
The Paradox of Tolerance for tech companies

How to support free speech but not white
supremacy

<http://frameshiftconsulting.com/>

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~~~Disclaimer~~~

I am representing myself and Frame Shift Consulting only

Many tech companies in this talk are also my clients

Anything about those clients in this talk is based only on publicly available information about them

I am not a lawyer and this is not legal advice

Online resources

Slides, spreadsheets, supporting articles, etc. at:

Web: <https://bit.ly/intolerablespeech>

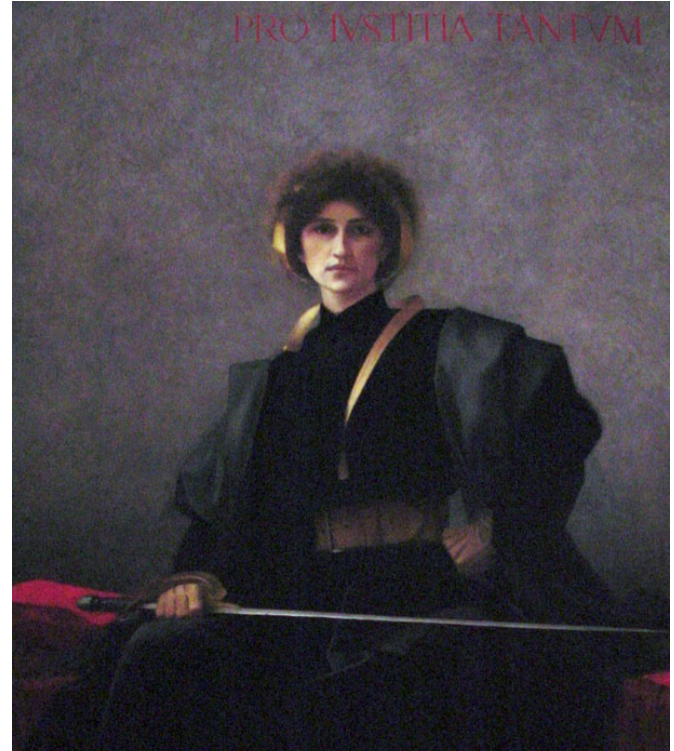
Twitter: [@frameshiftllc](https://twitter.com/frameshiftllc)

Live-tweeting? Thank you! Please tag **@frameshiftllc**

Common U.S. approach to free speech

"I disapprove of what you say,
but I will defend to the death
your right to say it."

—*Evelyn Beatrice Hall*
describing Voltaire's beliefs



2003: Joke newspaper article



ACLU Defends Nazis' Right To Burn Down ACLU Headquarters

2017: Actual reality

ACLU-VA, Rutherford Institute File Suit to Uphold Right of Free Speech for All; Sue City of Charlottesville for Making Permit Decisions Based on Content of Speech

The ACLU of Virginia and the Rutherford Institute have filed a federal lawsuit against the City of Charlottesville on behalf of “alt-right” activist Jason Kessler claiming his 1st and 14th Amendment rights are being denied by the city’s refusal to allow him and supporters to access Emancipation Park on Aug. 12 for a previously approved demonstration.

FIRE AND FURY

Unite the Right torch rally ends in violence at the Rotunda

The Daily Progress staff reports Aug 11, 2017 (351)



Approval of Trump's response to Charlottesville violence



Source: <http://www.politico.com/f/?id=0000015e-0bfa-d354-abfe-abfa67c10000>

Maybe... don't defend violent people?

"If a protest group insists, 'No, we want to be able to carry loaded firearms,' well, we don't have to represent them. They can find someone else."

*—Anthony Romero, executive director
of the ACLU*



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<https://flic.kr/p/puJjTZ>

Outline

What is the Paradox of Tolerance?

Proposed "Intolerable Speech Rule"

Examples of tech companies taking action based on Paradox of Tolerance

How to implement the Paradox of Tolerance at your tech company

Who am I?

Software engineer for 10+ years

Co-founder and ED for 5 years at Ada Initiative

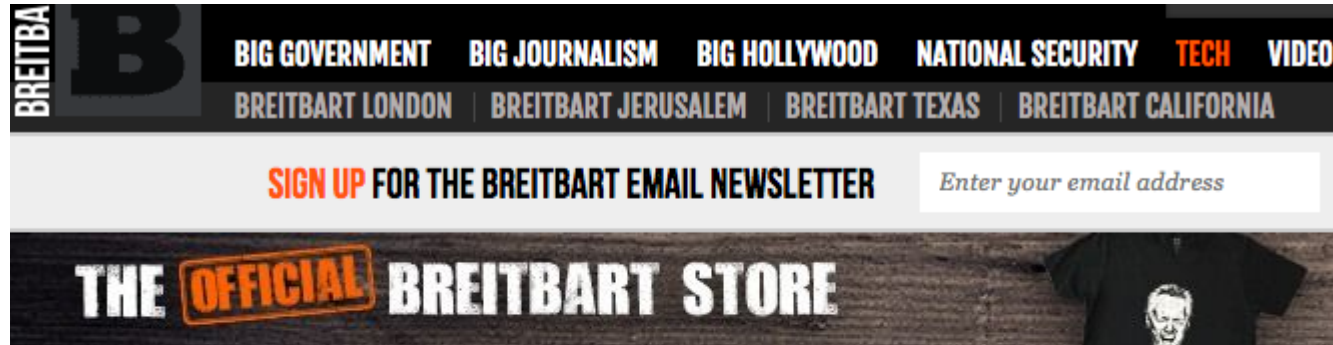
Founder Frame Shift Consulting

Taught Ally Skills Workshop to 1900+ people in 8 countries



Valerie Aurora

Breitbart News wrote about me in 2015



**FEMINISTS ARE TRYING TO FRAME LINUS
TORVALDS FOR SEXUAL ASSAULT, CLAIMS
OPEN SOURCE INDUSTRY VETERAN**

Never Again pledge

From Wikipedia, the free encyclopedia

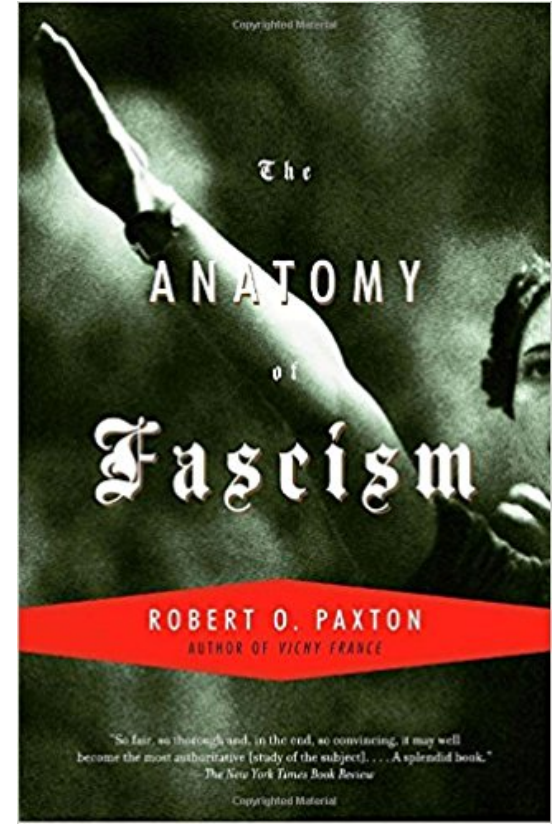
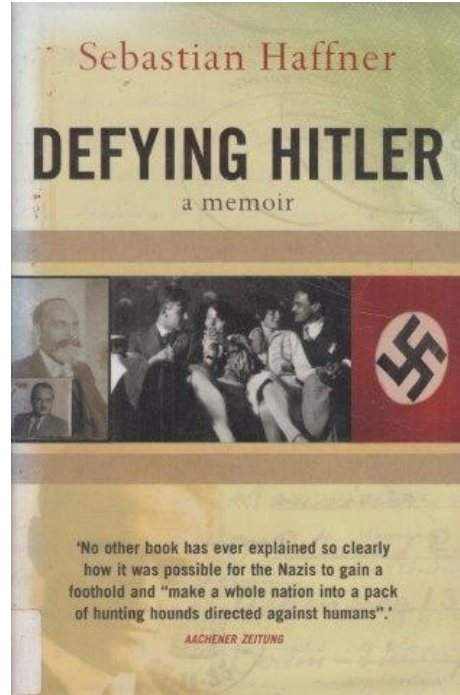
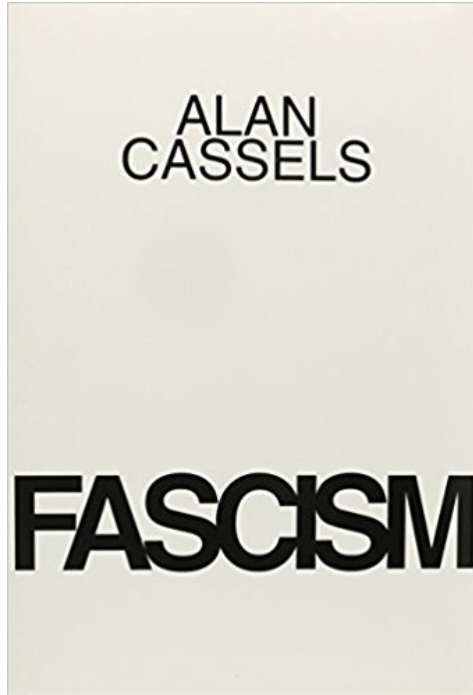
The **Never Again pledge** or **NeverAgain.tech** is a commitment by [information technology](#) workers to work against a [United States](#) government database identifying people by race, religion, or national origin, specifically in response to the [Trump presidential campaign](#) statements about creating a [Muslim](#) registry and deporting millions of [illegal immigrants](#).^{[1][2][3][4][5][6]}

Guest Post: A post-election guide to changing hearts and minds

[Trigger warnings: sexual assault, racist police violence, anti-Muslim bigotry, anti-Semitism, child sexual abuse]



Studying fascism



The Paradox of Tolerance

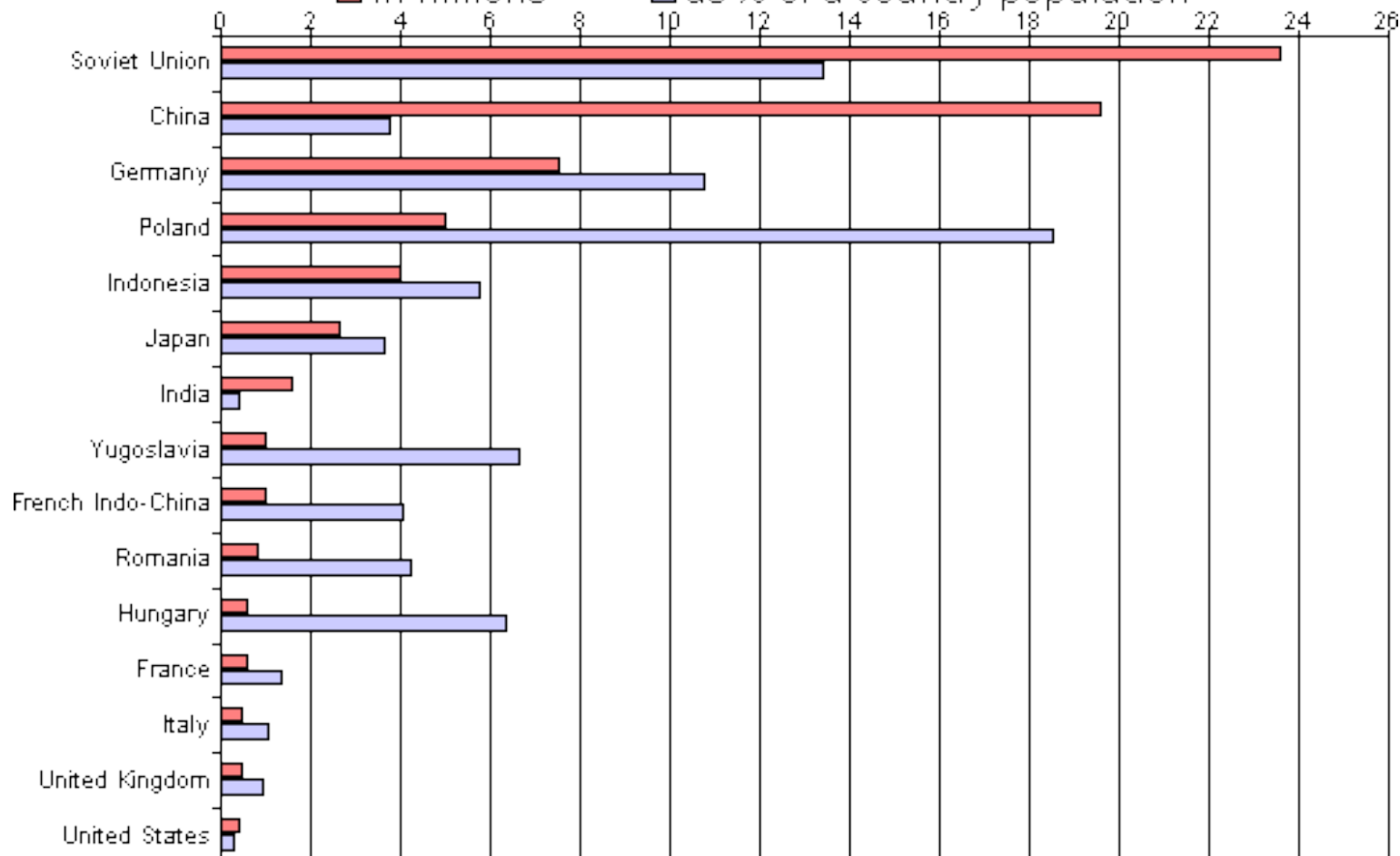
1. A tolerant society should be tolerant by default
2. With one exception: it should not tolerate intolerance itself

https://en.wikipedia.org/wiki/Paradox_of_tolerance

Human Losses of World War Two by Country

■ in millions

■ as % of a country population



Too much tolerance leads to self-destruction



A tolerant society has the right to self-defense

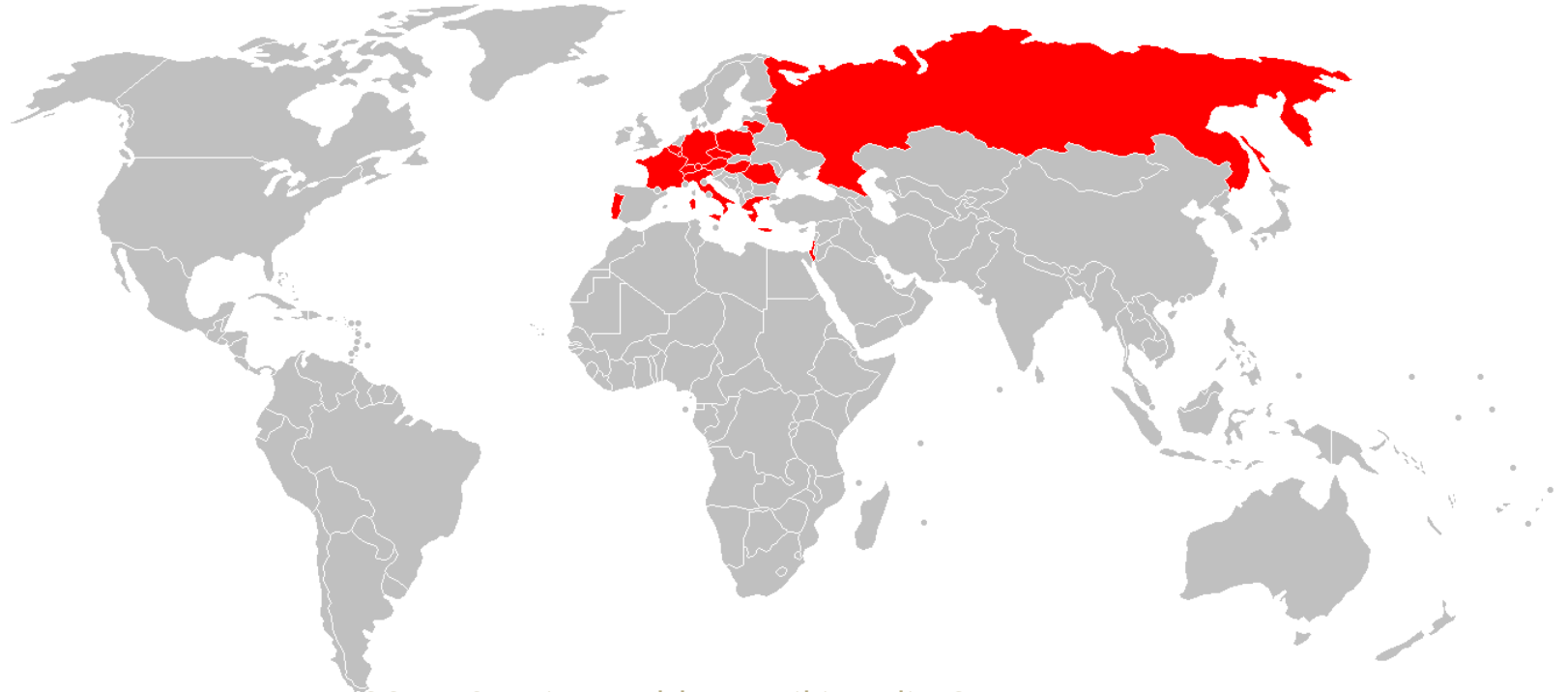


The Paradox of Tolerance in practice

“Everyone has the right to freedom of expression [...] The exercise of these freedoms [...] may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are **necessary in a democratic society** [...] **for the protection of the reputation or rights of others** [...]”

—Article 10 of the European Convention on Human Rights

Laws against denying the Holocaust



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Don't let racists use your software



jennmoneyeuro 🇪🇸

@jenschiffer

a very easy & fun activity is *not* letting people use your software for racist garbage



jennmoneyeuro 🇪🇸

@jenschiffer

this is a v important thing to bring up when talking to future/current employers - what's your stance on nazis using your product

Tech companies and freedom of speech

Historically, a common position is to support all speech as long as it's not:

- Illegal (child pornography, fraud)
- Spam
- Directly harming the service

(Some companies also ban harassment and abuse, but enforcement tends to be poor...)

Often suffer from "legal talisman" syndrome

"Legal talisman" coined by lawyer Kendra Albert

Legal talisman: A legal term of art that's **out of place**, invoked to make or justify substantive decisions that **don't involve formal legal process**

"Free speech" invokes the power and responsibility of the state and an enormous body of law - in a situation involving private companies making unrelated decisions

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Freeze Peach example: Twitter in 2012

"Generally, we remain neutral as to the content because our general council and CEO like to say that we are the free speech wing of the free speech party."

—*Tony Wang, GM of Twitter UK*



Legitimate concerns about free speech

Governments do pressure companies to censor in ways that harm society

How do we know we're not just banning things because we're prejudiced against them?

Will we have to reverse our decision?

Will users leave our service?

Are we harming society?

Karl Popper on suppressing intolerant speech

"[...] I do not imply, for instance, that we should always suppress the utterance of intolerant philosophies; as long as we can counter them by rational argument and keep them in check by public opinion, suppression would certainly be unwise."

—*Karl Popper, "The Open Society and its Enemies"*

Karl Popper on suppressing intolerant speech

"But we should claim the right to suppress them if necessary even by force; for it may easily turn out that they are not prepared to meet us on the level of rational argument, but begin by denouncing all argument; they may forbid their followers to listen to rational argument, because it is deceptive, and **teach them to answer arguments by the use of their fists or pistols.**"

—Karl Popper, *"The Open Society and its Enemies"*

Even the U.S. Bill of Rights has something to say

"The First Amendment guarantees 'the right of the people peaceably to assemble.' **Peaceably**. When it became clear that the organizers' goal was violence, that left me with no qualms about their lack of First Amendment rights in this matter."

—Waldo Jaquith, former ACLU Virginia board member

Level of tolerance changes with context

“Even in the U.S., where we have the most speech protective law, some acts of speech are illegal. Nobody has suggested that to fulfill freedom of expression every act of speech has to be allowed. It doesn’t mean you can post absolutely anything. **Everyone is figuring out how to draw the lines.**”

—*Susan Benesch, director of the Dangerous Speech Project*

Tech companies using Paradox of Tolerance

I made a spreadsheet! <https://bit.ly/intolerablespeech>

Currently 37 entries for actions by 34 companies:

Airbnb, Apple, Bumble, CD Baby, Deezer, Discord, Facebook, GoDaddy, GoFundme, Google, Indiegogo, Kickstarter, LinkedIn/Microsoft, Mailchimp, Metafilter, OkCupid, Pandora, Paypal, Reddit, Sendgrid, Soundcloud, Spotify, Square, Squarespace, Stripe, Twitter, Uber, WordPress/Automattic

Before Charlottesville: Airbnb

October 27, 2016: Airbnb created "Community Commitment" for all hosts and guests

"I agree to treat everyone in the Airbnb community — regardless of their race, religion, national origin, ethnicity, disability, sex, gender identity, sexual orientation, or age — with respect, and without judgment or bias."

Before Charlottesville: Airbnb

August 8, 2017: Revoked bookings and accounts for people attending the Unite the Right rally in Charlottesville

"When through our background check processes or from input of our community we identify and determine that there are those who would be **pursuing behavior on the platform that would be antithetical to the Airbnb Community Commitment**, we seek to take appropriate action including, as in this case, removing them from the platform."

Before Charlottesville: Spotify

Uses a database of objectionable material maintained by the German government to pro-actively ban white supremacist material

Other bans on case-by-case basis

As of November 2014, already banned 22 of 54 white supremacist bands listed by Southern Poverty Law Center and agreed to remove more

After Charlottesville: Spotify

Removed additional, more obscure white supremacist bands when notified

"We are glad to have been alerted to this content - and have already removed many of the bands identified today, whilst urgently reviewing the remainder."

Before and after Charlottesville: Facebook

August 11, 2017: Removed "Unite the Right" rally organizing page

August 14, 2017: Deleted many more white nationalist profiles, groups, and pages

But Facebook ignored previous warnings

2016: SPLC reports 200+ hate group items on Facebook,
Facebook deletes < 10

May 10, 2017: Fast Company reports 17 hate group items,
Facebook deletes 2

July 31, 2017: The Guardian reports 175 hate group items,
Facebook deletes 9

Moral of the story: SPLC is smart

When the Southern Poverty Law Center alerts you to hate groups using your services, listen to them!



SPLC
Southern Poverty
Law Center

Before and after Charlottesville: Bumble

Online dating service co-founded by Whitney Wolfe, who was sexually harassed and discriminated against at Tinder

As an explicitly pro-woman service, experienced plenty of misogynist attacks

Actively takes down profiles with hate symbols

Formally partnered with Anti-Defamation League, which maintains an up-to-date database of hate symbols

After Charlottesville: WordPress/Automattic

May 2017: Fast Company asks Automattic about white nationalist and neo-Nazi sites hosted on WordPress, answer is they don't censor

August 15, 2017: Automattic deletes American Vanguard site, a group alleged Charlottesville murder James Fields claimed membership in

Terms of service vs. enforcement

Most companies did not change their terms of service after Charlottesville, only changed their enforcement

This is fine and normal!

Spreadsheet of ToS: <https://bit.ly/intolerablespeech>

Amazon is still not enforcing its terms of service around white supremacist-related items...

Not Paradox of Tolerance: Cloudflare

August 16, 2017: Cloudflare, which provides protection against denial of service attacks, terminated Daily Stormer's account:

"Literally, I woke up in a bad mood and decided someone shouldn't be allowed on the Internet. No one should have that power."

—Matthew Prince, Cloudflare CEO in leaked email

Not Paradox of Tolerance: Dreamhost

Dreamhost policy: "We will host any website as long as its content is legal in the United States of America."

August 24, 2017: Dreamhost terminates Daily Stormer's account for, basically, being the target of a denial of service attack (after they no longer have Cloudflare service)

"Freeze peach"



Freeze peach pendant by Gretchen Koch <https://www.etsy.com/listing/189263542/freeze-peach-pendant>

"The Intolerable Speech rule" - proposed

Ban people from using your products if they are:

1. Advocating for the removal of human rights
2. From people based on an aspect of their identity
3. In the context of systemic oppression primarily harming that group
4. In a way that overall increases the danger to that group

1. Advocating for the removal of human rights

This includes right to life, vote, travel, medical care, speech, shelter, food, education, etc.

Dehumanizing or treating a group as inferior meets this criteria, because non-humans don't have human rights

Many tech company terms of service already forbid promoting, advocating, or encouraging violence or hate <https://bit.ly/intolerablespeech>

2. From people based on an aspect of their identity

Must be based on a part of their identity which is difficult to change: race, gender, sexuality, disability, religion (except intolerant parts), etc.

Identity does not include intolerant or bigoted parts of someone's beliefs - religious, political, or otherwise

It's fine to advocate removing rights from people based on freely chosen actions or opinions (e.g., someone convicted of murder loses some rights during their prison sentence)

3. In the context of systemic oppression

Is there a proven, on-going system of oppression which primarily harms this group?

Example: systemic sexism hurts everyone, but it hurts women and non-binary people far more than men

Plenty of reliable research and evidence exists

You don't have to convince anyone but yourself

4. That overall increases the danger to that group

Much hate speech is better off not being censored and subject to normal criticism, counterspeech, etc.

Some hate speech makes the target group safer, e.g.:

- Quoting hate speech in order to denounce it

- Providing material for those studying hate groups

- Publishing private communications of hate groups in order to embarrass or hurt their organization

Examples: does not meet test

Famous Black person tweets, "Maybe white people shouldn't vote for 10 years, just take a break"

Does not meet #3: in the context of systemic oppression

- White people are in zero danger of losing access to the vote

- Raises awareness of voter suppression efforts aimed at people of color

Example: does not meet test

Wall Street Journal op-ed suggesting that Democrats should not be allowed to vote

Does not meet #2: based on an aspect of identity

Political opinions are freely chosen

You can suppress this speech for other reasons, like believing that universal suffrage is crucial to democracy or wanting to protect your newspaper's reputation

Example: does not meet test

Fast Company reporter asks Cloudflare CEO: "If I were to write on my blog, 'I think Cloudflare is homophobic, and that's good because I hate gays,' that puts you in the same position that you were with The Daily Stormer, right?"

Does not meet #4: overall increases danger to that group

This is a easily mocked argument on a tiny blog, reasonable to publish and let people respond

Example: does not meet test

People posting the Daily Stormer article attacking Heather Heyer on Facebook with comments denouncing it

Does not meet #4: overall increases danger to that group

This actually helps protect the endangered group

Facebook made this exception too

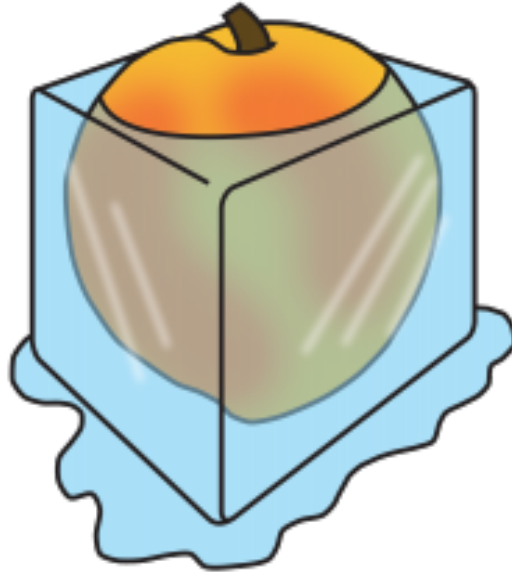
This is not the only test!

Lots of other reasons not to support some speech (illegal, against other values, spam, harms your platform)

This is just one of many rules that come into play

The Intolerable Speech rule covers a particularly bad loophole in most terms of service

Freeze Peach!



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**Not Sure What It Is,
But It's Mine!**

<https://the-orbit.net/almostdiamonds/swag/>

Implementing the Paradox of Tolerance

Update your terms of service if necessary

Continuously update enforcement guidelines

Proactively seek out evolving threats

Have a diverse and empowered team creating and implementing ToS and enforcement guidelines

Listen to and partner with experts

Implementation: Legal issues

Ask your lawyer!

In many cases, no legal issues at all

When legal requirements exist, often on your side:

- Anti-discrimination laws for lodging
- Anti-harassment or anti-stalking laws
- Non-U.S. laws tend far more toward restricting speech

Implementation: Structural issues

"Why are tech companies making these decisions?" —*Cloudflare CEO and a whole lotta other people*

Would rather just allow everything that is legal and make governments make the decision

Many countries do have better laws, like most of EU

Laws will always lag or be out of step - we still have to be willing to take action ourselves

Advocating for change at your company

Liz Fong-Jones (@lizthegrey) shared how she organizes tech workers at Google to change company policy:

<https://frameshiftconsulting.com/2017/02/04/how-to-organize-tech-workers-to-change-company-policy/>

Hire me or Y-Vonne Hutchinson at ReadySet to help you:

<https://thereadysset.co/>

Business arguments

Hosting hate groups is bad for the brand

Hate groups are bad clients (unethical, cheap, mean)

Fascism is bad for business

Harder to recruit and retain employees

Reduces legal exposure (hate groups do illegal things)

Personal arguments

Stop feeling bad about your job, sleep better at night

You like living in a free society

You care about fairness and justice

Your friends may start avoiding you if you work for a company that supports hate groups

Other random arguments

Everyone else is doing it! (At least 34 tech companies)

<https://bit.ly/intolerablespeech>

Karl Popper and other famous old white male philosophers say you should do this

World War II is what happens when people are tolerant of intolerance - let's skip it this time around

Call to action

Tell other people about the Paradox of Tolerance

Organize other tech workers at your company to adopt the Intolerable Speech Rule at your company

Ask your legislators to pass laws that take the Paradox of Tolerance into account

Donate to the Southern Poverty Law Center <https://www.splcenter.org/>



U.S. anti-discrimination laws kind of suck

In legal matters, you can't treat groups differently based on context of systemic oppression

A "protected class" is any group based on race, gender, etc. - even ones that are currently dominant

E.g., the current legal basis for affirmative action in university admissions is creating a "critical mass of students of a particular race" and an "improved learning environment through a diverse student body"

Refusing to help Milo Yiannopoulos give speeches

"Though [Yiannopoulos's] ability to speak is protected by the First Amendment, I don't believe in protecting principle for the sake of principle in all cases. His actions have consequences for people I care about and for me."

—Chase Strangio, ACLU attorney, speaking for himself

This makes Richard Spencer mad - good!

“They have changed their interpretation of their own policies. Nothing has changed. We have been advocating for the same things for years; I’ve been using the same language for years. I’ve always been upfront with who I am and what our organization is.”

—*Richard Spencer, white nationalist leader*

Example: Mailchimp

August 14, 2017: Updated terms of service, which originally only included rules against spam, fraud, pornography, illegal stuff, and technical abuse

"MailChimp does not allow accounts with the primary purpose of promoting or inciting harm towards others or the promotion of discriminatory, hateful, or harassing content."

"Freeze peach"



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