

**THE
COUNTY
COURT
OF PARIS**

**INTERIM COURT ORDER
made on 20th November 2000**

**N° RG :
00/05308**

by Jean-Jacques GOMEZ, First Deputy Justice Presiding in the County Court of Paris, hearing a summary proceeding in public by delegation of the Chief Presiding Justice of the Court.

assisted by Nicole VOURIOT, Clerk to the Court.

N° : 1/k1

PLAINTIFFS

The **LEAGUE AGAINST RACISM AND ANTISEMITISM - LICRA**,
represented by its President Mr. Patrick GAUBERT
42 rue du Louvre
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represented by counsel Marc LEVY, Member of the PARIS Bar - PO119

The **FRENCH UNION OF JEWISH STUDENTS**,
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represented by counsel Stéphane LILTI, member of the PARIS bar -
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RESPONDENTS

The company **YAHOO! INC.**
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UNITED STATES OF AMERICA

represented by counsel Christophe PECNARD, member of the PARIS bar -
- L0237

The company **YAHOO FRANCE**
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**Executory
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VOLUNTARY PARTICIPANT

MRAP

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represented by counsel Didier SEBAN, member of the PARIS bar - E0057

IN THE PRESENCE OF

The PUBLIC PROSECUTOR

Palais de Justice de Paris
4 Boulevard du Palais
75001 PARIS

represented by Mr. Pierre DILLANGE, First Deputy Prosecutor.

We, the Presiding Justice,

Considering our order of 22nd May 2000, to which reference shall expressly be made and wherein we ordered :

1/ YAHOO Inc. : to take all necessary measures to dissuade and make impossible any access via yahoo.com to the auction service for Nazi merchandise as well as to any other site or service that may be construed as an apology for Nazism or contesting the reality of Nazi crimes

2/ YAHOO France : to issue to all Internet surfers, even before use is made of the link enabling them to proceed with searches on yahoo.com, a warning informing them of the risks involved in continuing to view such sites;

3/ continuance of the proceeding in order to enable YAHOO Inc. to submit for deliberation by all interested parties the measures that it proposes to take to put an end to the trouble and damage suffered and to prevent any further trouble;

Considering our order of 11th August 2000, to which reference shall be made insofar as it sets out the facts of the case as well as the arguments and claims of the parties.

Considering the submissions made by LICRA, UEJF and MRAP and reiterated at the hearing of 6th November 2000 in pursuit of their case as already set forth in our previous order;

Considering the submissions in defence presented both by Yahoo France and by Yahoo Inc. in pursuit of their case as set forth in our previous order;

Considering the report by the consultants WALLON - VINTON CERF - LAURIE;

Considering the memoranda submitted under private consideration, to which reference is expressly made;

Having heard the oral submissions made by the Public Prosecutor;

Considering the documents produced;

Having received the expert witness statement by Mr. Vinton CERF, who is not registered on the list of court-registered experts, and by Mr. NORER, who is a court-registered expert but acting in this instance in the capacity of English interpreter alongside Ms. KINDER, a court-registered expert in this speciality;

On the demands placed on YAHOO Inc.

Whereas in the opinion of the company YAHOO Inc. :

- this court is not competent to make a ruling in this dispute;
- there are no technical means capable of satisfying the terms of the order of 22nd May 2000;
- on the assumption that such means existed, their implementation would entail unduly high costs for the company, might even place the company in jeopardy and would to a degree compromise the existence of the Internet, being a space of liberty and scarcely receptive to attempts to control and restrict access;

Whereas in support of its incompetence plea, reiterated for the third time, the company YAHOO points out that :

- its services are directed essentially at surfers located in the territory of the United States of America;
- its servers are installed in the same territory;
- a coercive measure instituted against it could have no application in the United States given that it would be in contravention of the first amendment of the United States Constitution which guarantees freedom of opinion and expression to every citizen;

Whereas it is true that the "Yahoo Auctions" site is in general directed principally at surfers based in the United States having regard notably to the items posted for sale, the methods of payment envisaged, the terms of delivery, the language and the currency used, the same cannot be said to apply to the auctioning of objects representing symbols of Nazi ideology which may be of interest to any person

Whereas, furthermore, and as already ruled, the simple act of displaying such objects in France constitutes a violation of Article R645-1 of the Penal Code and therefore a threat to internal public order;

Whereas, in addition, this display clearly causes damage in France to the plaintiff associations who are justified in demanding the cessation and reparation thereof;

Whereas YAHOO is aware that it is addressing French parties because upon making a connection to its auctions site from a terminal located in France it responds by transmitting advertising banners written in the French language;

Whereas a sufficient basis is thus established in this case for a connecting link with France, which renders our jurisdiction perfectly competent to rule in this matter;

Whereas any possible difficulties in executing our decision in the territory of the United States, as argued by YAHOO Inc., cannot by themselves justify a plea of incompetence;

Whereas this plea will therefore be rejected;

Whereas, on the argument developed by YAHOO and based on the impossibility of implementing technical measures capable of satisfying the terms of the order of 22nd May 2000, it is necessary cite in the first instance the findings of the panel of consultants contained in pages 62 to 76 of their report :

"Opinion of the consultants

Preamble

The undersigned consultants are at pains to point out that their brief is limited to answering the technical questions put by the Court. In no circumstances may their answers be construed as constituting a technical or moral backing of the decisions of the court or, on the contrary, a criticism of these decisions.

The context

An order was made on 22nd May 2000 against the companies YAHOO! France and YAHOO! Inc. by the County Court of Paris in the following terms :

We order the company YAHOO! Inc. to take all measures to dissuade and make impossible any access via Yahoo.com to the auction service for Nazi objects and to any other site or service that may be construed as constituting an apology for Nazism or contesting the reality of Nazi crimes;

We order the company YAHOO FRANCE to warn any surfer visiting Yahoo.fr, even before use is made of the link enabling him or her to proceed with searches on Yahoo.com, that if the result of any search, initiated either through a tree structure or by means of keywords, causes the surfer to point to sites, pages or forums of which the title and/or content constitutes a violation of French law, as applies to the viewing of sites making an apology for Nazism and/or exhibiting uniforms, insignia or emblems resembling those worn or displayed by the Nazis, or offering for sale objects or works whose sale is strictly prohibited in France, the surfer must desist from viewing the site concerned subject to imposition of the penalties provided in French legislation or the bringing of legal action against him. "

The company YAHOO! France declared that it had complied with this decision. The company YAHOO! Inc. pointed out that there was no technical solution which would enable it to comply fully with the terms of the court order.

A panel of experts was then designated to enlighten the Court on the various technical solutions that could be implemented by YAHOO! Inc. in order to comply with the order of 22nd May.

Internet

The Internet is a combination of several hundred million computer networks and associated sites which are interconnected throughout the world. The routers are computers dedicated to the interconnection of these networks. The number of computers using the Internet at any one time is estimated at one hundred million, and three times more if one includes portable computers, office computers, organisers, mobile telephones, etc...

A set of procedures was defined in the period between 1973 and 1980 under the control of the US defence research laboratories (DARPA). These procedures, referred to as TCP/IP, are the core of several hundred protocols used by the Internet.

In the late 80's, CERN developed the World Wide Web (WWW) which uses a set of complementary procedures - the HTTP protocols and HTML language - to set up this global information-sharing system.

The commonest applications include electronic mail (email), forums (newsgroups), dialogue services (chat), auction services, online telephony, video and audio, together with many other services.

It is a common misconception that all Internet services are provided via the World Wide Web. In reality, the Web is only one facet of the Internet.

The Internet, which started out as an experimental project used and developed by computer researchers, has become a global business enterprise within the space of ten years. Internet service providers (ISPs) have established and operate networks open to the general public. Private networks in universities, companies, and even home computers are now interconnected by internet services providers to form a truly global network. Some service providers specialised in providing access to users of the public switched telephone network. Other specialised in providing access to users of cable television, digital users (ISDN), users of ADSL services, local loop, etc... These providers are generally referred to as Internet Access Providers. They also offer various portal services, email, information services, etc...

Each unit connected to the Internet has to have an IP address. Initially, certain organisations obtained sets of addresses from MANA. These sets were divided into sub-sets for allocation to their customers. These addresses could be fixed for permanently connected units or temporary for dial-up users connecting via the switched telephone network or for mobile units (portable computers). These addresses are composed of 32 bits in a two-part structure: the network part and the individual part. The boundaries between these two parts are variable depending on the class of the addresses. WAP telephones do not each have an IP address. The WAP protocol uses a gateway to convert the WAP address into an IP address and vice versa.

IP addresses are represented by four series of bytes converted into decimal numbers in the range 0 to 255.

This representation is not very convenient to use and a system was devised to associate a name with an address. These names, each of which corresponds to an address, are referred to as domain names. Conversion of domain names into their numerical IP addresses is performed by an array of databases distributed across the Internet (DNS). These DNS servers operate on the basis of a tree structure and are specialised according to the nature of the services offered (.COM, .ORG, .EDU, .GOV, etc...) and according to country (.FR, .UK, .SF, etc...).

However, it is necessary to understand that there is no hard and fast correspondence between the country appearing in the domain name and the numerical IP address. For example, www.yahoo.fr does not correspond to an IP address of a French network.

Therefore, the domain name extension cannot be used to determine which network a numerical IP address belongs to.

However, the IP address allocation originally made by MANA, and subsequently by ICANN, to Internet Service Providers (ISPs) follows a tree structure, for example, from the main network, to the sub-network, to the access provider, and finally to the local user.

It is possible to work backwards from a given IP address to the access provider, to the sub-network, to the main network.

This being so, certain organisations and certain providers maintain databases which are used to determine the identity of a network, sub-network, router or site from its IP address.

The DNS system gives access providers, sites, etc... the ability to associate their reference address with their geographical location in the form of latitude and longitude coordinates. This is not an obligatory requirement.

The ability to use information about the geographical location of IP address holders is extremely useful, however, not only for the purposes of targeted advertising but also in order to ensure harmonious development of the Web.

Several providers have technology and databases capable of identifying the geographical location of fixed addresses or even of dynamically allocated addresses. A number of these made submissions to the panel of experts to the effect that they had at their disposal the technical means to enable YAHOO! to fulfil the obligations placed upon it by the Court.

The problem

In order to satisfy the terms of the court order requiring it to prevent access to auction services for Nazi objects, YAHOO! has to :

- 1) know the geographical origin and nationality of surfers wishing to access its auctions site
- 2) prevent French surfers or surfers connecting from French territory from perusing the description of Nazi objects posted for auction, and even more importantly to prevent them from bidding.

On geographical origin and nationality

General case

In order for a website to be viewed by members of the public, it is necessary for a user workstation (PC or other) to be linked to a destination site.

This operation involves the participation of various categories of intermediaries: the access provider, routers, one more destination sites.

It may be useful to recall at this point that the user's workstation, access provider, routers and destination sites are all identified on the network by an address which conforms to the Internet Protocol (IP) standard.

Whereas the IP addresses of the sites operated by the access providers, routers and destination sites are fixed, in the sense that there is a permanent reciprocal link between the IP address and its holder, this does not apply to the address allocated to the user's workstation. This address is allocated dynamically, on a non-permanent basis, by the access provider at the time of connection.

However, access providers are only able to assign the IP addresses which have been allocated to them by the Internet authorities. These addresses follow a tree structure as mentioned above. A surfer's PC receives an IP address allocated to an access provider who belongs to a sub-network which belongs to a network.

The panel of experts consulted the AFA, the French association of access and internet service providers, to find out the proportion of internet connections made by access providers who do not assign IP addresses capable of being identified as French.

The answer was 20.57% at 30th September 2000.

The panel also asked the AFA to what extent were its members representative of access providers operating in French territory.

The answer, according to a Mediamétrie survey carried out in March 2000, was that *"87% of surfers connecting from their home use access providers who are AFA members"*.

It may be added that, given the level of telephone charges involved, French surfers for the most part use the services of access providers present in their country.

It may therefore be estimated that 70% of the IP addresses assigned to French surfers can be matched with certainty to a service provider located in France, and can be filtered.

Further, it is this fact that enables YAHOO Inc. to display French advertising banners in French on its auctions site.

Appendix B to this report illustrates the connection pathway from a surfer to the destination site via the access provider Club-Internet (Grolier) using the PING and WHOIS functions of the Internet.

The exceptions

There are numerous exceptions.

A large number of these, in the order of 20%, stem from the multinational character of the access provider or from the fact that they use the services of an international ISP or a private communications network.

The case of AOL is significant in this regard. AOL uses the services of the UUNET network. The dynamic IP addresses assigned by AOL appear as being located in Virginia where UUNET has its headquarters.

In this situation, the workstations of users residing in French territory appear on the Web as if they are not located in French territory.

The same applies to a number of private networks operated by large corporations (intranets) in which the real addresses are encapsulated and transported in a manner such that the address seen by Internet sites is that appearing at the tunnel exit.

Other exceptions stem from the desire on the part of certain users to hide their real address on the net. Thus, so-called anonymizer sites have been developed whose purpose is to replace the user's real IP address by another address. It is not possible in this case to know the geographical location of the access provider's customer because the user's address can no longer be identified. The only location which can be known is that of the anonymizer site, but this is of no value in this case.

Examination of solutions proposed by specialised providers

All of the proposed solutions are based on using geographical information about sites which have one or more permanent addresses. These approaches rely partly on information obtained from DNS servers and partly on information provided by the access providers themselves.

Infosplit

The consultants found that Infosplit was incapable of identifying the geographical location of users of AOL France whose server is sited in the United States, for the reasons stated earlier.

NetGeo

This system, which is based on principles similar to those of Infosplit, is also unable to determine the location of surfers using a network in which the access provider assigns dynamic IP addresses that do not match the user's actual geographical location.

Cyber Locator

This approach relies on the use of geographical data obtained from a satellite positioning system (GPS).

This solution is wholly unsuited to the case in question given the limited number of

Declaration of nationality made by the surfer

Given that, in light of the aforementioned exceptions, no filtering method is capable of identifying all French surfers or surfers connecting from French territory, the panel of consultants looked at the feasibility of requiring the surfer to make a sworn declaration of nationality.

This declaration could be made when a first connection is made to a disputed site, in this case the Yahoo auctions site, by a surfer whose IP address falls within the exceptions regime described above.

A message (cookie) downloaded to the surfer's workstation would then dispense with the need for the surfer to make a fresh declaration at each subsequent connection.

Use of nationality information by YAHOO Inc.

This is the second aspect of the problem. How to proceed once the nationality or location of the user workstation is known ?

The measures to be taken depend on the particular case in point. They cannot be generalised to all sites and services on the Internet.

In this case, the site in question is pages.auctions.yahoo.com. This site is hosted by GeoCities IP address 216.115.104.70, location 37°35'2" North by 121°9'58" West, GeoCities network registered by Yahoo, 3400 Central Expressway, Suite 201, Santa Clara, CA 95051.

This site is an auction site for miscellaneous items and is not dedicated to Nazi objects. A characteristic feature of this type of site is to enable the surfer to easily find the item he or she is looking for.

It appears that in order to satisfy the terms of the court order of 22nd May 2000, YAHOO must not allow surfers of French nationality or calling from French territory to access these items.

If, as the result of a search initiated by a request entered by a French surfer, one or more Nazi objects described as Nazi by their owner are picked up by the search engine, these items must be hidden from the surfer and excluded from the search result.

Clearly, however, it is not possible for YAHOO to exclude *a priori* items which have not been described by their owner as being of Nazi origin or belonging to the Nazi era, or the characteristics of which have not been brought to the attention of YAHOO.

Checks carried out by the panel of consultants confirmed that numerous Nazi objects were presented as such by their owner.

A more radical solution is also possible. This would simply require the search engine not to execute requests, transmitted in the URL, including the word "Nazi" and originating from surfers identified or declared as French.

THE DEMANDS PLACED ON YAHOO INC.

"Describe the information carried on the Internet enabling the geographical origin of calls to be determined."

The Internet Protocol (IP) attaches the sender's IP address and the recipient's IP address to each datapacket transmitted. The recipient is thus able to determine the sender's IP address. There are three classes of IP address (A, B and C), as described in Appendix P.

The first part of this address is used to identify the network and subnetwork to which the sender's access provider belongs. These networks may be national or multinational.

According to the French association of access providers (AFA), it may be estimated that 80% of the addresses assigned dynamically by the members of that association are identified as French. On the other hand, 20% are not so identified.

Of the information carried on the Internet, only senders' IP addresses can be used to determine the geographical origin of calls. 80% of the addresses assigned dynamically by AFA member access providers can be identified as being French.

It should be noted, however, that the geographical origin referred to is that of the access provider's site called by the surfer. There is nothing to prevent a user from placing a call from France, by telephone, to an access provider with a foreign telephone number. In this case, there is every chance that the dynamically assigned IP address will be identified as being foreign. It is equally feasible for a foreigner to call an access provider located in France and thus be assigned a French IP address.

However, it may be estimated in practice that over 70% of the IP addresses of surfers residing in French territory can be identified as being French.

The consultants stress that there is no evidence to suggest that the same will apply in the future. Encapsulation is becoming more widespread, service and access providers are becoming more international, and surfers are increasingly intent on protecting their rights to privacy.

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"Say whether other information, originating notably from telephone or cable operators, could be used either by access providers or destination site hosting services to determine the origin of calls and, if so, to describe this information."

This refers to information carried by telecommunications and cable operators, but which is not transmitted over the Internet. In this situation, the destination sites cannot know this information.

French telecommunications operators routinely transmit the caller's telephone number to the called party's handset. This information is not used in real time by the access provider. It is held temporarily in a file to facilitate searches at a later time. It is thus possible to know, *a posteriori*, after analysing the connection history, which caller number was assigned at a given time to a particular IP address, and vice versa.

Cable operators are also able, on request but *a posteriori*, to match an IP address assigned at a particular time to their customer's local site.

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"Describe the filtering procedures that can be implemented by the company YAHOO to prevent surfers operating from French territory from accessing sites which may be deemed illegal by the French judicial authorities.

On the assumption that no technical solution can guarantee 100% filtering, provide all technical and factual information to facilitate an assessment of the effectiveness of filtering capable of being achieved by each of the filtering procedures described by the consultants.

More generally, provide all technical and factual information to enable the Court to assure itself that the restrictions on access ordered against YAHOO Inc. can be met."

The consultants consider that, in order for a technical solution to be effective, it must be properly suited to the case in question. The YAHOO! companies operate numerous services (Appendix G) on the Internet, ranging from personal pages (GeoCities) to astrology (Yahoo astrology) and finance, etc... The majority of these sites do not appear to be concerned in the present dispute.

The decisions of the court and the demands made are precisely directed against the auctions site. No grievance against any other Yahoo! sites or services is formulated with sufficient precision to enable the consultants to propose suitable and effective technical solutions.

In these circumstances, the consultants will therefore confine their answers to the matter of the auctions site (Yahoo auctions).

They will also rule out an examination of other technical measures that could be imposed on third parties not party to the proceeding. Neither the matter of proxy servers nor the matter of browser settings at the surfer's computer fall within the remit as stipulated by the Court.

REPLIES OF THE CONSULTANTS LAURIE AND WALLON

These consultants report that in the current state of development of the Internet :

- 1) The figures supplied by the AFA, combined with their personal experience, enable the consultants to estimate that some 70% of the IP addresses of French users or users residing in French territory are capable of being correctly identified by specialised providers such as InfoSplit, GeoNet or others, using specialised databases.
- 2) Yahoo! displays advertising banners targeted at surfers considered by that company to be French, and that it therefore has the technical means to identify them.
- 3) Around 30% of the IP addresses assigned to French users cannot be identified correctly by the aforementioned methods.
- 4) Numerous sites, most often relating to the area of national defence (cryptography), only allow access to certain pages on the site or allow software to be downloaded after requesting surfers to declare their identity.
- 5) The use of cookies is a common practice which avoids the necessity for surfers to re-enter information every time they visit a site. Individuals wishing to delete cookies or prevent them from being stored on their computer are perfectly well aware that it will take longer to access the sites which issued the cookies.
- 6) Nazi objects are generally described as such by the vendors by including the word "Nazi" in the description of the item, which in their eyes constitutes a selling point.

In these circumstances, the consultants consider that in addition to the geographical identification already practised by Yahoo to target its advertising, it would also be desirable to ask surfers whose IP address is ambiguous to make a declaration of nationality.

This declaration, given on honour, would only be required of surfers whose IP address cannot be identified as belonging to a French ISP (e.g. multinational ISPs like AOL, address transmitted from an anonymizer site, or encapsulation of an address assigned by an intranet server).

At the discretion of Yahoo, this declaration could be made on the home page of the auctions site, or only in the context of a search for Nazi objects if the word "Nazi" is included in the user's request, immediately before the search engine processes the request.

In these circumstances, the consultants consider that it cannot be reasonably claimed that this would have a negative impact on the performance and response time of the server hosting the Yahoo! auctions service.

The combination of two procedures, namely geographical identification of the IP address and declaration of nationality, would be likely to achieve a filtering success rate approaching 90%.

REPLY OF THE CONSULTANT VINTON CERF

We reproduce here the divergent part of the opinion given by the consultant Vinton Cerf as expressed by him :

"....."

[Original text in English]

[Original text in English - continued]

....."

Thus written, checked and signed.

Paris. 6th November 2000

Vinton Cerf

Ben Laurie

Fançois Wallon

Free translation of the above : "It has been proposed that users identify where they are at the request of the web server, such as the one(s) serving yahoo.fr or yahoo.com. There are several potential problems with this approach. For one thing, users can choose to lie about their locations. For another, every user of the website would have to be asked to identify his or her geographic location since the web server would have no way to determine a priori whether the user is French or is using the Internet from a French location.

Some users consider such questions to be an invasion of privacy. While I am not completely acquainted with privacy provisions in the European Union, it might be considered a violation of the right of privacy of European users, including French users, to request this information. Of course, if this information is required solely because of the French Court Order, one might wonder on what grounds all other users all over the world are required to comply.

Another complaint about the idea of asking users for their location is that this might have to be done repeatedly by each web site that the user accesses. Yahoo cannot force every web site to make this request.

When a user first contacts the server(s) at yahoo.fr or yahoo.com, one might imagine that the question of geographic location might be asked and then a piece of data called a cookie might be stored on the user's computer disk. Repeated visits to Yahoo sites might then refer to this cookie for user location information. The problem with this idea is that cookies are considered by many to be an invasion of privacy. Also, as a result, many users configure browsers to reject storage of cookies on their disk drives or they clear them away after each session on the Internet - thus forcing the query about geographical location each time the user encounters a Yahoo-controlled web site. Again, Yahoo would have no way to force a web site net under its control to either ask the location question or to request a copy of the cookie containing the location. Indeed, it would open up a vulnerability for each user if arbitrary web sites were told how to retrieve the cookie placed there by the Yahoo sites.

For these and many other reasons, it does not appear to be very feasible to rely on discovering the geographic location of users for purposes of imposing filtering of the kind described in the Court Order".

Whereas it emerges from the said submissions that it is possible to determine the physical location of a surfer from the IP address;

Whereas YAHOO Inc. has sought to completely overturn these submissions on the basis of the contents of a separate note written by one of the consultants, Mr. Vinton CERF;

Whereas, however, at the hearing of submissions devoted inter alia to a presentation of the consultants' findings, Mr. Vinton CERF acknowledged the feasibility of identifying geographical location under the terms and conditions of the report and in the proportions mentioned in the report, of which he approved the content;

Whereas, furthermore, his separate note dated 5th November 2000 and submitted in evidence by YAHOO Inc. does not contradict the findings of the report; whereas the note confines itself to stating on one hand that it would be "incorrect or at any rate liable to be mistaken" to affirm that it is possible to determine with a high degree of reliability the physical location of an IP address, the phrase "high degree of reliability" evidently meaning a degree of reliability well above that stated in the report at some 70% and that, on the other hand, which the panel of consultants accepted in its entirety, that the reply give on this point could only relate to the auctions site for Nazi objects and that it could not be extrapolated against other YAHOO-controlled sites and services;

Whereas it should be borne in mind that YAHOO Inc. already carries out geographical identification of French surfers or surfers operating out of French territory and visiting its auctions site, insofar as it routinely displays advertising banners in the French language targeted at these surfers, in respect of whom it therefore has means of identification; whereas YAHOO Inc. cannot properly maintain that this practice amounts to "crude technology" of limited reliability, unless it were felt that YAHOO Inc. had decided to spend money with no hope of a return or that it was deliberately misleading its advertisers about the quality of the services which it had undertaken to offer them, which does not appear to be so in this case;

Whereas in addition to the geographical identification as shown above to be already practised by YAHOO Inc., the consultants' report suggests that a request be made to surfers whose IP address is ambiguous (access through an anonymizer site - or allocation of IP addresses by AOL COMPUSERVE which do not take account of the subscriber's country of origin) to provide a declaration of nationality, which in effect amounts to a declaration of the surfer's geographical origin, which YAHOO could ask for when the home page is reached, or when a search is initiated for Nazi objects if the word "Nazi" appears in the user's search string, immediately before the request is processed by the search engine;

Whereas the consultants, who contest the arguments adduced by YAHOO Inc. as to the negative impact on such controls on the performance and response time of the server hosting the auctions site, estimate that a combination of two procedures, namely geographical identification and declaration of nationality, would enable a filtering success rate approaching 90% to be achieved;

Whereas in regard to optimisation of the filtering process by the use of associated keywords, the consultants gave the opinion during the hearing of submissions that it would undoubtedly be necessary in order to optimise the filtering to select about ten words associated with the search operators for document searches or character string searches "AND", "OR", "EXCEPT";

Whereas, in addition to the measures suggested by the consultants, it is necessary to include checks by YAHOO on the place of delivery of items purchased by auction;

Whereas, in effect, the act of visiting the auctions site for Nazi objects is not exclusively for the purpose of viewing; that this purpose is often to purchase items; that in these circumstances even if YAHOO had been unable to identify with certainty the surfer's geographical origin, in this case France, it would know the place of delivery, and would be in a position to prevent the delivery from taking place if the delivery address was located in France;

Whereas, furthermore, YAHOO Inc. could obtain additional nationality information from the language version of the surfer's browser;

Whereas, however, it maintains that this information would require it to modify the management software of its sites and to substantially increase associated hardware resources;

Whereas it adds that filtering of all information at Web server level would only be feasible if it were possible to ensure that the prohibition would only apply to French surfers, otherwise surfers throughout the world would be denied access to information published on its sites, which cannot be envisaged;

Whereas, however, it has been shown above that it does have effective filtering methods available to it;

Whereas, furthermore, it fails to show by means of a convincing case study that the technical modifications required to control access to auction services for Nazi objects would effectively entail a substantial increase in associated hardware resources;

Whereas, in any event, the company YAHOO Inc. has offered to cooperate with the plaintiffs; whereas it thus requests that note be taken of its willingness to put in place a monitoring system with the assistance of the plaintiffs, for whom it expresses the greatest respect for the cause to which they are committed, so that when an offending site is brought to its notice by the plaintiffs and subject to its being manifestly directed essentially at French users, it can take action to cease hosting the site;

Whereas, to demonstrate its good faith, it states that it has ceased hosting the "Protocole des Sages de Sion", considering that a sufficient connecting link exists between this document and France by reason of the language of the work;

Whereas, with a modicum of will on its part, the company YAHOO Inc. could be persuaded of the usefulness of extending this connecting link to photographs and descriptions representing symbols of Nazism;

Whereas, according to the information given in the consultants' report at the initiative of the plaintiffs and which has not been seriously challenged, the company YAHOO is currently refusing to accept through its auctions service the sale of human organs, drugs, works or objects connected with paedophilia, cigarettes or live animals, all such sales being automatically and justifiably excluded with the benefit of the first amendment of the American constitution guaranteeing freedom of opinion and expression;

Whereas it would most certainly cost the company very little to extend its ban to symbols of Nazism, and such an initiative would also have the merit of satisfying an ethical and moral imperative shared by all democratic societies;

Whereas the combination of these technical measures at its disposal and the initiatives which it is able to take in the name of simple public morality therefore afford it the opportunity of satisfying the injunctions contained in the order of 22nd May 2000 in respect of the filtering of access to the auctions service for Nazi objects and to the service relating to the work Mein Kampf which was included in the wording of the aforementioned order by the phrase "and any other site or service constituting an apology for Nazism";

Whereas it is nonetheless granted a period of three months in which to comply with this order;

Whereas upon expiry of this period it shall be liable to a penalty of 100,000 Francs per day of delay until such time as it has complied in full;

On the demand placed on YAHOO FRANCE

Whereas the consultants' report states and suggests:

"Verify whether YAHOO France has effectively satisfied the terms of our injunction contained in the order of 22nd May 2000."

The order of 22nd May 2000 stipulates in this regard :

We order the company YAHOO FRANCE to warn any surfer visiting Yahoo.fr, even before use is made of the link enabling him or her to proceed with searches on Yahoo.com, that if the result of any search, initiated either through a tree structure or by means of keywords, causes the surfer to point to sites, pages or forums of which the title and/or content constitutes a violation of French law, as applies to the viewing of sites making an apology for Nazism and/or exhibiting uniforms, insignia or emblems resembling those worn or displayed by the Nazis, or offering for sale objects or works whose sale is strictly prohibited in France, the surfer must desist from viewing the site concerned subject to imposition of the penalties provided in French legislation or the bringing of legal action against him. "

In order to satisfy the terms of this order, YAHOO! France has:

- 1) modified and amplified its terms of use accessible by clicking on the link "Find out about Yahoo!" (*"tout savoir sur Yahoo!"*) appearing at the bottom of each page on the site. The following paragraph has been added: *"Finally, if in the context of a search conducted on www.yahoo.fr from a tree structure or keywords, the result of the search is to point to sites, pages or forums whose title and/or content contravenes French law, considering notably that Yahoo! France has no control over the Content of these sites and external sources (including Content referenced on other Yahoo! Sites and Services worldwide), you must desist from viewing the site concerned or you may be subject to the penalties provided in French law or legal action may be brought against you"*
- 2) put in place a warning when a search by tree structure (categories) is requested, worded as follows : *"Warning : if you continue this search on Yahoo! US, you could be invited to view revisionist sites of which the content contravenes French law and the viewing of which could lead to prosecution."*

It was found that the Yahoo! terms of use were not systematically displayed when first logging on to this site, and further that the link "Find out about Yahoo!" did not necessarily convey the impression that it pointed to the general terms of use of the service.

However, the warning was systematically displayed in the context of a search by category (e.g. holocaust).

It is technically possible for Yahoo! France to arrange the obligatory display of its terms of use apart from the first connection of a user to its site.

Yahoo! could also, instead of or in addition to the preceding measure, arrange for the warning referred to in 2) to be systematically displayed whenever the link to Yahoo.com is displayed.

However, on this latter point, Yahoo! contended that this went beyond the terms of the court order. Under these circumstances, it is for the court to interpret its ruling. Contrary to the argument made by Yahoo!, the phrase *"warn any surfer visiting Yahoo.fr, even before use is made of the link ..."* can mean that the warning must be displayed every time the link is displayed.

Whereas Yahoo France maintains that it has fully complied with the terms of our order of 22nd May 2000 by modifying the link referred to by the plaintiffs, by installing the warning mentioned in the order on several links, by advising surfers of the terms of use of the service which are accessible to users when they log on to Yahoo.fr and which can be viewed on all Yahoo.fr pages with effect from 3rd November 2000, and by amending the general terms of use of the service to include a message exceeding the requirements of the court order of 22nd May 2000 and worded in the terms of the new Article 6.2;

Whereas the initiatives undertaken by Yahoo! France are technically capable of satisfying in large measure the terms of our order of 22nd May 2000, with the proviso however that the warning is given every time the link is displayed "even before use is made of the link".

On the other demands placed on YAHOO! France

Whereas there is no matter for summary consideration in respect of the demands of LICRA, UEJF and MRAP seeking to require YAHOO FRANCE, subject to the imposition of financial penalties, to eliminate all links connecting the site Yahoo.fr to sites belonging directly or indirectly to YAHOO Inc. until such time as YAHOO Inc. has fulfilled its obligations, having regard to the existence of a serious objection to the demands on the part of YAHOO FRANCE, which objections are exclusive of our competence;

ON THESE GROUNDS

Ruling in public hearing, with the possibility of appeal, by order following full discussion by all parties,

We reject the plea of incompetence reiterated by YAHOO Inc.;

We order YAHOO Inc. to comply within 3 months from notification of the present order with the injunctions contained in our order of 22nd May 2000 subject to a penalty of 100,000 Francs per day of delay effective from the first day following expiry of the 3 month period;

We instruct at the advanced cost of YAHOO Inc. :

Mr. WALLON
19 rue Decamps 75016 PARIS
Telephone: 01.47.55.47.73
Fax: 01.47.55.48.08

to undertake an assignment to prepare a consultancy report on the conditions of fulfilment of the terms of the aforementioned order;

We fix in the sum of 10,000 Francs the provision in respect of consultancy costs to be deposited by the Company YAHOO Inc. directly to the consultant within one month following the present order;

We state that failing deposit of the provision within this mandatory period, the matter shall be referred to us for summary ruling;

We take due note of the decision by YAHOO Inc. to cease hosting the "Protocole des Sages de Sion";

We find that YAHOO FRANCE has complied in large measure with the spirit and letter of the of the order of 22nd May 2000 containing an injunction against it;

We order it, however, to display a warning to surfers even before they have made use of the link to Yahoo.com, to be brought into effect within 2 months following notification of the present order;

We order YAHOO Inc. to pay to each of the plaintiffs the sum of 10,000 Francs pursuant to Article 700 of the New Code of Civil Procedure;

We state that there is no basis for application of the aforementioned provisions against YAHOO FRANCE;

We reserve the possible liquidation of the penalty;

We state that there is no basis for the imposition of other measures or to make summary rulings in respect of the other demands made against YAHOO FRANCE;

We award costs to the charge of YAHOO Inc., with the exception of those arising from the petition brought against YAHOO FRANCE which shall provisionally remain to the charge of each of the parties.

Made at Paris on 20th November 2000

The Clerk to the Court

The Presiding Justice

(signature)

(signature)

Nicole VOURIOT

Jean-Jacques GOMEZ