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THE 2023-2024 PRICE MEDIA LAW MOOT COURT COMPETITION

UNA AND ONEAI

(APPLICANTS)

V

THE STATE OF CERO

(RESPONDENT)

WRITTEN SUBMISSIONS FOR THE RESPONDENT

WORD COUNT: 4985 WORDS

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LIST OF ABBREVIATIONS

ABBREVIATION	FULL FORM
ACommHPR	African Commission on Human and People's Rights
ACtHPR	African Court on Human and Peoples' Rights
AI	Artificial Intelligence
CCID	Cerovian Criminal Investigation Department
DRC	Digital Regulatory Commission
DSA	Digital Safety Act 2018
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ELA	Enos Liberation Army
EU	European Union
IACHR	Inter-American Convention on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
RMSM	Run-My-Social-Media
u/s	under section
UK	United Kingdom
UN	United Nations

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STATEMENT OF RELEVANT FACTS

PARTIES INVOLVED

1. Cero is a country with a population of approximately 50 million people. It recognizes the right to free speech and information and its obligations are consistent with international law. It is primarily engaged in manufacturing arms and has a regional defence pact with its neighbour Enos.
2. Una is a Cerovian model and social media influencer with seventeen million followers worldwide. She was recently declared the most influential person in Cero. She posts regularly on matters concerning public importance, including women's rights, LGBTQIA+ rights, and the arms trade between Cero and Enos. Una utilizes the RMSM service offered by OneAI.
3. OneAI is a technology company that has developed several sophisticated AI programmes at the global stage. It recently launched RMSM, a programme that generates social media content for its subscribers. These programmes are compliant with the community standards of the relevant social media platform it posts content on.

DIGITAL SERVICES ACT

4. Cero enacted the DSA to regulate social media and social media services. Section 28 criminalizes the indirect encouragement of terrorism, which includes the glorification of terrorist entities. Section 77 empowers the DRC to receive and investigate complaints alleging violations of the DSA. Section 100 defines *glorification* and *terrorism*.

RUN-MY-SOCIAL MEDIA (RMSM)

5. RMSM is an open-source AI tool which works as a plug-in into existing social media platforms. Through continuous learning, it automatically generates content on its users' behalf, imitating their styles, habits, preferences, and views.
6. Its market version was being used by 800,000 individuals at a monthly subscription of \$9.99. OneAI's Terms of Service specified that 100% of RMSM's auto-generated content is fully compliant with the community standards of the relevant social media platforms.
7. RMSM gives users an option to either approve the content generated by it or post auto-generated content without the user's approval. Users can control the frequency of the auto-generated content, schedule posts, and list preferences in terms of themes and topics. OneAI offers users discretion to designate generated content as *suggested*, *autogenerated*, or turn off the labelling feature.

CRISIS IN ENOS

8. There has been a conflict in Enos between the government and the ELA, a terrorist entity engaging in violence against the Enosian government. At the peak of this conflict, there existed a state of armed conflict, with casualties on both sides and other civilian casualties. A significant number of the arms being used in this conflict were supplied to Enos by Cero.
9. Enos maintained a zero civilian casualty policy during this conflict. It alleged that the ELA used civilians as human shields. There were several criticisms, including by Una, against Cero's arms trade with Enos. There were calls for a ceasefire and a cessation of all hostilities.

POSTS BY UNA

10. Having turned off RMSM’s labelling feature, Una permitted it to *autogenerate* content and post it without her approval on her behalf on social media. She then posted multiple posts concerning the Enosian crisis in the town of Naut.

<i>Date</i>	<i>Platform</i>	<i>Auto-Generated</i>	<i>Content of the Statement</i>
14 March 2023	Instagram	No (Reviewed)	A video calling for a ceasefire with the caption ‘#Naut’ and ‘#StopArmingEnos
16 March 2023	Facebook and Instagram	No (Reviewed)	The genocide must stop! #♥Naut #StopArmingEnos # 🇸🇸 Ela’
17 March 2023 at 9.00 AM	Instagram	Yes (Reviewed)	Stop the genocide! #♥Naut #StopArmingEnos # 🇸🇸 Ela
17 March 2023 at 11.00 AM	Facebook	Yes (Not Reviewed)	The genocide must stop! I stand in solidarity with ELA. #♥Naut #StopArmingEnos # 🇸🇸 Ela

11. Una’s last statement encountered many negative comments and she deleted the same more than an hour later. At 2.00 AM on 18 March 2023, there was an attack on a Cerovian weapons manufacturing facility on its border with Enos. Preliminary reports pointed to the ELA sympathizers as the cause for the attack.

LEGAL PROCEEDINGS AND PROCEDURAL HISTORY

12. The DRC received multiple complaints concerning the impugned post because it glorified terrorism. It submitted the report to CCID, which initiated proceedings against Una and OneAI.
13. Una and OneAI were jointly found guilty by the High Court for recklessly publishing content that indirectly encouraged terrorism through the glorification of a terrorist entity. Their conviction and sentence were upheld by the Court of Appeals and Constitutional Court.
14. Consequently, Una and OneAI filed applications before the Universal Court of Human Rights on the ground that their rights under Article 19 of the ICCPR were violated.

STATEMENT OF JURISDICTION

Una and OneAI (Applicants) have approached the Universal Court of Human Rights on issues relating to the right of freedom of expression under Article 19 of the International Covenant on Civil and Political Rights. The State of Cero submits to the jurisdiction of this Honourable Court.

QUESTIONS PRESENTED

I.

DID UNA'S CONVICTION AND SENTENCE UNDER THE DIGITAL SAFETY ACT VIOLATE HER
RIGHT TO FREEDOM OF EXPRESSION UNDER ARTICLE 19 OF THE ICCPR.

II.

DID ONEAI'S CONVICTION AND SENTENCE UNDER THE DIGITAL SAFETY ACT VIOLATE ITS
RIGHT TO FREEDOM OF EXPRESSION, INCLUDING THE FREEDOM TO IMPART INFORMATION,
UNDER ARTICLE 19 OF THE ICCPR.

SUMMARY OF ARGUMENTS

QUESTION I

Una's conviction and sentence of one year, fine of \$1,500, and one-month ban from the use of social media does not violate Article 19 of the ICCPR.

First, Una's conviction is prescribed by law. The indirect encouragement and recklessness standards, as well as the definitions of terrorism and glorification, are sufficiently precise. This is because of the uncertain scope of terrorism and the misuse of the internet to propagate the same. The foreseeability of Una's conviction for glorification and the presence of entities such as the DRC to prevent arbitrariness highlight that the DSA is sufficiently precise.

Second, Una's conviction serves the legitimate aim of countering terrorism, thereby protecting Cero's national security and public order interests.

Third, Una's conviction corresponds to a pressing social need. She was reckless in failing to exercise due diligence in RMSM's use. The impugned post had the tendency to incite imminent violence, considering the content, context, and extent of dissemination of the statement. Since she is an influential individual with the constitutional duties to protect and safeguard national solidarity, she possesses special duties in the exercise of her rights.

Fourth, Una's conviction is proportionate. This is because of the wide margin of appreciation accorded to states, the reduced punishments imposed, and sentences awarded for the glorification of terrorism in other states. Considering the precarious situation in Cero and the long duration of the conflict, penalties in the nature of a one-month ban are proportionate.

Therefore, Una's conviction and sentence did not violate Article 19 of the ICCPR.

QUESTION II

OneAI's conviction and subsequent fine and ban of one-month on the offering of RMSM does not violate Article 19 of the ICCPR.

First, OneAI's conviction is prescribed by law as the DSA extends to legal persons. OneAI both publishes and disseminates content as it is not only a content provider but also an active intermediary. The possibility of corporations to fail to take due diligence measures make the scope of recklessness under DSA foreseeable for OneAI.

Second, OneAI's conviction serves the legitimate aim of countering terrorism, thereby protecting Cero's national security, especially considering the risk posed by generative AI and its increased exploitation by terrorist groups.

Third, OneAI's conviction corresponds to a pressing social need. OneAI failed to exercise due diligence measures by its failed to comply with the initial terms, providing only automatic content moderation, and failing to make labelling requirement mandatory. OneAI failed to discharge its heightened responsibilities given the ongoing conflict and its user base. Further, OneAI cannot be granted intermediary immunity because it was not a mere passive intermediary and exercised substantial control over the content.

Fourth, OneAI's conviction is proportionate. The nature, severity, and extent of dissemination of the impugned statement, given OneAI's annual revenue, and fines imposed by other legislations justify the fine. Given the wide margin of appreciation accorded to states and the absence of a lesser intrusive method to pursue this aim, the ban was proportionate.

Therefore, OneAI's conviction and sentence did not violate Article 19 of the ICCPR.

ARGUMENTS

[I] CERO DID NOT VIOLATE UNA’S RIGHTS UNDER ARTICLE 19 OF THE ICCPR BY CONVICTING AND SENTENCING HER UNDER THE DSA

1. The High Court of Cero found Una guilty u/s 28 of the DSA for glorifying the ELA.¹ She was convicted and sentenced to a suspended prison sentence of one year, with a prohibition of a fine of \$1,500, and a prohibition of use of social media for one month.² With all domestic remedies exhausted,³ Una challenges her conviction and sentencing as violative of Article 19 of the ICCPR.

2. The freedom of expression is a core tenet of a functioning democratic society⁴ that finds place in various human rights instruments.⁵ As emphasised by the ICCPR, derogations are

¹ Fact on Record [36].

² *ibid* [37].

³ *ibid* [42].

⁴ UNHRC, ‘General Comment No 34: Article 19: Freedom of Opinion and Expression’ (12 September 2011) UN Doc CCPR/C/G34 (‘GC 34’) [13], [22]-[25]; ACommHPR, ‘Resolution on the Adoption of the Declaration of Principles of Freedom of Expression in Africa’ (2002) ACHPR/Res 62(XXXII) 02; *Abrams v United States* 250 US 616, 630 (1919); *R v Keegstra* [1990] 3 SCR 697 [89]; *Vladimir Velichkin v Belarus* Communication No 1022/2001 UN Doc CCPR/C/85/D/1022/2001 (HRC, 23 November 2005) [7.3]; *Ingabire Victoire Umuhoza v Republic of Rwanda* App no 003/2014 (ACtHPR, 24 November 2017) [119]; *Liubou Pranevich v Belarus* Communication No 2251/2013 UN Doc CCPR/C/124/D/2251/2013 (HRC, 15 October 2018) [6.4]; *Berik Zhagiparov v Kazakhstan* Communication No 2441/2014 UN Doc CCPR/C/124/D/2441/2014 (HRC, 25 October 2018) [13.3]; *Hasanov and Majidli v Azerbaijan* App nos 926/14 and 9717/14 (ECtHR, 7 January 2022) [53]; *Gaši and others v Serbia* App no 24738/19 (ECtHR, 30 January 2023) [77]; See also Paul M. Taylor, *A Commentary on the International Covenant on Civil and Political Rights* (CUP 2020) 538-540.

⁵ American Declaration of the Rights and Duties of Man (adopted 2 May 1948) art 4; European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 1950, entered into force 3 September 1953), art 10; International Covenant on Civil and Political Rights (ICCPR) (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (‘ICCPR’) art 19; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) art 13; African Charter on Human and Peoples’ Rights (adopted 27 June 1981, entered into force 21 October 1986) art 9; CIS Convention on Human Rights and Fundamental Freedoms (adopted 26 May 1995, entered into force 11 August 1998), art 11; Arab Charter on Human Rights (adopted 22 March 2004, entered into force 15 March 2008), art 26; ASEAN Human Rights Declaration (adopted 18 November 2012), art 23; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) art 19.

permissible if the restrictions are prescribed by law, pursue a legitimate aim, and are necessary in a democratic society.⁶

3. It is submitted that Una's conviction and sentence does not contravene Article 19 of the ICCPR because her conviction is prescribed by law [A], pursues a legitimate purpose [B] and is necessary in a democratic society [C].

[A] UNA'S CONVICTION IS PRESCRIBED BY LAW

4. The law must be accessible and of a certain quality.⁷ It must be formulated with sufficient precision to ensure that acts proscribed can be foreseen and individuals can regulate their conduct accordingly.⁸ It must also contain adequate safeguards against arbitrary application.⁹

⁶ ICCPR, art 19; GC 34 (n 4) [22]-[23]; *Handyside v UK* App no 5493/72 (ECtHR, 7 December 1976) (*'Handyside'*) [50]; *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) (*'Sunday Times'*) [49]; *Tae Hoon Park v Korea* Communication No 628/1995 UN Doc CCPR/C/64/D/628/1995 (HRC, 3 November 1998) [10.3]; *Afuson Njaru v Cameroon* Communication No 1353/2005 UN Doc CCPR/C/89/D/1353/2005 (HRC, 19 March 2007) [6.4]; *Pavel Levinov v Belarus* Communication No 1812/2008 UN Doc CCPR/C/123/D/2239/2013 (HRC, 26 July 2011) [6.3]; *Khairullo Saidov v Tajikistan* Communication No 2680/2015 UN Doc CCPR/C/122/D/2680/2015 (HRC, 4 April 2018) [6.3]; *Halet v Luxembourg* App no 21884/18 (ECtHR, 6 September 2021) [110]; *Narbutas v Lithuania* App no 14139/21 (ECtHR, 19 December 2023) [291]-[293].

⁷ UNHRC 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue' (20 April 2010) UN Doc A/HRC/14/23 [79]; *Cantoni v France* App no 17862/91 (ECtHR, 11 November 1996) [29]; *Coeme and Others v Belgium* App nos 32492/96, 32547/96, 32548/96, 33209/96 and 33210/96 (ECtHR, 18 October 2000) [145]; *Achour v France* App no 67335/01 (ECtHR, 29 March 2006) [42]; *Kafkaris v Cyprus* App no 21906/04 (ECtHR, 12 February 2008) [140].

⁸ GC 34 (n 4) [25]; UN Economic and Social Council and UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) UN Doc E/CN.4/1984/4; *Sunday Times* (n 6) [49]; *Fontevicchia and D'Amico v Argentina* Series C No 238 (IACtHR, 29 November 2011) [52]; *Selahattin Demirtas v Turkey* (no 2) [GC] App no 14305/17 (ECtHR, 22 December 2020) [250].

⁹ UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue' (17 April 2013) UN Doc A/HRC/23/40 [29]; ICCPR, 'Concluding Observations on the Fourth Periodic Report of the United States of America' (23 April 2014) UN Doc CCPR/C/USA/CO/4 [22]; *Malone v UK* App no 8691/79 (ECtHR, 2 August 1984) [67]-[68]; *Maestri v Italy* App no 39748/98 (ECtHR, 17 February 2004) [83]; *Weber and Saravia v Germany* App no 54934/00 (ECtHR, 29 June 2006) [23]; *Altuğ Taner Akçam v Turkey* App no 27520/07 (ECtHR, 25 January 2012) [93]-[94]; *Roman Zakharov v Russia* App no 47143/06 (ECtHR, 4 December 2015) [230]; *Beghal v UK* App no 4755/16 (ECtHR, 22 August 2016) [88]; *Navalnyy v Russia* App nos 29580/12, 36847/12, 11252/13, 12317/13 and 43746/14 (ECtHR, 15 November 2018) [115]; *Karastelev and Others v Russia* App no 16435/10 (ECtHR, 6 January 2021) [78]-[97].

5. It is submitted that the DSA is sufficiently precise [1] and has safeguards against arbitrariness [2].

[1] THE DSA IS SUFFICIENTLY PRECISE

6. While certainty in laws is desirable, absolute precision is impossible because of the changing views of the society.¹⁰ The level of precision in a law depends on its content, the realm it covers, the number and status of those whose conduct it regulates.¹¹ Considering the wide realm of terrorism the DSA is designed to cover, it is submitted that the impugned provisions, namely sections 28 and 100, are sufficiently precise.

[a] Section 28 is sufficiently precise

7. Section 28(1) penalises statements that *indirectly encourage* terrorism.¹² Sub-section (2) criminalises reckless conduct.¹³ Sub-section (3) explains that indirect encouragement *includes* glorification.¹⁴

8. *First*, indirect encouragement and glorification are necessary to bridge the gaps between emerging acts of terrorism and the inadequacy of direct incitement laws in dealing with the same.¹⁵ They form a proportionate response to the real danger of individuals being

¹⁰ *Wingrove v United Kingdom* App no 17419/90 (ECtHR, 25 November 1996) [46]; *Muller v Switzerland* App no 10737/84 (ECtHR, 24 May 1988) [19]; *Lindon, Otchakovsky-Laurens and July v France* App no 21275/02 (ECtHR, 22 October 2007) (*'Lindon v France'*) [41].

¹¹ *Silver and Others v The United Kingdom* App nos 5947/72, 6205/73, 7052/75, 7061/75, 7107/75, 7113/75 and 7136/75 (ECtHR, 25 March 1983) [88]; *Chauvy and Others v France* App no 64915/01 (ECtHR, 29 September 2004) (*'Chauvy'*) [43]-[45]; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 August 2011) (*'Editorial Board'*) [52]; *Centro Europa 7 S R L and Di Stefano v Italy* App no 38433 (ECtHR, 7 June 2012) [142]; *Kudrevičius and others v Lithuania* App no 37553/05 (ECtHR, 15 October 2015) [110].

¹² Fact on Record [5].

¹³ *ibid* [5].

¹⁴ *ibid* [5].

¹⁵ UNSC Res 1624 (14 September 2005) S/RES/1624 (2005); Yaël Ronen, 'Incitement to Terrorist Acts and International Law' (2010) 23(3) *Leiden Journal of International Law* 645, 663-666; English Law Commission, *Conspiracy and Attempts* (Law Com No. 318, 2009) [6.42].

lured into terrorism.¹⁶ Given the wide reach of the internet, it was retained in the UK because it is designed to reduce the possibility of terrorist attacks by curbing the spread of violent ideologies.¹⁷ These offences exist in the UK,¹⁸ France,¹⁹ and Spain,²⁰ and have been endorsed by the European Counter-Terrorism Strategy 2023²¹ and the Security Council.²²

9. While it might extend to the indirect encouragement of *freedom fighters* such as the ELA who use violence,²³ a precise formulation of these offences is impossible. Such application has been upheld because of the absence of any exception in international law that protects their glorification.²⁴

10. *Second*, an individual can be prosecuted for recklessness under the DSA.²⁵ An individual is said to be reckless if he is aware of the risk that will exist and nevertheless proceeds to take the same.²⁶ The expansion of intention as the only *mens reus* is necessary²⁷ to cover

¹⁶ *R v Terence Roy Brown* [2011] EWCA Crim 2751 [20]-[21]; *R v Faraz* [2012] EWCA Crim. 2820 [49]-[57]; ‘Proposals by Her Majesty’s Government for Changes to the Laws Against Terrorism: Report by The Independent Reviewer Lord Carlile of Berriew Q.C.’ (6 October 2005) (**‘Lord Carlile Report 2005’**) [20]-[23].

¹⁷ ‘Report on Terrorism Legislation and Protests’ (*Independent Reviewer of Terrorism Legislation*, 23 November 2023) [92]-[101] <<https://terrorismlegislationreviewer.independent.govuk/wp-content/uploads/2023/11/IRTL-Terrorism-and-Protests.pdf>> accessed 27 November 2023 (**‘IRTL Report on Terrorism’**).

¹⁸ Terrorism Act 2006 (UK) s 1(1).

¹⁹ Criminal Code 2014 (France) art 421-2-5.

²⁰ Criminal Code 2016 (Spain) art 578.

²¹ Council of Europe, ‘Counter-Terrorism Strategy (2023-2027)’ (8 February 2023) CM(2023)2-add-final.

²² UNSC Res 1624 (14 September 2005) S/RES/1624 (2005).

²³ HC Deb (26 October 2005), vol 438 cols 325, 338, 364 (UK).

²⁴ *R v Gul* [2013] UKSC 64 (**‘R v Gul’**) [45].

²⁵ Facts on Record [5].

²⁶ *R v G* [2003] UKHL 50 [41]; IRTL Report on Terrorism (n 17) [43].

cases where there exist difficulties in finding the origin of the attack and the identity of perpetrators.²⁸ Recklessness is compliant with domestic legislation²⁹ and international law.³⁰

11. *Third*, it cannot be argued that the non-restriction of the scope of terrorism to proscribed entities renders the Act imprecise. Such a restrictive construction criminalizes the glorification of the 9/11 attacks but not the Christchurch Bombings.³¹ Terrorism legislation in the UK,³² France,³³ Israel,³⁴ and Spain³⁵ do not limit its scope to designated entities. *Therefore*, section 28 is sufficiently precise.

[b] Section 100 is sufficiently precise

12. Section 100 defines glorification and terrorism.³⁶ Glorification includes the *praise* or *celebration* of terrorism and includes other *cognate expressions*.³⁷ Terrorism includes the use of force to *influence* the government for the advancement of a *political cause*.³⁸

²⁷ *Republic of France Constitutional Court Decision no. 2018-706 QPC* (18 May 2018) (*France Constitutional Court Decision*) [5], [25].

²⁸ Ulrich Sieber, 'International Cooperation Against Terrorist Use of The Internet' (2006) 77(3) *The International Review of Penal Law* 395, 411.

²⁹ Joint Committee on Human Rights, *The Council of Europe Convention on the Prevention of Terrorism* (HL 26/HC 247); Council of Europe, 'Convention on the Prevention of Terrorism' (adopted 16 May 2005, entered into force 1 June 2007) CETS 196 ('**Convention on the Prevention of Terrorism**'), art 5; *R v Abdul Rahman and Bilal Mohammed* [2008] EWCA Crim. 1465 [5]; *R v Ali* [2018] EWCA Crim 547 ('**R v Ali**') [17]; Keiran Hardy and George Williams, 'Free speech and counter-terrorism in Australia' in Ian Cram (ed), *Extremism, Free Speech and Counter-Terrorism Law and Policy* (Routledge 2019).

³⁰ Convention on the Prevention of Terrorism, art 5; IRTL Report on Terrorism (n 17) [52]-[60].

³¹ IRTL Report on Terrorism Legislation (n 17) [80].

³² Terrorism Act 2000 (UK) s 1(1); Terrorism Act 2006 (UK), s 34.

³³ Criminal Code 2014 (France), art 421-2-5.

³⁴ Penal Law 5737 (1977) (Israel), s 144D2.

³⁵ Criminal Code 2016 (Spain), art 578.

³⁶ Fact on Record [7].

13. The definition of terrorism cannot be considered imprecise because of the absence of a fixed definition of terrorism in international law³⁹ and the multitude of forms it takes.⁴⁰ The constituent elements of section 100 are compliant with international and domestic norms.⁴¹ This definition was declared constitutional in the UK⁴² because a rigid definition would mitigate against national security interests.
14. As submitted,⁴³ a broad definition of glorification is necessary because of the uncertain definition of terrorism, the multitude of forms it takes, and the vast scope of the internet. The constituent elements of *praise* and *celebration* in the DSA were specifically retained in the UK as recent as November 2023.⁴⁴
15. The impugned statement concerned the glorification of the ELA, an armed entity that uses violence against its government and commits grave human right violations.⁴⁵ Therefore, the ELA is a terrorist entity. In standing in solidarity with the ELA, Una celebrated its violent political cause by praising it amidst a conflict. *Therefore*, section 100 is sufficiently precise.

³⁷ *ibid* [7].

³⁸ *ibid* [7].

³⁹ *Al-Sirri v Secretary of State* [2013] 1 AC 745 [37]; *R v Gul* (n 24) [31]. See also Ben Saul, *Defining Terrorism in International Law* (OUP, 2006); Ezekiel Rediker, 'The Incitement of Terrorism on the Internet: Legal Standards, Enforcement, and the Role of the European Union' (2015) 36(2) *Michigan Journal of International Law* 321, 332.

⁴⁰ Crime and Security Act 2010 (UK); Terrorist Asset-Freezing etc Act 2010 (UK); Terrorism Prevention and Investigation Measures Act 2011 (UK); Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 (UK); Sieber (n 35) 396.

⁴¹ Terrorism Act 2000 (UK) (n 32) s 1(1); Terrorism Act 2006 (UK) (n 18) s 34; Criminal Code (RSC, 1985, c.C-46) (Canada) s 83.01; UNSC Res 1566 (8 October 2004) S/RES/1566.

⁴² *R v Ali* (n 29); *R v Gul* (n 24) [38].

⁴³ *See* [9] of Arguments.

⁴⁴ IRTL Report on Terrorism (n 17) [100]-[101].

⁴⁵ Fact on Record [19], [22].

Therefore, the DSA is sufficiently precise and Una could have foreseen that the impugned statement will violate it.

[2] THE DSA POSSESSES ADEQUATE SAFEGUARDS

16. Despite the broad definition of terrorism, safeguards exist in the DSA against arbitrariness.

17. *First*, section 77 requires the DRC to scrutinize complaints and decide those that merit prosecution.⁴⁶ Similar legislations in the UK⁴⁷ and Canada⁴⁸ require authorization by specific entities to initiate proceedings. This ensures that there is no arbitrary abuse of rights.⁴⁹

18. The DRC's report is forwarded to the CCID, which independently investigates the complaint and decides to initiate prosecution.⁵⁰ The adjudication of claims is done by the High Court of Cero.⁵¹ Since international law is directly applicable in Cero,⁵² judicial interpretations are compliant with Article 19 of the ICCPR.

19. *Second*, section 28(4) prescribes penalties for violations of the DSA, including a restriction order on the use or provision of social media platforms.⁵³ No upper limit is

⁴⁶ *ibid* [6].

⁴⁷ Terrorism Act 2006 (UK) (n 18) s 19.

⁴⁸ Anti-Terrorism Act 2015 (Canada); Kent Roach, 'Must we trade rights for security? The choice between smart, harsh, or proportionate security strategies in Canada and Britain' (2006) 27(5) *Cardozo Law Review* 2151, 2181-2182.

⁴⁹ Lord Carlile Report 2005 (n 16) [49].

⁵⁰ Fact on Record [32].

⁵¹ *ibid* [7], [36].

⁵² *ibid* [4].

⁵³ *ibid* [5].

prescribed for the imposition of a restriction order.⁵⁴ However, meaningful limit cannot be placed given the wide range of offences under the DSA and the ever-changing digital landscape.⁵⁵ Further, the right to appeal, exercised by Una,⁵⁶ acts as a safeguard.⁵⁷

Therefore, the DSA has adequate safeguards against arbitrariness.

[B] UNA'S CONVICTION AND SENTENCE PURSUES A LEGITIMATE AIM

20. Free speech can only be restricted to grounds enshrined in Article 19(3) of the ICCPR.⁵⁸

Counter-terrorism efforts constitute a legitimate basis to curb free speech since they protect national security and public order.⁵⁹ In the aftermath of terrorist attacks, India,⁶⁰ Sri Lanka,⁶¹ New Zealand,⁶² Canada,⁶³ Ireland,⁶⁴ and the European Union⁶⁵ have enacted

⁵⁴ *ibid* [5].

⁵⁵ Graeme Newman & Ronald V Clarke, 'Policing Terrorism: An Executive's Guide' (*US Department of Justice*, 2008) 36 <<https://www.ojp.gov/ncjrs/virtual-library/abstracts/policing-terrorism-executives-guide>> accessed 19 December 2023.

⁵⁶ Fact on Record [37].

⁵⁷ *Malcolm Ross v Canada* Communication No 736/1997 UN Doc CCPR/C/70/D/736/1997 (HRC, 18 October 2000) [11.4]; *Uzun v Germany* App no 35623/05 (ECtHR, 2 September 2010) [72]; *Gurtekin v Cyprus* App nos 60441/13, 68206/13 and 68667/13 (ECtHR, 11 March 2014) [28].

⁵⁸ *Vladimir Viktorovich Shchetko and Vladimir Vladimirovich Shchetko v Belarus* Communication No 1009/2001 UN Doc CCPR/C/87/D/1009/2001 (HRC, 8 August 2006) [7.2].

⁵⁹ UNSC Res 1267 (15 October 1999) S/RES/1267; UNSC Res 1373 (28 September 2001) S/RES/1373; UNSC Res 1566 (8 October 2004) S/RES/1566; UNSC Res 1624 (14 September 2005) S/RES/1624 (2005); UNSC Res 2178 (24 September 2014) S/RES/2178 (2014); Council Framework Decision 2008/919/JHA of 28 November 2008 amending Framework Decision 2002/475/JHA on combating terrorism [2008] OJ L330/21; Martin Scheinen, 'Limits to freedom of expression: lessons from counter-terrorism' in Tarlach McGonagle and Yvonne Donders (eds), *The United Nations and Freedom of Expression and Information* (CUP 2015) 429; Evelyn Mary Aswad, 'To Protect Freedom of Expression, Why Not Steal Victory from the Jaws of Defeat?' (2020) 77(2) *Washington and Lee Law Review* 609, 625-626.

⁶⁰ Information Technology Act 2000 (India).

⁶¹ Proposed Online Safety Act 2023 (Sri Lanka).

⁶² Harmful Digital Communications Act 2015 (New Zealand).

⁶³ Anti-Terrorism Act 2015 (Canada).

⁶⁴ The Online Safety and Media Regulation Act 2022, Number 41 of 2022 (Ireland).

⁶⁵ Convention on the Prevention of Terrorism, art 5.

laws relating to digital safety and cyber-terrorism. In line with UN recommendations,⁶⁶ Cero enacted the DSA to counter the spread of radical, extremist, and violent ideologies through social media.⁶⁷

21. The glorification of a terrorist entity engaged in the violence risks propagating terrorism and disrupting public order.⁶⁸ Prosecuting such statements seeks to bring about a behavioural change to prevent the justification of violence or hatred.⁶⁹ The precarious situation underlying Cero is evinced by the brewing violence in Enos and escalating acts of terrorism plaguing the region.⁷⁰ Furthermore, the attack on Cero's defence facilities⁷¹ in the aftermath of the impugned statement threatens Cero's ability to defend itself.

Therefore, Una's conviction serves a legitimate aim.

⁶⁶ UNSC Res 1624 (14 September 2005) S/RES/1624 (2005).

⁶⁷ Vaibhav Chadha, 'Freedom of Speech and Expression versus the Glorification of Acts of Terrorism: Defining limits in the Indian Context' (2021) 17 *The Age of Human Rights Journal* 54, 58, 61; Daragh Murray, 'Freedom of Expression, Counter-Terrorism and the Internet in Light of the UK Terrorist Act 2006 and the Jurisprudence of the European Court of Human Rights' (2017) 27(3) *Netherlands Quarterly of Human Rights* 331, 339-342; Robert Winnett & David Leppard, 'Leaked No 10 Dossier Reveals Al-Qaeda's British Recruits' (*The Sunday Times*, 10 July 2005) <<https://www.thetimes.co.uk/article/leaked-no-10-dossierreveals-al-qaedas-british-recruits-9lpg68xw93r>> accessed 2 December 2023; FBI, 'What We Investigate: Terrorism' (*Federal Bureau of Investigation*) <<https://www.fbi.gov/investigate/terrorism>> accessed 24 November 2023; Christian A. Honeywood, 'Britain's Approach to Balancing Counter-Terrorism Laws with Human Rights' (2016) 9(3) *Journal of Strategic Security* 28, 34-35.

⁶⁸ IRTL Report on Terrorism (n 17) [92].

⁶⁹ Stefan Sottiaux, 'Bad Tendencies' in the ECtHR's "Hate Speech" Jurisprudence' (2011) 7(1) *European Constitutional Law Review* 40, 54; Antoine Buyse, 'Dangerous Expressions: The ECHR, Violence and Free Speech' (2014) 63(2) *The International and Comparative Law Quarterly* 491, 493.

⁷⁰ Fact on Record [19]-[22].

⁷¹ *ibid* [29].

[C] UNA'S CONVICTION AND SENTENCE IS NECESSARY IN A DEMOCRATIC SOCIETY

22. Any restriction must serve a pressing social need⁷² and be proportionate to the legitimate aims.⁷³ It is submitted that the conviction and sentencing of Una served a pressing social need [1.3.1] and was proportionate to the legitimate aims [1.3.2].

[1] UNA'S CONVICTION SERVES A PRESSING SOCIAL NEED BY SAFEGUARDING PUBLIC ORDER

23. The test of a pressing social need concerns itself with whether the reasons adduced for a certain restriction are *relevant* and *sufficient*.⁷⁴ There must be a direct and immediate connection between the expression and the relevant public interest.⁷⁵ It is submitted that there exists a pressing social need to restrict Una's rights because Una acted recklessly [a], the impugned statement had the tendency to incite imminent violence [b], and her special duties and responsibilities justify conviction [c].

[a] Una was reckless

24. Recklessness constitutes a sufficient *mens rea* to convict Una upon. Una subscribed to RMSM's market version. As a user of an AI tool, it was expected of her to undertake a minimum level of due diligence.⁷⁶ Such diligence includes subsequent moderation of

⁷² *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism* (Arts 13 and 29 American Convention on Human Rights) Series A no 5 (IACtHR, 13 November 1985) [46]; *Gozelik and Others v Poland* App no 44158/98 (ECtHR, 17 February 2004) [95]; *Herrera-Ulloa v Costa Rica* Series C no 107 (IACtHR, 2 July 2004) [122]; *Otegi Mondragon v Spain* App no 2034/07 (ECtHR, 15 September 2011) [49]; *Perinçek v Switzerland* App no 27510/99 (ECtHR, 15 October 2015) ('*Perinçek*') [196]-[197].

⁷³ *Marques v Angola* Communication No 1128/2002 UN Doc CCPR/C/83/D/1128/2002 (HRC, 29 March 2005) [3.9]; *Schweizerische Radio-und Fernsehgesellschaft SRG v Switzerland* App no 34124/06 (ECtHR, 21 June 2012) [56]; *Pentikäinen v Finland* App no 11882/10 (ECtHR, 20 October 2015) [87]; *Mohamed Rabbae v the Netherlands* Communication no 2124/2011 UN Doc CCPR/C/117/D/2124/2011 (HRC, 18 November 2016) [10.4]; *Yashar Agazade and Rasul Jafarov v Azerbaijan* Communication No 2205/2012 UN Doc CCPR/C/118/D/2205/2012 (HRC, 3 February 2017) [7.4]; *Fragoso Dacosta v Spain* App no 27926/21 (ECtHR, 8 June 2023) [23]; *Tuleya v Poland* App nos 21181/19 and 51751/20 (ECtHR, 6 July 2023) [532].

⁷⁴ *Bladet Tromsø and Stensaas v Norway* [GC] App no 21980/93 (ECtHR, 20 May 1999) [58]-[73]; *Editorial Board* (n 11) [49]; *Pentikäinen* (n 73) [114]; *Cheltsova v Russia* App no 44294/06 (ECtHR, 13 June 2017) [100]; *Mariya Alekhina and Others v Russia* App no 38004/12 (ECtHR, 17 July 2018) [264].

⁷⁵ GC 34 (n 4) [35].

⁷⁶ *Sanchez v France* App no 45581/15 (ECtHR, 15 May 2023) ('*Sanchez v France*') [190].

content.⁷⁷ Being beneficiaries,⁷⁸ users of AI tools also have proportionate obligations. Further, RMSM cannot evaluate the *context* in which statements are made.⁷⁹

25. Given Una's previous critical statements about the Enosian crisis,⁸⁰ it was reasonable to expect that RMSM might produce content that glorifies the ELA. However, she deselected the option for labelling the auto-generated content.⁸¹ Individuals react less severely to such labelled posts since they account for the possible contribution by a TOOL. Thus, Una did not exercise due diligence while using RMSM.

Therefore, she was reckless in co-producing the impugned statement.

[b] The impugned statement had the tendency to incite imminent violence

26. In cases where the impugned statement can lead to violence, its content,⁸² context⁸³, and extent of dissemination⁸⁴ must be analysed. It is submitted that the impugned statement

⁷⁷ *ibid* [190].

⁷⁸ Christiane Wendehorst, 'Liability for Artificial Intelligence: The Need to Address Both Safety Risks and Fundamental Rights Risks' in Silja Voeneke and Others (eds), *The Cambridge Handbook of Responsible Artificial Intelligence* (CUP 2022) 187, 200.

⁷⁹ Thiago Oliva Dias and others, 'Fighting Hate Speech, Silencing Drag Queens' (2021) 25 *Sexuality and Culture* 714; Case Decision 2020-003-FB-UA (Facebook Oversight Board, January 2021).

⁸⁰ Fact on Record [24]-[27].

⁸¹ *ibid* [17].

⁸² *Khural and Zeynalov v Azerbaijan* (no. 2) App no 383/12 (ECtHR, 19 January 2023) ('*Khural v Azerbaijan*') [43]-[44]; *Morice v France* App no 29369/10 (ECtHR, 23 April 2015) [126].

⁸³ Directive (EU) 2017/541 Of The European Parliament And Of The Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA [2017] OJ L88/6; *Zana* [57]-[60]; *News Verlags GmbH & Co KG v Austria* App no 31457/96 (ECtHR, 11 April 2000) ('*News Verlags v Austria*') [52]; *Muslim Gündüz v Turkey* App no 35071/97 (ECtHR, 14 June 2004) ('*Gündüz*') [43]-[49]; *Saygılı and Falakaoğlu (no. 2) v Turkey* App no 39457/03 (ECtHR, 21 October 2008) [28]; *Perinçek* (n 69) [205]; *Stomakhin v Russia* App no 52273/07 (ECtHR, 9 May 2018) ('*Stomakhin v Russia*') [96], [98]-[109]; *E.S. v Austria* App no 38450/12 (ECtHR, 25 October 2018) ('E.S.') [50]; *Erkizia Almandoz v Spain* App no . 5869/17 (ECtHR, 22 September 2021) [45]; *Zhablyanov v Bulgaria* App no 36658/18 (ECtHR, 27 June 2023) [85].

⁸⁴ *Karatas v Turkey* App no 23168/94 (ECtHR, 8 July 1999) [52]; *Polat v Turkey* App no 23500/94 (ECtHR, 8 July 1999); *Gündüz* (n 83) [44]; *Vejdeland and Others v Sweden* App no 1813/07 (ECtHR, 5 December 2012) ('*Vejdeland v Sweden*') [56]; *Perinçek* (n 8) [254]; *R v Ali* (n 29) [24].

could have resulted in imminent violence, considering its content [i], the context in which it was made [ii], and the extent of dissemination [iii].

[i] The content of the statement increased the imminence of violence

27. Imminence requires a reasonable probability that the speech would succeed in inciting actual action against the target.⁸⁵ The public endorsement of violent ideas disturbs public order in society and its peace and tranquillity.⁸⁶ Any positive depiction of terrorism, irrespective of the underlying intention, has been criticised⁸⁷ and penalised.⁸⁸ Such depictions offend the sensitivities of terrorism victims and can lead to violence.⁸⁹
28. The impugned post depicted a positive image of a terrorist entity that allegedly used civilians as human shields,⁹⁰ despite their purported aim to fight against corruption and electoral malpractice.⁹¹ Una's praise of ELA can radicalise its supporters to pursue violence. Considering the impugned statement followed violence in Enos, it justified violence and was thus inciteful.

Therefore, the content of the impugned statement increased the imminence of violence.

⁸⁵ UNHRC, 'Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence' (5 October 2012) UN Doc A/HRC/22/17/Add.4 ('**Rabat Plan of Action**') [29]; *Jersild v Denmark* App no 15890/89 (ECtHR, 23 September 1994) ('**Jersild**') [14]; *Prosecutor v Nahimana et al* Case No ICTR-99-52-A (28 November 2007) [720]; *Board of Trade v Owen* [1957] 1 All ER 411 [416].

⁸⁶ *France Constitutional Court Decision* (n 27) [21]; *Jorge López v Spain* App no 54140/21 (ECtHR, 20 September 2022) ('**Jorge López**') [20]-[21]; See also Buyse (n 69) 493.

⁸⁷ HC Deb (26 October 2005), vol 438 cols 324-329.

⁸⁸ *Rouillan v France* App no 28000/19 (ECtHR, 23 June 2022) ('**Rouillan v France**').

⁸⁹ *ibid* [46]; *Jorge López* (n 86) [9].

⁹⁰ Fact on Record [22].

⁹¹ *ibid* [19].

[ii] The context of the statement increased the likelihood of violence

29. Prevalent socio-political circumstances are considered in assessing a statement's context.⁹² In *Zana*, the ECtHR upheld the prosecution of a politician for a statement made in a violent situation in one of the most politically-sensitive regions in Turkey, despite the non-incitement of violence.⁹³

30. The instant facts are analogous to that of *Zana*. The situation in Enos has significantly worsened with the intensification of fighting between the Enosian government and the ELA, with civilian and rebel casualties.⁹⁴ Online supporters of the ELA have criticized Cero for the supply of arms to Enos and called upon it to cease military ties with Enos.⁹⁵ The attack on a Cerovian Arms Manufacturing facility on its border with Enos points to the precarious situation in Cero. Arms manufacturing facilities constitute critical infrastructure,⁹⁶ the destruction of which is extremely harmful for Cero's national security.⁹⁷

Therefore, the context of the impugned statement increases the imminence of violence.

[iii] The wide dissemination of the statement increased the likelihood of violence

31. Extent of dissemination⁹⁸ refers to the means of dissemination and the size and magnitude of the audience.⁹⁹ The impugned statement was posted over Facebook, a global social

⁹² *Zana v Turkey* App no 18954/91 (ECtHR, 25 November 1997) ('*Zana*') [51].

⁹³ *ibid* [62].

⁹⁴ Fact on Record [21]-[23], [30].

⁹⁵ *ibid* [23].

⁹⁶ Michael N. Schmitt, *Tallinn Manual 2.0 on the International Law Applicable to Cyber Operations* (CUP 2017) 564.

⁹⁷ *ibid* 564.

⁹⁸ *Féret v Belgium* App no 15615/07 (ECtHR, 16 July 2009) ('*Féret v Belgium*') [76]; *Savva Terentyev v Russia* App no 10692/09 (ECtHR, 28 August 2018) [79]; *Rouillan v France* (n 88) [70].

media platform with millions of users.¹⁰⁰ The reach of the statement across the world aggravates its effects.¹⁰¹ The tendency of social media platforms to fuel riots cannot be discounted.¹⁰² They facilitate extensive spread of communication¹⁰³ and are susceptible to amplifying hate speech.¹⁰⁴ These platforms spread propaganda and disinformation,¹⁰⁵ especially at the margins.¹⁰⁶ In recognition of this nature of the internet,¹⁰⁷ statements that do not ultimately incite violence have been criminalized.¹⁰⁸

⁹⁹ Rabat Plan of Action (n 85) [29]; Tufyal Choudhury, 'The Terrorism Act 2006' in Ivan Hare and James Weinstein (eds), *Extreme Speech and Democracy* (OUP 2010) 477-478, 486.

¹⁰⁰ Stacy Jo Dixon, 'Most popular social networks worldwide as of October 2023, ranked by number of monthly active users' (*Statista*, 27 October 2023) <<https://www.statista.com/statistics/272014/global-social-networks-ranked-by-number-of-users/>> accessed 3 December 2023.

¹⁰¹ *Delfi AS v Estonia* App no 64569/09 (ECtHR, 16 June 2015) ('*Delfi*') [110]; *Arnarsson v Iceland* App no 58781/13 (ECtHR, 13 June 2017) [37]; *Editorial Board* (n 11) [63].

¹⁰² UN Counter-Terrorism Committee, 'Global Survey of the Implementation of Security Council Resolution 1373' (2001) UN Counter-Terrorism Committee 7; Declan Harvey, 'How Islamic State Extremists Use Social Media to Recruit' *BBC* (23 February 2015) <<http://www.bbc.co.uk/newsbeat/article/31574846/how-islamic-state-extremists-use-social-media-to-recruit>> accessed 18 January 2023.

¹⁰³ UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue' (16 May 2011) UN Doc A/HRC/17/27; Molly Land, 'Toward an International Law of the Internet' (2013) 54 *Harvard International Law Journal* 393, 445; UNESCO, 'Background Note: Case Studies on the Role of Internet Intermediaries in Promoting Freedom of Expression on Internet' (12 August 2013) ('**UNESCO Background Note on Role of Intermediaries**'); UN, 'Our Common Agenda Policy Brief 8: Information Integrity on Digital Platforms' (June 2023) ('**UN Common Agenda 2023**') 3.

¹⁰⁴ UNHRC, 'Report of the independent international fact-finding mission on Myanmar, Advance Edited Version' (12 September 2018) UN Doc A/HRC/39/64 [73]; See also Taina Bucher, 'Want to Be on the Top? Algorithmic Power and the Threat of Invisibility on Facebook' (2012) *New Media & Society*; UN Secretary General, 'United Nations Strategy and Plan of Action on Hate Speech' (May 2019) 1; UN Economist Network, 'New economics for sustainable development: Attention Economy'.

¹⁰⁵ Samantha Bradshaw, Hannah Bailey and Philip N. Howard, 'Industrialized Disinformation: 2020 Global Inventory of Organized Social Media Manipulation' (*Oxford Internet Institute*, 13 January 2021) <<https://comprop.oii.ox.ac.uk/wp-content/uploads/sites/127/2021/01/CyberTroopReport20-FINALv3.pdf>> accessed 5 December 2023.

¹⁰⁶ Corrina Di Gennaro, and William Dutton, 'The Internet and the Public: Online and Offline Political Participation in the United Kingdom' (2006) 59(2) *Parliamentary Affairs* 299, 306.

¹⁰⁷ *Times Newspaper Ltd v the United Kingdom (Nos. 1 and 2)* App nos 3002/03 and 23676/03 (ECtHR, 10 March 2009) [27]; *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012) ('*Ahmet Yildirim*') [48]; *Delfi* (n 101) [110]; *Cengiz and Others v Turkey* App nos 48226/10 and 14027/11 (ECtHR, 1 December 2015) [52]; UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and the ACHPR Special Rapporteur on

Therefore, the extent of dissemination on the internet increased the likelihood of violence.

[c] Una's special duties and responsibilities create a pressing social need

32. The right to freedom of expression carries with it *special duties and responsibilities* that need to be taken into consideration when exercising the right.¹⁰⁹

33. Such duties are contingent on the individual's status.¹¹⁰ Status refers to the possible influence that the speaker exercises on the audience.¹¹¹ Una is Cero's most influential individual¹¹² with a fan following of roughly eight million in Cero and several million abroad.¹¹³ The influence of individuals who engage in debates on issues of political importance is incredibly high.¹¹⁴ Their speech requires higher scrutiny,¹¹⁵ especially in

Freedom of Expression and Access to Information, Joint Declaration on Media Freedom and Democracy (2 May 2023).

¹⁰⁸ *Leroy v France* App no 36109/03 (ECtHR, 2 October 2008) ('*Leroy v France*') [45]; *Rouillan v France* (n 88). See also *Ramji Lal Modi v State of Uttar Pradesh* AIR 1957 SC 620 [7], [9]; *Féret v Belgium* (n 98) [73]; *Le Pen v France* App no 18788/09 (ECtHR, 7 May 2010); Stefan Sottiaux, 'Bad Tendencies' in the ECtHR's 'Hate Speech' Jurisprudence' (2011) 7(1) European Constitutional Law Review 40, 54.

¹⁰⁹ GC 34 (n 4) [21]; *LvT v Romania* App no . 35582/15 (ECtHR, 1 June 2022); *Hurbain v Belgium* App no 57292/16 (ECtHR, 4 July 2023) [177]; *Bild GMBH & Co. KG v Germany* App no . 9602/18 (ECtHR, 31 October 2023) ('*Bild v Germany*'); *Drozd v Poland* App no 15158/19 (ECtHR, 6 April 2023) [60]; *Eigirdas and VJ Pricope v Romania* App no 60183/17 (ECtHR, 30 May 2023) [38]; "*Demokratijos plėtros fondas*" v *Lithuania* App no s. 84048/17 and 84051/17 (ECtHR, 12 September 2023) [73]; *Ikotity and Others v Hungary* App no 50012/17 (ECtHR, 5 October 2023) [39].

¹¹⁰ UNHRC, 'Promotion and protection of the right to freedom of opinion and expression' (7 September 2012) UN Doc A/67/357; *Robert Faurisson v France* Communication No 550/1993 UN Doc CCPR/C/58/D/550/1993 (HRC, 19 July 1995) [5]; *Hogefeld v Germany* App no 35402/97 (ECtHR, 20 January 2000); *Erbakan v Turkey* App no 59405/00 (ECtHR, 6 July 2006) ('*Erbakan v Turkey*') [64]; *Baldasi and Others v France* App nos 15271/16 and 6 others (ECtHR, 11 June 2020); *Drousiotis v Cyprus* App no 42315/15 (ECtHR, 5 July 2022) [50]-[51].

¹¹¹ *Refah Partisi (The Welfare Party) and Others v Turkey* App nos 41340/98, 41342/98, 41343/98 and 41344/98 (ECtHR, 13 February 2003) [115]; *Lindon v France* (n 10) [35]; *Yalincer v Turkey* App no 64116/00 (ECtHR, 21 February 2008) [46]-[49], [81]; *Ojala and Etukeno Oy v Finland* App no 69939/10 (ECtHR, 14 January 2014) [52]; *Almeida Leitão Bento Fernandes v Portugal* App no 25790/11 (ECtHR, 12 June 2015) [51]-[52]; *Karácsony and Others v Hungary* [GC] App nos 42461/13 and 44357/13 (ECtHR, 17 May 2016) [125]; *Rediker* (n 39) 345.

¹¹² Fact on Record [15].

¹¹³ *ibid* [15].

¹¹⁴ *Erbakan v Turkey* (n 110) [64]; *Zana* (n 84) [49]; *Mahi v Belgium* App no 57462/19 (ECtHR, 7 July 2020) [31]-[32].

violent times.¹¹⁶ Even though such posts highlight political conflicts, they cannot be protected if they glorify terrorism.¹¹⁷

34. The scope of duties applicable in this case extends to the constitutional duty to preserve and strengthen national solidarity.¹¹⁸ The duty to preserve national solidarity should be read concurrently with restrictions on free speech.¹¹⁹ It casts an obligation on individuals to refrain from undertaking actions that alter the *status quo* in society.¹²⁰ This is key in ensuring peace and development.¹²¹ The discontent expressed over Cero's supply of arms to Enos points to the breaking of national solidarity. In such a hostile situation, the impugned statement increases the likelihood of violence, compromising Cero's national security and solidarity. Therefore, Una's *special duties and responsibilities* justify the pressing social need to convict her.

Therefore, the Una's conviction is necessary in a democratic society.

¹¹⁵ *Kapsis and Danikas v Greece* App no 52137/12 (ECtHR, 19 January 2017) [35]; *Milosavljevic v Serbia* App no 57574/14 (ECtHR, 25 May 2021) [62].

¹¹⁶ *Erdogdu & Ince v Turkey* App nos 25067/94 and 25068/94 (ECtHR, 8 July 1999); *Gündüz* (n 83) [43].

¹¹⁷ Dirk Voorhoof, 'The European Convention on Human Rights: The Right to Freedom of Expression and Information restricted by Duties and Responsibilities in a Democratic Society' (2014) EUI Working Paper RSCAS 2014/12 9-10.

¹¹⁸ Facts on Record [2].

¹¹⁹ *Ajavon v Benin* App no 062/2019 (ACtHPR, 4 December 2020) [182]-[184].

¹²⁰ J Sloth Nielsen and BD Mezmur, 'A Dutiful Child: The Implications of Article 31 of the African Children's Charter' (2008) 52(2) *Journal of African Law* 159, 166-169.

¹²¹ Stephen P Marks, 'Emerging Human Rights: A New Generation for the 1980s' (1980) 33 *Rutgers Law Review* 435, 441; Philip Alston, 'A Third Generation of Solidarity Rights: Progressive Development or Obfuscation of International Human Rights Law?' (1982) 29(3) *Netherlands International Law Review* 307, 318; Julia Swanson, 'The Emergence of New Rights in the African Charter' (1991) 12(1) *NYLS Journal of International and Comparative Law* 307, 313; Tamar Brandes, 'Solidarity as a Constitutional Value' (2021) 27(2) *Buffalo Human Rights Law Review* 59.

[2] UNA'S CONVICTION WAS PROPORTIONATE

35. A measure restricting free speech under Article 19(3) must be the least restrictive measure to achieve the goal in question¹²² and the benefits of the restriction must be balanced with the harms caused.¹²³ In this assessment, the nature and severity of the interference are relevant parameters.¹²⁴

36. States also enjoy a wide margin of appreciation in countering terrorism and dealing with threats to national security,¹²⁵ especially those that tend to incite violence.¹²⁶ This provides state lawmakers flexibility to use legislative efforts to deal with obstinate social

¹²² UNGA, 'Promotion and protection of the right to freedom of opinion and expression: Note by the Secretary-General' (9 October 2019) UN Doc A/74/486; *Mouvement Ralien Suisse v Switzerland* [GC] App no 16354/06 (ECtHR, 13 July 2012) ('*Mouvement Ralien Suisse v Switzerland*') [75]; *Perinçek* (n 69) [273]; *Axel Springer SE and RTL Television GMBH v Germany* App no 51405/12 (ECtHR, 21 September 2017) [56]; *Tagiyev and Huseynov v Azerbaijan* App no 13274/08 (ECtHR, 5 December 2019) [49]; Evelyn Mary Aswad, 'To Protect Freedom of Expression, Why Not Steal Victory from the Jaws of Defeat?' (2020) 77(2) Washington and Lee Law Review 609.

¹²³ *Zana* (n 84) [55]; *Yalçın Küçük v Turkey* App no 28493/95 (ECtHR, 5 December 2002) [39]; *Axel Springer AG v Germany* [GC] App no 39954/08 (ECtHR, 7 February 2012) [83]-[84]; *Von Hannover v Germany* (no. 2) App no 40660/08 and 60641/08 (ECtHR, 7 February 2012) [104]-[107]; *Węgrzynowski and Smolczewski v Poland* App no 33846/07 (ECtHR, 16 July 2013) [98]; *Index.hu Zrt v Hungary* App no 77940/17 (ECtHR, 7 September 2023) ('*Index.hu Zrt*') [23]; See also Aharon Barak, *Proportionality: Constitutional Rights and their Limitations* (CUP 2012) ch 12.

¹²⁴ *Arslan v Turkey* App. No. 23462/94 (ECtHR, 8 July 1999) [49]; *Ceylan v Turkey* App no 23556/94 (ECtHR, 8 July 1999) [49]; *Tammer v Estonia* App no 41205/98 (ECtHR, 4 April 2001) [69]; *Skalka v Poland* App no 43425/98 (ECtHR, 27 May 2003) [41]-[42]; *Cumpănă and Mazare v Romania* App no 33348/96 (ECtHR, 17 December 2004) ('*Cumpănă*') [111]-[124]; *Bédat v Switzerland* [GC] App no 56925/08 (ECtHR, 29 March 2016) [79]; *Khural v Azerbaijan* (n 82) [49].

¹²⁵ *Tanganyika Law Society and the Legal and Human Rights Centre v Tanzania and Rev Christopher R. Mtikila v Tanzania* App nos 009/2011 and 011/2011 (ACtHPR, 14 June 2013); *Šeks v Croatia* App no 39325/20 (ECtHR, 3 February 2022) [61], [63].

¹²⁶ *Sürek v Turkey* (No. 1) App no 26682/95 (ECtHR, 8 July 1999) [61]; *Sürek (No 3) v Turkey* App no 24735/94 (ECtHR, 8 July 1999) [37]; *Şener v Turkey* App no 26680/95 (ECtHR, 18 July 2000) [40]; *Ždanoka v Latvia* App no 58278/00 (ECtHR, 16 March 2006) [106]-[111]; *Giniewski v France* App no 64016/00 (ECtHR, 30 April 2006) [48]; *Lambert v France* App no 46043/14 (ECtHR, 5 June 2013) [31]-[41].

issues.¹²⁷ This margin ought to be wide since there exists no consensus among states as to the threshold to curb free speech for terrorism.¹²⁸

37. It is submitted that the suspended imprisonment sentence for one-year [a], the fine of \$1,500 [b], and the one-month ban [c] are proportionate.

[a] Una's imprisonment is proportionate

38. Admittedly, criminal imprisonment is a measure of last resort in cases involving free speech.¹²⁹ However, imprisonment is permissible when violence is incited.¹³⁰ Una only had to go to prison if she complied with the one-month ban – which itself is a proportionate measure. Suspended imprisonments are even criticised for their low gravity and lack of any real penal consequences. Courts have found them to be proportionate when given alongside reduced fines.¹³¹ Further, the range of imprisonment generally ranges between one year and three and a half years for the glorification of terrorism.¹³² In Spain, a popular artist like Una was sentenced to nine-months of imprisonment for the

¹²⁷ *Handyside* (n 6) [47]-[48]; *Z v Finland* App no 22009/93 (ECtHR, 25 February 1997); *S and Marper v UK* App nos 30562/04 and 30566/04 (ECtHR, 4 December 2008).

¹²⁸ Andrew Legg, *The Margin of Appreciation in International Human Rights Law* (OUP 2012) ch 5; See also Alex Schmid, 'Defining Terrorism' (*International Center for Counter-Terrorism*, March 2023) <https://icct.nl/sites/default/files/2023-03/Schmidt%20-%20Defining%20Terrorism_1.pdf> accessed 23 December 2023.

¹²⁹ GC 34 (n 4) [47]; *Cumpănă* (n 124) [115]; *Article 19 v Eritrea* App no 275/03 (ACtHPR, 30 May 2007); *Bodrožić and Vujić v Serbia* App no 38435/05 (ECtHR, 23 June 2009) [39]-[40]; *Alexander Adonis v The Philippines* Communication No 1815/2008 UN Doc CCPR/C/103/D/1815/2008/Rev1 (HRC, 26 April 2012) [7.9]; *Lohé Issa Konaté v Burkina Faso* App no 004/2013 (ACtHPR, 5 December 2014) [165]; *Rouillan v France* (n 88); *Sanchez v France* (n 76) [207]. See also Law Commission of Canada, *What is a Crime? Defining Criminal Conduct in Contemporary Society* (UBC Press 2014) 9.

¹³⁰ *Sanchez v France* (n 76) [207].

¹³¹ *Vejdeland v Sweden* (n 84) [58].

¹³² *R v Mohammed Abdul Kahar* [2016] EWCA Crim 568 [49]-[54]; Raul Redondo, 'Islamist leader Rachid Ghannouchi sentenced in Tunisia for glorifying terrorism' *Atalayar* (16 May 2023) <<https://www.atalayar.com/en/articulo/politics/islamist-leader-rachid-ghannouchi-sentenced-in-tunisia-for-glorifying-terrorism/20230516120729184783.html>> Accessed 18 November 2023.

glorification of terrorism.¹³³ To the contrary, Una only faced a suspended imprisonment, meaning that she was not even incarcerated.¹³⁴

Therefore, the one-year suspended imprisonment sentence is proportionate.

[b] Una's \$1,500 fine is proportionate

39. The courts also consider the financial situation of the applicant while determining proportionality of the fine.¹³⁵ The fine only constituted 0.75 percent of Una's monthly income. Further, glorification of terrorism is generally fined between the range of \$1,500 and \$46,700.¹³⁶ Even when violence has not been incited, glorification of terrorism has been fined €1,200¹³⁷ and \$1,500.¹³⁸

Therefore, Una's reduced fine of \$1,500 is proportionate.

[c] Una's one-month ban is proportionate

40. The context and prevailing situation need to be considered in determining proportionality.¹³⁹ Social media companies have imposed bans on individuals,¹⁴⁰

¹³³ *Rivadulla Duró v Spain* App no 27925/21 (ECtHR, 12 October 2023) [41].

¹³⁴ Andrew Ashworth, *Sentencing and Criminal Justice* (4th edn, CUP 2005) 5.

¹³⁵ *Sokolowski v Poland* App no 75955/01 (ECtHR, 29 March 2005) [51].

¹³⁶ *Leroy v France* (n 108) [65]; See also Guy Hedgecoe, 'The Spanish rappers getting 'terror' sentences for songs' *BBC News* (17 March 2018) <<https://www.bbc.com/news/world-europe-43407694>> accessed 24 December 2023 ; Freemuse, 'Submission to the Universal Periodic Review (UPR) of Spain by Freemuse' (18 July 2019).

¹³⁷ *Jorge López* (n 86) [22].

¹³⁸ *Leroy v France* (n 108) [65].

¹³⁹ *Animal Defenders International v The United Kingdom* App no 48876/08 (ECtHR, 22 April 2013) ('*Animal Defenders International*') [107]; *Stomakhin v Russia* (n 83) [96].

¹⁴⁰ Case Decision 2021-001-FB-FBR (Facebook Oversight Board, 5 May 2021) 31.

including for the glorification of terrorist entities.¹⁴¹ Una was prosecuted before the Cerovian Courts while the conflict was ongoing.¹⁴² Given Una's solidarity towards the ELA, the one-month ban was justified in light of the prevalent conflict.

41. Further, the ban cannot impose a chilling effect on free speech. While the threat of criminal sanctions has an impact on discourse,¹⁴³ the chilling effect arises out of vague and overbroad norms.¹⁴⁴ The DSA is not vague or overbroad, and was foreseeable for Una. Thus, the ban does not impose a chilling effect. *Therefore*, the one-month ban on Una was proportionate.

Therefore, Cero did not violate Una's rights under Article 19 of the ICCPR.

¹⁴¹ Carlton Férment, 'PewDiePie Was Briefly Banned from Twitter for Saying He Was Joining ISIS' *Vice* (1 September 2016) <<https://www.vice.com/en/article/pp4kng/pewdiepie-got-banned-from-twitter-for-saying-he-was-joining-isis-vgtrn>> accessed 24 November 2023.

¹⁴² Fact on Record [31]-[35] r/w [30].

¹⁴³ UNHRC, 'Report of the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai' (24 April 2013) UN Doc A/HRC/23/39 [77]-[78]; *Nikula v Finland* App no 31611/96 (ECtHR, 21 March 2002) [54]-[55]; *Tatár And Fáber v Hungary* App no 26005/08 (ECtHR, 12 June 2012) ('*Tatár v Hungary*') [41]; *Özbent and Others v Turkey* App nos 56395/08 and 58241/08 (ECtHR, 9 September 2015) ('*Özbent v Turkey*') [48]; See also Frederick Schauer, 'Fear, Risk and the First Amendment: Unraveling the Chilling Effect' (1978) 58 *Boston University Law Review* 685, 685-690.

¹⁴⁴ Daniel A. Farber, 'Free Speech Without Romance: Public Choice and the First Amendment' (1991) 105 *Harvard Law Review* 554, 562, 570; *Walker v City of Birmingham* 388 US 307, 345-346 (1967); *Reno v ACLU* 521 US 844, 845, 872 (1997); *Dilipak v Turkey* App no 29680/05 (ECtHR, 15 September 2015) [47]; *Ali Gürbüz v Turkey* App no 52497/08 (ECtHR, 12 March 2019) [60]; *Vajnai v Hungary* App no 33629/06 (ECtHR, 8 July 2008) [54]; *Yefimov and Youth Human Rights Group v Russia* App nos 12385/15 and 51619/15 (ECtHR, 7 December 2021) [70]; *Independent Newspapers (Ireland) Limited v Ireland* App no 28199/15 (ECtHR, 15 June 2017) [61].

**[III] CERO DID NOT VIOLATE ONEAI'S RIGHTS UNDER ARTICLE 19 OF THE ICCPR BY
CONVICTING AND SENTENCING IT UNDER THE DSA**

42. OneAI was found guilty u/s 28 of the DSA for the offence of indirect encouragement.¹⁴⁵

OneAI was guilty for *joint production* of the content posted from Una's account, and a fine of \$50,000 and a restriction order prohibiting the provision of RMSM's services for one month were imposed.¹⁴⁶

43. Corporations enjoy the right to freedom of expression, including the right to impart information.¹⁴⁷ However, this right is not absolute. While AI technologies such as RMSM possess a transformative value for society,¹⁴⁸ they exist in a regulatory grey area.¹⁴⁹ This

¹⁴⁵ Fact on Record [36].

¹⁴⁶ *ibid* [37].

¹⁴⁷ *Magyar Tartalomszolgáltatók Egyesülete and hu Zrt v Hungary* App no 22947/13 (ECtHR, 2 February 2016) ('*MTE February*') [49]; *NIT S.R.L. v Republic of Moldova* App no 28470/12 (ECtHR, 5 April 2022) ('*NIT S.R.L.*') [177]; *Axel Springer SE v Germany* App no 8964/18 (ECtHR, 17 January 2023) [36] ('*Axel Springer SE*'); *Sanchez v France* (n 76) [83]; *Radio Broadcasting Company B92 AD v Serbia* App no 67369/16 (ECtHR, 5 September 2023) [54]; *Bild v Germany* (n 109) [20]; See also *Société Colas Est v France* App no 37971/97 (ECtHR, 16 April 2002) [40]-[42]; *Couderc and Hachette Filipacchi Associés v France* App no 40454/07 (ECtHR, 10 Nov 2015) [89].

¹⁴⁸ UNHRC, 'Resolution adopted by the Human Rights Council on 14 July 2023: New and emerging digital technologies and human rights' (18 July 2023) UN Doc A/HRC/RES/53/29 ('**UNHRC Resolution 2023**').

¹⁴⁹ OECD, 'Recommendation of the Council on Artificial Intelligence' (2019) <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0449>> ('**OECD on AI 2019**'); UN Common Agenda 2023 (n 103); UNHRC Resolution 2023 (n 148); UNESCO Background Note on Role of Intermediaries (n 103); Council of Europe (Committee of Ministers), 'Recommendation 18 CM/Rec (2012) 3 of the Committee of Ministers to member States on the protection of human rights with regard to search engine' (4 April 2012) 4.

necessitates regulation through appropriate restrictions,¹⁵⁰ subject to the three-pronged test of prescription, legitimacy, and necessity.¹⁵¹

44. Admittedly, the one-month ban and the fine constitute a restriction on OneAI's rights. It is submitted, however, that this restriction does not contravene Article 19 of the ICCPR because it is prescribed by law [A], pursues a legitimate aim [B], and is necessary in a democratic society [C].

[A] ONEAI'S CONVICTION AND SENTENCE IS PRESCRIBED BY LAW

45. As submitted,¹⁵² any law must be sufficiently precise to allow individuals to regulate their conduct. Further, lack of adequate safeguards against arbitrariness violate this requirement.

46. As submitted,¹⁵³ DSA is sufficiently precise and has adequate safeguards. Further, OneAI could foresee its guilt under the DSA because of its professional nature [1], since it can *publish* and *disseminate* content [2], and since it can exercise recklessness [3].

[1] ONEAI COULD FORESEE LIABILITY GIVEN ITS PROFESSIONAL NATURE

47. Legal persons fall within DSA's scope.¹⁵⁴ Entities carrying on professional activities that require a high degree of caution are expected to take special care in the assessment of

¹⁵⁰ Federal Government of Germany, 'Artificial Intelligence Strategy' (2018) <<https://www.ki-strategie-deutschland.de/home.html>> accessed 5 December 2023; UNHRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye' (26 October 2018) UN Doc A/73/348 ('**David Kaye AI Report 2018**') [20]; European Commission, 'White Paper on Artificial Intelligence: A European Approach to Excellence and Trust' COM (2020) 65 final; 'AI Risk Management Framework' (*National Institute of Standards and Technology, US Department of Commerce*) <<http://www.nist.gov/itl/ai-risk-management-framework>> accessed 25 November 2023.

¹⁵¹ *Sunday Times* (n 6) [47]; *News Verlags v Austria* (n 83) [39]; *Federal Election Commission v Wisconsin Right to Life Inc* 551 US 449 (2007) [28]–[29].

¹⁵² See [4] of Arguments.

¹⁵³ See [5]–[20] of Arguments.

¹⁵⁴ Fact on record [5].

risks that they entail.¹⁵⁵ In the case of *Delfi*,¹⁵⁶ the Court highlighted that as a professional publisher, the company should familiarize itself with domestic law.¹⁵⁷ Since OneAI is one of the most technologically advanced AI companies operating in Cero,¹⁵⁸ it should have sought legal advice on the scope of the DSA.¹⁵⁹ Moreover, one of the objectives of DSA was to regulate the *offering of social media services*.¹⁶⁰ Therefore, it was reasonably foreseeable that OneAI would be regulated given RMSM's functionalities.¹⁶¹

[2] ONEAI CAN PUBLISH AND DISSEMINATE CONTENT

48. The DSA criminalizes *publication* or *dissemination*. RMSM both publishes and disseminates information. In *Delfi*, the liability of the act of publishing was extended to an *active intermediary* on the basis of the control exercised on the content and the economic interest involved.¹⁶² RMSM is an active intermediary exercising active editorial control and substantially modifying the content.¹⁶³ Therefore, RMSM was engaged in the act of publishing as a content service provider.

49. Dissemination implies making information available to third parties, at the request of the recipient of the service who provided the information.¹⁶⁴ RMSM can post content on its

¹⁵⁵ *Chauvy* (n 11) [45]; *Lindon v France* (n 10) [41]; *Delfi* (n 101) [122]; *MTE February* (n 147).

¹⁵⁶ *Delfi* (n 101).

¹⁵⁷ *Delfi* (n 101) [129].

¹⁵⁸ Fact on record [8].

¹⁵⁹ *Delfi* (n 101) [129].

¹⁶⁰ Fact on record [5].

¹⁶¹ *ibid* [8].

¹⁶² *Delfi* (n 101) [110]-[117].

¹⁶³ See [67]-[71] of Arguments.

¹⁶⁴ Digital Services Act (EU), art 3(k).

own *without* the user's approval.¹⁶⁵ This act of posting content on hosting platforms, on the user's request, makes information available to third parties. Therefore, OneAI was engaged in the dissemination of information.

[3] ONEAI CAN EXERCISE RECKLESSNESS IN ITS OPERATIONS

50. Developers do not exercise direct control over the content generated but play a significant role in designing the algorithm.¹⁶⁶ Even if AI companies cannot foresee a *specific* act beforehand, they can intend unforeseeable behaviour in general.¹⁶⁷ Hence, some standard of *mens rea* can be attached.¹⁶⁸ The relaxation of the standard of *mens rea* to include recklessness, coupled with the possibility of corporations failing to take due diligence measures effectively,¹⁶⁹ suggests that OneAI falls within the DSA's scope.

[B] ONEAI'S CONVICTION AND SENTENCE PURSUES A LEGITIMATE PURPOSE OF PROTECTING NATIONAL SECURITY

51. As submitted,¹⁷⁰ the restriction on OneAI's freedom of expression for prohibiting statements glorifying terrorism pursues the legitimate aims of protecting national security and public order. Additionally, generative AI aggravates the risk of radicalisation,¹⁷¹

¹⁶⁵ Fact on record [13].

¹⁶⁶ *R (Bridges) v CC South Wales* [2020] EWCA Civ 1058 [193]; OHCHR, 'Mandating Downstream Human Rights Due Diligence' (13 September 2022) 1, 2.

¹⁶⁷ Matthew U. Scherer, 'Regulating Artificial Intelligence Systems: Risks, Competencies, and Strategies' (2016) 29(2) *Harvard Journal of Law and Technology* 354, 366; Jack M. Balkin, 'The Path of Robotics Law' (2015) 6 *California Law Review Circuit* 45, 52.

¹⁶⁸ Nina Brown and others, 'Where's the Liability in Harmful AI Speech?' (2023) 3(2) *Journal of Free Speech Law* 589, 636.

¹⁶⁹ Wendehorst, *Liability for Artificial Intelligence* (n 78) 202.

¹⁷⁰ See [21]-[22] of Arguments.

¹⁷¹ Miron Lakomy, 'Artificial Intelligence as a Terrorism Enabler? Understanding the Potential Impact of Chatbots and Image Generators on Online Terrorist Activities' (*Global Network on Extremism & Technology*, 15 December 2023).

considering the increased exploitation of AI technologies and the internet by terrorist groups.¹⁷²

Therefore, the restriction on OneAI pursues a legitimate aim.

[C] ONEAI'S CONVICTION AND SENTENCE WAS NECESSARY IN A DEMOCRATIC SOCIETY

52. It is submitted that the restriction imposed on OneAI is necessary in a democratic society because it corresponds to a pressing social need [1] and is proportionate to the legitimate aims pursued [2].

[1] THERE WAS A PRESSING SOCIAL NEED

53. As submitted,¹⁷³ the test for a pressing social need concerns itself with whether the reasons adduced for a certain restriction are *relevant and sufficient*.¹⁷⁴

54. There was a pressing social need to prosecute OneAI because RMSM poses a harm to public interest [a] and it failed to exercise due diligence to mitigate this harm [b]. Further, RMSM has special duties and responsibilities [c] and cannot claim immunity on the basis of it being an intermediary [d].

[a] The risks posed by RMSM are unprecedented

55. The black-box effects,¹⁷⁵ autonomous behaviour, and limited predictability of AI¹⁷⁶ make the regulation of AI inherently difficult.¹⁷⁷ Generative AI tools such as RMSM are especially concerning given their unique nature.

¹⁷² European Commission, 'Proposal for a Regulation of the European Parliament and of the Council on preventing the dissemination of terrorist content online' (12 September 2018) COM(2018) 640 final 2018/0331(COD) 1; David Gilbert, 'Here's How Violent Extremists Are Exploiting Generative AI Tools' *Wired* (9 November 2023) <<https://www.wired.com/story/generative-ai-terrorism-content/>> accessed 18 November, 2023; See also *Foundation for Media Professionals v State (UT of J&K)* (2020) 5 SCC 746 [13], [22].

¹⁷³ See [24] of Arguments.

¹⁷⁴ *M.P. v Finland* App no 36487/12 (ECtHR, 15 December 2016) [51]; *Bagirov v Azerbaijan* App nos 81024/12 and 28198/15 (ECtHR, 25 June 2020) [98].

56. A tool such as RMSM in the hands of influential people such as Una poses a real threat to public order given its potential to *hallucinate* i.e. generate content that is untruthful.¹⁷⁸ RMSM easily generates prohibited content in large volumes, defeating the already weak content moderation measures of social media platforms.¹⁷⁹
57. More importantly, AI tools such as RMSM cannot evaluate the context in which statements are made.¹⁸⁰ The use of tools such as RMSM in precarious situations such as this provides increased opportunities for marginal organizations to amplify their propaganda.¹⁸¹ Therefore, AI companies complicit in the production of such prohibited content must be held culpable.¹⁸²

¹⁷⁵ Frank Pasquale, *The Black Box Society: The Secret Algorithms That Control Money and Information* (HUP 2015); Yavar Bathaee, 'The Artificial Intelligence Black Box and The Failure of Intent and Causation' (2018) 31(2) *Harvard Journal of Law & Technology* 879; See also Council of Europe (Committee of experts on internet intermediaries), 'Algorithms and human rights - Study on the human rights dimensions of automated data processing techniques and possible regulatory implications' (2018) DGI(2017)12 1 ('**CoE Algorithms and Human Rights**') 37.

¹⁷⁶ Scherer (n 167) 369; See also European Commission, 'Adapting Liability Rules to the Digital Age and Artificial Intelligence (Inception Impact Assessment)' Ares(2021) 4266516 ('**EC Liability Rules to AI**') 1, 2; Wendehorst, *Liability for Artificial Intelligence* (n 78) 189.

¹⁷⁷ Scherer (n 167) 356-57; Beatriz Botero Arcila, 'Is It a Platform? Is It a Search Engine? It's ChatGPT! The European Liability Regime for Large Language Models' (2023) 3(2) *Journal of Free Speech Law* 455, 472; House of Lords (Select Committee on Artificial Intelligence), 'AI in the UK: ready, willing and able?' (16 April 2018) ch 8.

¹⁷⁸ *Walters v OpenAI, LLC*, No. 23-A-04860, 2023 WL 3915956 (Ga. Super. June 5, 2023); OpenAI, 'GPT-4 Technical Report' (21 March 2023) <<https://cdn.openai.com/papers/gpt-4.pdf>> accessed on 15 November, 2023; Yiqiu Shen and others, 'ChatGPT and other large language models are double-edged swords' (2023) 307(2) *Radiology* 1.

¹⁷⁹ Filippo Menczer and others, 'Addressing the harms of AI-generated inauthentic content' (2023) 5 *Nature Machine Intelligence* 679.

¹⁸⁰ David Kaye AI Report 2018 (n 150) [29]; Dias and others (n 79).

¹⁸¹ Gabriel Weimann, 'www.terror.net: How modern Terrorism Uses the Internet Special Report 116, (*United States Institute of Peace, Washington DC*, March 2004) 1, 6.

¹⁸² UNHRC, 'Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, David Kaye' (Apr 2018) UN Doc A/HRC/38/35 ('**David Kaye April**') [17]; OHCHR, 'UNESCO's Input in reply to the OHCHR report on the Human Rights Council Resolution 47/23 entitled "New and emerging digital technologies and human rights"' ('**UNESCO's Input to HRC/Res/47/23**') [11].

[b] OneAI lacked due diligence

58. The Guiding Principles establish global standards of expected conduct,¹⁸³ including the respect for human rights.¹⁸⁴ It lays down that the companies should conduct due diligence¹⁸⁵ and engage in mitigation strategies compliant with internationally-recognized human rights principles.¹⁸⁶ It should exercise ex-post and ex-ante regulation of content.¹⁸⁷ OneAI failed to exercise minimum standards of care.

[i] OneAI did not exercise effective ex-ante regulation

59. Ex-ante control is necessary to ensure the system's alignment with public interest.¹⁸⁸ OneAI exercised ex-ante control through compliance with community standards,¹⁸⁹ which was entirely AI based.¹⁹⁰ However, it failed to discharge its obligations.

60. *First*, inadequate content moderation is a failure to discharge duties.¹⁹¹ Moderating only through AI measures is inefficient because of the errors in automated filtering measures¹⁹²

¹⁸³ OHCHR 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) UN Doc HR/PUB/11/04 ('**Guiding Principles on Business and Human Rights**'); David Kaye AI Report 2018 (n 150) [21].

¹⁸⁴ Guiding Principles on Business and Human Rights (n 194) [11], [16]; David Kaye April (n 182) [41]-[44]; UNESCO's Input to HRC/Res/47/23 (n 184) [3]; HRC, 'New and emerging digital technologies and human rights' (2021) UN Doc A/HRC/RES/47/23 [2]; See also Future of Life Institute, 'Asilomar AI Principles' (11 August 2017) [10], [11] ('**Asilomar AI Principles**'); Mathias Risse, 'Human Rights and Artificial Intelligence: An Urgently Needed Agenda' (2018) Working Paper Series from Harvard University, John F. Kennedy School of Government 1, 10.

¹⁸⁵ UNESCO's Input to HRC/Res/47/23 (n 184) [6]; UNHRC Resolution 2023 (n 148).

¹⁸⁶ Guiding Principles on Business and Human Rights (n 194) [13], [23]; David Kaye AI Report 2018 (n 150) [52]; *Delfi* (n 101) [142], [152]-[159]; *MTE February* (n 147) [80]. See also Asilomar AI Principles (n 197) [21].

¹⁸⁷ *Delfi* (n 101) [142]; Council of Europe (Expert Committee MSI-AUT), 'A study of the implications of advanced digital technologies (including AI systems) for the concept of responsibility within a human rights framework' (2019) 68; Marcelo Thompson, 'Beyond Gatekeeping: The Normative Responsibility of Internet Intermediaries' (2016) 18 *Vanderbilt Journal of Entertainment and Technology Law* 793; See also Information Technology Act 2000 (India) (n 60) s 79.

¹⁸⁸ Scherer (n 167) 368.

¹⁸⁹ 'Dangerous organisations and individuals' (*Meta*) <<https://transparency.fb.com/en-gb/policies/community-standards/dangerous-individuals-organizations/>> ('**Meta Dangerous Organisations and Individuals Policy**').

¹⁹⁰ Clarifications [9].

and their failure to contextualise the assessment of speech. This makes human reviewers necessary.¹⁹³ This failure is dangerous, considering the political nature of the content RMSM was producing.¹⁹⁴

61. *Second*, OneAI's non-compliance to its initial terms¹⁹⁵ is a failure to discharge its duties. It failed to comply with its Terms of Service since the impugned statement violated Facebook's Dangerous Organizations and Individuals Policy.¹⁹⁶ Facebook prohibits any praise or support of Tier 1 entities.¹⁹⁷ The ELA is a *terrorist organization* engaged in *systematic criminal operations* since 2012,¹⁹⁸ thus qualifying as a Tier 1 entity. The statement *I stand with Branton Tarrant* violates the policy.¹⁹⁹ The impugned statement is parallel to the above statement by engaging in the act of *praising* the ELA.

¹⁹¹ *Parler LLC v Amazon Web Services Inc.* 514 F Supp 3d 1261, 1266 (W.D. Wash. 2021).

¹⁹² David Kaye AI Report 2018 (n 150) [29]; European Commission, 'Commission recommendation on measures to effectively tackle illegal content online' (1 March 2018) C(2018) 1177 final ('**EC Recommendation on Illegal Content Online**') [19]; UNESCO's Input to HRC/Res/47/23 (n 184) [11]; UN Common Agenda 2023 (n 103) 17.

¹⁹³ David Kaye AI Report 2018 (n 150) [14], [49]; CoE Algorithms and Human Rights (n 175) 21; See also EC Recommendation on Illegal Content Online (n 192) [20].

¹⁹⁴ Matteo Monti, 'Automated Journalism and Freedom of Information: Ethical and Juridical Problems Related to AI in the Press Field' (2018) 1(1) *Opinio Juris in Comparatione* 139, 151; See also UNESCO's Input to HRC/Res/47/23 (n 184) [7].

¹⁹⁵ *User v Facebook Ireland, Inc.*, 10 71/18 (Regional Court in Heidelberg, Germany, 28 August 2018).

¹⁹⁶ Meta Dangerous Organisations and Individuals Policy (n 191).

¹⁹⁷ *ibid.*

¹⁹⁸ Fact on Record [19].

¹⁹⁹ Meta Dangerous Organisations and Individuals Policy' (n 191).

62. *Third*, any such compliance does not ensure due diligence since Facebook’s policies are not fully compliant with international human rights regulations and national legislations.²⁰⁰

[ii] OneAI did not exercise effective ex-post regulation

63. In addition to the hosting platforms, a minimum degree of monitoring or filtering is necessary from a platform’s users.²⁰¹ OneAI failed to put effective ex-post mechanisms or systems monitoring the generated content. In not mandating the labelling of the autogenerated content, OneAI failed to discharge due diligence.²⁰² Mandatory labelling ensures transparency,²⁰³ thereby preventing misinformation²⁰⁴ RMSM can be mistaken for a human actor²⁰⁵ and OneAI was aware that it might engage in political speech.²⁰⁶

Therefore, RMSM ought to have had a mandatory labelling feature.

²⁰⁰ David Kaye April (n 182) [24]; UNHRC, ‘Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression: Disinformation and freedom of opinion and expression during armed conflicts, Irene Khan’ (12 August 2022) UN Doc A/77/288 (**‘Irene Khan August’**) [85].

²⁰¹ *Sanchez v France* (n 76) [190].

²⁰² A bill to require a watermark for AI-generated materials, and for other purposes (US) (118th, Congress, 1st Session, 12 September 2023); AI Labeling Act of 2023 (US) (118th Congress, 1st Session, 21 November 2023); See also ‘Llama 2- Responsible Use Guide’ (*MetaAI*, August 2023) <<https://ai.meta.com/static-resource/responsible-use-guide/>> accessed 5 December 2023.

²⁰³ OECD on AI 2019 (n 149) [1.3]; Thomas Burri, The New Regulation of the European Union on Artificial Intelligence: Fuzzy Ethics Diffuse into Domestic Law and Sideline International Law in Silja Vooney and Others (eds), *The Cambridge Handbook of Responsible Artificial Intelligence* (CUP 2022) 104, 116; See also ‘Generative AI Prohibited Use Policy’ (*Google*, 14 March 2023) <<https://policies.google.com/terms/generative-ai/use-policy>> accessed 5 December 2023; ‘Community Guidelines’ (*Snapchat*, August 2023) <<https://values.snap.com/en-GB/privacy/transparency/community-guidelines>> accessed 5 December 2023.

²⁰⁴ Council of Europe, ‘Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes’ (Adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers’ Deputies) [9]; Clarke Statement on Meta’s Announcement to Require Disclosure and Labeling of AI-Generated Content (Press Release Washington D.C., 8 November 2023) <<https://clarke.house.gov/clarke-statement-on-metas-announcement-to-require-disclosure-and-labeling-of-ai-generated-content/>> accessed on 5 December 2023.

²⁰⁵ UNESCO, ‘Recommendation on the Ethics of Artificial Intelligence’ (23 November 2021) SHS/BIO/PI/2021/1 [127]; Wendehorst, Liability for Artificial Intelligence (n 78) 200; Christiane Wendehorst, ‘The Proposal for an Artificial Intelligence Act COM (2021) 206 from a Consumer Policy Perspective’ (Study commissioned by the Austrian Federal Ministry of Social Affairs, Health, Care and Consumer Protection, 2021) 1, 27; Christiane Wendehorst and Jakob Hirtenlehner, ‘Outlook on the future regulatory requirements for AI in

[iii] OneAI had heightened due diligence requirements given the circumstances and specificities of its service

64. The special circumstances under which RMSM was operating, along with the user base and model of OneAI, impose heightened obligations on OneAI.

65. *First*, corporations operating in a situation of armed conflict need to exercise heightened due diligence in line with the increased risks.²⁰⁷ Inadequate content moderation in such times can lead to propaganda and increased incitement of violence.²⁰⁸

66. *Second*, OneAI assumes special responsibility given the specific nature of its user base²⁰⁹ and the medium used for the expression.²¹⁰ Its user base majorly comprises celebrities and social media influencers who are financially dependent on the continuous production of content²¹¹ and those who exercise considerable public influence.²¹² Moreover, as explained above,²¹³ OneAI has social media platforms as the hosting platforms, thereby

Europe' (SSRN, 2022) 39 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4093016> accessed 5 December 2023.

²⁰⁶ Keith Collins, 'How ChatGPT Could Embed a 'Watermark' in the Text It Generates' *New York Times* (17 February 2023) <<https://www.nytimes.com/interactive/2023/02/17/business/ai-text-detection.html>> accessed 5 December 2023.

²⁰⁷ Guiding Principles on Business and Human Rights (n 194) [7], [17]; OHCHR, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Business, human rights and conflict-affected regions: towards heightened action' (21 July 2020) UN Doc A/75/212 [13], [19]-[21], [72]; Irene Khan August (n 200) [125]; UN Development Programme, 'Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide' (2022) 9-11.

²⁰⁸ Irene Khan August (n 200) [88]; See also Anita Ramasastry and Robert C. Thompson, 'Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law, Fafo Report No. 536' (*Fafo*, 2006) 27.

²⁰⁹ OECD, 'Human rights due diligence through responsible AI' in *OECD Business and Finance Outlook 2021: AI in Business and Finance* (OECD Publishing, Paris, 2021) [3.3].

²¹⁰ *Jersild* (n 85) [31]; *Delfi* (n 101) [134].

²¹¹ Fact on Record [12].

²¹² P. David Marshall, 'New media—New self: The changing power of celebrity' in P. David Marshall (ed.) *The celebrity culture reader* (New York, NY: Routledge 2006) 644.

²¹³ See [31] of Arguments.

contributing to the extensive dissemination and increased spread of propaganda and hate speech.

[d] OneAI must not be granted intermediary immunity given its active role

67. Service providers which exercise mere *passive, automatic and technical* control over the content posted are intermediaries and are granted immunity from the claims against the user-generated content.²¹⁴ Providers that substantially contribute and disseminate original content are not intermediaries.²¹⁵ Substantial contribution can be inferred from a direct participation in the development of the alleged illegality.²¹⁶ The court determines whether the entity is neutral or not.²¹⁷

68. The role of the entity in drafting the content of a commercial ad has been held to be relevant.²¹⁸ Further, the optimization of the presentation of the content has also been held to be *active* control.²¹⁹ However, RMSM is not entitled to any immunity since it both generated and substantially modified the content, qualifying as the publisher of the content.

²¹⁴ Communications Decency Act, 1996 (US) s 230; Council Directive 2000/31/EC of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce in the Internal Market [2000] OJ L178/1 (EU); Information Technology Act 2000 (India) (n 60) s 79; Electronic Communications and Transactions Act, 2009 (Zambia); Marco Civil da Internet, Law no 12.965 (23 April 2014) (Brazil); See also Council of Europe, ‘Declaration on freedom of communication on the Internet’ (Adopted by the Committee of Ministers on 28 May 2003 at the 840th meeting of the Ministers’ Deputies) [6].

²¹⁵ UNESCO, World Trends in Freedom of Expression and Media Development: Special Digital Focus (UNESCO Publishing 2015).

²¹⁶ *San Fernando Valley v Roommates.com, LLC*, 521 F 3d 1157, 1167-68, 1174-77 (9th Cir 2008); *Nemet Chevrolet, Ltd. v Consumeraffairs.com, Inc.*, 591 F 3d 250, 257-58 (4th Cir 2009); *Jones v Dirty World Ent. Recordings*, 755 F 3d 398, 410-16 (6th Cir 2014); *Marshall’s Locksmith Serv. Inc. v Google, LLC*, 925 F 3d 1263, 1269-71 (DC Cir 2019); *Henderson v Source for Pub. Data, L.P.*, 53 F 4th 110, 127-29 (4th Cir 2022).

²¹⁷ *Universal Comm. Sys. v Lycos, Inc.*, 478 F 3d 413 419-21 (1st Cir 2007) [419]; *Google France, Google Inc v Louis Vuitton Malletier SA* C-236/08 (CJEU, 23 March 2010) (‘*Google France*’) [114]; *L’Oreal SA v eBay* C-324/09 (CJEU, 12 July 2011) (‘*L’Oreal SA*’) [113]; *Papasavvas v O Fileleftheros Dimosia Etaireia Ltd* C-291/13 (CJEU, 27 March 2013) (‘*Papasavvas*’) [41].

²¹⁸ *FTC v Accusearch, Inc.*, 570 F 3d 1187 (10th Cir 2009) [1199]; *Google France* (n 217) [23].

²¹⁹ *L’Oreal* (n 217) [123].

69. OneAI was not a mere passive intermediary. The emoji-to-text conversion carries with itself some creative process,²²⁰ given the multiple interpretations possible.²²¹ It involved substantial editorial control from OneAI. In learning from Una’s habits, engagements and reposts,²²² OneAI exercised control in interpreting the emojis.²²³
70. Even if the process was automated, OneAI cannot claim the status of a passive intermediary²²⁴ or reduce its culpability.²²⁵ Thus, the rearranging of text, selection of content even if based on user preferences, and moderation constitutes substantial contribution more than mere *neutral or technical, automated and passive role*.
71. The purpose of the AI tool is a relevant factor.²²⁶ RSM’s aim was to aid the user in *generating* content on their behalf and not merely summarizing or organizing information. Generative AI should be held strictly liable²²⁷ and be given no immunity as an intermediary.²²⁸ *Therefore, OneAI should not be granted immunity.*

²²⁰ Philipp Wicke & Joao M. Cunha, ‘An Approach for Text-to-Emoji Translation’ (Eleventh International Conference on Computational Creativity, 2020).

²²¹ Hannah Miller, Jacob Thebault-Spieker, Shuo Chang & others, “‘Blissfully Happy’ or ‘Ready to Fight’”: Varying Interpretations of Emoji’ (In Proceedings of the 10th International Conference on Web and Social Media, 2016).

²²² Facts on Record [9]; Clarifications [3].

²²³ Clarifications [7].

²²⁴ *Delfi* (n 101) [46]; Council of Europe, Recommendation CM/Rec (2011)7 of the Committee of Ministers to member states on a new notion of media (21 September 2011) Appendix [32].

²²⁵ European Parliament, Report with recommendations to the Commission on a civil liability regime for artificial intelligence (2020/2014 (INL)) (5 October 2020) [26].

²²⁶ *Arcila* (n 177) 486.

²²⁷ EC Liability Rules to AI (n 176) 5; Samir Chopra and Laurence F. White, *A Legal Theory of Autonomous Artificial Agents* (University of Michigan Press 2011) 136; Caroline Cauffman, ‘Robo-liability: The European Union in search of the best way to deal with liability for damage caused by artificial intelligence’ (2018) 25(5) *Maastricht Journal of European and Comparative Law* 527, 531.

²²⁸ A bill to waive immunity under section 230 of the Communications Act of 1934 for claims and charges related to generative artificial intelligence (US) (118th, Congress, 1st Session, 14 June 2023); Cristiano Lima, ‘AI Chatbots Won’t Enjoy Tech’s Legal Shield, Section 230 Authors Say’ *Washington Post* (17 March 2023)

Therefore, there was a pressing social need to convict OneAI.

[2] THE FINE AND THE RESTRICTION ORDER ARE PROPORTIONATE

72. As submitted,²²⁹ the nature and severity of punishment are considered in assessing proportionality.²³⁰ In such determination, the nature and gravity of the impugned statement is considered.²³¹ Factors such as the size,²³² market share of the operator,²³³ and the number of persons potentially affected determine this fine.²³⁴

73. It is submitted that the fine of \$50,000 [i], and the restriction order banning OneAI from offering RMSM for a month [ii] were proportionate to the aim pursued.

[a] The fine of \$50,000 is proportionate

74. *First*, the \$50,000 fine was proportionate since other domestic and regional legislations regulating AI and technology companies impose similar quantum of fines.²³⁵ The EU Artificial Intelligence Act provides for even higher fines, up to €20,000,000 or 4% of the

<<https://www.washingtonpost.com/politics/2023/03/17/ai-chatbots-wont-enjoy-techs-legal-shield-section-230-authors-say/>> accessed 5 December 2023; *Gonzalez v Google LLC*, 143 S. Ct. 1191 (2023) (Gorsuch, J.) Oral Argument [49].

²²⁹ See [36] of Arguments.

²³⁰ *Standard Verlags GmbH v Austria* (No 2) App no 4, 5, 12 21277/05 (ECtHR, 4 June 2009) [29]; *Delfi* (n 101) [160].

²³¹ *Delfi* (n 101) [142], [144]-[146]; *MTE February* (n 147) [72]-[77].

²³² *Microsoft Corp v Commission of the European Communities* T-201/04 (CJEU, 17 September 2007) [1344], [1352], [1360]-[1361], [1363]; *Europapress Holding d.o.o. v Croatia* App no 25333/06 (ECtHR, 22 October 2009) [73]; European Commission, ‘Fines for Breaking EU Competition Law’ (2011) 1.

²³³ *Delfi* (n 101) [83], [129]; Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonized Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts (21 April, 2021) COM(2021) 206 final, art 71(6)(c) (‘EU Artificial Intelligence Act’).

²³⁴ *ROJ TV A/S v Denmark* App no 24683/14 (ECtHR, 17 April 2018) (‘*ROJ TV A/S*’) [47]; Wendehorst, Liability for Artificial Intelligence (n 78) [198].

²³⁵ Gesetz zur Verbesserung der Rechtsdurchsetzung in sozialen Netzwerken (Network Enforcement Act) 2017 (Germany) s 4(2); Proposed Online Safety Act Sri Lanka (n 61) s 12; See also *ROJ TV A/S* (n 234); Lesley Fair, ‘Twitter to pay \$150 million penalty for allegedly breaking its privacy promises – again’ (*Federal Trade Commission*, 25 May 2022) <<https://www.ftc.gov/business-guidance/blog/2022/05/twitter-pay-150-million-penalty-allegedly-breaking-its-privacy-promises-again>> accessed 5 December 2023.

total annual turnover for the preceding financial year for non-compliance.²³⁶ As a large professionally managed commercial entity, OneAI directly derives economic benefits from the generated content.²³⁷ Given its subscription model, it earns \$96 million annually.²³⁸ An amount of \$50,000 is hardly 0.05% of its annual revenue generated.

75. *Second*, businesses can be imposed with civil or criminal liability for failing to undertake mitigation measures in situations of armed conflict.²³⁹ OneAI failed to exercise due diligence and discharge its heightened responsibilities, causing grave risks to national security and human lives.²⁴⁰

76. *Third*, sanctioning OneAI with a \$50,000 fine serves as a deterrent for other AI companies to take necessary measures in ensuring that the AI algorithms do not generate harmful content.²⁴¹

Therefore, the \$50,000 fine was justified.

[b] The one-month suspension on RMSM is proportionate

77. States enjoy a wider margin of appreciation in the commercial sphere,²⁴² especially when competing private and public interests are involved.²⁴³ Temporary restriction orders have

²³⁶ EU Artificial Intelligence Act (n 233), art 71(4).

²³⁷ *L'Oreal* (n 217); *Delfi* (n 101) [144]; *Papasavvas* (n 217) [46]; *Sanchez v France* (n 76) [204].

²³⁸ Fact on Record [12].

²³⁹ UNHRC, 'Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie' (27 May 2011) UN Doc A/HRC/17/32 [18].

²⁴⁰ See [64]-[66] of Arguments.

²⁴¹ Eugene Volokh, 'Large Libel Models? Liability for AI Output' (2023) 3(2) *Journal of Free Speech Law* 489, 514-521; Nina Brown, 'Bots Behaving Badly: A Products Liability Approach to Chatbot-Generated Defamation' (2023) 3(2) *Journal of Free Speech Law* 389, 423; Arcila (n 177) 474.

²⁴² *Mouvement Ralien Suisse v Switzerland* (n 122) [61].

been upheld if passed after adversarial judicial proceedings.²⁴⁴ OneAI's suspension is in line with the recent jurisprudence arguing against heavy regulation of the sector. It ensures that the costs such platforms bear align with AI's harms.²⁴⁵

78. Contrary to harsher measures such as a complete ban on AI and digital media companies,²⁴⁶ or the revocation of licenses,²⁴⁷ OneAI's ban is the less intrusive measure²⁴⁸ and lasted one month. Less restrictive measures such as the removal of specific content²⁴⁹ cannot be sanctioned because OneAI does not have the technological capability for its execution.

79. The chilling effect on free speech²⁵⁰ is mitigated by the short and temporary nature of OneAI's ban. Temporary restrictions on AI companies have proven effective in ensuring

²⁴³ *Axel Springer SE* (n 148) [36]; *Klaus Muller v Germany* App no 24173/18 (ECtHR, 19 November 2020) [66].

²⁴⁴ *Ahmet Yildirim* (n 107); *Groppera Radio AG and Others v Switzerland* App no 10890/84 (ECtHR, 28 March 1990) [73]; *RT France v Council of the European Union* T-125/22 (CJEU, 27 July 2022) [215].

²⁴⁵ Matt Perault, 'Section 230 Won't Protect ChatGPT' (2023) 3(2) *Journal of Free Speech Law* 363, 370.

²⁴⁶ Italian Data Protection Authority, 'Artificial intelligence: stop to ChatGPT by the Italian SA, Personal data is collected unlawfully, no age verification system is in place for children' (*Garante Privacy*, 31 March 2023) <<https://www.garanteprivacy.it/web/guest/home/docweb/-/docweb-display/docweb/9870847>> accessed on 5 December 2023; A Bill to impose sanctions with respect to TikTok, and for other purposes: No TikTok on United States Devices Act (US) (118th Congress, 1st Session).

²⁴⁷ Draft Proposal for Broadcast Regulatory Commission Act, 2023 (Sri Lanka) s 19(8); Decree 15/2020/ND-CP Penalties For Administrative Violations Against Regulations On Postal Services, Telecommunications, Radio Frequencies, Information Technology And Electronic Transactions (Vietnam) art 100(4); See also *NIT S.R.L.* (n 147) [252]-[255].

²⁴⁸ *Glor v Switzerland* App no 13444/04 (ECtHR, 30 April 2009) [94]; *Animal Defenders International* (n 139) [16]; See also *Informationsverein Lentia and Others v Austria* App nos 13914/88; 15041/89; 15717/89; 15779/89; 17207/90 (ECtHR, 24 November 1993) [39].

²⁴⁹ *Glawischnig-Piesczek v Facebook Ireland Limited* C-18/18 (CJEU, 3 October 2019) [53]; *Swami Ramdev v Facebook*, 2019 SCC OnLine Del 10701 [96].

²⁵⁰ *Tatár v Hungary* (n 143) [41]; *Cumpănă* (n 124) [114]; *Özbent and Others v Turkey* (n 143) [48].

the implementation of necessary due diligence measures.²⁵¹ *Therefore*, the restriction order was proportionate.

Therefore, OneAI's prosecution u/s 28 of DSA was necessary in a democratic society and did not contravene Article 19 of the ICCPR.

²⁵¹ Shiona McCallum, 'ChatGPT accessible again in Italy' *BBC* (28 April 2023) <<https://www.bbc.com/news/technology-65431914>> accessed on 3 December, 2023.

PRAYER FOR RELIEF

For the foregoing reasons, the Respondent respectfully requests this Honourable Court to adjudge and declare the following:

- I. Una's conviction and sentence under the DSA do not violate her freedom of expression under Article 19 of the ICCPR.
- II. OneAI's conviction and sentence under the DSA do not violate its freedom of expression, including the freedom to impart information, under Article 19 of the ICCPR.

All of which is humbly prayed

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Counsel for Respondent.