

**THE 2018-2019 PRICE MEDIA  
MOOT COURT COMPETITION**

---

**UNGER RAS AND UCONNECT**

**(Applicants)**

**v.**

**THE STATE OF MAGENTONIA**

**(Respondent)**

---

**MEMORIAL FOR APPLICANT**

---

[4,985 words]

## TABLE OF CONTENTS

---

TABLE OF CONTENTS.....	2
LIST OF ABBREVIATIONS .....	5
LIST OF AUTHORITIES.....	6
STATEMENT OF RELEVANT FACTS.....	21
STATEMENT OF JURISDICTION.....	25
QUESTIONS PRESENTED.....	26
SUMMARY OF ARGUMENTS.....	27
ARGUMENTS.....	1
<b>I. MAGENTONIA’S FAILURE TO RECTIFY, ERASE OR BLOCK THE SEARCH RESULTS (“MAGENTONIA’S DECISION”) DEPICTING THE CYANISIAN TIMES STORY OF 2001 (“THE 2001 STORY”) VIOLATED ARTICLE 17 OF THE ICCPR.....</b>	<b>1</b>
<b>A. Under Article 17 of the ICCPR, Magentonia has both a positive and negative obligation to protect Ras from impermissible interferences to his privacy and reputation.....</b>	<b>2</b>
<b>B. Magentonia’s Decision interfered with Ras’ right to privacy and was an unlawful attack on his reputation.....</b>	<b>4</b>
1. The search results interfered with Ras’ privacy.....	4
2. Further and in the alternative, the search results were an unlawful attack on Ras’ reputation.....	5

<b>C. Magentonia violated its positive obligation under Article 17(2) as its Decision failed to properly balance Ras’ rights with the public’s in having access to the search results. ....</b>	<b>8</b>
1. Magentonia’s Decision was not necessary to protect the public interest in accessing the search results.....	9
2. Ordering rectification, erasure or blockage of the search results would have been proportionate. ....	11
<b>II. MAGENTONIA’S SUSPENSION ORDER VIOLATED BOTH UCONNECT’S AND ITS USERS’ RIGHTS TO FREEDOM OF EXPRESSION. ....</b>	<b>14</b>
<b>A. The suspension was not provided for by law as it was not issued pursuant to any Magentonian law and was not reasonably foreseeable.....</b>	<b>15</b>
<b>B. The suspension was not necessary in a democratic society.....</b>	<b>17</b>
1. Suspending UConnect’s operations did not meet a pressing social need as they were not likely to mislead the reasonable viewer, or incite discrimination, hostility or violence against the Cyanisian refugees.....	17
2. Further, the suspension was disproportionate.....	19
i. The posts concerning refugees were legitimate expressions concerning political matters in the public interest.....	20
ii. The suspension would unduly chill legitimate speech.....	21

<b>III.MAGENTONIA’S PROSECUTION AND CONVICTION OF UCONNECT UNDER THE PIDPA FOR THE 26 MAY AND 30 MAY POSTS VIOLATED UCONNECT’S AND THEIR USERS’ RIGHTS TO FREEDOM OF EXPRESSION.....</b>	<b>24</b>
<b>A. Magentonia’s prosecution and conviction of UConnect was not provided by law.....</b>	<b>24</b>
1. It was not reasonably foreseeable that intermediaries could incur liability under Sections 3 and 5 of the PIDPA. ....	24
2. Section 5 of the PIDPA is overly vague. ....	26
<b>B. Magentonia’s prosecution and conviction of UConnect is not justified by the aim of protecting public order. ....</b>	<b>26</b>
1. There was no pressing social need to prosecute and convict UConnect as there was no evidence that the posts were likely to incite any action, mislead members of the public or cause public disorder. ....	27
2. Magentonia’s prosecution and conviction of UConnect was disproportionate. ....	27
i. Requiring intermediaries to adjudicate the legality of the two posts was unduly onerous and consequently overly chills speech. ....	27
ii. The posts were political critique which intermediaries should only remove if, and when proven to be conclusively false by a court of law. ....	29
iii. UConnect removed the 26 May post upon receiving notice. ....	31
iv. The fine of USD 100,000 was disproportionate. ....	32
<b>PRAYER FOR RELIEF .....</b>	<b>34</b>

## **LIST OF ABBREVIATIONS**

---

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Human Convention on Human Rights
ACommHPR	African Commission on Human and Peoples' Rights
CJEU	Court of Justice of the European Union
Commission	Information and Data Protection Commission of Magentonia
ECHR	European Convention on Human Rights
EHRR	European Human Rights Reports
EU	European Union
HRC	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
PIDPA	Public Information and Data Protection Act of 2016
OHCHR	United Nations Office of the High Commissioner for Human Rights
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
VCLT	Vienna Convention on the Law of Treaties

## LIST OF AUTHORITIES

---

### DECLARATIONS, TREATIES AND CONVENTIONS

ACHR (adopted 22 November 1969, entered into force 18 July 1978) .....	4
African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58 .....	14
American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) .....	14
ECHR (adopted 4 November 1950, entered into force 3 September 1953) .....	4
European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 .....	14
G.A. Resolution 59(I), 14 Dec. 1946 .....	14
ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 .....	24
UDHR (adopted 10 December 1948) UNGA Res 217A (III) .....	4
Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) ..	14
Vienna Convention on the Law of Treaties UN Doc. A/Conf.39/27; 1155 UNTS 331; 8 ILM 679 (1969); 63 AJIL 875 (1969) .....	2

### CASES FROM THE ECtHR

<i>A. v. Norway</i> , App no 28070/06 (ECtHR, 9 April 2009) .....	6, 24
<i>Ahmet Yildirim v Turkey</i> App no 3111/10 (ECtHR, 18 December 2012) .....	16
<i>Al-Nashif v Bulgaria</i> App no 50963/99 (ECtHR, 20 June 2002) .....	16
<i>Arslan v Turkey</i> App no 57908/00 (ECtHR, 10 January 1996) .....	30
<i>Axel Springer AG v Germany</i> , App no 39954/08 (ECtHR, 7 February 2012) .....	1, 6, 20
<i>Bărbulescu v Romania</i> App no 61496/08 (ECtHR, 5 September 2017) para 108 .....	2, 8

<i>Bedat v Switzerland</i> App no 6925/08 (ECtHR, 29 March 2016).....	6
<i>Bowman v UK</i> App no 24839/94 (ECtHR, 19 February 1998) .....	14
<i>Ceylan v Turkey</i> App no 23556/94 (ECtHR, 08 July 1999) .....	29
<i>Craxi v Italy (No 2)</i> App no 24337/94 (ECtHR, 17 July 2003).....	4
<i>Editorial Board of Pravoye Delo and Shtekel v Ukraine</i> App no 33014/05 (ECtHR, 5 May 2011) .....	14
<i>Eon v France</i> App no 26118/10 (ECtHR, March 14, 2013).....	30
<i>Erbakan v Turkey</i> App no 59405/00 (ECtHR, 6 July 2006).....	21
<i>Evans v the United Kingdom</i> App no 6339/05 (ECtHR, 10 April 2007).....	1
<i>Feldek v Slovakia</i> App no 29032/95 (ECtHR, 12 July 2001).....	30
<i>Fernández Martínez v. Spain</i> , App no 56030/07 (ECtHR, 12 June 2014) .....	3, 15
<i>Grebneva and Alisimchik v Russia</i> App no 8918/05 (ECtHR, 22 November 2016) .....	20
<i>Gündüz v Turkey (No 1)</i> App no 35071/97 (ECtHR, 4 December 2003).....	18
<i>Hämäläinen v. Finland</i> App no 37359/09 (ECtHR, 16 July 2014) .....	2
<i>Karako v Hungary</i> , App no 39311/05 (ECtHR, 28 April 2009).....	6
<i>Liu v Russia (No 2)</i> App no 29157/09 (ECtHR, 26 July 2011) .....	16
<i>Lozovyve v Russia</i> App no 4587/09 (ECtHR, 24 April 2018) .....	1
<i>Medzlis Islamske Zajednice Brcko and Others v Bosnia and Herzegovina</i> App no 17224/11 (ECtHR, 27 June 2017).....	6
<i>Otegi Mondragon v Spain</i> App no 2034/07 (ECtHR, 15 March 2011) .....	20
<i>Perincek v Switzerland</i> App no 27510/08 (ECtHR, 15 October 2015) .....	29
<i>Pfeifer v Austria</i> App no 12556/03 (ECtHR, 15 November 2007).....	1, 2
<i>Ricardo Canese v. Paraguay</i> (IACtHR, 31 August 2004).....	20

<i>Sanoma Uitgevers BV v The Netherlands</i> App no 38224/03 (ECtHR, 14 September 2010) .....	16
<i>Sunday Times v UK (No 1)</i> App no 6538/74 (ECtHR, 26 April 1979).....	14
<i>Süreç v Turkey (No 1)</i> App no 26682/95 (ECtHR, 8 July 1999) .....	30
<i>The Sunday Times v The United Kingdom</i> App no 6538/74 (ECtHR, 26 April 1979).....	15
<i>Vörður Ólafsson v Iceland</i> App no 20161/06 (ECtHR, 27 April 2010) .....	14
<i>White v Sweden</i> App No 42435/02 (ECtHR, 19 September 2006).....	2
<i>X and Y v the Netherlands</i> App no 8978/80 (ECtHR, 26 March 1985).....	2

### **CASES FROM THE HRC**

<i>Antonius Cornelius Van Hulst v The Netherlands</i> UN Doc CCPR/C/82/D/903/1999 (HRC, 1 November 2004) .....	8
<i>Ilmari Lämsmä v Finland</i> UN Doc CCPR/C/52/D/511/1992 (HRC, 14 October 1993).....	29
<i>Leonardus Johannes Maria de Groot v The Netherlands</i> UN Doc CCPR/C/54/D/578/1994 (HRC, 1995).....	15
<i>Pinkney v Canada</i> UN Doc CCPR/C/OP/1 (HRC, 29 October 1981).....	16
<i>Sohn v Republic of Korea</i> UN Doc CCPR/C/54/D/518/1992 (HRC, 19 July 1995) .....	24
<i>Toonen v Australia</i> UN Doc CCPR/C/50/D/488/1992 (HRC, 31 March 1994).....	8
<i>Velichkin v Belarus</i> UN Doc CCPR/C/85/D/1022/2001 (HRC, 20 October 2005).....	14, 24

### **CASES FROM THE IACTHR**

<i>Palamara-Iribarne v Chile</i> Merits, Reparations, and Costs (IACtHR, 22 November 2015) .....	21
--	----

### **CASES FROM ACOMMHPR**

<i>Interights v Mauritania</i> AHRLR 87 Comm no 242/2001 (ACommHPR, 4 June 2004).....	14
---	----



**CASES FROM OTHER SUPRANATIONAL COURTS AND INTERNATIONAL  
TRIBUNALS**

*Case C-131/12 Google Spain v AEPD and Mario Costeja Gonzalez* EU:C:2014:317 ..... 4, 5  
*Google France, Google Inc v Louis Vuitton Malletier SA* C–236/08 (CJEU, 23 March 2010) .. 25  
*Google Spain v. AEPD and Mario Costeja Gonzalez* (CJEU, 13 May 2014) ..... 4, 6  
*L’Oreal SA v eBay* C-324/09 (CJEU, 12 July 2011) ..... 25  
*NT1 and NT2 v. Google LLC* [2018] EWHC 799 (QB) ..... 4, 8, 9, 13

**CASES FROM OTHER JURISDICTIONS**

*A v B plc* [2003] QB 195..... 4  
*Belen Rodriguez*, Judgment R.522.XLIX (Argentina, 2014)..... 30  
*Blockowicz v Williams*, 630 F 3d 563 (7th Cir 2010) ..... 30  
*Broadrick v Oklahoma* 413 US 601 (1973) ..... 16  
*Campbell v. MGN Ltd*, [2004] 2 All E.R. 995 (UKHL. 2004) ..... 4, 9  
*Cantwell v Connecticut* (1940) 310 US 296 (SCOTUS) 310. .... 30  
*Capitol Records, LLC v Vimeo, LLC* 972 F. Supp. 2d 500 (SDNY 2013) 536 ..... 31  
*Constitutional Court*, Application No. 2014/3986, 2 April 2014; Regulation (EU) 2015/2120 .. 16  
*Crookes v Newton* 2011 SCC 47 (Canada)..... 30  
*Curtis Pub Co v Butts* 388 US 130 (1967)..... 32  
*Gertz v Robert Welch* 418 US 323, 344 (1974) ..... 32  
*GmbH v Constantin Film Verleih GmbH*, 24 March 2014, High Court of Justice [2010] EWHC  
608..... 16  
*Jurin v Google, Inc* 695 F Supp 2d 1117 (ED Cal 2010) ..... 30

<i>Knight First Amendment Inst. at Columbia Univ. v. Trump</i> , 302 F. Supp. 3d 541 (S.D.N.Y. May 23, 2018).....	22
<i>Magda v Ohio Election Commission</i> (Court of Appeals for Ohio Tenth Appellate District, 21 July 2016).....	29
<i>Metropolitan Schools v Designtecnica</i> (2009) EWHC 1765 (QB).....	30
<i>Mmubango v Google, Inc</i> 2013 W L 664231 (ED Pa 2013) .....	30
<i>New York Times Co v Sullivan</i> 376 U.S. 254 (1964).....	30, 32
<i>Perfect 10, Inc v CCBill LLC</i> 488 F 3d 1102 (9th Cir 2007).....	31
<i>R v Spencer</i> [2014] 2 SCR 212 .....	2
<i>St Amant v Thompson</i> 390 US 727 (1968).....	32
<i>Susan B Anthony List v Ohio Election Commission</i> 814 F.3d 473 (Court of Appeals for the Sixth Circuit of the United States, 24 February 2016).....	29
<i>Tamiz v the United Kingdom</i> [2013] EWCA Civ 68 .....	17
<i>Zeran v AOL</i> 129 F.3d 332 .....	25

## STATUTES

Communications Decency Act, s 230 (United States, 1996).....	29
Network Enforcement Act (Netzdurchsetzungsgesetz, NetzDG) Network Enforcement Act, June 30 2017. In effect on January 1, 2018 < <a href="https://germanlawarchive.iuscomp.org/?p=1245">https://germanlawarchive.iuscomp.org/?p=1245</a> > ...	31

## UN DOCUMENTS

UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, ‘Joint Declaration on Freedom of Expression and the Internet’ (2011) .....	31
--	----

UNHRC ‘CCPR General Comment No 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service’ (12 July 1996) UN Doc CCPR/C/21/Rev1/Add7.....	21
UNHRC, ‘General Comment 16’ (8 April 1988) UN Doc HRI/GEN/1/Rev.....	6, 9
UNHRC, ‘General Comment 24’, (4 November 1994) UN Doc CCPR/C/21/Rev.1/Add.6.....	3
UNHRC, ‘General Comment 31’ CCPR/C/21/Rev.1/Add.13.....	3
UNHRC, ‘General Comment 34’ (12 September 2011) UN Doc CCPR/C/GC/34 .....	30, 31, 33
UNHRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 11 May 2016, A/HRC/32/38.....	17, 22, 29

#### **ACADEMIC ARTICLES**

Bambauer, D. E. (2015). Against Jawboning. <i>Minnesota Law Review.</i> , 100, 51 .....	17
Carol A.F. Umhoefer, Right to be Forgotten: New Enforcement Trends and Perspectives, Privacy Matters – DLA Piper Blog (4 August 2015); Safeguarding Privacy in a Connected World: An European Data Protection Framework for the 21 <sup>st</sup> Century, COM (2012) 9 final (25 January 2012) .....	5
Cora Feingold, ‘The Doctrine of Margin of Appreciation and the European Convention on Human Rights’ (1977) 53 <i>Notre Dame Law Review</i> 90 .....	20
Daniel Halpern, Sebastián Valenzuela, James E. Katz, ‘We Face, I Tweet: How Different Social Media Influence Political Participation through Collective and Internal Efficacy’, (2017) <i>Journal of Computer-Mediated Communication</i> 320 .....	1
David J. Stute, ‘Privacy Almighty? The CJEU’s Judgment in Google Spain SL v. AEPD’ (2015) 36 <i>Michigan Journal of International Law</i> 649.....	1

David S. Ardia, ‘Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law’ [2010] Harvard Civil Rights-Civil Liberties Law Review 45 .....	6
Eugene C. Kim, Note, ‘YouTube: Testing the Safe Harbors of Digital Copyright Law’ (2007) 17 Southern California Interdisciplinary Law Journal 139.....	32
Eyal Benvenisti, ‘Margin of Appreciation, Consensus, and Universal Standards’ (1999) 31 International Law and Politics 843 .....	20
Flemming Splidsboel Hansen, ‘Russian Hybrid Warfare: A study of disinformation’ [2017] Danish Institute for International Studies 28 .....	6
I Ruthven, C Clews and WHM Dali, First impressions: how search engine results contextualise digital identities’ (2010) Proceedings of the third symposium on Information interaction in context, 314.....	7
Jennifer M. Urban & Laura Quilter, ‘Efficient Process or “Chilling Effects”? Takedown Notices Under Section 512 of the Digital Millennium Copyright Act’ (2006) Santa Clara Computer & High Technology Law Journal 621.....	33
John W. Dowdell, ‘An American Right to Be Forgotten’ (2017) 52 Tulsa Law Review 311 .....	5
Mark A. Lemley, ‘Rationalising Internet Safe Harbours’ (2007-2008) 6 Journal on Telecommunications & High.Technology Law 101.....	31
Michael J. Kelly and Satolam David, ‘ <i>The Right to be Forgotten</i> ’, 2017 University of Illinois Law Review (2017).....	5
Rasmus Kleis Nielsen and Sarah Anne Ganter, Dealing with digital intermediaries: A case study of the relations between publishers and platforms (Sage Journals, 2018).....	7
Rebecca MacKinnon, Fostering Freedom Online: The Role of Internet Intermediaries (UNESCO Publishing 2015) 4 .....	29

Simon Rodell, ‘False Statements v Free Debate: Is the First amendment a License to Lie in Elections?’ (2008) 60 Florida Law Review 4 953.....	30
Tansy Woan, ‘Searching for an Answer: Can Google Legally Manipulate Search Results?’ (2013) 16 University of Pennsylvania Journal of Business Law 1 .....	6
Tomas Gomez-Arostegui: Defining Private Life under the European Convention of Human Rights by Referring to Reasonable Expectations (California Western International Law Journal, May 2005) .....	2
Trevor Allan, ‘Human Rights and Judicial Review; A Critique of “Due Defence”’ (2006) 65(3) Cambridge Law Journal 671 .....	20
Wendy Seltzer, ‘Free Speech Unmoored in Copyright’s Safe Harbor: Chilling Effects of the DMCA on the First Amendment’ (2010) 24 Harv.J.L.& Tech 171-232 .....	29
<b>BOOKS</b>	
Andrew Legg, The Margin of Appreciation in International Human Rights Law (OUP 2012) 1 19	
Bernadette Rainey and others, Jacobs, White & Ovey, The European Convention on Human Rights, (7th ed, OUP 2014) 438.....	29
Elizabeth van Couvering, ‘The History of the Internet Search Engine: Navigational Media and the Traffic Commodity, in Web Search: Multidisciplinary Perspectives’ 177, 177-206 (Amanda Spink & Michael Zimmer eds., 2008).....	1
Nadine Strossen, ‘Hate: Why We Should Resist It With Free Speech, Not Censorship’ (OUP, 2018) .....	23
Nayef Al-Rodhan, et al., ‘The Age of Perplexity: Rethinking the World We Knew’ (Penguin Random House Group, 2018). .....	22

Sarah Joseph and Melissa Castan, <i>The International Covenant on Civil and Political Rights: Cases, Materials and Commentary</i> (OUP 2013) 625 .....	29
Theresa M. Payton & Theodore Claypoole, <i>Privacy in the Age of Big Data: Recognizing Threats, Defending Your Rights, and Protecting Your Family</i> 1 (Rowman & Littlefield, 2015).....	4

## **MATERIALS FROM THE INTERNET**

Abdi Latif Dahir, ‘More African governments are trying to control what’s being said on social media and blogs’ ( <i>Quartz Africa</i> , 17 July 2018) < <a href="https://qz.com/africa/1329145/african-governments-silence-social-media-bloggers-on-twitter-whatsapp-facebook/">https://qz.com/africa/1329145/african-governments-silence-social-media-bloggers-on-twitter-whatsapp-facebook/</a> > accessed 28 January 2019 .....	22
Article 19, ‘Africa: Increasing internet Shutdowns and media bans limiting access to information’ ( <i>Article 19</i> , 16 January 2019) < <a href="https://www.article19.org/resources/africa-increasing-internet-shutdowns-and-media-bans-limiting-access-to-information/">https://www.article19.org/resources/africa-increasing-internet-shutdowns-and-media-bans-limiting-access-to-information/</a> > accessed 28 January 2019 .....	22
Article 19, ‘Eastern Africa: New tax and licensing rules for social media threaten freedom of expression’ ( <i>Article 19</i> , 2018) <a href="https://www.article19.org/resources/eastern-africa-new-tax-and-licensing-rules-for-social-media-threaten-freedom-of-expression/">https://www.article19.org/resources/eastern-africa-new-tax-and-licensing-rules-for-social-media-threaten-freedom-of-expression/</a> .....	22
Article 19, ‘Internet intermediaries: Dilemma of Liability’ ( <i>Article 19</i> , 2 October 2016) < <a href="http://www.article19.org/data/files/Intermediaries_ENGLISH.pdf">www.article19.org/data/files/Intermediaries_ENGLISH.pdf</a> > accessed 28 January 2019 ....	25
Article 19, Germany: Act to Improve Enforcement of the Law on Social Networks undermines free expression < <a href="https://www.article19.org/wp-content/uploads/2017/09/170901-Legal-Analysis-German-NetzDG-Act.pdf">https://www.article19.org/wp-content/uploads/2017/09/170901-Legal-Analysis-German-NetzDG-Act.pdf</a> > accessed 28 January 2019.....	32

Article 19, *The ‘Right to Be Forgotten’: Remembering Freedom of Expression* (2016)  
 <[https://www.article19.org/data/files/The\\_right\\_to\\_be\\_forgotten\\_A5\\_EHH\\_HYPERLINKS.pdf](https://www.article19.org/data/files/The_right_to_be_forgotten_A5_EHH_HYPERLINKS.pdf)> ..... 5

Daniel Boffey, *Dutch surgeon wins landmark ‘right to be forgotten’ case* (Brussels, 21 January 2019) *The Guardian* <<https://www.theguardian.com/technology/2019/jan/21/dutch-surgeon-wins-landmark-right-to-be-forgotten-case-google>> ..... 4

David Card, Christian Dustmann and Ian Preston, *Understanding attitudes to immigration: The migration and minority module of the first European Social Survey* (Centre for Research and Analysis of Migration Discussion Paper Series, 2005) <<http://davidcard.berkeley.edu/papers/euroimmig.pdf>> ..... 20

Duncan J. Watts and David M. Rothschild, ‘Don’t blame the election on fake news. Blame it on the media’ *Columbia Journalism Review* (5 December 2017)  
<https://www.cjr.org/analysis/fake-news-media-election-trump.php> accessed 28 January 2019  
 ..... 12

Emily Bell and Taylor Owen, ‘The Platform Press: How Silicon Valley reengineered journalism’ (2017) Report from the Tow Center for Digital Journalism ..... 12

Gargi Chakrabarti and Saahil Dama, ‘Intermediary Liability and Hate Speech’ (Jodhpur National Law University, 2015) <<https://www.law.uw.edu/media/1395/india-intermediary-liability-of-isps-hate-speech.pdf>> accessed 28 January 2019 ..... 29

Google Transparency Report,  
 <<https://www.google.com/transparencyreport/removals/europeprivacy/>> ..... 13

Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence (31 August 2018) < <a href="https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf">https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf</a> > .....	1
Jason Koebler and Joseph Cox, ‘The Impossible Job: Inside Facebook’s Struggle to Moderate Two Billion People’ <i>Motherboard</i> , 24 August 2018  <a href="https://motherboard.vice.com/en_us/article/xwk9zd/how-facebook-content-moderation-works">https://motherboard.vice.com/en_us/article/xwk9zd/how-facebook-content-moderation-works</a> accessed 28 January 2019 .....	26
Matthew Ingram ‘Fake News is part of a bigger problem: automated propaganda’ <i>Columbia Journalism Review</i> , 22 February 2018 < <a href="https://www.cjr.org/analysis/algorithm-russia-facebook.php">https://www.cjr.org/analysis/algorithm-russia-facebook.php</a> > accessed 28 January 2019 .....	12
Microsoft Content Removal Requests Report,  < <a href="https://www.microsoft.com/about/csr/transparencyhub/crrr/">https://www.microsoft.com/about/csr/transparencyhub/crrr/</a> > .....	13
Nushin Rashidian, Pete Brown, and Elizabeth Hansen, ‘Friend and Foe: The Platform Press at the Heart of Journalism’ (2018) < <a href="https://www.cjr.org/tow_center_reports/the-platform-press-at-the-heart-of-journalism.php/">https://www.cjr.org/tow_center_reports/the-platform-press-at-the-heart-of-journalism.php/</a> > .....	12
Renee Diresta, ‘Free Speech in the Age of Algorithmic Megaphones’ <i>Wired</i> , 10 December 2018 < <a href="https://www.wired.com/story/facebook-domestic-disinformation-algorithmic-megaphones/">https://www.wired.com/story/facebook-domestic-disinformation-algorithmic-megaphones/</a> > accessed 28 January 2019. ....	12
The Economic and Social Role of Internet Intermediaries, OECD April 2010, p. 9,  < <a href="http://www.oecd.org/internet/ieconomy/44949023.pdf">www.oecd.org/internet/ieconomy/44949023.pdf</a> > .....	25
Yael Grauer, Facebook is not equipped to stop the spread of authoritarianism, Tech Crunch, (24 December 2018) < <a href="https://techcrunch.com/2018/12/24/facebook-government-silence-dissent-authoritarianism/">https://techcrunch.com/2018/12/24/facebook-government-silence-dissent-authoritarianism/</a> > .....	30



## NEWS PUBLICATIONS

- Amar Toor, 'Google removes Gab app for violating hate speech policy' *The Verge*, 18 August 2017 <<https://www.theverge.com/2017/8/18/16166240/gab-google-play-removed-hate-speech>> accessed 28 January 2019. .... 22
- Amnesty International UK, 'Algeria: blogger faces death penalty for Facebook post and YouTube video' (23 May 2018) <<https://www.amnesty.org.uk/press-releases/algeria-blogger-faces-death-penalty-facebook-post-and-youtube-video>> accessed 28 January 2019 ..... 22
- Catherine O'Donnell, 'New study quantifies use of social media in Arab Spring. University of Washington News'. 2011. <<http://www.washington.edu/news/2011/09/12/new-study-quantifies-use-of-social-media-in-arab-spring/>> accessed 28 January 2019 ..... 29
- Daniel Heng, 'Meet the fake news trolls who influenced US and Indonesian polls for money' *Channel News Asia* (5 January 2019) <<https://www.channelnewsasia.com/news/cnainsider/trolls-fake-news-industry-elections-veles-malaysia-indonesia-us-11087430>> accessed 28 January 2019. .... 12
- Elizabeth Landers, White House: Trump's Tweets are 'Official Statements', CNN (June 16, 2017, 4:37 PM), <http://www.cnn.com/2017/06/06/politics/trump-tweets-officialstatements/index.html>. .... 22
- Emilio Ferrara, 'Disinformation and social bot operations in the run up to the 2017 French presidential election' (First Monday, 7 August 2017) <<https://firstmonday.org/article/view/8005/6516>> accessed 28 January 2019..... 12
- Ercan Gurses, 'Turkey Fines Twitter for Failure to Remove "Terrorist Propaganda": Official' Reuters (11 December 2015) <<http://www.reuters.com/article/us-turkey-twitter-fine-idUSKBN0TU0NK20151211>> accessed 28 January 2019 ..... 33

Farhad Manjoo, ‘ <i>Right to be Forgotten</i> ’ <i>Online Could Spread</i> , New York Times (5 August 2015) < <a href="https://www.nytimes.com/2015/08/06/technology/personaltech/right-to-be-forgotten-online-is-poised-to-spread.html">https://www.nytimes.com/2015/08/06/technology/personaltech/right-to-be-forgotten-online-is-poised-to-spread.html</a> > .....	5
Heather A. Conley, ‘Successfully Countering Russian Electoral Interference’ <i>CSIS</i> , 21 June 2018 < <a href="https://www.csis.org/analysis/successfully-countering-russian-electoral-interference">https://www.csis.org/analysis/successfully-countering-russian-electoral-interference</a> > accessed 28 January 2019 .....	12
Jackson Ryan, ‘Facebook’s leaked rulebooks highlight struggle with content moderation’ (CNet, 28 December 2018) < <a href="https://www.cnet.com/news/facebooks-leaked-rulebooks-highlight-struggles-with-content-moderation/">https://www.cnet.com/news/facebooks-leaked-rulebooks-highlight-struggles-with-content-moderation/</a> > accessed 28 January 2019 .....	28
Josh Constine, ‘Facebook Adds Keyword Moderation and Profanity Blocklists to Pages’ <i>Adweek</i> , 10 February 2011 < <a href="https://www.adweek.com/digital/keyword-moderation-profanity-blocklist/">https://www.adweek.com/digital/keyword-moderation-profanity-blocklist/</a> > accessed 28 January 2019 .....	28
Lulu Chang, ‘Facebook removed 583 million fake accounts in the first quarter of 2018’ <i>Digital Trends</i> , 15 May 2018 < <a href="https://www.digitaltrends.com/social-media/facebook-fake-accounts/">https://www.digitaltrends.com/social-media/facebook-fake-accounts/</a> > accessed 28 January 2019 .....	19
Madhumita Murgia and Helen Warrell, ‘Why tech companies struggle with hate speech’ <i>Financial Times</i> , 8 April 2017 < <a href="https://www.ft.com/content/2aaa13b2-1ba2-11e7-bcac-6d03d067f81f">https://www.ft.com/content/2aaa13b2-1ba2-11e7-bcac-6d03d067f81f</a> > accessed 28 January 2019 .....	28
Man loses ‘right to be forgotten’ Google court bid’ BBC News (London, 30 July 2015) < <a href="https://www.bbc.com/news/uk-england-nottinghamshire-33706475">https://www.bbc.com/news/uk-england-nottinghamshire-33706475</a> > .....	5
Narjas Zata, ‘Social Media Experiment reveals how easy it is to create fake instagram accounts and make money from them’ <i>Independent</i> , 11 August 2017 < <a href="https://www.independent.co.uk/life-style/gadgets-and-tech/social-media-experiment-fake-">https://www.independent.co.uk/life-style/gadgets-and-tech/social-media-experiment-fake-</a>	

instagram-accounts-make-money-influencer-star-blogger-mediakix-a7887836.html> accessed 28 January 2019 .....	19
Olivia Solon and Sabrina Siddiqui, ‘Russia-backed Facebook posts “reached 126m Americans” during US election’ <i>The Guardian</i> (31 October 2017) < <a href="https://www.theguardian.com/technology/2017/oct/30/facebook-russia-fake-accounts-126-million">https://www.theguardian.com/technology/2017/oct/30/facebook-russia-fake-accounts-126- million</a> > accessed 28 January 2019 .....	12
Olivia Solon, ‘Underpaid and overburdened: the life of a Facebook moderator’ (The Guardian, April 10, 2018) <a href="https://www.theguardian.com/news/2017/may/25/facebook-moderator-underpaid-overburdened-extreme-content">https://www.theguardian.com/news/2017/may/25/facebook-moderator- underpaid-overburdened-extreme-content</a> > accessed 28 January 2019 .....	28
Tabeta Shunsuke, China fines social media giants for banned content <i>Nikkei Asian Review</i> (26 September 2017) < <a href="https://asia.nikkei.com/Politics/China-fines-social-media-giants-for-banned-content">https://asia.nikkei.com/Politics/China-fines-social-media-giants-for- banned-content</a> > .....	33

## MISCELLANEOUS

Article 29 Data Protection Working Party, ‘Guidelines on The Implementation of The Court of Justice of The European Union Judgment On ‘Google Spain And Inc. v Agencia Espaajola De Proteccion De Datos And Mario Costeja Gonzalez’ C-131/12 (2014) < <a href="http://www.dataprotection.ro/servlet/ViewDocument?id=1080">http://www. dataprotection.ro/servlet/ViewDocument?id=1080</a> > .....	8, 9, 11
Claire Wardle, Hossein Derakhshan, <i>Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making</i> (Council of Europe 2017).....	9
Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of	

Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information (3 March 2017) FOM.GAL/3/17.....	25
European Commission, <i>Report of the Independent High Level Group on fake news and online disinformation</i> (Publication Office of the European Union 2018) .....	10
IACHR, OSRFE, Freedom of Expression Standards for Free & Inclusive Broadcasting, (2010)	16
Manila Principles on Intermediary Liability 2015 .....	25
Network Enforcement Act Regulatory Fining Guidelines Guidelines on setting regulatory fines within the scope of the Network Enforcement Act (Netzwerkdurchsetzungsgesetz - NetzDG) of 22 March 2018 .....	33, 34
Oxford Dictionary < <a href="https://en.oxforddictionaries.com/definition/engage">https://en.oxforddictionaries.com/definition/engage</a> > accessed 28 January 2019.....	24
Toby Mendel, ‘Restricting Freedom of Expression: Standards and Principles Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression’ Centre for Law and Democracy (March 2010) < <a href="http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf">www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf</a> > accessed 29 January 2019 .....	19, 21
William Dutton and Grant Blank, ‘Next Generation Users: The Internet in Britain’ (2011) Oxford Internet Survey 2011 Report <a href="https://www.oii.ox.ac.uk/archive/downloads/research/oxis/oxis2011_report.pdf">https://www.oii.ox.ac.uk/archive/downloads/research/oxis/oxis2011_report.pdf</a> accessed 28 January 2019 .....	7

## STATEMENT OF RELEVANT FACTS

---

### **Background of Magentonia**

- A. Magentonia is a democratic society with a population of 1 million. Between January and December 2010, it saw a significant influx of around 65,000 refugees from the neighbouring country, Cyanisia.
- B. In February 2018, the market crash in natural gas led to widespread fears that Magentonia would enter a period of economic recession. In the lead up to the parliamentary election in June 2018, the opposition party Magentonian Popular Front ('MPF') promised to take steps to prevent the further influx of immigrants and secure employment for 'native' Magentonians.

### **The events leading up to Ras' request to remove search results relating to *The Cyanisian Times* 2001 story**

- C. Unger Ras was a former professor of the State University of Cyanisia. In 1995, Ras was accused of misconduct but fully exonerated following an investigation by the University. In 2000, Ras established the Democratic Party of Cyanisia ('DPC'), the main opposition party. In February 2001, it was reported in the state newspaper *The Cyanisian Times* that a warrant had been issued against Ras for alleged misappropriation of university funds during his previous tenure as a professor. The article quoted the Director of State Police as having issued instructions for Ras' immediate arrest.
- D. Systematic persecution of the members of the DPC, which involves violence and intimidation of party leaders and supporters, and false charges mounted against them, began in 2001 and continues till today.
- E. Ras moved to Magentonia in 2001 and became a naturalized citizen in 2011, ten years after he fled Cyanisia. Ras joined the United Magentonian Party ('UMP') and actively campaigned to

raise awareness on the human rights abuses in Cyanisia. In January 2018, Ras announced that he was running for office and would work to ensure that Cyanisian refugees receive a faster track to Magentonian citizenship if he becomes a Member of Parliament.

- F. On 1 April 2018, a privately owned news website in Magentonia named *the Magentonian Mail* published a so-called ‘expose’ on Ras (‘exposé on Ras’). The article claimed that Ras fled Cyanisia in 2001 following a ‘corruption scandal’ in his university, and that an arrest warrant had been issued against him. The article linked the online version of the story published in 2001 in *The Cyanisian Times* which appeared to corroborate the article’s claims. Ras issued a statement clarifying that the contents of the story from 2001 were false, which was carried by the *Magentonian Mail* on 3 April 2018. After two weeks of deliberating Ras’ request to remove the article, the expose on Ras was finally removed.
- G. However, by 15 April 2018, the expose on Ras had begun to trend. Public posts that linked the article started appearing high on the search results page for search terms such as ‘Ras’ and ‘Magentonia’. On 25 April 2018, an anonymous user named *TakeBackMag200* posted a web link to the online version of the original 2001 story appearing in *The Cyanisian Times* with the caption ‘you can’t erase history’ (‘*TakeBackMag200*’s post’). The user paid the platform to promote the story and it began to appear high on the list of search results relating to ‘Ras’ or ‘Unger Ras’.
- H. On 29 April 2018, Ras wrote to the head office of UConnect requesting that *TakeBackMag200*’s post be taken down. UConnect responded to Ras on 30 April 2018 stating that it would remove *TakeBackMag200*’s post but not remove search results depicting the 2001 story unless ordered to do so by the Commission.

- I. On 10 May 2018, the Commission issued its decision rejecting Ras’ request for an injunction and dismissing the petition as the information appearing in the search results was relevant to the public interest, and Ras was a public figure and a candidate at an upcoming election. On 1 July 2018, the High Court of Magentonia dismissed Ras’ appeal as UConnect was entitled to retain the information in the ‘public interest’. As a result, Ras’ reputation and privacy has been severely interfered with, for the public to receive irrelevant, inaccurate and incomplete information.

**The events leading to Magentonia’s prosecution and conviction of UConnect**

- J. In early May 2018, an organization calling itself Take Back Magentonia (TBM) began posting on UConnect regularly characterizing Ras as a ‘thief’ and a ‘fraudster’, referring to Cyanisian refugees as bottom feeders – a derogatory term often associated with Cyanisian refugees.
- K. One of the posts appearing on UConnect’s platform on 26 May 2018 (‘the 26 May 2018 post’) stated that the refugees were ‘kicked out of Cyanisia for plotting terrorist attacks and protecting thieves and fraudsters’. It stated that the refugees were championed by Ras and that they wanted to ‘form their own nation’, kicking the Magentonians out. Another post by TBM on 30 May 2018 claimed that the ‘University of Magentonia had revealed that Cyanisian refugees would outnumber Magentonians by 2025’ (‘the 30 May 2018 post’).
- L. The 26 May 2018 post was reported by UConnect users, reviewed by UConnect’s team and removed on 30 May 2018. No complaints were made about the 30 May 2018 post and it was not removed.
- M. Between 10-31 May 2018, several thousand users subscribed to UConnect, and began to share and view content posted by TBM and other anti-UMP users. The posts generally claimed that re-electing UMP would result in further influx of Cyanisian refugees.

- N. Owing to the proliferation of anti-refugee posts on UConnect, the Magentonian government filed action before the High Court of Magentonia seeking an injunction against UConnect under the PIDPA. The next day, the High Court issued an interim injunction ordering UConnect to suspend all operations in Magentonia until the conclusion of the trial on 10 July 2018.
- O. UMP narrowly won the parliamentary election of 4 June 2018, securing 50% of the seats in parliament. Ras failed to secure a seat in parliament. The final report of an independent civil society organization, Magentonia Watch, argued that the significant decline in the UMP's seats and Ras' unexpected electoral failure might be attributed to the successful campaign conducted by TBM via UConnect.
- P. The High Court of Magentonia prosecuted and convicted UConnect under Section 3 of the PIDPA for the post of 26 May 2018 for the failure to prevent the advocacy of national and/or racial hatred that constituted incitement to hostility. UConnect was also convicted under Section 5 of the PIDPA for the post of 30 May 2018 for the reckless dissemination of false propaganda. UConnect was ordered to pay a fine of USD 100,000.



## **STATEMENT OF JURISDICTION**

---

The Applicants, Ras and UConnect have approached the Universal Court of Human Rights ('this Court'), and hereby humbly submit to this Court their disputes concerning Article 17 and Article 19 of the ICCPR.

All parties have agreed to accept the judgment of this Court as final and binding and execute it in good faith in its entirety. On the basis of the foregoing, this Court is requested to adjudge the dispute in accordance with the rules and principle of international law, including any applicable declarations and treaties.

## **QUESTIONS PRESENTED**

---

1. Whether Magentonia's decision not to grant Ras any rectification, erasure or blocking of search results depicting The Cyanisian Times story of 2001 violated Art 17 of the ICCPR.
2. Whether Magentonia's decision of 2 June 2018 to direct UConnect to suspend all operations until the conclusion of the trial violated Article 19 of the ICCPR.
3. Whether Magentonia's prosecution and conviction of UConnect under Sections 3 and 5 of the PIDPA violated Article 19 of the ICCPR.

## **SUMMARY OF ARGUMENTS**

---

### **MAGENTONIA’S FAILURE TO RECTIFY, ERASE OR BLOCK THE SEARCH RESULTS DEPICTING THE CYANISIAN TIMES STORY OF 2001 VIOLATED RAS’ RIGHTS UNDER ARTICLE 17 OF THE ICCPR**

- A. Magentonia’s decision not to rectify, erase or block the search results depicting the Cyanisian Times story of 2001, violated Ras’ right to privacy and reputation. As State Party to the ICCPR, Magentonia is obligated to abstain from, and to protect by law against any interferences with Ras’ right to privacy and reputation. Magentonia’s declaration, which purports to exclude the positive obligation by way of omission from its Constitution, should be severed as being inconsistent with the object and purpose of the ICCPR. Accordingly, its declaration does not exclude it from its positive obligation to protect by law the right to privacy and reputation against interference by private actors.
- B. Alternatively, even assuming that Magentonia’s declaration was effective, Magentonia would have breached its negative obligation to refrain from interfering with Ras’ rights to privacy and reputation since it was directly involved in the decision-making process of deciding not to rectify, erase or block the search results. Its decision not to rectify, erase or block the search results exacerbated the effects of the interference caused by the search results as it allowed more users to view the search results.
- C. In any case, on either interpretation of its obligations, Magentonia’s failure to compel UConnect to rectify, erase or block the search results interfered with Ras’ right to privacy. The right to privacy includes the ‘right to be forgotten’, which is applicable here since the the search results concern information that is currently irrelevant and outdated, and Ras has the right to have such search results de-listed. Further, the search results were also an interference as they

onstituted an unlawful attack on Ras' reputation. They negatively associated Ras' reputation with the falsehood in the 2001 story that a warrant had been issued for his immediate arrest in 2001. However, the 2001 story was false as Ras had been exonerated of the allegation that he was guilty of financial misappropriation in 1995. The search results were also clearly unlawful because free speech protection for intentionally defamatory statements is clearly not authorized by law.

- D. Magentonia violated its positive obligation under Article 17(2) of the ICCPR as its decision failed to properly balance Ras' rights with the public interest in having freedom of access to the search results. Magentonia's decision was not necessary to protect the public interest in accessing the search results. By reference to the criteria set out by the Article 29 Working Party, the public interest in the search results is minimal because it is irrelevant, untrue and does not relate to a *live* situation.
- E. Further, ordering rectification, erasure, or blockage of the search results would have been proportionate for the aim of protecting Ras' right of privacy and reputation. Given the potential and indeed, the effect of the search results in spreading divisive falsehoods, it was necessary to rectify, erase or block the search results. This is especially since Ras' efforts at taking down the original post and issuing clarificatory statements were of little effect. Erasure, or de-listing the search results would be the least restrictive measure available because the search results would still be accessible but simply not coupled with Ras' name as a search term. Accordingly, the State's failure to adopt even the least restrictive measure out of rectification, erasure or blocking failed to strike a proper balance between the competing rights of Ras' privacy and reputation, and the public interest in access to the search results.

**MAGENTONIA VIOLATED BOTH UCONNECT AND ITS USERS' FREEDOM OF EXPRESSION BY SUSPENDING ALL OF UCONNECT'S OPERATIONS TILL THE CONCLUSION OF THE TRIAL**

- F. The suspension was not provided by law as it was not made pursuant to a legal basis found under Magentonian law. Further, the grounds of 'irreversible harm' on which the suspension was invoked was vague and confers unfettered discretion to authorities.
- G. Further, the suspension was not necessary in a democratic society as there was no pressing need to suspend UConnect's operations. *First*, the posts concerning refugees were not likely to mislead the reasonable viewer. The standard of social media literacy in Magentonia is high as majority of its population actively utilizes UConnect, and its users are able to identify posts which are potentially inflammatory without themselves being inflamed. *Second*, it was unlikely that the posts would have incited discrimination, violence or hostility in relation to the refugees, since it was also public knowledge that there had been an influx of Cyanisian refugees in 2010. Further, the fact that the posts were shared and liked is not conclusive of increased hostility, discrimination or violence, especially given the ease with which social media accounts can be created today.
- H. Lastly, the suspension was disproportionate for two reasons. *First*, the posts concerning the refugees were a legitimate expression relating to political matters in the public interest. Such political speech should be accorded a greater latitude in the broad debate in democratic societies, even if it shocks, offends or disturbs. Discourse which offers genuine critique should never be restricted except in exceptional circumstances. *Second*, it would lead to undue chilling effects on speech. The suspension amounted to overregulation because it was not content-specific. It failed to consider that the posts concerning refugees were made by only a select

group of users specifically on the theme of refugees. The suspension would also inhibit political debate amongst users in Magentonia, especially as social media increasingly resembles a public forum which politicians utilize in their official capacity. Social media platforms are meant to be democratic spaces unhindered by state censorship, with ultimate victors to be determined by reason and deliberation, not censorship. Here, the suspension penalized UConnect, a crucial facilitator of free speech, which would have severe impacts on UConnect's viability as a platform for the marketplace of ideas.

### **MAGENTONIA VIOLATED UCONNECT'S FREEDOM OF EXPRESSION BY PROSECUTING AND CONVICTING UCONNECT UNDER THE PIDPA**

- I. Magentonia's prosecution and conviction of UConnect was not a permissible limitation of UConnect's freedom of expression as it was not provided by law. *First*, it was not reasonably foreseeable that Sections 3 and 5 of the PIDPA contemplates liability for intermediaries such as UConnect. Sections 3 and 5 contemplate liability for entities that actually 'engage' in advocacy or dissemination respectively. Clearly, intermediaries like UConnect which have no control over the content of their users posts, or editorial control, would not be able to reasonably foresee that they would be liable for the content of their users posts.
- J. Further, it was also not reasonably foreseeable that UConnect would be liable under Section 5 as there was no evidence that UConnect knew or was reckless as to the 30 May post. No user complaints had been made about the post. Having instituted a system of reviewing posts which are flagged out as potentially in breach of its Community Standards, it was not reasonably foreseeable that UConnect would be additionally expected to monitor every single post.
- K. *Second*, Section 5 of the PIDPA which prohibits false propaganda that would mislead or coerce members of the public 'to do or refrain from doing anything' is overly vague and confers

unfettered discretion on State authorities since intermediaries would be uncertain as to what sort of content is prohibited.

L. Further, Magentonia's aim of protecting public order did not justify the imposition of criminal liability on UConnect. There was no pressing social need to prosecute and convict UConnect as there was no evidence that the posts were likely to incite any action, or mislead users of UConnect in refraining from doing anything pursuant to Section 5 of the PIDPA. It was unlikely that viewers of the two posts would sympathise with the content of the posts, let alone be moved to act against the refugees because of the two isolated posts.

M. Lastly, the prosecution and conviction of UConnect was also disproportionate for four reasons. *First*, the obligation to determine the legality of the two posts was unduly onerous and would overly chill speech. *Second*, the posts involved critique on political matters that an intermediary should only remove if proven to be conclusively false. *Third*, in any event UConnect removed the 26 May post expeditiously upon receiving notice and should not be penalized. *Fourth*, the fine of USD 100,000 was disproportionate as less severe fines have been meted out where removal took longer than four days, and where intermediaries were aware of the illegal content on their platform.

## ARGUMENTS

---

### I. MAGENTONIA'S FAILURE TO RECTIFY, ERASE OR BLOCK THE SEARCH RESULTS ("MAGENTONIA'S DECISION") DEPICTING THE CYANISIAN TIMES STORY OF 2001 ("THE 2001 STORY") VIOLATED ARTICLE 17 OF THE ICCPR.

1. The Internet and social media technology have undermined our control over what information about ourselves others have access to.<sup>1</sup> Algorithms now determine on our behalf the most significant things that should be shared with others.<sup>2</sup> When benign, they are harnessed for impressive opportunities for free speech.<sup>3</sup> At their worst, however, they can be weaponized to spread disinformation<sup>4</sup> and irretrievably damage credibility. In treading this fine line, the State is obligated to find a *fair* balance between privacy and freedom of expression,<sup>5</sup> such that neither right automatically trumps the other.<sup>6</sup>

---

<sup>1</sup> David J. Stute, 'Privacy Almighty? The CJEU's Judgment in Google Spain SL v. AEPD' (2015) 36 Michigan Journal of International Law 649, 650; See generally Elizabeth van Couvering, 'The History of the Internet Search Engine: Navigational Media and the Traffic Commodity' in Amanda Spink and Michael Zimmer (eds) *Web Search: Multidisciplinary Perspectives* (Springer 2008).

<sup>2</sup> David S. Ardia, 'Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law' [2010] Harvard Civil Rights-Civil Liberties Law Review 45, 262.

<sup>3</sup> Daniel Halpern, Sebastián Valenzuela, James E. Katz, 'We Face, I Tweet: How Different Social Media Influence Political Participation through Collective and Internal Efficacy', (2017) Journal of Computer-Mediated Communication 320.

<sup>4</sup> European Commission, *Report of the Independent High Level Group on fake news and online disinformation* (Publication Office of the European Union 2018).

<sup>5</sup> European Court of Human Rights, 'Guide on Article 8 of the European Convention on Human Rights: Right to respect for private and family life, home and correspondence' (Council of Europe/European Court of Human Rights, 31 August 2018) <[https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf)> accessed 28 January 2019.

<sup>6</sup> *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) para 87; *Pfeifer v Austria* App no 12556/03 (ECtHR, 15 November 2007) at para 5; *Lozovyye v Russia* App no 4587/09 (ECtHR, 24 April 2018) at para 36; *Evans v the United Kingdom* App no 6339/05 (ECtHR, 10 April 2007) at para 75.



**A. Under Article 17 of the ICCPR, Magentonia has both a positive and negative obligation to protect Ras from impermissible interferences to his privacy and reputation.**

2. As a party to the ICCPR,<sup>7</sup> Magentonia is not just to abstain from interfering with the rights of those within its jurisdiction ('the negative obligation').<sup>8</sup> It is also bound by Article 17(2) of the ICCPR to enact laws to prevent private actors from interfering with such rights ('the positive obligation').<sup>9</sup>
3. Magentonia's declaration at the time of its ratification of the ICCPR<sup>10</sup> in fact purports to exclude the positive obligation, which is omitted in Article 7 of the Magentonian Constitution. This Court should sever the declaration.<sup>11</sup> Pursuant to the VCLT,<sup>12</sup> reservations shall only be valid when consistent with the object and purpose of the treaty in question.<sup>13</sup> Removing the State's obligation to protect individuals against interferences by private actors goes against the

---

<sup>7</sup> Fact Pattern, para 2.4.

<sup>8</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 17(1); *Von Hannover v Germany (No 2)* App nos 40660/08,60641/08 (ECtHR, 7 February 2012); *R v Spencer* [2014] 2 SCR 212 at para 57; *White v Sweden* App No 42435/02 (ECtHR, 19 September 2006) at para 20.

<sup>9</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 17, Article 17(2); *Pfeifer v Austria* App no 12556/03 (ECtHR, 15 November 2007) para 36; *Bărbulescu v Romania* App no 61496/08 (ECtHR, 5 September 2017) para 108; Tomas Gomez-Arostegui, 'Defining Private Life under the European Convention of Human Rights by Referring to Reasonable Expectations' (California Western International Law Journal, May 2005) p. 156-7; UNHRC, 'General Comment 16' (8 April 1988) UN Doc HRI/GEN/1/Rev para 1; *X and Y v the Netherlands* App no 8978/80 (ECtHR, 26 March 1985) para 23; *Von Hannover v Germany (No 2)* App nos 40660/08,60641/08 (ECtHR, 7 February 2012) para 98; *Hämäläinen v. Finland* App no 37359/09 (ECtHR, 16 July 2014) para 62.

<sup>10</sup> Fact Pattern, paras 2.4 & 5.4.

<sup>11</sup> UNHRC, 'General Comment 24', (4 November 1994) UN Doc CCPR/C/21/Rev.1/Add.6 para 18.

<sup>12</sup> Vienna Convention on the Law of Treaties UN Doc. A/Conf.39/27; 1155 UNTS 331; 8 ILM 679 (1969); 63 AJIL 875 (1969).

<sup>13</sup> UNHRC, 'General Comment 24', (4 November 1994) UN Doc CCPR/C/21/Rev.1/Add.6 paras 12, 17 & 18.

very object and purpose of the ICCPR,<sup>14</sup> which is to create ‘legally binding standards for human rights’.<sup>15</sup> Accordingly, Magentonia remains subject to the positive obligation under Article 17(2).

4. Alternatively, even assuming *arguendo* that Magentonia’s declaration was effective in excluding its positive obligation under Article 17 of the ICCPR, Magentonia would have breached its negative obligation to refrain from interfering with Ras’ right to privacy and reputation. Magentonia was ‘directly involved in the decision-making process’<sup>16</sup> of enforcing UConnect’s decision<sup>17</sup> to interfere with Ras’ privacy and reputation under Section 22 of the PIDPA. Its Decision exacerbated the effects of the interference by allowing more users to view the search results.
5. On either interpretation of its obligations, Magentonia’s Decision violated Article 17 as: (i) the search results interfered with Ras’ right to privacy and were an unlawful attack on his reputation; and (ii) Magentonia’s Decision failed to strike a fair balance between Ras’ right to privacy and reputation and the public’s interest in having access to the search results.<sup>18</sup>

---

<sup>14</sup> UNHRC, ‘General Comment 24’, (4 November 1994) UN Doc CCPR/C/21/Rev.1/Add.6 paras 12, 17 & 18; UNHRC, ‘General Comment 31’ CCPR/C/21/Rev.1/Add.13, para 8.

<sup>15</sup> UNHRC, ‘General Comment 24’, (4 November 1994) UN Doc CCPR/C/21/Rev.1/Add.6; UNHRC, ‘General Comment 31’, (29 March 2004) UN Doc CCPR/C/21/Rev.1/Add.13 para 8.

<sup>16</sup> *Fernández Martínez v. Spain* App no 56030/07 (ECtHR, 12 June 2014) para 115.

<sup>17</sup> Fact Pattern, para 4.7.

<sup>18</sup> Fact Pattern, para 4.7.

**B. Magentonia’s Decision interfered with Ras’ right to privacy and was an unlawful attack on his reputation.**

1. The search results interfered with Ras’ privacy.

6. All persons, even politicians,<sup>19</sup> have the right to privacy<sup>20</sup> which includes an individual’s ‘right to be forgotten’.<sup>21</sup> In the landmark decision of *Google v Spain*,<sup>22</sup> the CJEU recognized an individual’s right to request that Google remove links to private information when asked, provided that the information was no longer relevant.<sup>23</sup>
7. In the digital age where information communication technologies have the ability to significantly interfere with an individual’s right to privacy,<sup>24</sup> the ‘right to be forgotten’<sup>25</sup> enables individuals to control their identity and protect their personal dignity by requesting

---

<sup>19</sup> *Craxi v Italy (No 2)* App no 24337/94 (ECtHR, 17 July 2003) para 65; *Campbell v. MGN Ltd*, [2004] 2 All ER 995 (HL); *A v B plc* [2002] 2 All ER 545 [11(xi)]; *A v B plc* [2003] QB 195 para 11(xi).

<sup>20</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 17, Article 17; UDHR (adopted 10 December 1948) UNGA Res 217A (III) art 12; ECHR (adopted 4 November 1950, entered into force 3 September 1953) art 8; ACHR (adopted 22 November 1969, entered into force 18 July 1978) art 11.

<sup>21</sup> Case C-131/12 *Google Spain v AEPD and Mario Costeja Gonzalez* EU:C:2014:317; *NT1 and NT2 v. Google LLC* [2018] EWHC 799 (QB); Daniel Boffey, ‘Dutch surgeon wins landmark ‘right to be forgotten’ case’ *The Guardian* (Brussels, 21 January 2019) <<https://www.theguardian.com/technology/2019/jan/21/dutch-surgeon-wins-landmark-right-to-be-forgotten-case-google>> accessed 28 January 2019.

<sup>22</sup> Case C-131/12 *Google Spain v AEPD and Mario Costeja Gonzalez* EU:C:2014:317 paras 92, 94.

<sup>23</sup> Case C-131/12 *Google Spain v AEPD and Mario Costeja Gonzalez* EU:C:2014:317 paras 92, 94.

<sup>24</sup> Case C-131/12 *Google Spain v AEPD and Mario Costeja Gonzalez* EU:C:2014:317 para 80; See also Theresa M. Payton & Theodore Claypoole, *Privacy in the Age of Big Data: Recognizing Threats, Defending Your Rights, and Protecting Your Family 1* (Rowman & Littlefield 2015).

<sup>25</sup> European Commission, *Safeguarding Privacy in a Connected World: An European Data Protection Framework for the 21<sup>st</sup> Century* (25 January 2012) <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0009:FIN:EN:PDF>> accessed 28 January 2019; Viviane Reding, Vice President, ‘The EU Data Protection Reform 2012: Making Europe the Standard Setter for Modern Data Protection Rules in the Digital Age 5’ (Innovation Conference Digital, Life, Design, Munich, 22 January 2012) <<http://europa.eu/rapid/pressReleasesAction.do?reference=SPEECH/12/26&format=PDF>> accessed 28 January 2019.

that their irrelevant information be de-listed.<sup>26</sup> It recognizes that people should not be *indefinitely* reminded of and remembered by their past mistakes,<sup>27</sup> let alone by past allegations which have been disproven.<sup>28</sup>

8. The 2001 story, and its promoted emphasis in the search results, clearly falls within the scope of interference with Ras' privacy. It was irrelevant for its purposes. It was not only outdated considering the passage of time,<sup>29</sup> but Ras was exonerated of the allegation made against him more than 20 years ago.<sup>30</sup>

2. Further and in the alternative, the search results were an unlawful attack on Ras' reputation.

9. Additionally, the search results were an unlawful interference because free speech protection for intentionally defamatory statements is clearly not 'envisaged by law'.<sup>31</sup> The search results

---

<sup>26</sup> *Von Hannover v Germany (No 2)* App nos 40660/08,60641/08 (ECtHR, 7 February 2012) at para 50; Article 19, 'The 'Right to Be Forgotten': Remembering Freedom of Expression' (2016) <[https://www.article19.org/data/files/The\\_right\\_to\\_be\\_forgotten\\_A5\\_EHH\\_HYPERLINKS.pdf](https://www.article19.org/data/files/The_right_to_be_forgotten_A5_EHH_HYPERLINKS.pdf)> accessed 28 January 2019.

<sup>27</sup> John W. Dowdell, 'An American Right to Be Forgotten' (2017) 52 *Tulsa Law Review* 311, 322-325; Farhad Manjoo, 'Right to be Forgotten' Online Could Spread' *New York Times* (5 August 2015) <<https://www.nytimes.com/2015/08/06/technology/personaltech/right-to-be-forgotten-online-is-poised-to-spread.html>> accessed 28 January 2019; Geert van Claster, Elsemiek Apers, Alejandro Gonzalez Arreaza, 'Not just one, but many "rights to be forgotten". A global status quo' (2018) 7 *Internet Policy Review* 2; Michael J. Kelly and Satolam David, 'The Right to be Forgotten' [2017] *University of Illinois Law Review*.

<sup>28</sup> Fact Pattern, para 1.2.

<sup>29</sup> Case C-131/12 *Google Spain v AEPD and Mario Costeja Gonzalez* EU:C:2014:317, para 93; Man loses 'right to be forgotten' Google court bid' *BBC News* (London, 30 July 2015) <<https://www.bbc.com/news/uk-england-nottinghamshire-33706475>> accessed 28 January 2019.

<sup>30</sup> Fact Pattern, para 1.2.

<sup>31</sup> UNHRC, 'General Comment 16' (8 April 1988) UN Doc HRI/GEN/1/Rev para 3.

amounted to an attack as they *seriously*<sup>32</sup> impaired Ras' reputation,<sup>33</sup> namely, by reprising the allegations concerning his tenure at the State University of Cyanisia without including the *vital fact* that he had been fully exonerated after investigations.<sup>34</sup> To state that a warrant had been issued for Ras' 'immediate arrest' in 2001 is to claim that Ras *was* found guilty of financial misconduct. Such a claim is clearly *false*, given that Ras had been exonerated in 1995.<sup>35</sup>

10. Further, the 2001 story lacked context – specifically that Cyanisian State authorities had systematically persecuted members of the DPC, the political party established by Ras and of which he was a member,<sup>36</sup> by, in some instances, functionally exiling them through making false charges against them.<sup>37</sup>

11. Nor is this just about one line in a search result. Aggregated search results, particularly results which are highly ranked, provide a context by which false impressions of a person are formed,<sup>38</sup> especially since news is increasingly *exclusively* found through search results and

---

<sup>32</sup> *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012) para 83; *Bedat v Switzerland* App no 6925/08 (ECtHR, 29 March 2016) para 72; *Medzlis Islamske Zajednice Brcko and Others v Bosnia and Herzegovina* App no 17224/11 (ECtHR, 27 June 2017) para 76; *A. v. Norway* App no 28070/06 (ECtHR, 9 April 2009) at para 64; *Karako v Hungary* App no 39311/05 (ECtHR, 28 April 2009) at para 40.

<sup>33</sup> David S. Ardia, 'Reputation in a Networked World: Revisiting the Social Foundations of Defamation Law' [2010] *Harvard Civil Rights-Civil Liberties Law Review* 45, 262; Tansy Woan, 'Searching for an Answer: Can Google Legally Manipulate Search Results?' (2013) 16 *University of Pennsylvania Journal of Business Law* 1, 302; Flemming Splidsboel Hansen, 'Russian Hybrid Warfare: A study of disinformation' [2017] *Danish Institute for International Studies* 28.

<sup>34</sup> Fact Pattern, para 1.2.

<sup>35</sup> Fact Pattern, para 1.2.

<sup>36</sup> Fact Pattern, para 1.3.

<sup>37</sup> Fact Pattern, para 1.3.

<sup>38</sup> Case C-131/12 *Google Spain v AEPD and Mario Costeja Gonzalez* EU:C:2014:317, paras 38, 80; I Ruthven, C Clews and WHM Dali, 'First Impressions: How Search Engine Results Contextualise Digital Identities' [2010] *Proceedings of the third symposium on Information interaction in context*, 314.

social referrals via digital intermediaries.<sup>39</sup> By the subtle use of omission and isolated facts, the 2001 story presented information about Ras that would lead users to wrongly draw negative conclusions about Ras' character.<sup>40</sup> In prominently displaying the misleading 2001 story, the search results perpetrated a portrayal of Ras that could lead UConnect users to wrongly perceive his character and suitability as a public servant, especially since Ras' statement of 3 April never trended.<sup>41</sup>

12. As it turned out, this was what precisely happened. Prior to the 2001 story resurfacing in UConnect's search results, Ras had been highly respected among the wider UMP voter base and was considered a viable parliamentary candidate.<sup>42</sup> Yet, Ras failed to secure a seat in Parliament after the search results debacle.<sup>43</sup> This causal link is supported by a report by Magentonia Watch, an independent civil society organization, which argues that Ras's unexpected electoral failure could be attributed to the campaign conducted by TBM on UConnect.<sup>44</sup> No other possible reasons have been proffered for the unexpected results.<sup>45</sup> We

---

<sup>39</sup> William Dutton and Grant Blank, *Next Generation Users: The Internet in Britain: Oxford Internet Survey 2011 Report* (Oxford Internet Institute, 2011) <[https://www.oii.ox.ac.uk/archive/downloads/research/oxis/oxis2011\\_report.pdf](https://www.oii.ox.ac.uk/archive/downloads/research/oxis/oxis2011_report.pdf)> accessed 28 January 2019; Rasmus Kleis Nielsen and Sarah Anne Ganter, 'Dealing with digital intermediaries: A case study of the relations between publishers and platforms' [2018] Sage Journals.

<sup>40</sup> Rogers and Tyushka, "'Hacking into the West": Russia's "Anti-Hegemonic" Drive and the Strategic Narrative Offensive' (2017) 2 *Defence Strategic Communications* 35, 45.

<sup>41</sup> Clarification no 28.

<sup>42</sup> Fact Pattern, para 2.2.

<sup>43</sup> Fact Pattern, para 5.6.

<sup>44</sup> Fact Pattern, para 5.6.

<sup>45</sup> Fact Pattern, para 2.1.

ask this Court to draw the reasonable inference that the search results had negatively impacted Ras' reputation.

**C. Magentonia violated its positive obligation under Article 17(2) as its Decision failed to properly balance Ras' rights with the public's in having access to the search results.**

13. States have a positive obligation to protect by law a person's rights from interference by private actors.<sup>46</sup> The enactment of the PIDPA, *per se*, does not mean that Magentonia has fulfilled this positive obligation. Rather, Magentonia's Decision *itself* must have struck a proper balance compatible with its obligations under the ICCPR<sup>47</sup> between the competing interests of the individual and community as a whole.<sup>48</sup> In this case, (1) Magentonia's Decision was not necessary to protect the public interest in ensuring UConnect users' freedom to receive information from the search results as the information provided was misleading;<sup>49</sup> and (2) ordering the rectification, erasure or blockage of the search results would have been proportionate.

---

<sup>46</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 17, Article 17(2); Tomas Gomez-Arostegui, 'Defining Private Life under the European Convention of Human Rights by Referring to Reasonable Expectations' [2005] California Western International Law Journal, 156-7.

<sup>47</sup> *Bărbulescu v Romania* App no 61496/08 (ECtHR 5 September 2017) paras 128-139.

<sup>48</sup> Article 29 Data Protection Working Party, 'Guidelines on The Implementation of The Court of Justice of The European Union Judgment on 'Google Spain And Inc. v Agencia Espaajola De Proteccion De Datos And Mario Costeja Gonzalez' C-131/12 (2014) <<http://www.dataprotection.ro/servlet/ViewDocument?id=1080>>; *NT1 and NT2 v. Google LLC* [2018] EWHC 799 (QB) [36]-[37].

<sup>49</sup> *Toonen v Australia* UN Doc CCPR/C/50/D/488/1992 (HRC, 31 March 1994) para 8.3; *Antonius Cornelis Van Hulst v Netherlands* UN Doc CCPR/C/82/D/903/1999 (HRC, 1 November 2004); UNHRC, 'General Comment 16' (8 April 1988) UN Doc HRI/GEN/1/Rev para 32; European Court of Human Rights, *Guide on Article 8 of the European Convention on Human Rights* (Council of Europe/European Court of Human Rights 2018).

1. Magentonia's Decision was not necessary to protect the public interest in accessing the search results.

14. It was not necessary to protect UConnect users' freedom to receive information from the search results. Whether there is a public interest in accessing data has been analysed by reference to guiding criteria set out by the Article 29 Working Party.<sup>50</sup> The criteria applicable to the present case are: (i) whether the data subject is a public figure; (ii) whether the data is accurate, (iii) whether the data is *relevant* and not excessive; (iv) whether the data is up-to-date; (v) whether the data causes a disproportionate negative impact on the data subject; and (vi) whether the original content was published in the context of journalistic purposes. Applying these criteria, the public interest in the search results is weak.

15. *First*, Ras' function as a public figure does not mean that he is deprived of the right to rectification, erasure or blockage. A fundamental distinction must be made between facts capable of contributing to a debate in a democratic society<sup>51</sup> and details which only serve to satisfy the morbid curiosity of the public.<sup>52</sup> Here, there is minimal public interest in receiving information relating to an allegation that has been disproven. The 2001 story, by falsely portraying Ras as a wanted criminal, effectively amounts to disinformation,<sup>53</sup> which does not

---

<sup>50</sup> Article 29 Data Protection Working Party, 'Guidelines on The Implementation of The Court of Justice of The European Union Judgment On 'Google Spain And Inc. v Agencia Espaajola De Proteccion De Datos And Mario Costeja Gonzalez' C-131/12 (2014); *NT1 and NT2 v. Google LLC* [2018] EWHC 799 (QB).

<sup>51</sup> *Von Hannover v Germany (No 2)* App nos 40660/08,60641/08 (ECtHR, 7 February 2012) para 76; *Campbell v. MGN Ltd* [2004] 2 All E.R. 995 (UKHL, 2004) at para 63.

<sup>52</sup> *Von Hannover v Germany (No 2)* App nos 40660/08,60641/08 (ECtHR, 7 February 2012).

<sup>53</sup> Claire Wardle, Hossein Derakhshan, *Information Disorder: Toward an Interdisciplinary Framework for Research and Policy Making* (Council of Europe 2017).



contribute to the marketplace of ideas but instead detracts from it by undermining the people's freedom to vote by providing them with inaccurate information.<sup>54</sup> Accordingly, there is no public interest in ensuring the freedom to receive information like the 2001 story.

16. *Second*, the data was not accurate as the 2001 story stated that a warrant for Ras' *immediate* arrest had been issued in 2001,<sup>55</sup> which read as if it was a fresh report. This gave the impression that the allegation against Ras was *live* information, which is inaccurate because Ras had been exonerated of misconduct in 1995.<sup>56</sup>
17. *Third*, the data could no longer be said to be relevant since it was published a long time ago, regarding a discredited story that was no longer evolving. Further, it related to Ras' role as a university professor in 1995, whereas he was now no longer employed in the same profession.
18. *Fourth*, the data is clearly no longer up to date as it relates to outdated information concerning the allegation against Ras, which has since been clarified by the university and Ras' statements.<sup>57</sup>
19. *Fifth*, the 2001 story had a disproportionately negative impact on Ras since it related to a *false* allegation which was subsequently clarified, casting doubt on his reputation.<sup>58</sup> The impact of these allegations may be seen in Ras' failure to secure a seat in the 2018 parliamentary elections. While a data subject need not demonstrate prejudice in every case before they may

---

<sup>54</sup> European Commission, *Report of the Independent High Level Group on fake news and online disinformation* (Publication Office of the European Union 2018).

<sup>55</sup> Fact Pattern, para 1.2.

<sup>56</sup> Fact Pattern, para 1.2.

<sup>57</sup> Fact Pattern, paras 1.2 and 4.1.

<sup>58</sup> Para 9 of this Memorial.

request de-listing, the prejudice caused to Ras<sup>59</sup> presents a strong factor in favour of de-listing.<sup>60</sup>

20. *Sixth*, journalistic privilege is not applicable here to the 2001 story, which was irrelevant, untrue and not relating to a live matter. While the 2001 story was published by The Cyanisian Times, this criterion alone does not provide a sufficient basis for refusing a request. Journalistic privilege is accorded because of the dynamic and evolving nature of news.

2. Ordering rectification, erasure or blockage of the search results would have been proportionate.

21. Given the minimal public interest, if any, in ensuring the freedom of UConnect's users to view the search results, ordering the rectification, erasure or blocking of the search results would have been proportionate. Rectification, erasure or blockage would have been the least that the State could have done to protect Ras' right to privacy and reputation as removal and clarification have proven to be ineffective.<sup>61</sup> Removal of the original source, as Ras had sought to do,<sup>62</sup> had little effect against the spread of disinformation given the ease at which articles can be replicated online.<sup>63</sup> Algorithms such as the one employed on UConnect's platform

---

<sup>59</sup> Paras 11-12 of this Memorial.

<sup>60</sup> Article 29 Data Protection Working Party, 'Guidelines on The Implementation of The Court of Justice of The European Union Judgment On 'Google Spain And Inc. v Agencia Espaaajola De Proteccion De Datos And Mario Costeja Gonzalez' C-131/12 (2014).

<sup>61</sup> Fact Pattern, para 4.3.

<sup>62</sup> Fact Pattern, paras 4.2 and 4.5.

<sup>63</sup> Fact Pattern, para 4.4.

amplify the content which is most viewed,<sup>64</sup> without checking its accuracy, completeness or relevance, thus augmenting the impact of disinformation.<sup>65</sup> The way the 2001 story was pushed into trending lists<sup>66</sup> is similar to the uncontrollable spread of divisive falsehoods during the election period, such as the 2017 French Presidential Election,<sup>67</sup> and the 2016 US Elections.<sup>68</sup> The only way to protect Ras from interference with his privacy and reputation would be to rectify, erase or block the search results, thus reducing access to the disinformation.

22. Erasure of the search results would have been the least restrictive measure, and would have had a limited impact on the access to information. Erasure would not have prejudiced the public's ability to find news about Ras as the 2001 story would merely be de-listed from search

---

<sup>64</sup> Fact Pattern, paras 3.2.1 and 4.3; Matthew Ingram, 'Fake News is Part of a Bigger Problem: Automated Propaganda' (*Columbia Journalism Review*, 22 February 2018) <<https://www.cjr.org/analysis/algorithm-russia-facebook.php>> accessed 28 January 2019; Renee Dresta, 'Free Speech in the Age of Algorithmic Megaphones' *Wired* (10 December 2018) <<https://www.wired.com/story/facebook-domestic-disinformation-algorithmic-megaphones/>> accessed 28 January 2019.

<sup>65</sup> Emily Bell and Taylor Owen, 'The Platform Press: How Silicon Valley reengineered journalism' *Columbia Journalism Review* (29 March 2017) <[https://www.cjr.org/tow\\_center\\_reports/platform-press-how-silicon-valley-reengineered-journalism.php#executive-summary](https://www.cjr.org/tow_center_reports/platform-press-how-silicon-valley-reengineered-journalism.php#executive-summary)> accessed on 28 January 2019; Nushin Rashidian, Pete Brown, and Elizabeth Hansen, 'Friend and Foe: The Platform Press at the Heart of Journalism' Report from the Tow Center for Digital Journalism (2018) <[https://www.cjr.org/tow\\_center\\_reports/the-platform-press-at-the-heart-of-journalism.php/](https://www.cjr.org/tow_center_reports/the-platform-press-at-the-heart-of-journalism.php/)> accessed on 28 January 2019.

<sup>66</sup> Daniel Heng, 'Meet the Fake News Trolls who Influenced US and Indonesian Polls for Money' *Channel News Asia* (5 January 2019) <<https://www.channelnewsasia.com/news/cnainsider/trolls-fake-news-industry-elections-veles-malaysia-indonesia-us-11087430>> accessed 28 January 2019.

<sup>67</sup> Emilio Ferrara, 'Disinformation and Social Bot Operations in the Run up to the 2017 French Presidential Election' *First Monday* (7 August 2017) <<https://firstmonday.org/article/view/8005/6516>> accessed 28 January 2019; Heather A. Conley, 'Successfully Countering Russian Electoral Interference' *CSIS* (21 June 2018) <<https://www.csis.org/analysis/successfully-countering-russian-electoral-interference>> accessed 28 January 2019.

<sup>68</sup> Olivia Solon and Sabrina Siddiqui, 'Russia-backed Facebook posts "reached 126m Americans" during US election' *The Guardian* (31 October 2017) <<https://www.theguardian.com/technology/2017/oct/30/facebook-russia-fake-accounts-126-million>> accessed 28 January 2019; Duncan J. Watts and David M. Rothschild, 'Don't blame the election on fake news. Blame it on the media' *Columbia Journalism Review* (5 December 2017) <<https://www.cjr.org/analysis/fake-news-media-election-trump.php>> accessed 28 January 2019.

results *specifically* relating to Ras' name,<sup>69</sup> with no information deleted from the original source. Therefore, even if there were *some* public relevance in the 2001 story,<sup>70</sup> the story would still be accessible using other search terms or by direct access to the original story on The Cyanisian Time's website.<sup>71</sup> Such erasure is in fact an acceptable method consistent with the practice of major search engines such as Google.<sup>72</sup>

23. For all the above reasons, it would have been proportionate for UConnect to rectify, erase or block the search results.

---

<sup>69</sup> *NT1 and NT2 v. Google LLC* [2018] EWHC 799 (QB) [37].

<sup>70</sup> Fact Pattern, para 4.4.

<sup>71</sup> *NT1 and NT2 v. Google LLC* [2018] EWHC 799 (QB) [37].

<sup>72</sup> Microsoft Content Removal Requests Report, <<https://www.microsoft.com/about/csr/transparencyhub/crrr/>> accessed on 28 January 2019; Google Transparency Report, <<https://www.google.com/transparencyreport/removals/europeprivacy/>> accessed on 28 January 2019.

## II. MAGENTONIA'S SUSPENSION ORDER VIOLATED BOTH UCONNECT'S AND ITS USERS' RIGHTS TO FREEDOM OF EXPRESSION.

24. Article 19 of the ICCPR<sup>73</sup> protects the right to freedom of expression<sup>74</sup>, the 'touchstone'<sup>75</sup> of any free and democratic society,<sup>76</sup> which extends to corporate entities such as UConnect.<sup>77</sup> As previously stated,<sup>78</sup> the State must strike a *fair* balance in every case so as to only impose restrictions on freedom of expression that are prescribed by law, in pursuit of a legitimate aim, and necessary in a democratic society.<sup>79</sup> Magentonia's suspension order in response to the posts concerning refugees thus violated UConnect and its users' right to freedom of expression because it was not (A) provided by law; and (B) not necessary for a legitimate aim enumerated under Article 19(3).

---

<sup>73</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 17, Article 19.

<sup>74</sup> Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III), Article 19; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932, Article 10; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978), Article 13; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58, Article 9.

<sup>75</sup> G.A. Resolution 59(I), 14 Dec. 1946.

<sup>76</sup> UNHRC, 'General Comment 34' (12 September 2011) UN Doc CCPR/C/GC/34 para 2; *Bowman v UK* App no 24839/94 (ECtHR, 19 February 1998) at para 42.

<sup>77</sup> *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 March 2013); *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990); *The Sunday Times Constitutional Rights Project, Civil Liberties Organisation and Media Rights Agenda v Nigeria* (2000) AHRLR 227 (ACommHPR, 1999) para 37.

<sup>78</sup> Para 1 of this Memorial.

<sup>79</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 17, Article 19(3); *Vörður Ólafsson v Iceland* App no 20161/06 (ECtHR, 27 April 2010) para 51; *Editorial Board of Pravoye Delo and Shtetel v Ukraine* App no 33014/05 (ECtHR, 5 May 2011) para 48; *Handyside v UK* App no 5393/72 (ECtHR, 7 December 1976); *Sunday Times v UK (No 1)* App no 6538/74 (ECtHR, 26 April 1979); *Malcolm Ross v Canada* UN Doc CCPR/C/70/D/736/1997 (HRC, 18 October 2000); *Interights v Mauritania* AHRLR 87 Comm no 242/2001 (ACommHPR, 4 June 2004) paras 78–79.

**A. The suspension was not provided for by law as it was not issued pursuant to any Magentonian law and was not reasonably foreseeable.**

25. To be provided by law, domestic law must not only *exist* but be formulated with sufficient precision<sup>80</sup> so that individuals can regulate their conduct.<sup>81</sup> Foreseeability allows individuals to know when their actions will constitute an offence<sup>82</sup> and the consequences of liability.<sup>83</sup> This enables them to regulate their conduct accordingly.<sup>84</sup> The suspension was not provided by law for three reasons.

26. *First*, the suspension had no legal basis as it was issued on the grounds that ‘irreversible harm’ would be caused to the public,<sup>85</sup> which is not specified in the PIDPA.<sup>86</sup>

27. *Second*, it was not reasonably foreseeable to UConnect or its users that a suspension would be imposed on UConnect as no domestic law in Magentonia provides that a court may grant a

---

<sup>80</sup> UNHRC, ‘General Comment 34’ (12 September 2011) UN Doc CCPR/C/GC/34 para 25; UNHRC, ‘Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression’ (20 April 2010) UN Doc A/HRC/14/23 para 78; *Chauvy v France* App No 64915/01 (ECtHR, 29 June 2004) para 43; *Lindon, Otchakovsky-Laurens and July v France* App No 21279/02 and 36448/02 (ECtHR, 22 October 2007) para 41; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993) para 40.

<sup>81</sup> *The Sunday Times v The United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) para 49.

<sup>82</sup> *Fernández Martínez v Spain* App No 56030/07 (ECtHR, 12 June 2014) para 117.

<sup>83</sup> *Leonardus Johannes Maria de Groot v The Netherlands* UN Doc CCPR/C/54/D/578/1994 (HRC, 1995); UNHRC, ‘General Comment 34’ (12 September 2011) UN Doc CCPR/C/GC/34 para 25.

<sup>84</sup> *The Sunday Times v The United Kingdom* App no 6538/74 (ECtHR, 26 April 1979) para 49; *Editorial Board of Pravoye Delo and Shtekel v Ukraine* App no 33014/05 (ECtHR, 5 May 2011) para 52.

<sup>85</sup> Clarification no 33.

<sup>86</sup> Fact Pattern, paras 4.6 and 5.5.

suspension order against a data controller.<sup>87</sup> Even with legal advice,<sup>88</sup> UConnect could not reasonably foresee that the PIDPA implicitly provided that its *entire* platform might be suspended because of the content of *specific* posts on its platform.<sup>89</sup> This is especially as blanket bans on social media platforms are unprecedented.<sup>90</sup>

28. *Third*, even if the suspension were somehow made pursuant to a legal basis of preventing ‘irreversible harm’,<sup>91</sup> it is disconcertingly *overbroad* in how it grants unfettered discretion.<sup>92</sup> The lack of any adequate safeguards<sup>93</sup> means that authorities have ‘broad discretionary powers’<sup>94</sup> to interfere with free speech with no consideration of the proportionality of its measures.<sup>95</sup>

---

<sup>87</sup> Fact Pattern, para 5.5.

<sup>88</sup> Fact Pattern, para 5.2; UNHRC, ‘General Comment 34’ (12 September 2011) UN Doc CCPR/C/GC/34 para 43; *Constitutional Court*, Application No. 2014/3986, 2 April 2014; Regulation (EU) 2015/2120.

<sup>89</sup> Fact Pattern, para 5.1.

<sup>90</sup> *Ahmet Yildirim v Turkey* App no 3111/10 (ECtHR, 18 December 2012); *GmbH v Constantin Film Verleih GmbH*, 24 March 2014, High Court of Justice [2010] EWHC 608.

<sup>91</sup> Clarification no 33.

<sup>92</sup> UNHRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 11 May 2016, A/HRC/32/38 para 39; *Broadrick v Oklahoma* 413 US 601 (1973).

<sup>93</sup> *Pinkney v Canada* UN Doc CCPR/C/OP/1 (HRC, 29 October 1981) para 34; *Al-Nashif v Bulgaria* App no 50963/99 (ECtHR, 20 June 2002) para 119; *Sanoma Uitgevers BV v The Netherlands* App no 38224/03 (ECtHR, 14 September 2010) para 82; *Liu v Russia (No 2)* App no 29157/09 (ECtHR, 26 July 2011) para 88.

<sup>94</sup> IACHR, OSRFE, Freedom of Expression Standards for Free & Inclusive Broadcasting, (2010) at para. 131.

<sup>95</sup> Derek Bambauer ‘Against Jawboning’ (2015) 100 Minnesota Law Review, 51, 5.

**B. The suspension was not necessary in a democratic society.**

29. The suspension violated Article 19 as: (1) there was no pressing social to suspend UConnect; and (2) the suspension of UConnect’s *entire platform* was disproportionate.<sup>96</sup>

1. Suspending UConnect’s operations did not meet a pressing social need as they were not likely to mislead the reasonable viewer, or incite discrimination, hostility or violence against the Cyanisian refugees.

30. The suspension of UConnect’s *entire platform* is a draconian restriction of the freedom of expression which could only have been justified if it were to meet a ‘pressing social need’.<sup>97</sup> Here, there was no pressing social need because *first*, the posts concerning the refugees were unlikely to mislead the reasonable viewer, who would be unlikely to believe that they were true. Over 60% of the population of Magentonia uses social media,<sup>98</sup> indicating that the population is social media literate. Users even recognized the 26 May post to be in breach of UConnect’s Community Standards,<sup>99</sup> meaning that they could see its potential for inflammation without being themselves inflamed.<sup>100</sup>

31. The tenor of the anti-refugee posts was that re-electing UMP would result in the further influx of Cyanisian refugees.<sup>101</sup> This is a far-fetched proposition unlikely to be believed by the

---

<sup>96</sup> Para 20 of this Memorial.

<sup>97</sup> *Handyside v United Kingdom* [1976] App No 5493/72, [48].

<sup>98</sup> Fact Pattern, para 3.1.

<sup>99</sup> Fact Pattern, para 5.1.

<sup>100</sup> Fact Pattern, para 3.4; *Tamiz v the United Kingdom* [2013] EWCA Civ 68, [80]-[81].

<sup>101</sup> Fact Pattern, para 5.4.



reasonable majority of Magentonians. The Celadon minority, who were now stateless refugees of Magentonia,<sup>102</sup> were driven to asylum not because of the incumbent political party in Magentonia but because of systematic persecution in Cyanisia.

32. *Second*, it was unlikely that the posts would have incited discrimination, violence or hostility in relation to the refugees. The posts were made in a context similar to the case of *Gündüz v Turkey*,<sup>103</sup> where the leader of a controversial Islamic Sect made statements calling for the overthrow of democracy and labelled certain groups as ‘bastards’. In holding that such language did not constitute hate speech, the court noted that the inflammatory views expressed were already known, had been discussed in the public arena and were expressed during a pluralistic debate.<sup>104</sup> Here, it was also public knowledge that there had been an influx of Cyanisian refugees in 2010.<sup>105</sup>

33. Further, there was no evidence that the posts concerning refugees caused *increased* discrimination of Cyanisian refugees or hostility towards them.<sup>106</sup> Shares and views<sup>107</sup> are not

---

<sup>102</sup> Fact Pattern, para 1.3.

<sup>103</sup> *Gündüz v Turkey (No 1)* App no 35071/97 (ECtHR, 4 December 2003).

<sup>104</sup> *Gündüz v Turkey (No 1)* App no 35071/97 (ECtHR, 4 December 2003) para 51.

<sup>105</sup> Fact Pattern, para 1.4.

<sup>106</sup> Fact Pattern, para 5.1. and 5.4.

<sup>107</sup> Fact Pattern, para 5.4.

conclusive of increased hostility or discrimination, especially given the ease with which fake accounts can be made on social media to cause posts to trend.<sup>108</sup>

2. Further, the suspension was disproportionate.

34. As mentioned above,<sup>109</sup> proportionality requires States to adopt the least restrictive measure available<sup>110</sup> where there are various options to balance the legitimate interest against the freedom of expression.<sup>111</sup> The margin of appreciation that Magentonia may have in choosing what measures to impose must rightly be *narrow* for political speech.<sup>112</sup> Here, the suspension was disproportionate as the (i) posts concerning refugees were a legitimate expression of political belief relating to matters in the public interest; and (ii) the suspension would lead to undue chilling effects.

---

<sup>108</sup> Narjas Zata, 'Social Media Experiment Reveals How Easy it is to Create Fake Instagram Accounts and Make Money from Them' *Independent*, 11 August 2017 <<https://www.independent.co.uk/life-style/gadgets-and-tech/social-media-experiment-fake-instagram-accounts-make-money-influencer-star-blogger-mediakix-a7887836.html>> accessed 28 January 2019; Lulu Chang, 'Facebook Removed 583 Million Fake Accounts in the First Quarter of 2018' *Digital Trends* (15 May 2018) <<https://www.digitaltrends.com/social-media/facebook-fake-accounts/>> accessed 28 January 2019.

<sup>109</sup> Para 25 of this Memorial.

<sup>110</sup> UN Economic and Social Council, UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) Annex, UN Doc E/CN.4/1984/4 principle 11; UNESCO (Sub-Commission), 'Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR' (1984) UN Doc E/CN.4/1984/4, principle 4; UNHRC, 'General Comment 22' (30 July 1993) UN Doc CCPR/C/21/Rev.1/Add.4 ('General Comment 22') para 8; UNHRC, 'General Comment 34' (12 September 2011) UN Doc CCPR/C/GC/34 para 34.

<sup>111</sup> Toby Mendel, 'Restricting Freedom of Expression: Standards and Principles Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression' Centre for Law and Democracy (March 2010) <[www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf](http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf)> accessed 29 January 2019.

<sup>112</sup> Cora Feingold, 'The Doctrine of Margin of Appreciation and the European Convention on Human Rights' (1977) 53 *Notre Dame Law Review* 90, 95; Eyal Benvenisti, 'Margin of Appreciation, Consensus, and Universal Standards' (1999) 31 *International Law and Politics* 843, 844; Trevor Allan, 'Human Rights and Judicial Review; A Critique of "Due Defence"' (2006) 65(3) *Cambridge Law Journal* 671, 675; Andrew Legg, *The Margin of Appreciation in International Human Rights Law* (OUP 2012) 1.

i. The posts concerning refugees were legitimate expressions concerning political matters in the public interest.

35. The posts were an expression of the natural sentiment<sup>113</sup> in response to the influx of immigrants from Cyanisia<sup>114</sup> and Ras' promise to grant Cyanisian refugees a faster track to citizenship if he should be elected as Member of Parliament.<sup>115</sup> Magentonians would rightly have legitimate concerns about the country's demographic<sup>116</sup> given that Ras' campaign, which involved granting citizenship based on one's *origins* rather than merits<sup>117</sup>, was one that would invite some controversy.

36. Political discourse is an important means by which citizens participate in representative democracy.<sup>118</sup> Generally, statements concerning political matters in the public interest should be accorded a greater latitude in the broad debate in democratic societies,<sup>119</sup> even speech which shocks, offends and disturbs.<sup>120</sup> Uninhibited debate regarding *live* political matters is

---

<sup>113</sup> David Card, Christian Dustmann and Ian Preston, Understanding Attitudes to Immigration: The Migration and Minority Module of the First European Social Survey (Centre for Research and Analysis of Migration Discussion Paper Series, 2005) < <http://davidcard.berkeley.edu/papers/euroimmig.pdf> > accessed 28 January 2019.

<sup>114</sup> Fact Pattern, para 1.3.

<sup>115</sup> Fact Pattern, para 2.2.

<sup>116</sup> Fact Pattern, para 5.4.

<sup>117</sup> Fact Pattern, para 1.2.

<sup>118</sup> UNHRC 'CCPR General Comment No 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service' (12 July 1996) UN Doc CCPR/C/21/Rev1/Add7 para 26.

<sup>119</sup> *Ricardo Canese v Paraguay* (IACtHR, 31 August 2004) para 98; *Herrera Ulloa v Costa Rica* (IACtHR, 2 July 2004) para 128; *Grebneva and Alisimchik v Russia* App no 8918/05 (ECtHR, 22 November 2016) para 60; *Otegi Mondragon v Spain* App no 2034/07 (ECtHR, 15 March 2011) para 50.

<sup>120</sup> *Axel Springer AG v Germany* App no 39954/08 (ECtHR, 7 February 2012); *Handyside v UK* App no 5393/72 (ECtHR, 7 December 1976) para 49.

especially crucial leading up to political elections where the electorate has to make an informed choice.<sup>121</sup> Discourse which offers a genuine critique, is to be accorded ‘the highest importance’ in the context of an election campaign<sup>122</sup> and should not be suppressed except in exceptional circumstances.

ii. *The suspension would unduly chill legitimate speech.*

37. The suspension would unduly chill speech for two reasons. *First*, the suspension amounted to overregulation as it was not content-specific. It failed to consider that the posts concerning refugees were made by only a select group of users specifically on the theme of refugees. The complete blocking of a social media platform is here akin to using a ‘sledge-hammer to crack a nut’.<sup>123</sup> Assuming *arguendo* that the posts concerning refugees amounted to hate speech, intermediaries generally have not been directly or completely *censored* because users’ posts contain hate speech.<sup>124</sup>

---

<sup>121</sup> UNHRC, ‘General Comment 34’ (12 September 2011) UN Doc CCPR/C/GC/34 para 2; *Palamara-Iribarne v Chile* Merits, Reparations, and Costs (IACtHR, 22 November 2015) para 83.

<sup>122</sup> *Erbakan v Turkey* App no 59405/00 (ECtHR, 6 July 2006).

<sup>123</sup> Toby Mendel, ‘Restricting Freedom of Expression: Standards and Principles Background Paper for Meetings Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression’ Centre for Law and Democracy (March 2010) <[www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf](http://www.law-democracy.org/wp-content/uploads/2010/07/10.03.Paper-on-Restrictions-on-FOE.pdf)> accessed 29 January 2019.

<sup>124</sup> UNHRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 11 May 2016, A/HRC/32/38 para 40-44.

38. In countering hate speech on social media, State intervention has generally only been limited to the monitoring and filtering of specific posts by specific users.<sup>125</sup> Where media bans similar to the suspension are imposed, they have been widely criticized to be in ‘clear violation of international law’ for stifling the public’s freedom of expression.<sup>126</sup>
39. *Second*, the suspension would inhibit political debate amongst users in Magentonia, especially as social media increasingly resembles that of a ‘public forum’<sup>127</sup> which even politicians utilize heavily for official communications.<sup>128</sup> Social media platforms have been shown to have a positive effect in creating wider avenues for instantaneous political discourse.<sup>129</sup> Thus, they

---

<sup>125</sup> Amnesty International UK, ‘Algeria: Blogger Faces Death Penalty for Facebook Post and YouTube Video’ (*Amnesty International UK*, 23 May 2018) <<https://www.amnesty.org.uk/press-releases/algeria-blogger-faces-death-penalty-facebook-post-and-youtube-video>> accessed 28 January 2019; Article 19, ‘Eastern Africa: New Tax and Licensing Rules for Social Media Threaten Freedom of Expression’ (*Article 19*, 2018) <https://www.article19.org/resources/eastern-africa-new-tax-and-licensing-rules-for-social-media-threaten-freedom-of-expression/> accessed on 28 January 2019; Amar Toor, ‘Google Removes Gab App for Violating Hate Speech Policy’ (*The Verge*, 18 August 2017) <<https://www.theverge.com/2017/8/18/16166240/gab-google-play-removed-hate-speech>> accessed 28 January 2019.

<sup>126</sup> Article 19, ‘Africa: Increasing Internet Shutdowns and Media Bans Limiting Access to Information’ (*Article 19*, 16 January 2019) <<https://www.article19.org/resources/africa-increasing-internet-shutdowns-and-media-bans-limiting-access-to-information/>> accessed 28 January 2019; Abdi Latif Dahir, ‘More African Governments are trying To Control What’s Being Said On Social Media And Blogs’ (*Quartz Africa*, 17 July 2018) <<https://qz.com/africa/1329145/african-governments-silence-social-media-bloggers-on-twitter-whatsapp-facebook/>> accessed 28 January 2019; Abdi Latif Dahir, ‘Chad Republic Has Kept Social Media Shut For 300 Days And Counting’ (*Quartz Africa*, 22 January 2019) <<https://qz.com/africa/1530071/chad-republic-blocks-social-media-for-300-days-sparking-campaign/>> accessed 28 January 2019.

<sup>127</sup> *Knight First Amendment Inst. at Columbia Univ. v. Trump*, 302 F. Supp. 3d 541 (S.D.N.Y. May 23, 2018).

<sup>128</sup> Elizabeth Landers, White House: Trump’s Tweets are ‘Official Statements’, *CNN* (16 June 2017), <<http://www.cnn.com/2017/06/06/politics/trump-tweets-officialstatements/index.html>> accessed 28 January 2019; Carol Soon, Social Media’s Influence In Singapore Politics Here To Stay, *The Straits Times* (19 June 2015), <<https://www.straitstimes.com/opinion/social-medias-influence-in-spore-politics-here-to-stay>> accessed 28 January 2019.

<sup>129</sup> Nayef Al-Rodhan, et al., ‘The Age of Perplexity: Rethinking the World We Knew’ (Penguin Random House Group, 2018).

are meant to be democratic spaces unhindered by state censorship, with the ultimate victors in the clash of ideas ‘determined by reason and deliberation’.<sup>130</sup>

40. In contrast, the suspension unduly penalised UConnect in its role as a crucial facilitator of free speech.<sup>131</sup> Even less invasive intrusions on social media platforms have tended to drive away users, rendering the platform unviable as a place for the free dissemination of ideas, opinions and criticisms. For instance, Twitter reported losses by a fifth in its userbase and a dip in share prices following aggressive actions to delete fake accounts. In comparison, UConnect’s suspension, which lasted a total of 29 days,<sup>132</sup> was far more extreme and would have untold effects on UConnect’s viability as a platform for the marketplace of ideas.

---

<sup>130</sup> Nadine Strossen, ‘HATE: Why We Should Resist It With Free Speech, Not Censorship’ (OUP, 2018) at p 51.

<sup>131</sup> Para 37 of this Memorial.

<sup>132</sup> Fact Pattern, para 5.5.

### III. MAGENTONIA'S PROSECUTION AND CONVICTION OF UCONNECT UNDER THE PIDPA FOR THE 26 MAY AND 30 MAY POSTS VIOLATED UCONNECT'S AND THEIR USERS' RIGHTS TO FREEDOM OF EXPRESSION.

41. Applying the requirements discussed above,<sup>133</sup> the prosecution and conviction of UConnect under the PIDPA violated Article 19<sup>134</sup> because it was not: (A) provided by law; or (B) necessary to achieve a legitimate aim.<sup>135</sup>

#### A. Magentonia's prosecution and conviction of UConnect was not provided by law.

1. It was not reasonably foreseeable that intermediaries could incur liability under Sections 3 and 5 of the PIDPA.

42. As mentioned above,<sup>136</sup> legislation must be sufficiently precise to allow UConnect to reasonably foresee that its actions would fall within the ambit of the PIDPA and thus regulate its conduct accordingly. *First*, Sections 3 and 5 target entities that 'engage' in advocacy or dissemination respectively. To 'engage' in means to participate or become involved with.<sup>137</sup> It was not reasonably foreseeable to UConnect that it would bear liability for the dissemination

---

<sup>133</sup> Para 28 of this Memorial.

<sup>134</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 19.

<sup>135</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171; *Womah Mukong v Cameroon* UN Doc CCPR/C/51/D/458/1991 (UNHRC, 10 August 1994) para 9.7; *Sohn v Republic of Korea* UN Doc CCPR/C/54/D/518/1992 (HRC, 19 July 1995) para 10.4; *Malcolm Ross v Canada* UN Doc CCPR/C/70/D/736/1997 (HRC, 18 October 2000) para 11.2; *Velichkin v Belarus* UN Doc CCPR/C/85/D/1022/2001 (HRC, 20 October 2005) para 7.3; *Handyside v United Kingdom* [1976] App No 5493/72 para 49; *Sunday Times v UK (No 1)* App no 6538/74 (ECtHR, 26 April 1979) para 45.

<sup>136</sup> Para 39 of this Memorial.

<sup>137</sup> 'engage' (Oxford Living Dictionaries) <<https://en.oxforddictionaries.com/definition/engage>> accessed 28 January 2019.

of material by its users as it does not participate in the editing of content of posts.<sup>138</sup> Additionally, the UN has noted that intermediaries are ‘never [...] liable for any third-party content’ unless they *specifically intervene* or refuse a court order,<sup>139</sup> which reflects the position in various jurisdictions.<sup>140</sup> UConnect is merely a conduit through which users independently upload and modify their own content.<sup>141</sup> It is distinguishable from content providers that produce information,<sup>142</sup> or active intermediaries,<sup>143</sup> which allow third parties to comment on their content.<sup>144</sup>

43. *Second*, it was not reasonably foreseeable that UConnect would be liable under Section 5 as there was no evidence that UConnect knew of or was reckless as to the 30 May post. Section 5 prescribes criminal liability only when an intermediary knowingly or recklessly engages in the dissemination of false propaganda. No user complaints had been made about the post.<sup>145</sup>

---

<sup>138</sup> Fact Pattern, para 3.

<sup>139</sup> Declaration by the United Nations Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe Representative on Freedom of the Media, the Organization of American States (OAS) Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of Expression and Access to Information (3 March 2017) FOM.GAL/3/17.

<sup>140</sup> Communications Decency Act 1996, Section 230 (US, 1996); Manila Principles on Intermediary Liability 2015; *Zeran v AOL* 129 F.3d 332.

<sup>141</sup> Fact Pattern, para 3; Clarification no 21.

<sup>142</sup> Joint Dissenting Opinion of Judges Sajó and Tsotsoria in *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) para 1; Article 19, *Internet Intermediaries: Dilemma of Liability* (Article 19, 2016); The Economic and Social Role of Internet Intermediaries, OECD April 2010, p. 9, <[www.oecd.org/internet/ieconomy/44949023.pdf](http://www.oecd.org/internet/ieconomy/44949023.pdf)> accessed on 28 January 2019.

<sup>143</sup> Joint Dissenting Opinion of Judges Sajó and Tsotsoria in *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015); C-236/08 *Google France, Google Inc v Louis Vuitton Malletier SA* EU:C:2010:159; C-324/09 *L’Oreal SA v eBay* EU:C:2011:474.

<sup>144</sup> Joint Dissenting Opinion of Judges Sajó and Tsotsoria in *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) para 1.

<sup>145</sup> Fact Pattern, para 5.4.



UConnect has over 100 million users<sup>146</sup> on its platform and even more posts than that are published on its platform every day. Having instituted a system of reviewing posts which are flagged out as potentially in breach of its Community Standards, it was not reasonably foreseeable that UConnect would be *additionally* expected to monitor every single post.<sup>147</sup>

2. Section 5 of the PIDPA is overly vague.

44. Section 5 is insufficiently precise because the term ‘to do or refrain from doing anything’<sup>148</sup> is vague. Without a clear definition of what Section 5 seeks to prevent, intermediaries are left uncertain as to what sort of content is prohibited, and as such, how to avoid liability under Section 5. The breadth of this provision thus confers excessive discretion upon State authorities in determining what conduct would fall afoul of Section 5.

**B. Magentonia’s prosecution and conviction of UConnect is not justified by the aim of protecting public order.**

45. The prosecution and conviction of UConnect violated Article 19<sup>149</sup> because (1) there was no pressing social need for the prosecution and conviction; and (2) the prosecution and conviction of UConnect was disproportionate to the aim of protecting public order.<sup>150</sup>

---

<sup>146</sup> Fact Pattern, para 3.1.

<sup>147</sup> Jason Koebler and Joseph Cox, ‘The Impossible Job: Inside Facebook’s Struggle to Moderate Two Billion People’ *Motherboard*, 24 August 2018 [https://motherboard.vice.com/en\\_us/article/xwk9zd/how-facebook-content-moderation-works](https://motherboard.vice.com/en_us/article/xwk9zd/how-facebook-content-moderation-works) accessed 28 January 2019.

<sup>148</sup> Fact Pattern, para 5.5.

<sup>149</sup> ICCPR (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 19.

<sup>150</sup> Para 43 of this Memorial.

1. There was no pressing social need to prosecute and convict UConnect as there was no evidence that the posts were likely to incite any action, mislead members of the public or cause public disorder.

46. As mentioned above,<sup>151</sup> the 26 May post<sup>152</sup> was unlikely to incite discrimination, hostility or violence.<sup>153</sup> Ras himself was a refugee and yet highly respected among the majority of Magentonian voters,<sup>154</sup> indicating that the general Magentonian sentiment against refugees was not hostile to begin with. The post grossly distorted Cyanisian refugees as terrorists<sup>155</sup> when they would be better known to the Magentonians as victims of systematic persecution in Cyanisia, who had lived peacefully in Magentonia since 2011.<sup>156</sup> It is unlikely that viewers of the 26 May post would sympathise with the content of the post, let alone be moved to act against the refugees as a result of a single post's characterization of the refugees.<sup>157</sup>

2. Magentonia's prosecution and conviction of UConnect was disproportionate.

- i. Requiring intermediaries to adjudicate the legality of the two posts was unduly onerous and consequently overly chills speech.*

47. Imposing criminal liability on intermediaries encourages over-censorship and severely impairs their contribution to a country's democratic development. Intermediaries are ill-equipped to

---

<sup>151</sup> Paras 36-37 of this Memorial.

<sup>152</sup> Fact Pattern, para 5.1.

<sup>153</sup> Fact Pattern, para 5.5.

<sup>154</sup> Fact Pattern, para 2.2.

<sup>155</sup> Fact Pattern, para 5.1.

<sup>156</sup> Fact Pattern, para 1.3.

<sup>157</sup> Fact Pattern, para 5.1.

make determinations of content illegality because it is context-specific.<sup>158</sup> Indeed, the impracticality of reviewing all posts on its platform would drive intermediaries to use mechanisms like filtering to reduce compliance costs, based on keywords in posts,<sup>159</sup> to avoid criminal liability.<sup>160</sup> Automatic word-based filters have tended to either over or under-filter posts even when they do not contain sophisticated metaphors or subtle threats.<sup>161</sup> Given the massive volume of posts received by UConnect, an undesired side effect of prosecution would be to incentivize the *indiscriminate* removal of non-illegal posts.<sup>162</sup>

---

<sup>158</sup> UNHRC, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, 11 May 2016, A/HRC/32/38 paras 40-44; Olivia Solon, 'Underpaid and Overburdened: the Life of a Facebook Moderator' *The Guardian* (10 April 2018) <<https://www.theguardian.com/news/2017/may/25/facebook-moderator-underpaid-overburdened-extreme-content>> accessed 28 January 2019; Jackson Ryan, 'Facebook's leaked rulebooks highlight struggle with content moderation' *CNet* (28 December 2018) <<https://www.cnet.com/news/facebooks-leaked-rulebooks-highlight-struggles-with-content-moderation/>> accessed 28 January 2019.

<sup>159</sup> Josh Constine, 'Facebook Adds Keyword Moderation and Profanity Blocklists to Pages' (*Adweek*, 10 February 2011) <<https://www.adweek.com/digital/keyword-moderation-profanity-blocklist/>> accessed 28 January 2019; Madhumita Murgia and Helen Warrell, 'Why Tech Companies Struggle with Hate Speech' *Financial Times* (8 April 2017) <<https://www.ft.com/content/2aaa13b2-1ba2-11e7-bcac-6d03d067f81f>> accessed 28 January 2019.

<sup>160</sup> Rebecca MacKinnon, 'Fostering Freedom Online: The Role of Internet Intermediaries' (UNESCO Publishing 2015) 4; Wendy Seltzer, 'Free Speech Unmoored in Copyright's Safe Harbor: Chilling Effects of the DMCA on the First Amendment' (2010) 24 *Harvard Journal of Law and Technology* 171.

<sup>161</sup> *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) para 156.

<sup>162</sup> Gargi Chakrabarti and Saahil Dama, 'Intermediary Liability and Hate Speech' (Jodhpur National Law University, 2015) <<https://www.law.uw.edu/media/1395/india-intermediary-liability-of-isps-hate-speech.pdf>> accessed 28 January 2019.

- ii. The posts were political critique which intermediaries should only remove if, and when proven to be conclusively false by a court of law.

48. As established above,<sup>163</sup> expressions that contribute to or are part of live political discussions are vital to representative democracy<sup>164</sup> and thus will be accorded more leeway.<sup>165</sup> The 26 May and 30 May posts related to the issue of refugees, which was political speech. Accordingly, any restriction is presumptively unconstitutional.<sup>166</sup> States have no<sup>167</sup> or a very narrow<sup>168</sup> margin of appreciation while restricting speech concerning *ongoing* matters of public interest, since value placed on speech in public debate is particularly high.<sup>169</sup> Hence, intermediaries should not remove speech relating to *live issues* without conclusive evidence, such as a court order.<sup>170</sup>

---

<sup>163</sup> Para 50 of this Memorial.

<sup>164</sup> Catherine O'Donnell, 'New Study Quantifies Use of Social Media In Arab Spring', *University of Washington* (12 September 2011) <<http://www.washington.edu/news/2011/09/12/new-study-quantifies-use-of-social-media-in-arab-spring/>> accessed 28 January 2019.

<sup>165</sup> Bernadette Rainey and others, *The European Convention on Human Rights*, (7th ed, OUP 2014) 438.

<sup>166</sup> *Susan B Anthony List v Ohio Election Commission* 814 F.3d 473 (Court of Appeals for the Sixth Circuit of the United States, 24 February 2016); *Magda v Ohio Election Commission* (Court of Appeals for Ohio Tenth Appellate District, 21 July 2016); Simon Rodell, 'False Statements v Free Debate: Is the First amendment a License to Lie in Elections?' (2008) 60 *Florida Law Review* 4 953.

<sup>167</sup> UNHRC, 'General Comment 34' (12 September 2011) UN Doc CCPR/C/GC/34 para 36; *Ilmari Lämsman v Finland* UN Doc CCPR/C/52/D/511/1992 (HRC, 14 October 1993) para 9.4; Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (OUP 2013) 625.

<sup>168</sup> *Ceylan v Turkey* App no 23556/94 (ECtHR, 08 July 1999) para 34; *Perincek v Switzerland* App no 27510/08 (ECtHR, 15 October 2015) para 197.

<sup>169</sup> UNHRC, 'General Comment 34' (12 September 2011) UN Doc CCPR/C/GC/34 para 38; *Arslan v Turkey* App no 57908/00 (ECtHR, 10 January 1996) para 46; *Eon v France* App no 26118/10 (ECtHR, March 14, 2013) para 59; *Sürek v Turkey (No 1)* App no 26682/95 (ECtHR, 8 July 1999) para 61; *Feldek v Slovakia* App no 29032/95 (ECtHR, 12 July 2001) para 74.

<sup>170</sup> *Belen Rodriguez*, Judgment R.522.XLIX (Argentina, 2014) para 18.

49. Requiring intermediaries to take down posts on political matters based on mere allegations would create a system that is susceptible to abuse, as users cannot effectively challenge a takedown request, setting a precedent for intermediaries to become weapons for silencing dissent.<sup>171</sup> For example, Facebook’s notice-and-takedown system has become abused by government supporters to silence criticism of the government.<sup>172</sup> Hence, intermediaries who do not exercise editorial control should be exempt from liability<sup>173</sup> for user generated content.<sup>174</sup>
50. Accordingly, it was disproportionate to prosecute UConnect because it could not have conclusively known that the 30 May post, which alleges that Magentonians would be outnumbered by Cyanisians in 2025, was false *simply by looking at the post*, especially where no indication of its falsity,<sup>175</sup> such as by way of a clarificatory statement,<sup>176</sup> had been made.

---

<sup>171</sup> *New York Times Co v Sullivan* 376 U.S. 254 (1964) at 271; *Cantwell v Connecticut* (1940) 310 US 296 (SCOTUS) 310.

<sup>172</sup> Yael Grauer, ‘Facebook Is Not Equipped To Stop The Spread Of Authoritarianism’, (*Tech Crunch*, 24 December 2018) <<https://techcrunch.com/2018/12/24/facebook-government-silence-dissent-authoritarianism/>> accessed 28 January 2019.

<sup>173</sup> *Jurin v Google, Inc* 695 F Supp 2d 1117 (ED Cal 2010); *Mmubango v Google, Inc* 2013 W L 664231 (ED Pa 2013); Communications Decency Act, s 230 (US, 1996); UN Special Rapporteur on Freedom of Opinion and Expression, OSCE Representative on Freedom of the Media, OAS Special Rapporteur on Freedom of Expression and ACHPR Special Rapporteur on Freedom of Expression and Access to Information, ‘Joint Declaration on Freedom of Expression and the Internet’ (2011) <[http://www.law-democracy.org/wp-content/uploads/2010/07/IRIS-piece-2.11.08.TM\\_rev\\_.pdf](http://www.law-democracy.org/wp-content/uploads/2010/07/IRIS-piece-2.11.08.TM_rev_.pdf)> accessed 28 January 2019.

<sup>174</sup> *Metropolitan Schools v Designtecnica* (2009) EWHC 1765 (QB); *Blockowicz v Williams*, 630 F 3d 563 (7th Cir 2010); *Crookes v Newton* 2011 SCC 47 (Canada); Mark A. Lemley, ‘Rationalising Internet Safe Harbours’ (2007-2008) 6 *Journal on Telecommunications & High.Technology Law* 101.

<sup>175</sup> Fact Pattern, paras 5.4 and 6.2.2.

<sup>176</sup> Fact Pattern, para 1.2.

No users had made complaints about the post.<sup>177</sup> The falsity of the statement was only uncovered after the Magentonian court investigated the claim.<sup>178</sup>

*iii. UConnect removed the 26 May post upon receiving notice.*

51. It is disproportionate to prosecute intermediaries when unlawful content is removed expeditiously upon notice.<sup>179</sup> The nature of ‘expeditious’ is a fact specific analysis to be determined upon the nature of the content, the subject-matter of the content, ease of assessing the infringement, and the popularity of the intermediary.<sup>180</sup> Take-downs which took a few days have been held to be expeditious.<sup>181</sup> Not allowing UConnect sufficient time to respond to reports would force it to remove content immediately upon receiving a complaint, which would inhibit legitimate speech and cause intermediaries to act against their internal guidelines.<sup>182</sup> It is impossible for UConnect to automatically filter posts that incite violence or are false, without imposing a blanket ban on innocent speech.

52. Here, UConnect removed the 26 May post within four days of receiving complaints from its users.<sup>183</sup> As it was uncertain whether the content of the post breached its guidelines, UConnect

---

<sup>177</sup> Fact Pattern, para 5.4.

<sup>178</sup> Fact Pattern, para 6.2.2.

<sup>179</sup> *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) para 153.

<sup>180</sup> Eugene C. Kim, Note, ‘YouTube: Testing the Safe Harbors of Digital Copyright Law’ (2007) 17 Southern California Interdisciplinary Law Journal 139.

<sup>181</sup> *Perfect 10, Inc v CCBill LLC* 488 F 3d 1102 (9th Cir 2007); *Capitol Records, LLC v Vimeo, LLC* 972 F. Supp. 2d 500 (SDNY 2013) 536.

<sup>182</sup> Fact Pattern, para 3.5.

<sup>183</sup> Fact Pattern, para 5.2.

required time to seek legal advice<sup>184</sup> on whether the post should be removed. Four days was a reasonable duration since the removal of the post required understanding the context and social background sufficiently to decide if there was serious doubt as to the truthfulness of the allegations,<sup>185</sup> and whether it was posted with malicious intent.<sup>186</sup> Even Germany's law, which has been widely criticized as draconian,<sup>187</sup> provides a seven-day window where it is not *immediately* clear that content is illegal.<sup>188</sup> Reviewing complaints is vital to prevent false or frivolous complaints<sup>189</sup> and for UConnect to be accountable to its users by adhering to its Community Standards.<sup>190</sup>

*iv. The fine of USD 100,000 was disproportionate.*

53. As stated above,<sup>191</sup> proportionality requires that states adopt the least restrictive measure. The fine was disproportionate pursuant to international standards. *First*, UConnect was fined USD 100,000 for a post which it took down in four days and another which received no user

---

<sup>184</sup> Fact Pattern, para 5.2.

<sup>185</sup> *St Amant v Thompson* 390 US 727 (1968); *New York Times Co. v Sullivan* 376 U.S. 254 (1964).

<sup>186</sup> UNHRC, 'General Comment 34' (12 September 2011) UN Doc CCPR/C/GC/34 para 11; *Gertz v Robert Welch* 418 US 323, 344 (1974); *Curtis Pub Co v Butts* 388 US 130 (1967); *New York Times Co v Sullivan* 376 U.S. 254 (1964); *Associated Press v Walker* 379 US 47 (1964).

<sup>187</sup> Article 19, Germany: Act to Improve Enforcement of the Law on Social Networks Undermines Free Expression (Article 19, August 2017) < <https://www.article19.org/wp-content/uploads/2017/09/170901-Legal-Analysis-German-NetzDG-Act.pdf> > accessed 28 January 2019.

<sup>188</sup> Network Enforcement Act (*Netzdurchsetzungsgesetz*, NetzDG) (Germany).

<sup>189</sup> Jennifer M. Urban & Laura Quilter, 'Efficient Process or "Chilling Effects"? Takedown Notices Under Section 512 of the Digital Millennium Copyright Act' [2006] *Santa Clara Computer & High Technology Law Journal* 621.

<sup>190</sup> Fact Pattern, para 3.5.

<sup>191</sup> Para 25 of this Memorial.

complaints.<sup>192</sup> In comparison, less severe fines have been imposed on intermediaries for where removal took more than four days. Delfi, a news portal intermediary, was made to pay only approximately USD 370 in damages despite only removing unlawful content after *six* weeks.<sup>193</sup> Fines were also less severe where intermediaries were aware of illegal content. Google was fined USD 65,000 by France for failing to remove a defamatory publication from its search links, where the company contacted Google several times. Similarly, Twitter was fined USD 51,000 by Turkey for refusing to remove ‘terrorist propaganda’.<sup>194</sup>

54. *Second*, the fine was manifestly excessive considering relevant factors in determining the quantum of a fine, namely: the size of UConnect’s platform and the circumstances and effects of the offence.<sup>195</sup> Given that UConnect’s platform in Magentonia has fewer than a million users and the effects of the post could not be said to be *serious*, the fine should rightly have been in the range of 10,000 euros to 12,500 euros.<sup>196</sup>

---

<sup>192</sup> Fact Pattern, para 6.2.2.

<sup>193</sup> *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015) para 160.

<sup>194</sup> Ercan Gurses, ‘Turkey Fines Twitter for Failure to Remove “Terrorist Propaganda”’: Official’ *Reuters* (11 December 2015) <<http://www.reuters.com/article/us-turkey-twitter-fine-idUSKBN0TU0NK20151211>> accessed 28 January 2019. See also Tabeta Shunsuke, ‘China fines social media giants for banned content’ *Nikkei Asian Review* (26 September 2017) <<https://asia.nikkei.com/Politics/China-fines-social-media-giants-for-banned-content>> accessed 28 January 2019.

<sup>195</sup> Network Enforcement Act Regulatory Fining Guidelines Guidelines on setting regulatory fines within the scope of the Network Enforcement Act (*Netzwerkdurchsetzungsgesetz - NetzDG*) of 22 March 2018.

<sup>196</sup> Network Enforcement Act Regulatory Fining Guidelines Guidelines on setting regulatory fines within the scope of the Network Enforcement Act (*Netzwerkdurchsetzungsgesetz - NetzDG*) of 22 March 2018 p 26.



## PRAYER FOR RELIEF

---

For the foregoing reasons, the Applicants, Unger Ras and UConnect, respectfully requests this Honorable Court to:

1. **DECLARE** that Magentonia's failure to rectify, ease or block the search results depicting *The Cyanisian Times* story of 2001 violated Article 17 of the ICCPR;
2. **DECLARE** that Magentonia's decision of 2 June 2018 to direct Uconnect to suspend all operations until the conclusion of the trial violated Article 19 of the ICCPR; and
3. **DECLARE** that Magentonia's prosecution and conviction of Uconnect under the PIDPA was a violation of Article 19 of the ICCPR.

Respectfully submitted,

\_\_\_\_\_  
Agent for the Applicant, 103A