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Hate Speech: Clash of Freedoms in Information Law and Ethics

In May 2000 two NGOs, *La Ligue contre le racisme et l'antisémitisme* and *l'Union des étudiants juifs de France*, brought a claim to the French court of the first instance (*Tribunal de grande instance de Paris*) against the American Internet company *Yahoo*. The case concerned the sale of memorabilia from the Nazi period at an Internet auction. The legal problem at stake is whether French law applies to the allegedly external situation, considering that *yahoo.fr* functions as a subsystem of *yahoo.com* based in California. A related case in American courts (questioning the enforcement of the French judgment) reached the U.S. Circuit Court of Appeals, where a majority of the judges ruled to dismiss Yahoo!'s appeal. Nonetheless, the case reveals a radical controversy between the United States and Europe on the very perception of hateful expression. The French *Code pénal* explicitly prohibits the sale of memorabilia from the Nazi period, whereas in the U.S. even Nazi expression is covered by the scope of the First Amendment to the American Constitution.

Yahoo saga exemplifies the conflict between legal appraisals of the right to freedom of speech in the United States, with its overwhelming safeguard of the *marketplace of ideas*, and Europe, with its tragic experience of World War II and a strong belief in a non-discrimination rationale. In the proposed presentation, I intend to illuminate several accounts of transnational legal conflicts arising from diverse constitutional visionary of hate speech.