us French, such an exposure to sale would constitute, in addition to a breach of criminal laws, even if resulting from a decree, an offence to the collective memory of the country deeply wounded by the nazi authorities. French associations decided to react, writing first to Yahoo!, and then, by going to court.

These associations did certainly not imagine that their request would cause such havoc in the Internet world and would disturb the very concept of the Internet at that time.

Rapidly, people voiced their feeling that the Internet had not been designed to bear authoritarian control ; since the very operation of the network resulted from the non-organised action of a multitude of players, and that the balance that was then established resulted from the product of those actions, not from a pre-set plan.

Thus several arguments were put forward against those associations, supposed to justify the denial of any control.

The first, as we saw earlier, was related to the very structure of the network. It was not possible to consider the slightest authoritarian control since such a control, if needed, would come from the network itself.

The second argument, which still makes the headlines of exchanges between lawyers around the world, consisted in saying that there was no jurisdictional link with France justifying the competence of the French courts, as the site was intended for American Internet users, not French users. I had dismissed that argument after finding that the pages in question could be displayed in French, and that in reply to a request for access to the site from an Internet user located in France, a targeted advertising strip in French was sent, which confirmed that French Internet users were indeed targeted and thereby confirmed the jurisdiction of France.

The third argument was related to freedom of expression. Any enforceable decision including filtering, was considered an attack on freedom of expression. I will come back on my introduction, when I said some sought to divert constitutional rules protecting freedom of expression, from their end to cover activities unlawful in France and at least morally reprehensible in the United States. In addition, the relatively flexible nature of the concept of freedom of expression should be underlined, in the concerned operator's mind. The sale of cigarettes was seen as an attack on freedom of expression, but not the sale of nazi objets.

Fourth and last argument developed in two branches : the users had to be made responsible, by the technical providers, but furthermore, it was not possible to filter Internet users. On the first point : it is indisputable that an action to raise the awareness of users would be very beneficial. But it is not enough. Everything is so complicated. The involvement of technical providers should also be taken into account, which providers will not be able to maintain their strict neutrality stand very long. In this instance, a technical expertise showed the worthiness

of filtering, even if it is accepted that a 100 % filtering could not be considered. In addition, such a request was never made.

We have heard, since the case, that the company has decided to reorganise its economic choices and that in the framework of paying services, would no longer accept auctions sales for nazi objects, or objects referring to hateful or racist concerns. The result was beyond all expectations when a simple filtering measure for Internet users operating from France was ordered. And all for the best.

This case showed the opposition between the champions of an uncontrolled and borderless Internet and the champions of a responsible Internet. The technical argument should not be underestimated. But today, the issue is whether the Internet is at the service of Man and his growth or if it should remain a matter for technicians. Other question, of similar importance, related to Internet disputes : should they and can they be settled by reference to principles set forth in a legal framework that could not grasp, and for a good reason, all the challenges of the Internet or should those principles change to take into account the reality of the Internet, a reality made up of contradictions and especially of numerous and daily attacks on the rights of people ?

The debate is open.

Thank you.