The Regulation of Online Hate Crime

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Online Hate Crime v Online Hate Speech
Online hate crime deals with illegal behaviour, evidenced through the perpetrator demonstrating hostility towards the victim’s identity (i.e., race, religion, sexual orientation).
Online hate speech deals with illegal content, evidenced through the perpetrator spreading hate towards the victim and not specifically targeting his/her identity.

What is the issue and what must be regulated?
The sheer amount of online hate crime on social media platforms made it very difficult for governments to control the influx of online hate crime and thus the need for new regulatory approaches.
What must be regulated is user generated content from social media platforms spreading online hate.

How can we regulate online hate crime?

Reactive Measures
This is were content is taken down only after a complaint. Governments typically impose notice and take down obligations in relation to this.
Ensures careful scrutiny before removing material
Hate crime escalates quickly and take-down might be too late

Proactive Measures
This is were content is taken down before being posted thus preventing content to be noticed by anyone.
Preventing dissemination of hate speech/crime
Over moderation of material can remove legal content which infringes freedom of expression rights

The Local Dimension: Regulating Online Hate Crime in the UK
The paper imposes a statutory duty of care on social media companies for proactive moderation.
Placing Ofcom as an external regulator (substituting government) for hate crime.

The Regional Dimension: Regulating Online Hate Crime in the EU
Regulation of Online Hate Crime is convoluted as seen in Eva v Facebook Limited.
E-commerce directive imposes no general obligation on EU Member States to monitor illegal content.
But Eva stipulates that MS can impose statutory duties of care which contradicts ‘general obligation’ requirement.

The International Dimension: International Treaties Regulating Online Hate Crime
Art. 20 of International Covenant on Civil and Political Rights and other Treaties attempted to regulate online hate crime.
Difficulties in homogenising countries’ law due to differing jurisdictional laws.
For example, US cannot criminalise hate crime due to First Amendment Rights.

Options for Regulation in the UK

Self Regulation
- No Governmental oversight
- Fueled by business models (e.g., net neutrality/cyberlibertarianism) which might not halt online hate.

Legislative Regulation
- Legislation must be proportionate to freedom of expression rights.
- Legislation must not impose onerous proactive moderation on companies.

Co-regulatory Regulation
- Maintains a degree of governmental oversight.
- Ensures a careful balance between proactive and reactive measures is adopted.

References
- Alex Hern, ‘What powers will Ofcom have to regulate the internet’ (The Guardian, 12 Feb 2020) [https://www.theguardian.com/media/2020/feb/12/what-powers-ofcom-have-regulate-internet-uk]
- Case C-18/18 Eva Glawischnig-Piesczek v Facebook Ireland Limited [2019] ECR