



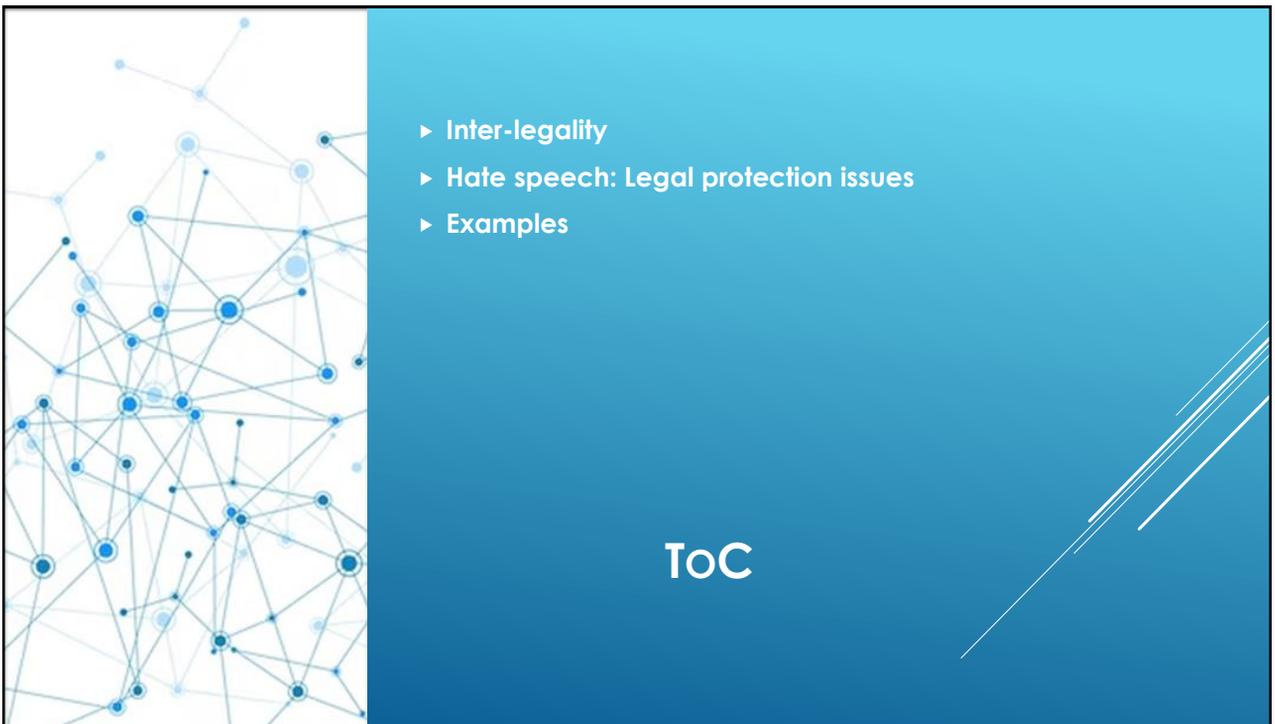
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**THE CONTRIBUTION OF INTER-LEGALITY TO THE  
FIGHT AGAINST ONLINE HATE  
SPEECH**

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▶ Inter-legality  
▶ Hate speech: Legal protection issues  
▶ Examples

**ToC**

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- ▶ From separate legal orders to inter-legality
- ▶ Boaventura de Sousa Santos (1987)
- ▶ Gianluigi Palombella, Jan Klabbers: “interlaw”

## INTER-LEGALITY

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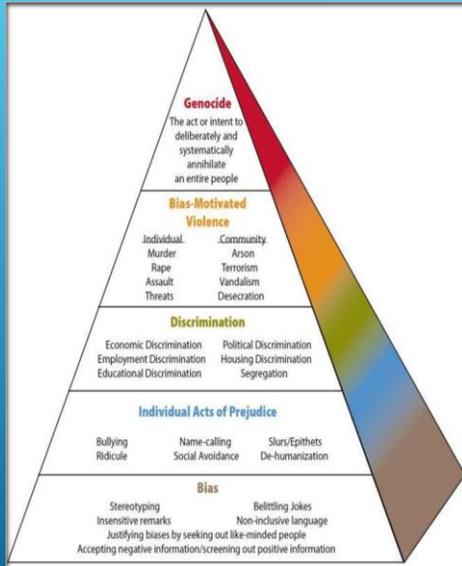
- ▶ Judges: “inter-legal hubs” in applying “composite law” to concrete cases

What about....

- ▶ ....lawmakers?
- ▶ ....mediators?
- ▶ ....quasi-judicial bodies?
- ▶ ....others?

## INTER-LEGALITY

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ADF

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## Hate Speech

- Definition and grounds

- US approach ("Marketplace of ideas") v. EU approach

- Criminal/Civil/Administrative Law?

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- ▶ Exceptionalist v. Exceptionalist
- ▶ Trend towards a common principle? «What is illegal offline is also illegal online»

## What Kind of Tool is the Net?

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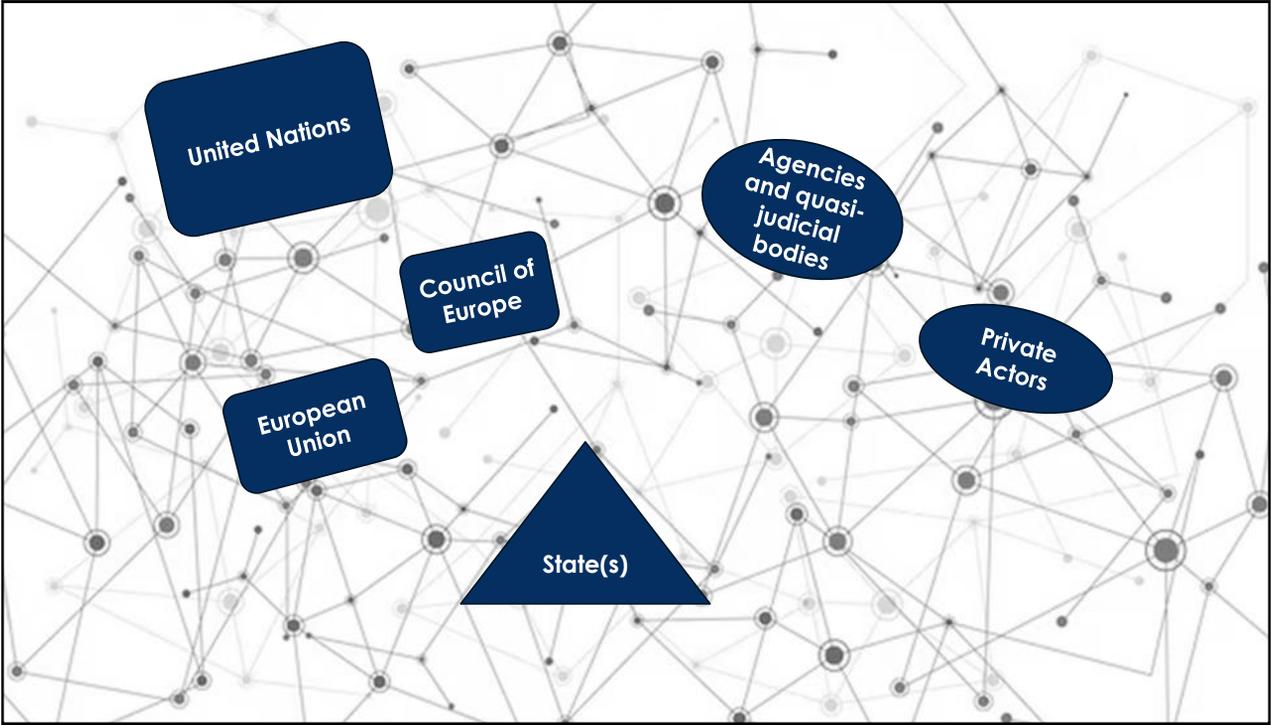


- ▶ Permanence
- ▶ Unpredictable return of content
- ▶ perceived Internet users' anonymity
- ▶ Transnationality

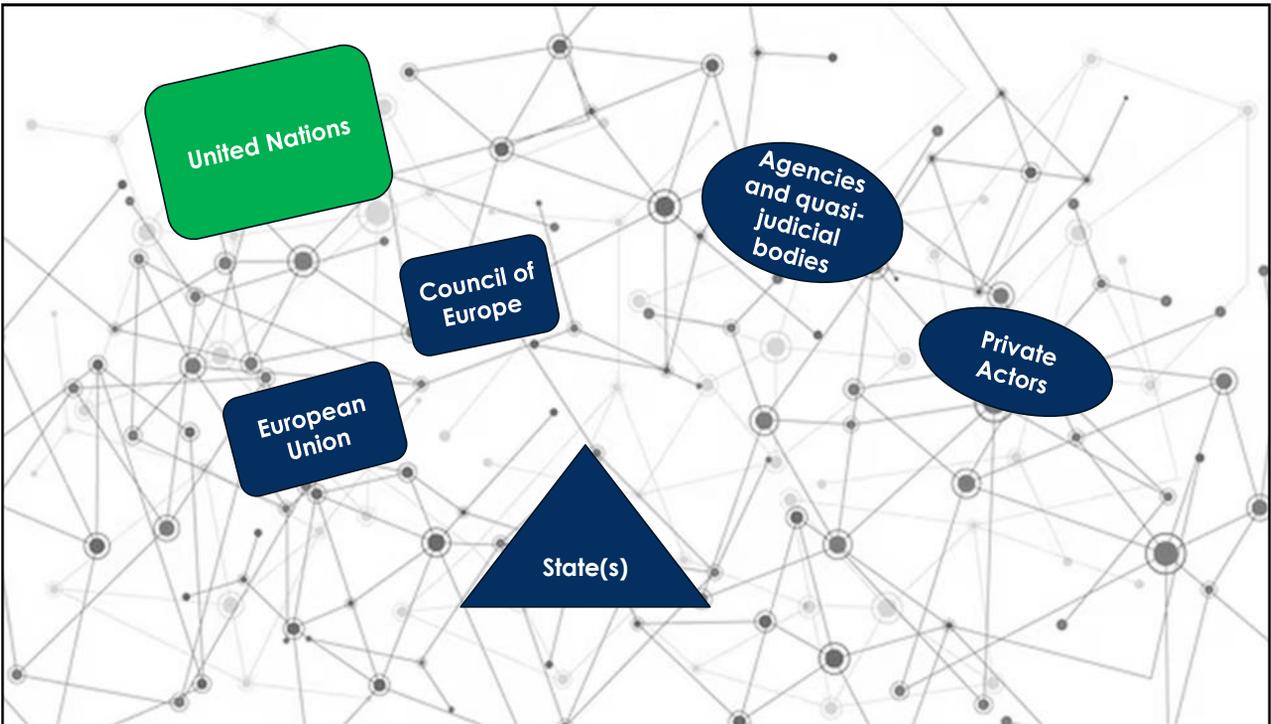
UNESCO 2015, 13–15)

## 4 CHARACTERISTICS OF ONLINE HATE SPEECH

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# LAW AND GOVERNANCE

UNITED NATIONS

COUNCIL OF EUROPE  
EUROPEAN UNION

NATIONAL LEGISLATION

ACTORS OF THE MARKET

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- ❖ Soft UN and hard (EU) co-regulation within frameworks of defined principles
- ❖ There co-exists the CoE hard and soft law provisions, which seem to pay more significant attention to intra-State coordination than inter-States cohesion, although within the framework of
- ❖ the ECHR principles
- ❖ EU: DSA
- ❖ EU Member States
- ❖ Platforms try to cope with the accountability and liability

## IN A NUTSHELL

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#### The Roadmap's key actions

To meet the call to connect, respect, and protect the online world, the action-oriented Roadmap presents the Secretary-General's recommendations for concrete action by diverse stakeholders that would enhance global digital cooperation in the following areas:

**Achieving universal, affordable, connectivity by 2030**

—everyone should have access to the internet.

**Promoting digital public goods to create a more equitable world**

—the internet's open source, public origins should be embraced and supported.

**Ensuring digital inclusion for all, including the most vulnerable**

—under-served groups need equal access to digital tools to accelerate developmental progress.

**Strengthening digital capacity building**

—skill development and training are needed around the world.

**Ensuring the protection of human rights in the digital era**

—human rights apply both online and offline.

**Supporting global cooperation on Artificial Intelligence**

that is trustworthy, human rights based, safe and sustainable and promotes peace.

**Promoting digital trust and security**

Calling for global dialogue to advance the Sustainable Development Goals.

**Building a more effective architecture for digital cooperation**

—make digital governance a priority and focus the organization's approach

# UNITED NATIONS

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## Preventing and tackling hate speech

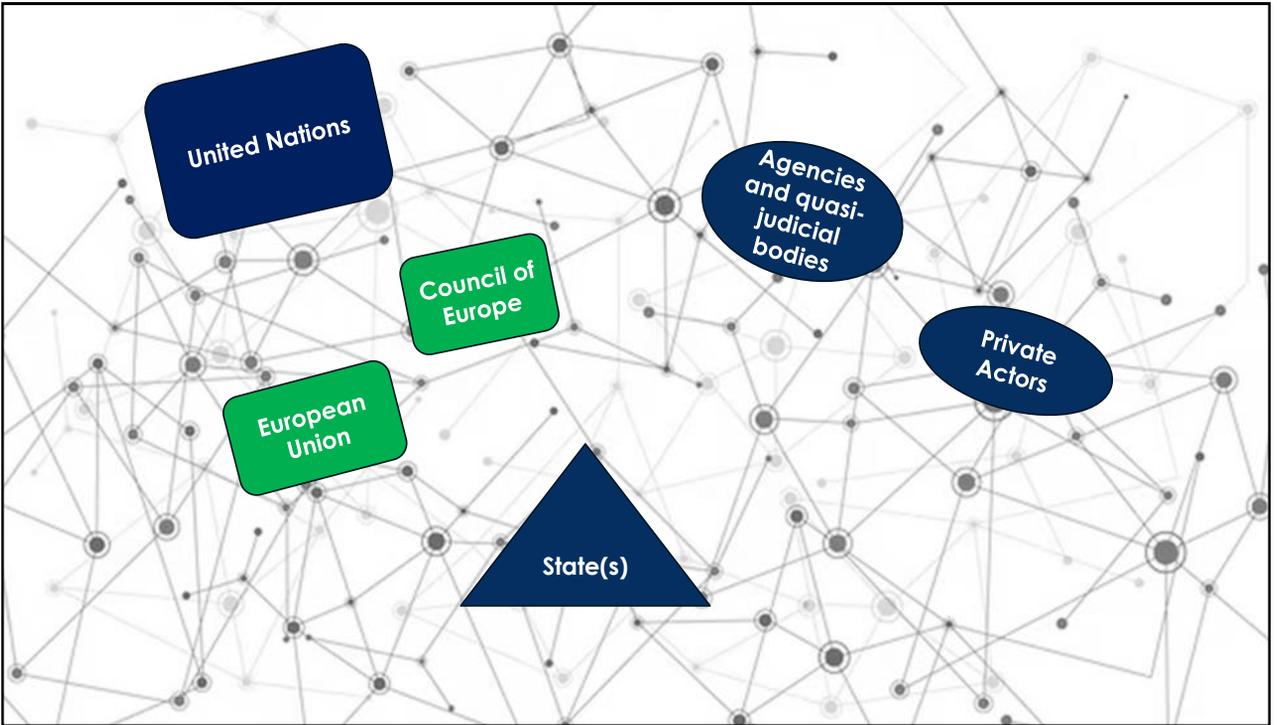
- ▶ United Nations Strategy and Plan of Action on Hate Speech

## Governance

- ▶ 2020 UN Secretary General's Report on the Road Map (A/74/821)
  - multi-stakeholder process
  - Distributed co-governance model at the national or regional levels

# UNITED NATIONS

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### ► Preventing and TACKLING HATE SPEECH

- ECHR: Art. 10 ("Freedom of expression"); art. 17 ("Prohibition of abuse of rights"); art. 14 ("Prohibition of discrimination").

*Budinova and Chaprazov v. Bulgaria / Behar and Gutman v. Bulgaria*  
(both of 16 February 2021)

A new hermeneutic: the Court states that hate speech amounts to a violation of the right to private and family life (Art. 8 "Right to respect for private and family life" of the ECHR) without discrimination on the grounds of ethnic and racial origin (in the specific case of Roma and Roma and Jews), which justifies the restriction of freedom of expression (Art. 10). The balance between Art. 10 and Art. 8 was thus supplemented by Art. 14

## COUNCIL OF EUROPE

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## ▶ PREVENTING AND TACKLING HATE SPEECH

- ▶ 2003: Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS No. 189)

Entry into force: 01/03/2006

Missing: Austria, Belgium, Bulgaria, Estonia, Hungary, Italy, Malta

- Istanbul Convention and General Recommendation No.1 on the digital dimension of violence against women

COUNCIL OF EUROPE

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## ▶ PREVENTING AND TACKLING HATE SPEECH

RECOMMENDATION ON COMBATING HATE SPEECH (CM/REC(2022)16), ADOPTED IN MAY 2022

Aimed at preventing and combating offline and online hate speech in a comprehensive way within the framework of the three CoE pillars (human rights, democracy and the rule of law).

The Appendix "Principles and Guidelines on a Comprehensive Approach to Combating Hate Speech" to this Recommendation identifies detailed measures that

States should adopt in relation both to substantive and regulatory profiles of hate speech, including its online manifestations. In doing so, it confirms States' crucial role within the today's horizontal and heterarchical configuration of the Internet

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- ▶ **Framework Decision (2008/913/JHA) on combating certain forms and expressions of racism and xenophobia by means of criminal law**

Race, colour, religion, descent or national or ethnic origin;

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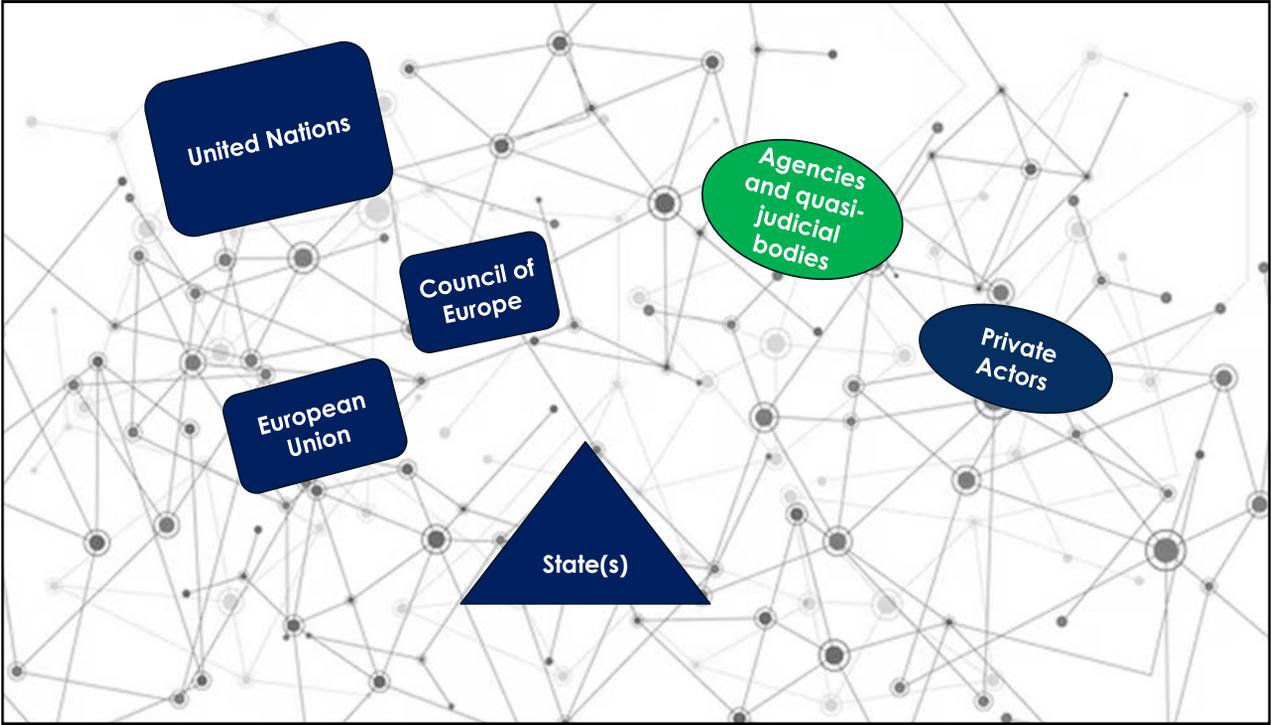
**Code of Conduct to counter the incitement to illegal online hate speech.**

Instagram, Snapchat and Dailymotion joined the initiative in 2018, followed by Jeuxvideo.com in 2019. Rakuten, Viber and Twitch announced their participation in Spring 2022

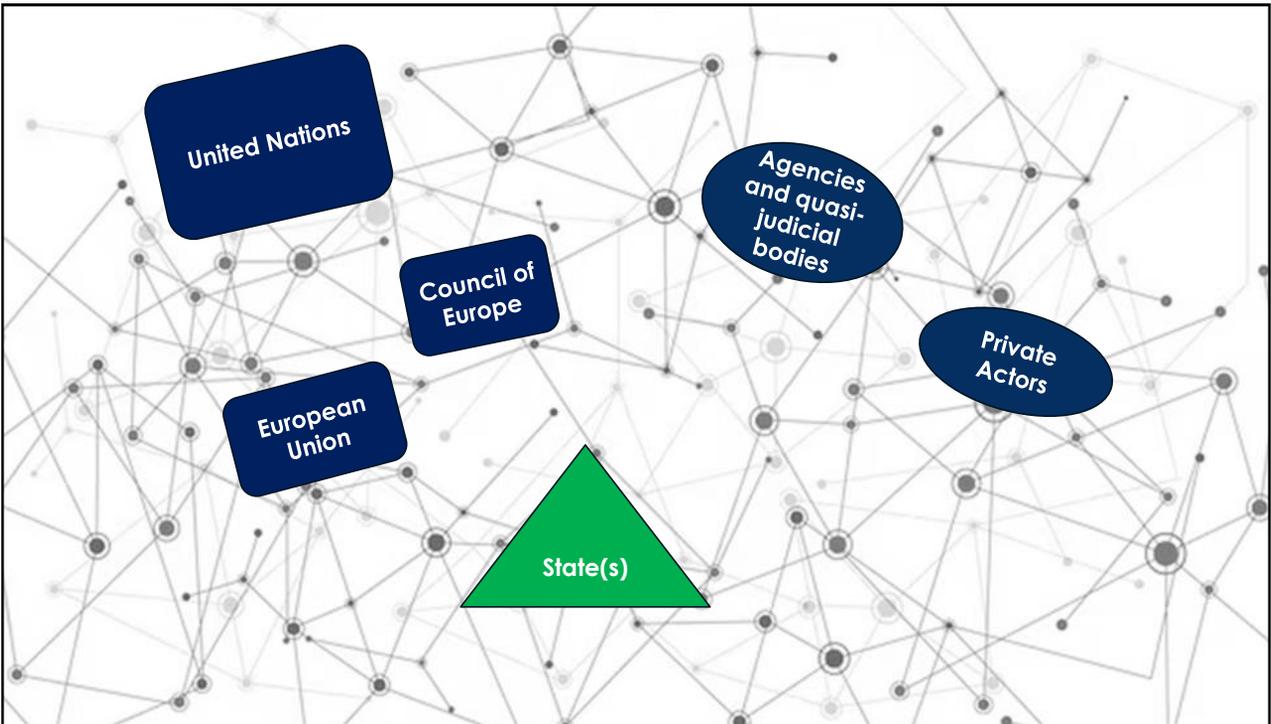
**Digital Service ACT (European Parliament and Council, Regulation 2022/2065)**

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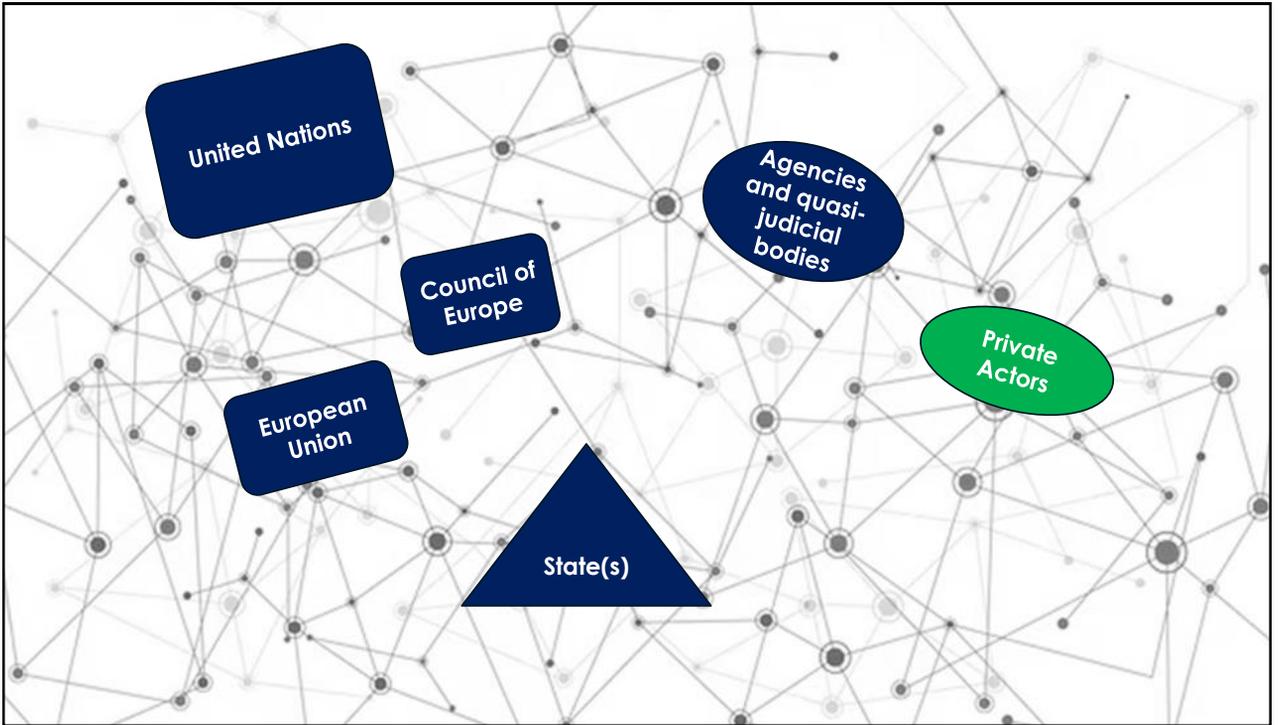
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- ▶ **Netzwerkdurchsetzungsgesetz – NetzDG** (German Law for the Protection of Rights on Social Networks) **2017**
- ▶ **Loi Avia** **2020**
- ▶ **Austrian Bundesgesetz über Maßnahmen zum Schutz der Nutzer auf Kommunikationsplattformen** (Federal law on Measures to Protect Users on Communication Platforms) **2021**

## NATIONAL LEGISLATION

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**LICRA v. Yahoo**

A French court decided in 2000

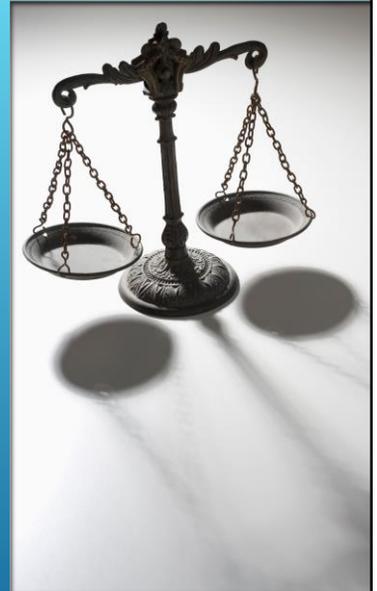
LICRA (Ligue internationale contre le racisme et l'antisémitisme) filed a civil complaint against Yahoo! for allowing its online auction service to be used for the sale of Nazi memorabilia

The Court ordered Yahoo! US to take all necessary measures to deter access to Nazi memorabilia auctions. It ordered Yahoo!

As a result, Yahoo! modified its auction guidelines and warned its users that the sale of items prohibited under Art. R645-1 of the French Criminal Code is not permitted.

**BUT THE US DISTRICT COURT....1<sup>st</sup> Amendment**

## “MISSED” INTER-LEGALITY (EXAMPLE)



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- ▶ **US Clarifying Lawful Overseas Use of Data Act (CLOUD Act) 2018**
- ▶ Aim: to improve procedures for both the US and foreign authorities in obtaining access to data held by service providers in the context of criminal investigations

## INTER-LEGALITY AND THE LAW

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