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MONROE E. PRICE MEDIA LAW MOOT COURT COMPETITION 2017-2018

NIAM PEAPS & SCOOPS

(APPLICANTS)

v.

STATE OF TURTONIA

(RESPONDENT)

MEMORIAL FOR THE APPLICANTS

WORD COUNT: 4992

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LIST OF ABBREVIATIONS

ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACHR	African Charter on Human and Peoples' Rights
ACLU	American Civil Liberties Union
ACommHPR	African Commission on Human and People's Rights
ACtHPR	African Court on Human and People's Rights
AIR	All India Reporter
App. No.	Application Number
ArCHR	Arab Charter on Human Rights
Art.	Article
CJEU	Court of Justice of the European Union
DMCA	Digital Millennium Copyright Act
ECHR	European Convention on Human Rights
ECOSOC	United Nations Economic and Social Council
EctHR	European Court of Human Rights

FIA	False Information Act
HRC	Human Rights Committee
IACtHR	Inter American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
ODPA	Online Dignity Protection Act
OUP	Oxford University Press
s	Section
SCC	Supreme Court Cases
SDNY	Southern District of New York
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UNHRC	United Nations Human Rights Council
USA	United States of America
USD	US Dollars
v	Versus

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STATEMENT OF RELEVANT FACTS

Socio-Political Background

1. Turtonia is a small country with a democratically elected government. Turtonia follows a civilian system with heavy emphasis on codification of law. Appeals from trial courts are directly heard by the Supreme Court on a discretionary basis and there is no guaranteed right of appeal.
2. During the last three years, Turtonia has witnessed a significant influx of immigrants from its neighbouring country, Aquaria, and this has caused uproar among the population. A vocal nationalist group called Turton Power has condemned the Turtonian Minister of Immigration, Wani Kola for allowing Aquarians to enter the country.
3. Meanwhile, since 2015, True Religion, a religious extremist terror group has gained prominence in Aquaria, and it has carried out violent attacks in schools and religious institutions resulting in numerous deaths. True Religion is headed by Prinsov Parkta who regularly issues calls to action through public videos.

Scoops

4. Scoops is the most popular social media platform in Turtonia. On Scoops, users can share posts with their friends and persons who have selected the same topic of interest. Users can also pay to boost their content and increase the reach of their post. Scoops primarily relies on an algorithm to select which users receive a post but it also employs human review to ensure that users are receiving content which matches their interests. Further,

Scoops features an 'influencer score' on its platform which records how many people have viewed content from the user.

5. Scoops' Terms of Service specify that harmful and malicious content such as spam, non-consensual sharing of intimate images, hate speech or child exploitative imagery are not allowed, and Scoops provides a mechanism to report such content on its platform.

Peap's Post and its aftermath

6. On May 1, Niam Peaps, a member of Turton Power created an account with the screen name "XYZ News12". XYZ News is a TV news network in Turtonia which is renowned for reliable and objective journalism.
7. On May 2, Peaps posted a naked image of Kola in a hotel room facing another individual, who appears to be Prinsov Parkta, the leader of True Religion. As per the Scoops algorithm, the post was then circulated to 20 users who had listed "XYZ News" as a topic of interest. The image was accompanied by a caption which stated that Kola had issued visas to members of True Religion at her lover's behest. The caption also indicated that Kola had ordered destruction of documents which revealed the terrifying nature of those individuals who were granted visas.
8. Peaps was under the impression that XYZ News was about to break a similar story, and he wanted to break the story first to maximize his influencer score on Scoops. Peaps found the morphed image on the publicly accessible Turton Power website and decided to use it to illustrate the relationship between Kola and Prinsov Parkta.
9. At 5 PM on May 2, XYZ News declared that it had no connection with the XYZNews12 account. This was also followed by a statement from Wani Kola's office calling the post a horrific lie and stating that the photo was morphed. In the wake of death threats and harassment, Kola's staff reported the post to Scoops at 7 PM on May 2 and selected the

option "a nude image of me shared without my consent" as the reason to request removal. However, Kola's staff did not complete the verification request sent by Scoops.

10. On May 3 at 11 AM, a legal notice claiming defamation and violation of privacy was sent to Scoops by Kola's legal counsel. Upon receiving the complaint, Scoops removed the post and all shares of the post in 50 hours. On the same day, TurtonTimes, a major newspaper ran a factual article about the post without commenting on its veracity. It also ran an opinion piece about loss of jobs and increasing threat of terrorism due to influx of Aquarian immigrants.
11. On May 4 and May 5, there were protests outside Kola's office demanding her resignation. More than 100 protesters chanted slogans criticizing Kola for her pro-immigration stance and on the evening of May 5, two Aquarian immigrants were beaten to death by an angry mob.

Prosecution under the Online Dignity Protection Act, 2015

12. In the years preceding 2015, there was a revenge porn epidemic in Turtonia. News articles have reported two separate suicides of teenage girls who were victims of such non-consensual sharing of nude images. 79 % Turtonians believe that such acts must be criminalized. In response this problem, Turtonia passed the Online Dignity Protection Act in 2015 ("ODPA") which criminalized non-consensual distribution of images revealing intimate parts of a person.
13. Peaps was prosecuted and punished under ODPA for distributing the morphed image of Kola. He sentenced to two years imprisonment. Scoops was also prosecuted for distributing the image in violation of ODPA and was fined 200,000 USD.

Prosecution under the Information Act, 2006

14. In Turtonia, false information concerning political candidates during the election process has shown massive shift in voter opinion resulting in civil unrest and a decrease in public faith in the democratic process. Therefore, the Turtonian legislature enacted the Information Act, 2006 primarily to preserve the integrity of the electoral process and safeguard peace in Turtonia. The legislation criminalizes intentional communication of false information resulting in loss of public confidence or communication of false information with an intent to incite civil unrest in Turtonia.
15. Peaps was prosecuted under this legislation for inciting violence through false information and he was ordered to pay a fine of 100,000 USD. Scoops was also fined 100,000 USD for knowingly communicating false information.
16. The Supreme Court of Turtonia declined to exercise its discretionary power of review. Therefore, Peaps and Scoops have challenged these verdicts before this Court, and the Court has certified Peaps' and Scoops' appeals on the four questions presented.

STATEMENT OF JURISDICTION

The Applicants, Peaps and Scoops, have approached the Universal Court of Free Expression to hear issues relating to the right of freedom of expression under Article 19 of the International Covenant on Civil and Political Rights.

All remedies within the Turtonian court system have been exhausted and the Applicants are not barred by any law to bring the present challenges.

The Applicants humbly submit to the jurisdiction of this Honourable Court.

QUESTIONS PRESENTED

- 1A -

WHETHER TURTONIA'S PROSECUTION OF PEAPS UNDER THE ODPA VIOLATES ARTICLE 19 OF THE ICCPR

- 1B -

WHETHER TURTONIA'S PROSECUTION OF SCOOPS UNDER THE ODPA VIOLATES THIS SAME INTERNATIONAL PRINCIPLE

- 2A -

WHETHER TURTONIA'S PROSECUTION OF PEAPS UNDER THE IA VIOLATES ARTICLE 19 OF THE ICCPR

- 2B -

WHETHER WHETHER TURTONIA'S PROSECUTION OF SCOOPS UNDER THE IA VIOLATES THIS SAME INTERNATIONAL PRINCIPLE.

SUMMARY OF ARGUMENTS

I. TURTONIA'S PROSECUTION OF PEAPS UNDER THE ONLINE DIGINITY PROTECTION ACT OF 2015 VIOLATES ARTICLE 19 ICCPR.

Freedom of speech and expression is a fundamental human right. It is necessary to ensure transparency, accountability and good governance in democratic societies. Public officials should tolerate a higher degree of criticism because they have voluntarily stepped into the limelight, and their access to the media enables them to correct defamatory statements. States have a very narrow margin of appreciation while restricting political speech.

Turtonia has violated Peaps' rights under Article 19, ICCPR by sentencing him to two-year imprisonment for using a morphed image available in the public domain to illustrate allegations of misconduct against a government minister. The interference with Peaps' rights does not satisfy the three-part test of legality, legitimacy and necessity because *firstly*, it is not prescribed by law, and *secondly*, it is not necessary in a democratic society.

The prosecution was not prescribed by law because ODPA is vague and overbroad. ODPA is vague because it does not mention who should be able to identify the person depicted in the picture, and the inclusive definition of *'distribution'* does not clarify whether merely recommending or hyperlinking a restricted image would attract criminal sanction. Further, ODPA is overbroad because it is not limited to images shared with a reasonable expectation of privacy, it does not require intent to harm the victim, and it requires specific consent for every individual act of disclosure regardless of the manner or platform through which the image was originally shared. Finally, ODPA's application to morphed images is unforeseeable and constitutes retrospective application of criminal law because the statutory

language and societal circumstances in Turtonia suggest that the Act only criminalizes non-consensual distribution of real images.

The prosecution was not necessary in a democratic society because it did not correspond to a pressing social need, and the two-year prison sentence was disproportionate to the aim sought to be achieved. There was no pressing social need to prosecute Peaps because the disclosure was made in public interest. Kola was a government minister, and the post related to her permissive immigration policy and the rising threat of terrorism, which are both subjects of public concern. Most importantly, the morphed image was lawfully obtained from a publicly accessible website, and it had been available on the Turton Power forum for two weeks before Peaps shared it on Scoops. Further, two-year imprisonment was grossly disproportionate because Peaps was a secondary distributor and he did not act with malice.

II. TURTONIA'S PROSECUTION OF SCOOPS UNDER THE ONLINE DIGINITY PROTECTION ACT OF 2015 VIOLATES ARTICLE 19 ICCPR.

Intermediaries who merely host content, and do not exercise control over information posted by users should not be held liable for user generated posts. The 200,000 USD fine imposed on Scoops is an onerous liability which would prevent it from disseminating information freely over the internet. Turtonia has violated Scoops' and its users' rights under Article 19, ICCPR by holding Scoops liable for the image shared by Peaps. The prosecution of Scoops is not justified because *firstly*, it was not prescribed by law, and *secondly*, it was not necessary in a democratic society.

The prosecution was not prescribed by law because ODPA merely contains a general negative obligation to not '*knowingly distribute*' a non-consensual intimate image, and it does not impose any specific positive obligations on intermediaries. Under ODPA, the applicable standard of knowledge should be actual knowledge because imposing a constructive

knowledge standard would force intermediaries to generally monitor all content on their platform. This would lead to a chilling effect, and private entities such as Scoops would err on the side of caution leading to proxy censorship.

The prosecution was not necessary in a democratic society because there was no pressing social need. Upon obtaining specific knowledge through a legal notice, Scoops expeditiously removed the post within 50 hours. Further, the 200,000 USD fine imposed on Scoops was disproportionate because the morphed image was shared on other social media platforms and other States impose significantly lesser punishment.

III. TURTONIA'S PROSECUTION OF PEAPS UNDER THE FALSE INFORMATION ACT OF 2006 VIOLATES ARTICLE 19 ICCPR.

False information is inevitable in any open and vigorous debate. Hence, individuals' speech cannot be curbed merely by the virtue of its falsity. Furthermore, the State has a very high burden of justifying an interference when speech is in regards matters of public debate. In the present case, Turtonia's prosecution of Peaps violated his right to freedom of expression under Article 19 since it was not justified under the three part test of legality, legitimacy, and necessity.

The interference was not prescribed by law since Section 1(b) of the FIA is vague because it uses terms which are broad and open to erroneous interpretation. Furthermore, since the difference between facts and opinions is very thin, the provision can be used to penalise opinions. The provision is also broad because it has not been limited to context of election or statements about electoral candidates, and hence can be misused to penalise speech made in private contexts. Finally, the provision also does not provide adequate safeguards because there is no guaranteed appeal in Turtonia.

The interference is not necessary because it does not fulfil a pressing social need since Peaps post was an innocent lie made to increase his influencer score on Scoops. He did not intend to incite violence, as is evident from the content of his post which only refers to the threat of True Religion. In any case, the post was also unlikely to incite violence because it did not demonise a community or issue a call of action. Furthermore, violence is less likely when other opinions are available to counterbalance a point of view, as is the case with social media platforms.

Lastly, the fine of 100,000 USD on Peaps was disproportionate since individuals in position of power have only been fined amounts as low as 10,000 EUR. Therefore, in the light of the nature of his post, he should not have been fine such a hefty amount.

IV. TURTONIA'S PROSECUTION OF SCOOPS UNDER THE FALSE INFORMATION ACT OF 2006 VIOLATES ARTICLE 19 ICCPR.

Intermediaries act as host platforms on which individuals can exercise their speech. Therefore, they should not be overburdened with duties which could lead to censorship of the speech of its users. In the present case, the prosecution of Scoops infringes on its rights under Article 19 ICCPR. Under the FIA, intermediaries are imputed with liability similar to that of a publisher. However, the liability on them must be subject to a differentiated and graduated approach. Therefore, the prosecution does not satisfy the three part test.

The interference is not prescribed by laws since the FIA does not provide any guidelines for an intermediary to determine the falsity of information, which often requires detailed discovery and adjudication of conflicting evidences. This leads to an over breadth and impreciseness in its application.

Furthermore, there is not pressing social need to make Scoops liable since intermediaries cannot adjudicate on matters of free speech which require a careful balancing of interests. In any case, they should not be made to act as proxy censors for the government because they might over-censor speech causing a 'chilling effect'.

The penalty of 100,000 USD imposed on Scoops is also disproportionate since it does not seek to preserve the *"integrity of the democratic process"*, which would be better protected by allowing for more speech.

Finally, Scoops has immunity under Section 3 of the FIA since it expeditiously removed Peaps post once it received a notification. Based on the traffic Scoops receives daily, there can be no general obligation to monitor content on its platform and pre-emptively filter content. Even on the receipt of a notification, the takedown need not be immediate since intermediaries must be given time to conduct their own analysis, and try to balance competing interests. Since the post was in a matter of public interest, the leeway given should be even higher. Therefore, Scoops' take down of the post in 50 hours was expeditious.

ARGUMENTS

I. TURTONIA'S PROSECUTION OF PEAPS UNDER THE ONLINE DIGNITY PROTECTION ACT VIOLATES ARTICLE 19, ICCPR.

1. Freedom of speech and expression is an internationally recognized human right.[1] It serves as the cornerstone of modern democratic societies, and it promotes transparency and accountability in governance.[2] The right extends to ideas that offend, shock or disturb because ideological differences are inevitable in a pluralistic society.[3]

2. Speech does not lose its protected character merely because it causes embarrassment or emotional distress to a person.[4] This is especially true if the person is a public official,[5] and the speech relates to a matter of public concern.[6]

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[1] Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (***'UDHR'***) art 19; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (***'ICCPR'***) art 19; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 (***'ECHR'***) art 10; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) (***'ACHR'***) art 13; African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) 21 ILM 58 (**'ACHPR'**) art 9; Arab Charter on Human Rights (adopted 22 May 2004, entered into force 15 March 2008) (**'ArCHR'**) art 32

[2] HRC, 'General Comment 34' (12 September 2011) UN Doc CCPR/C/GC/34, (***'General Comment 34'***) ¶ 3; ACHPR 'Declaration of Principles of Freedom of Expression in Africa' (2002) (***'ACHPR Declaration on FoE'***) preamble

[3] *General Comment 34* (n 2), ¶11; *Handyside v UK* App No 5393/72 (ECtHR, 7 December 1976), (***'Handyside v UK'***) ¶ 49; *MGN Ltd v UK* App No 39401/04 (ECtHR, 18 Jan 2011), (***'MGN Ltd v UK'***) ¶ 139; *Kobenter and Standard Verlags GmbH v Austria* App No 60899/00 (ECtHR, 2 November 2006), (***'Standard Verlags v Austria'***) ¶ 29; *Ojala and Etukeno Oy v Finland* App No 69939/10 (ECtHR, 14 January 2014), (***'Ojala v Finland'***) ¶ 40

[4] *Hustler Magazine, Inc v Falwell* 485 US 46 (1988) (***'Hustler v Falwell'***); *Snyder v Phelps* 562 US 443 (2011); John A Humbach, 'The Constitution and Revenge Porn' (2014) 35 Pace Law Review 1, 233 (***'John Humbach'***)

[5] ECOSOC, 'The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights' (1984) UN Doc E/CN4/1985/4, (***'Siracusa Principles'***) principle 37; *ACHPR Declaration on FoE* (n 2) principle 12; *Rafael Marques de Morais v Angola* UN Doc CCPR/C/83/D/1128/2002 (HRC, 29 March 2005), (***'Morais v Angola'***) ¶ 6.8; *Bladet Tromsø and Stensaas v Norway* App No 21980/93 (ECtHR, 9 July 1998), (***'Bladet Tromso v Norway'***) ¶ 80; *Kasabova v Bulgaria* App No 22385/03 (ECtHR, 19 April 2011), (***'Kasabova v Bulgaria'***) ¶ 57; *Ojala v Finland* (n 3) ¶ 46; *Kuchl v Austria* App No 51151/0675 (ECtHR, 4 December 2012), (***'Kuchl v Austria'***) ¶75; *Herrera-Ulloa v Costa Rica*, Preliminary Objections, Merits, Reparations and Costs Judgment (IACtHR, 2 July 2004), (***'Herrera v Costa Rica'***) ¶ 127-129; *Kimel v Argentina*, Merits, Reparations and Costs Judgement (IACtHR, 2

3. Further, freedom of speech and expression is not limited to true information.[7] While false statements have little intrinsic value, they are inevitable in the course of debate[8] and they should be protected because free speech needs breathing space.[9]

4. In the present case, Turtonia has punished Peaps for using a morphed image available in the public domain to illustrate allegations of misconduct against a government minister. The two-year prison sentence imposed on Peaps[10] constitutes an interference with his rights under Art.19, ICCPR.[11] This interference is not justified because it does not satisfy the widely endorsed three part test of legality, legitimacy, and necessity.[12] Hence, Peaps' prosecution under the Online Dignity Protection Act (***'ODPA'***) was not justified because it was not prescribed by law **(A)**, and it was not necessary in a democratic society **(B)**.

May 2008), (***'Kimel v Argentina'***) ¶ 86; *Good v Botswana* App No 313/05 (ACtHPR May 2010), (***'Good v Botswana'***) ¶198; *Lohe Issa Konate v Burkina Fasso* App No 004/2013 (ACtHPR, 5 December 2014), (***'Konate v Burkia Faso'***) ¶155; *R Rajagopal v State of Tamil Nadu* AIR 1995 SC 264 (India)

[6] *General Comment 34* (n 2) ¶ 20; *Lingens v Austria* App No 9815/82 (ECtHR, 8 July 1986), (***'Lingens v Austria'***) ¶25-26; *Olafsson v Iceland* App No 58493/13 (ECtHR, 16 March 2017), (***'Olafsson v Iceland'***) ¶51; *Pfeifer v Austria* App No 12556/03 (ECtHR, 15 November 2007), (***'Pfeifer v Austria'***) ¶45; *Axel Springer v Germany* App No 39954/08 (ECtHR, 7 February 2012), (***'Axel Springer v Germany'***), ¶90; *Uson Ramirez v Venezuela*, Preliminary Objections, Funds, Reparations and Costs Judgement (IACtHPR, 20 November 2009), (***'Ramirez v Venezuela'***) ¶84

[7] *New York Times Co v Sullivan* 376 US 271 (1964) (***'NYT v Sullivan'***); *United States v Alvarez* 132 US 2544, 2545 (2012) (***'US v Alvarez'***)

[8] *NAACP v Button* 371 US 415 (1963) ***('NAACP v Button'***)

[9] *Bladet Tromso v Norway* (n 5), ¶80; *Madanhire v. Attorney General* Case No. CCZ 2/14 (Constitutional Court of Zimbabwe, 12 June 2014)

[10] Moot Proposition, ¶ 12.1

[11] HRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue' (2011) UN Doc A/HRC/17/27, (***'Frank La Rue 2011 Report'***) ¶22; Guðmundur Alfreðsson and Asbjørn Eide, *The Universal Declaration of Human Rights: A Common Standard of Achievement* (Martinus Nijhoff 1999) (***'Alfreðsson and Eide'***) 409; Dirk Ehlers, *European Fundamental Rights and Freedoms* (Walter de Gruyter 2007) (***'Dirk Ehlers'***) 106

[12] *General Comment 34* (n 2), ¶22; HRC, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (17 April 2013) UN Doc A/HRC/23/40, (***'Special Rapporteur Report 2013'***) ¶28–29; *Siracusa Principles* (n 5) principle 10; *ACHPR Declaration on FoE* (n 2) principle 2; *Ballantyne, Davidson, McIntyre v Canada* UN Doc CCPR/C/47/D/359/1989 and 385/1989/Rev.1 (HRC, 5 May 1993), (***'McIntyre v Canada'***) ¶11.4; *MGN Ltd v UK* (n 3) ¶136; *Standard Verlags v Austria* (n 3) ¶ 24; *Kimel v Argentina* (n 5) ¶58; *Konate v Burkina Fasso* (n 5) ¶125

A. THE PROSECUTION OF PEAPS UNDER ODPA WAS NOT PRESCRIBED BY LAW.

5. For a restriction to be prescribed by law, it must be sufficiently precise and reasonably foreseeable.[13] In the present case, the prosecution of Peaps under ODPA does not satisfy the test of legality because ODPA is vague and overbroad **(i)**, and ODPA's application to non-consensual disclosure of morphed images is unforeseeable **(ii)**.

(i) ODPA is vague and overbroad.

6. For a legislation to satisfy the test of legality, it should be drafted with sufficient precision to enable individuals to reasonably foresee the consequences of their actions.[14] The standard of foreseeability depends on the content of the law, the field it is designed to cover, and the number and status of persons that it is applicable to.[15] While professionals can be expected to seek legal advice and exercise high degree of caution in their occupation,[16] a similar standard cannot be applied to laypersons. In the present case, ODPA is a criminal legislation which is supposed to guide the behaviour of the general population of Turtonia. Therefore, individuals should be able to determine from the wording of the statute what kind of acts will attract criminal sanction.[17]

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[13] *General Comment 34* (n 2) ¶25; *The Sunday Times v United Kingdom* App no 6538/74 (ECtHR, 26 April 1979), (***'Sunday Times v UK'***) ¶49

[14] *General Comment 34* (n 2) ¶25; HRC, '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, ¶78; *Olafsson v Iceland* (n 6) ¶36; *Chauvy v France* App No 64915/01 (ECtHR, 29 June 2004), (***'Chauvy v France'***) ¶43; *Lindon, Otchakovsky-Laurens and July v France* App No 21279/02 and 36448/02 (ECtHR, 22 October 2007), (***'Lindon v France'***) ¶41; *Kokkinakis v Greece* App no 14307/88 (ECtHR, 25 May 1993), (***'Kokkinakis v Greece'***) ¶40; *Ramirez v Venezuela* (n 6) ¶ 56-57; *Kimel v Argentina* (n 5) ¶63; *City of Chicago v Morales* 527 U.S. 41 (1999); *Kartar Singh v State of Punjab* 1994 3 SCC 569 (India); *Shreya Singhal v Union of India* AIR 2015 SC 1523 (India) (***'Shreya Singhal v UOI'***)

[15] *Chauvy v France* (n 14) ¶ 44; *Cantoni v France* App No 17862/91 (ECtHR, 11 November 1996), (***'Cantoni v France'***) ¶35

[16] *Chauvy v France* (n 14) ¶45; *Cantoni v France* (n 15) ¶35

[17] *Jorgic v. Germany* App No 74613/01 (ECtHR, 12 July 2007), (***'Jorgic v Germany'***) ¶100; *Streletz, Kessler and Krenz v Germany* App Nos 34044/96, 35532/97 and 44801/98 (ECtHR, 22 March 2001), (***'Krenz v Germany'***) ¶50; *Cantoni v France* (n 15) ¶9

7. It is submitted that ODPA is vague for two reasons. *First*, under ODPA, it is not clear who should be able to identify the subject depicted in the picture.[18] *Second*, while the term '*distribution*' has been inclusively defined to cover '*transferring, publishing, or reproducing*',[19] it is not clear whether actions like merely recommending or providing the hyperlink to a restricted image would constitute distribution.[20]

8. Even if there is a substantial government interest at stake, laws restricting speech should be narrowly tailored, and they cannot chill protected speech by sweeping an unnecessarily broad field.[21] In the present case, ODPA is overbroad for three reasons.

9. *First*, unlike revenge porn legislations in USA,[22] Canada,[23] and Philippines,[24]ODPA is not limited to images taken in circumstances where there is a reasonable expectation of privacy.[25]

10. *Second*, while revenge porn legislations in the USA[26] and UK[27] require an intent to harass or cause emotional distress to the victim, ODPA does not have an intent requirement. In case of

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[18] Sarah E Driscoll, 'Revenge Porn: Chivalry Prevails as Legislation Protects Damsels in Distress over Freedom of Speech' (2016) 21 Rogers William University Law Review 1, 109

[19] Section 2(a), ODPA. Moot Proposition, ¶ 10.2

[20] *Crookes v Newton* [2011] SCC 47(Supreme Court of Canada); ACLU, Complaint for Declaratory and Injunctive Relief against s13-1425, Arizona Revised Statutes (2014) <https://www.aclu.org/sites/default/files/assets/az_nude_picture_complaint_0.pdf> accessed 04 January 2018 (***'ACLU Brief'***); Jonathan Peters, 'Can News Organizations Be Sued for Just Linking To Those Hacked Nude Photos? Maybe. There's Only One Way to Find Out' (*Esquire*, 5 September 2014) <http://www.esquire.com/news-politics/news/a29921/news-orgs-legal-implications-hacked-photos/> accessed 10 January 2018

[21] *Grayned v City of Rockford* 408 US 104 (1972) (***'Grayned v Rockford'***); *NAACP v Alabama* 377 US 288 (1964); *NAACP v Button* (n 8); *Cantwell v Connecticut* 310 U S 296 (1940)

[22] Illinois Consolidated Statutes, s11-23.5; Colorado Revised Statutes, s18-7-107 and 18-7-108; Louisiana Revised Statutes, s14-283-2; Oklahoma Statutes, s21-1040.13b; North Carolina General Statutes, s 14-190.5A; Nevada Revised Statutes, s200-2; Minnesota Statutes, s 617-261

[23] The Intimate Image Protection Act (Manitoba, Canada, 2015)

[24] Anti-Photo and Video Voyeurism Act, s 4 (Philippines, 2009)

[25] Andrew Koppelman, 'Revenge Pornography and First Amendment Exceptions' (2016) 65 Emory Law Journal 664; Danielle Keats Citron and Mary Anne Franks, 'Criminalizing Revenge Porn' (2014) 49 Wake Forest Law Review 345, 367-370; Sarah Bloom, 'No Vengeance for Revenge Porn Victims: Unraveling Why this Latest Female Centric Intimate Partner Offence is Still Legal, and Why We Should Criminalize It' (2016) 42 Fordham Urban Law Journal 2, 253-255 (***'Sarah Bloom'***)

speech based offences, the speaker's intent should determine their culpability because imposing strict liability for harmful speech could have a chilling effect on valuable speech.[28]

11. *Third*, ODPA uses the phrase '*such disclosure*'[29] which suggests that specific consent is required for every individual act of disclosure. There is no provision to imply consent depending on the manner and platform through which the intimate image was originally shared.[30] Therefore, a person may be punished for sharing an image that was voluntarily put in the public domain.

(ii) ODPA's application to non-consensual disclosure of morphed images is unforeseeable.

9. Extending the application of ODPA to morphed images appearing to show a person's intimate parts through analogical reasoning violates the principle of non-retrospectivity of criminal law enshrined in Art.15, ICCPR.[31] A criminal statute like ODPA must be strictly interpreted,[32] and ODPA's application to morphed images is not reasonably foreseeable for two reasons.

10. *First*, ODPA uses the phrase '*image of another person who is identifiable…and whose intimate parts are exposed*'.[33] Interpreting ODPA to include morphed images would render the pronoun

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[26] Penal Code, s 647(j)(4) (California, 2014); Vermont Statutes Annotated, s 2605 (Vermont, 2015); Pennsylvania Consolidated Statutes, s 18-3131 (Pennsylvania, 2014); Nevada Revised Statutes, s 200-5 (Nevada, 2015); Eugene Volokh, 'The Freedom of Speech and Bad Purposes' (2016) 63 UCLA Law Review 1366, 1378

[27] Criminal Justice Courts Act, s 33(1)(b) (United Kingdom, 2015)

[28] Leslie Kendrick, 'Speech, Intent, and the Chilling Effect', (2013) 54 William & Mary Law Review 1633, 1648-1649

[29] Section 1, ODPA. Moot Proposition, ¶ 10.2

[30] *ACLU Brief* (n 20)

[31] *Jorgic v Germany* (n 17) ¶ 00; *Krenz v Germany* (n 17) ¶50; *Cantoni v France* (n 15) ¶29

[32] Francis Bennion, *Bennion on Statutory Interpretation* (Lexis Nexis 2008) 516

[33] Section 1, ODPA. Moot Proposition, ¶ 10.2

'*whose*' superfluous. *Second*, societal circumstances prevailing in Turtonia suggest that ODPA was enacted to prevent dissemination of real images shared with the expectation of privacy that people were actively trusted with.[34]

11. Non-consensual disclosure of intimate images is uniquely harmful because there is an underlying expectation of privacy.[35] In case of morphed images, the image itself is not a record of breach of trust.[36] Therefore, non-consensual disclosure of morphed images is not intrinsically related to violation of privacy.[37] Following a similar line of reasoning, courts have held that photographs where the head of a child is superimposed onto the naked body of an adult do not constitute child pornography.[38]

B. THE PROSECUTION OF PEAPS UNDER ODPA WAS NOT NECESSARY IN A DEMOCRATIC SOCIETY.

15. Restrictions on speech under Art.19(3), ICCPR must be strictly construed and their need should be convincingly established.[39] In the present case, the prosecution of Peaps was not necessary in a democratic society because it did not fulfill a pressing social need **(i)**,[40] and the interference was not proportionate to aim being pursued **(ii)**.[41]

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[34] Moot Proposition, ¶ 10.1

[35] Mary Anne Franks, 'How to Defeat 'Revenge Porn': First, Recognize It's About Privacy, Not Revenge' The (*Huffington Post*, 22 June 2015) <https://www.huffingtonpost.com/mary-anne-franks/how-to-defeat-revenge-porn_b_7624900.html> accessed 10 January 2018

[36] *Ashcroft v Free Speech Coalition* 535 US 234 (2002) (***'Ashcroft v Free Speech Coalition'***); *New York v Ferber* 458 US 747 (1982) (***'New York v Ferber'***)

[37] *Ashcroft v Free Speech Coalition* (n 36)

[38] *People v. Gerber* 196 Cal.App.4th 368 (2011); Carissa Byrne Hessick, 'The Limits of Child Pornography' 89 Indiana Law Journal 4, 1477

[39] *Siracusa Principles* (n 5) principle 3; *Ruokanen v Finland* App No 45130/06 (ECtHR, 6 April 2010) (**'*Ruokanen v Finland*'**) ¶35; *Chauvy v France* (n 14) ¶63; *John Humbach* (n 4) 220

[40] *Cumpana and Mazare v Romania* App No 33348/06 (ECtHR, 17 December 2004), (***'Cumpana v Romania'***) ¶88; *MGN Ltd v UK* (n 3) ¶139; *Standard Verlags v Austria* (n 3) ¶29; *Sunday Times v UK* (n 13) ¶ 62; *Pedersen and*

(i) The prosecution did not fulfill a pressing social need.

16. To prove that there was a pressing social need, the reasons advanced by the State must be both relevant and sufficient.[42] The sufficiency criterion depends on the public interest involved.[43] Certain aspects of a public official's private life may be of legitimate interest to the public.[44] In the present case, there was no pressing social need to prosecute Peaps for four reasons.

17. *First*, the disclosure was made in public interest. In certain situations, non-consensual disclosure of intimate images may be necessary to expose misconduct by public figures.[45] In the present case, the allegations related to abuse of power by Kola in her professional capacity[46] as the Immigration Minister. Peaps learnt from unnamed sources that XYZ News was about to expose Kola's misconduct.[47] Since XYZ News is renowned for its reliable and objective journalism,[48] Peaps could have reasonably believed that Kola was guilty of issuing visas to terrorists.

Baadsgaard v Denmark App No 49017/99 (ECtHR, 19 June 2003), (***'Pedersen v Denmark'***) ¶63; *Chauvy v France* (n 14) ¶64; *Herrera v Costa Rica* (n 5) ¶122

[41] *Sunday Times v UK* (n 13) 62; *Ojala v Finland* (n 3) ¶43; *Ruokanen v Finland* (n 39) ¶38; *Kasabova v Bulgaria* (n 5) ¶54; *Herrera v Costa Rica* (n 5) ¶122

[42] *Tonsberg v Norway* (**'*Tonsberg v Norway*'**) ¶54; *Handyside v UK* (n 3) ¶50; *Pedersen v Denmark* (n 40) ¶63; *Chauvy v France* (n 14) ¶ 65; *Cumpana v Romania* (n 40) ¶90

[43] *Sunday Times v UK* (n 13) ¶65

[44] *Hachette Filipacchi Associes v France* App No 71111/01 (ECtHR, 14 June 2007) (**'*Hachette v France*'**)

[45] Saul Levmore and Martha C. Nussbaum (Ed), *The Offensive Internet: Speech, Privacy and Reputation* (*Harvard University Press*, 2010) 134; Andy Ostroy, 'WeinerGate 2.0: The Misadventures of Carlos Danger' (*Huffington Post*, 25 July 2013) <http://www.huffingtonpost.com/andy-ostroy/weiner-20-the-misadventures_b_3647217.html> accessed 10 January 2018; John F Burns, 'Possible Nazi Theme of Grand Prix Boss's Orgy Draws Calls to Quit' (*NYT*, 7 April 2008) <http://www.nytimes.com/2008/04/07/world/europe/07formula.html> accessed 10 January 2018

[46] *Petrina v Romania* App No 78060/01 (ECtHR, 14 October 2008)

[47] Moot Proposition, ¶12.2

[48] Moot Proposition, ¶6.1

18. Whether there was public interest involved in distribution of the image cannot be evaluated with the benefit of hindsight.[49] At the time of sharing the image, Peaps believed in the veracity of the allegations against Kola, and he used the image to illustrate her relationship with Prinsov Parkta. The distribution of the image served public interest because it was not done with the sole purpose of satisfying curiosity about a public official's private life.[50]

19. *Second*, while participating in a debate of general interest, private individuals are also entitled to a higher degree of protection, and they cannot be penalized for failing to prove the veracity of their statements if they had acted with due diligence.[51] In the present case, the image related to politically charged issue, and it must be viewed in context of the widespread discontent with Kola's permissive immigration policy and the rise of terrorism in Turtonia.[52] Since the image addressed a subject of public importance, Turtonia was required to provide clear and convincing evidence that Peaps seriously doubted the truthfulness of the allegations,[53] and that he acted with malice.[54]

20. *Third*, the morphed image was lawfully obtained from a publicly accessible website, and Peaps did not play any role in its creation.[55] The morphed image had been available on the Turton Power website for more than two weeks before Peaps shared it on Scoops,[56] and hence, there

[49] *Bladet Tromsø v Norway* (n 5) ¶66; *Kasabova v Bulgaria* (n 5) ¶67; *Ruokanen v Finland* (n 39) ¶42

[50] *MGN Ltd v UK* (n 3) ¶143; *Von Hannover v Germany (No 2)* App Nos 40660/08 and 60641/08 (ECtHR, 7 February 2012), (***'Von Hannover No 2'***) ¶103; *Leempoel & S A ED Ciné Revue v Belgium* App No 464772/01 (ECtHR, 9 November 2006) ¶ 77; *Fontevecchia and D'Amico v Argentina*, Merits, Reparations and Costs Judgment (IACtHR, 29 November 2011), (***'D'Amico v Argentina'***) ¶68

[51] *Braun v Poland* App No 30162/10 (ECtHR, 4 November 2014) ¶ 50; Stijn Smet, 'Freedom of Expression and the Right to Reputation: Human Rights in Conflict' 26 American University International Law Review 1, 222

[52] Moot Proposition, ¶ 4.1

[53] *St Amant v Thompson* 390 US 727 (1968); *NYT v Sullivan* (n 7)

[54] *General Comment 34* (n 2) ¶11; *Gertz v Robert Welch* 418 US 323, 344 (1974); *Curtis Pub Co v Butts* 388 US 130 (1967); *Rosenblatt v Baer* 383 US 75 (1966); *NYT v Sullivan* (n 7); *Associated Press v Walker* 379 US 47 (1964)

[55] Moot Proposition, ¶ 12.3

[56] Moot Proposition, ¶ 12.4

was no pressing social need to prohibit further distribution.[57] The real harm suffered by Kola is purely reputational in nature, and by proceeding under ODPA, the Respondents seek to circumvent the actual malice standard for defamation of public officials.[58]

21. *Finally,* the State has an obligation to employ least restrictive means to satisfy the pressing social need.[59] In the present case, civil remedies under tort law and copyright law are already available to victims of non-consensual disclosure of intimate images, and successful civil lawsuits have been filed in USA,[60] UK,[61] Australia.[62]

(ii) The two-year prison sentence is disproportionate to the aim pursued.

22. Criminal liability seriously hampers free speech, and it must be imposed only in exceptional circumstances.[63] Two-year imprisonment is grossly disproportionate for sharing an online post on a subject of public concern,[64] especially in the absence of malice.[65] In comparison,

[57] *Mosley v News Group Newspapers* [2008] EWHC 1777 ¶ 36; *Observer and Guardian v United Kingdom* App No 13585/88 (ECtHR, 26 November 1991) (***'Guardian v UK'***) ¶ 66-70; *D'Amico v Argentina* (n 50) ¶ 63-64

[58] *General Comment 34* (n 2) ¶47; HRC, 'Consideration of reports submitted by States parties under article 40 of the Covenant : International Covenant on Civil and Political Rights : concluding observations of the Human Rights Committee : United Kingdom of Great Britain and Northern Ireland' (30 July 2008) UN Doc CCPR/C/GBR/CO/6 ¶ 25; *Adonis v Philippines* UN Doc CCPR/C/GBR/CO/6 (HRC, 26 October 2011), (***'Adonis v Philippines'***) ¶ 7.7; *NYT v Sullivan* (n 7); *Hustler v Falwell* (n 4)

[59] *General Comment 34* (n 2) UN ¶34; *Siracusa Principles* (n 5) principle 10; *McIntyre v Canada* (n 12) ¶11.4; *Adonis v Philipines* (n 58) ¶ 7.7; *Hachette v France* (n 44); *Konate v Burkina Fasso* (n 5) ¶ 149; *Sable Communications of California v. Federal Communications Commission* 492 US 115 (1989) (***'Sable v FCC'***); Janneke Gerards, 'How to Improve the Necessity Test of the European Court of Human Rights?' (2013) 11 International Journal of Constitutional Law 2, 482

[60] *Taylor v Franko* Civil No 09-00002 JMS/RLP (United States District Court for the District of Hawaii)

[61] *AMP v Persons Unknown* [2011] EWHC 3454 (Technology and Construction Court, London)

[62] *Wilson v Ferguson* [2015] WASC 15 (Supreme Court of Western Australia)

[63] CoE, 'Recommendation of the Committee of Ministers to Member States on "Hate Speech"' (Recommendation 97(20), 1997) (***'CoE on Hate Speech'***) principles 2 and 5; Council of Europe,' Ethical Journalism and Human Rights' (CommDH/IssuePaper1, 2011) 22; *General Comment 34* (n 2); *Kimel v Argentina* (n 5) ¶76-78; *Konate v Burkina Fasso* (n 5) ¶165

[64] *Cumpana v Romania* (n 40) ¶116

[65] *Kimel v Argentina* (n 5) ¶78

Oklahoma[66] prescribes one-year imprisonment or 1000 USD fine, and California[67] caps punishment at six months imprisonment or 1000 USD fine for first time offenders. Even France[68] limits jail term to one year.

23. Most importantly, imposing such a harsh punishment on a secondary distributor like Peaps who did not create the morphed image is unwarranted because while prosecuting an individual, the Court must also consider the chilling effect its ruling has on the media and general citizenry.[69]

[66] Oklahoma Statutes, s 12-1040.13b (Oklahoma, 2016)

[67] Penal Code, s 647(j)(4) (California, 2014)

[68] New Penal Code, Art 226-1 (France)

[69] *Kasabova v Bulgaria* (n 5) ¶55; William A Schabas, *The European Convention on Human Rights: A Commentary* (OUP, 2015) 452 (***'Schabas ECHRCommentary'***)

II. TURTONIA'S PROSECUTION OF SCOOPS UNDER THE ONLINE DIGNITY PROTECTION ACT VIOLATES ARTICLE 19, ICCPR.

24. Freedom of speech and expression extends to the internet,[70] and it protects the rights of intermediaries and their users.[71] Intermediaries who do not exercise editorial control should be exempt from liability[72] for user generated content.[73]

25. In the present case, Scoops' prosecution under ODPA for non-consensual distribution of Kola's morphed image violates Art.19, ICCPR because it does not satisfy the requirements of legality **(A)**, and necessity **(B)**.[74]

A. THE PROSECUTION OF SCOOPS UNDER ODPA WAS NOT PRESCRIBED BY LAW.

26. Laws restricting speech should be precise and their application must be foreseeable,[75] especially if they impose criminal liability.[76] Under ODPA, there merely exists a general negative

[70] *Frank La Rue 2011 Report* (n 11) ¶19-27; *Reno v American Civil Liberties Union* 521 US 844 (1997) (***'Reno v ACLU'***); *O'Grady v Superior Court of Santa Clara* County 44 Cal Rptr 3d 72 (2006); *Schabas ECHR Commentary* (n 69) 456; Richard Clayton and Hugh Tomlinson, *The Law of Human Rights* (1st edn, OUP 2000) (***'Clayton and Tomlinson'***) 1059

[71] *General Comment 34* (n 2) ¶43; *Delfi AS v Estonia* App No 64569/09 (ECtHR, 10 October 2013), (***'Delfi 2013'***) ¶69-70; *Cengiz v Turkey* App Nos 48226/10, 14027/11 (ECtHR, 1 December 2015) ¶56

[72] *Jurin v Google, Inc* 695 F Supp 2d 1117 (ED Cal 2010); *Mmubango v Google, Inc* 2013 WL 664231 (ED Pa 2013); Communications Decency Act, s 230 (United States, 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> accessed 10 January 2018, (***'Joint Declaration on FoE 2011'***) ¶ 2

[73] *Metropolitan Schools v Designtechnica* (2009) EWHC 1765 (QB) (***'Metropolitan Schools v Designtechnica'***); *Blockowicz v Williams*, 630 F 3d 563 (7th Cir 2010); *Crookes v Newton* 2011 SCC 47 (Canada) (***'Crookes v Newton'***); Mark A. Lemley, 'Rationalising Internet Safe Harbours' (2007-2008) 6 Journal on Telecommunications & High Technology Law 101

[74] *General Comment 34* (n 2) ¶22; *Special Rapporteur Report 2013* (n 12) ¶ 28–29; *Siracusa Principles* (n 5) principle 10; *ACHPR Declaration on FoE* (n 2) principle 2; *McIntyre v Canada* (n 12) ¶11.4; *MGN Ltd v UK* (n 3) ¶ 136; *Standard Verlags v Austria* (n 3) ¶ 24; *Kimel v Argentina* (n 5) ¶58; *Konate v Burkina Fasso* (n 5) ¶125

[75] *Sunday Times v UK* (n 13) ¶ 49; *Delfi AS v Estonia* App No 64569/09 (ECtHR, 16 June 2015), (***'Delfi 2015'***) ¶120-122

[76] *Kimel v Argentina* (n 5) ¶63

obligation to not '*knowingly distribute*'[77] a non-consensual intimate image. It does not impose specific positive obligations on an intermediary[78] unlike similar revenge porn legislations.[79] Therefore, the prosecution of Scoops for failing to remove the image within a reasonable time[80] is not prescribed under the Act.

B. THE PROSECUTION OF SCOOPS UNDER ODPA WAS NOT NECESSARY IN A DEMOCRATIC SOCIETY.

24. The prosecution of Scoops under ODPA was not necessary in a democratic society because it did not correspond to a pressing social need **(i)**,[81] and the interference was not proportionate to the aim pursued **(ii)**.[82]

(i) There was lack of pressing social need because Scoops merely hosted the content and it did not 'knowingly' distribute the image.

25. While curbing non-consensual distribution of intimate images corresponds to a pressing social need, imputing concomitant liability on intermediaries for all such distribution is unduly burdensome. The rigorous punishment imposed may have been justified for online platforms which knowingly and specifically encourage users to upload revenge porn for financial benefit.[83] However, in the instant case, Scoops is a passive intermediary which does not control

[77] Section 1, ODPA. Moot Proposition, ¶ 10.2

[78] *Delfi 2015* (n 75) (Sajo J and Tsotsoria J dissenting) ¶20

[79] Florida Statutes, s 784.049; Utah Code, s 76–5b–203

[80] Moot Proposition, ¶ 13.2.3

[81] *Standard Verlags v Austria* (n 3) ¶ 29; *Sunday Times v UK* (n 13) ¶ 62; *Ojala v Finland* (n 3) ¶41; *Herrera v Costa Rica* (n 5) ¶122

[82] *Pedersen v Denmark* (n 40) ¶ 63; *Chauvy v France* (n 14) ¶ 65; *Cumpana v Romania* (n 40) ¶90; *Herrera v Costa Rica* (n 5) ¶ 122

[83] Colorado Revised Statutes, s18–7–107, 18–7–108; Vermont Statutes Annotated, s 2605 (Vermont, 2015) ; *Sarah Bloom* (n 25) 254

the information posted by its users,[84] and it condemns harmful and malicious content in any form.[85]

26. The liability of an online intermediary like Scoops must be differentiated from that of a publisher because Scoops merely provides technical infrastructure and hosts the content on its platform.[86] Further, holding an intermediary responsible for any post shared on its platform causes severe economic hardship,[87] thus rendering it unviable as a site for dissemination of ideas, opinions and criticisms.

27. The provisions are inapplicable to Scoops because it merely hosted the image and did not '*knowingly distribute*' it.

(a) The applicable standard of knowledge is actual knowledge.

28. The act of '*distribution*' is preceded by a qualifier of '*knowledge*'.[88] The standard of knowledge for imputing the liability to Scoops should be actual knowledge, and not constructive knowledge for two reasons.[89]

29. *First*, a plain reading of the statue requires the image to have been '*knowingly distribute*(*d*)'. The statue does not employ any other qualifier such as '*should have known*' or '*has reason to believe*' as used in other revenge porn legislations.[90]

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[84] *Joint Declaration on FoE 2011* (n 72) ¶ 2; Council Directive 2000/31/EC of 8 June 2000 on Certain Legal Aspects of Information Society Services, in Particular Electronic Commerce in the Internal Market OJ L178/1, (***'E-Commerce Directive'***) ¶ 42; Manila Principles on Intermediary Liability (2015) (***'Manila Principles'***) principle 1; *Sidney Blumenthal v Matt Drudge and America Online Inc* 992 F Supp 44 (DDC 1998); *Cubby Inc v Compuserve* 776 F Supp 135 (SDNY 1991)

[85] Moot Proposition, ¶ 9.2

[86] *E-Commerce Directive* (n 84) art 14; *Delfi 2015* (n 75) ¶144-146

[87] Seth F Kreimer, 'Censorship by Proxy: The First Amendment, Internet Intermediaries and the Problem of the Weakest Link' (2006-07) 155 University of Pennsylvania Law Review 11 (***'Seth Kreimer'***) 31; S Yoo, 'Free Speech and the Myth of the Internet as an Unintermediated Experience' (2009) Scholarship at Penn Law Paper 289, 8

[88] Section 1, ODPA. Moot Proposition, ¶ 10.2

[89] *E-Commerce Directive* (n 84) art 14 and ¶ 46; *Delfi 2015* (n 75) (Sajo J and Tsotsoria J dissenting) ¶ 1; *Sega Enterprises v Maphia* 857 F Supp 679 (ND Cal 1994); Electronic Communications and Transactions Act, s 77 (South Africa, 2002)

30. *Second*, a constructive knowledge standard would require the intermediary to generally monitor all content on its platform.[91] Imposing such an obligation would force intermediaries to be arbiters of free speech.[92] Private corporations like Scoops are not trained to identify illegal content, and they must not be allowed to undertake such evaluation which necessitates judicial scrutiny.[93] Jurisprudence in India[94], Chile[95] and Argentina[96] also favour liability based on negligence, and not strict liability.

31. In the present case, Scoops did not receive notice at 7:00PM on 2 May when Kola's staff reported the image[97] because 'actual knowledge' is only imputed upon serving a judicial order.[98] In the absence of a judicial order, Scoops can regulate content according to its own Terms of Service.[99]

(b) Upon obtaining 'actual knowledge' Scoops expeditiously removed the image.

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[90] Colorado Revised Statutes, s 18–7–107, 18–7–108; Illinois Criminal Code, s 12–23.5; Oregon Revised Statutes, s 161.006

[91] *E-Commerce Directive* (n 84) art 15 and ¶ 47; *Scarlet Extended SA v SABAM* C–70/10 (CJEU, 24 November 2011) (***'Scarlet v SABAM'***); *Delfi 2015* (n 75) (Sajo J and Tsotsoria J dissenting) ¶1,9

[92] *Frank La Rue Report 2011* (n 11) ¶41- 43; *Turner Broadcast Inc v FCC* 512 US 622 (1994)

[93] *Frank La Rue Report 2011* (n 11) ¶42

[94] *Shreya Singhal v UOI* (n 14)

[95] *Paulina Fuentes Almendra y otro v Entel, S.A.yotro* Rol 1223-2003 (Chile)

[96] *Virginia Da Cunha v Yahoo in Argentina SRL* Expte N° 99.620/2006 (Argentina)

[97] Moot Proposition, ¶ 9.2

[98] *Frank La Rue Report 2011* (n 11) ¶47; *Joint Declaration on FoE 2011* (n 72) ¶ 2; *Manila Principles* (n 84) principle 2; *MGM Studios Inc v Grokster Ltd* 125 S Ct 2764 (2005)

[99] *Green v America Online* 318 F 3d 465 (3d Cir 2003)

32. As an intermediary, Scoops is required to balance the interests of its users and the victims of the posts.[100] It is impossible for intermediaries to automatically filter revenge porn without imposing a blanket ban on all sexual expression because computer programs cannot determine whether the subject of an intimate image consented to its disclosure.[101] Therefore, Scoops follows a notice and takedown model[102] which, in consonance with legal and industry standards,[103] requires users to verify the authenticity of the complaint before the content is removed.[104] Popular social media platforms such Twitter,[105] Reddit[106] and YouTube[107] also require first party verification in case of involuntary pornography. This step is necessary prevent false or frivolous complaints.[108]

33. In the present case, the complaint was not verified by Kola or her staff, thereby, absolving Scoops of knowledge. However, on receiving a letter from Kola's Counsel, Scoops expeditiously[109] removed the post in 50 hours. While evaluating expeditiousness, the Court should consider the degree of complexity of the case and whether the intermediary had to seek

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[100] Pablo Baistrocchi, 'Liability of Intermediaries under the EU Directive on Electronic Commerce' (2002) 19 Santa Clara High Technology Law Journal 111, 124

[101] *Scarlet v SABAM* (n 91)

[102] Moot Proposition, ¶ 9.2

[103] Digital Millennium Copyright Act, s 512(c)(iii) (United States, 1998); *Perfect 10, Inc v CCBill LLC* 488 F 3d 1102 (9th Cir 2007) (***'Perfect 10 v CCBill'***)

[104] Moot Proposition, ¶ 9.2

[105] Twitter Intimate Media Rules and Policies <https://help.twitter.com/en/rules-and-policies/intimate-media> accessed 10 January 2018

[106] Reddit Involuntary Pornography Rules and Reporting <https://www.reddithelp.com/en/categories/rules-reporting/account-and-community-restrictions/what-involuntary-pornography-and> accessed 10 January 2018

[107] YouTube Terms of Service <https://www.youtube.com/static?template=terms> accessed 10 January 2018

[108] 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 (***'Urban and Quilter'***)

[109] *E-Commerce Directive* (n 84), art 14 and ¶ 46; *Google France, Google Inc v Louis Vuitton Malletier* SA C–236/08 (CJEU, 23 March 2010); *L'Oreal SA v eBay* C-324/09 (CJEU, 12 July 2011)

legal advice.[110] Peaps' post was not a straightforward case of revenge pornography because the morphed image depicted a government minister and criticized her stance on immigration and terrorism. Therefore, Scoops needed more time to balance competing interests and seek legal advice before removing the post.[111]

(ii) The interference was disproportionate to the aim sought to be achieved.

34. The imposition of an exorbitant fine of 200,000 USD is disproportionate for three reasons. *First*, the morphed image was shared on several other social media platforms besides Scoops.[112] *Second*, similar legislations in Colorado[113]and Louisiana[114] prescribe maximum fine of 10,000 USD without any criminal penalty. *Third,* in *Delfi v Estonia*, the defamatory comments remained online for 6 weeks, and the intermediary was only fined 320 Euros.[115] In contrast, Scoops has been subjected to a 200,000 USD fine despite removing the image 3 days after it was originally posted.[116]

[110] Debra Weinstein, 'Defining Expeditious: Uncharted Territory of the DMCA Safe Harbor Provision' (2008) 26 Cardozo Arts & Entertainment Law Journal 589, 614 (***'Debra Weinstein'***)

[111] *Debra Weinstein* (n 110) 614

[112]Moot Proposition, ¶8.4

[113] Colorado Revised Statutes, ss 18–7–107, 18–7–108,

[114] Louisiana Revised Statutes, s14-283.2 (E)

[115] *Delfi 2015* (n 75) ¶160

[116] Moot Proposition, ¶9.2

III. THE PROSECUTION OF PEAPS BY TURTONIA UNDER THE FALSE INFORMATION ACT VIOLATES HIS RIGHT TO FREEEDOM OF EXPRESSION UNDER ARTICLE 19 ICCPR.

35. All individuals have a right to hold opinions and express them,[117] over any medium[118] including the internet.[119] The right also extends to opinions which may 'offend, shock, or disturb'[120] as plurality of opinions is necessary for the growth of a democratic society.[121] While the right is not absolute in nature,[122] any interference must be justified under Article 19(3) ICCPR and should not render the right illusory.[123]

36. The Applicants submit that *firstly*, Turtonia's prosecution of Peaps constitutes an interference **(A)**, and *secondly*, the interference is not justified under Article 19(3) ICCPR **(B)**.

A. TURTONIA'S PROSECUTION OF PEAPS CONSTITUTES AN INTERFERENCE WITH HIS RIGHT TO FREEDOM OF EXPRESSION.

[117] *UDHR* (n 1) art 19; *ICCPR* (n 1) art 19; *ECHR* (n 1) art 10; *ACHR* (n 1) art 13; *ACHPR* (n 1) art 9; *ArCHR* (n 1) art 26

[118] *General Comment 34* (n 2) ¶12; *Autronic AG v Switzerland* App no 12726/87 (ECtHR, 22 May 1990), (***'Autronic v Switzerland'***) ¶47; *Baruch Ivcher Bronstein v Peru* Case no 11762 (IACtHR, 3 March 1998), ¶145

[119] *General Comment 34* (n 2) ¶12; *Frank La Rue Report 2011* (n 11) ¶20; *Reno v ACLU* (n 70); *Fatullayev v Azerbaijan* App no 40984/07 (ECtHR, 22 April 2010), ¶78; IACHR, 'Freedom of expression and the Internet' (31 December 2013) OEA/Ser.L/V/II, ¶148; Clayton and Tomlinson (n 70) 1059; Diane Rowland, 'Virtual world, real rights?: Human rights and the internet' in Marco Odello and Sofia Cavandoli (eds), *Emerging Areas of Human Rights in the 21st Century: The role of the Universal Declaration of Human Rights* (1st edn, Routledge 2011)

[120] *Handyside v UK* (n 3) ¶49; *Sunday Times v UK* (n 13) ¶65

[121] *Tae Hoon Park v Republic of Korea* Communication no 628/1995 (HRC, 3 November 1998) UN Doc CCPR/C/64/D/628/1995, ¶10.3; *Benhadj v Algeria* Communication no 1173/2003 (HRC, 20 July 2007) UN Doc CCPR/C/90/D/1173/2003, ¶8.10; *Handyside v UK* (n 3) ¶49

[122] *UDHR* (n 1) art 29; *ICCPR* (n 1) art 19(3); *ECHR* (n 1) art 10(2); *ACHR* (n 1) art 13(2); *ACHPR* (n 1) art 9(2); *ArCHR* (n 1) art 4

[123] *General Comment 34* (n 2) ¶21; UNGA, 'Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Ameyi Libago' (2008) UN Doc A/HRC/7/14, ¶49

37. The Applicants submit that false statements are inevitable in open and vigorous public debate,[124] and therefore constitute protected speech.[125] Hence, Peaps' prosecution under Section 1(b) of the False Information Act (***'FIA'***)[126] for his post of May 2 on Scoops[127] (***'Peaps' post'***) constitutes an interference with his right to freedom of expression.[128]

38. Furthermore, Peaps' post referred to the threat of True Religion in Turtonia due Kola Wani's immigration policy,[129] which constitutes matters of public interest. Hence, this makes Peaps' post political speech,[130] thereby making any restriction presumptively unconstitutional.[131] States have no[132] or a very narrow[133] margin of appreciation while restricting speech concerning matters of public interest, since value placed on speech in public debate is particularly high.[134]

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[124] *NYT v Sullivan* (n 7)

[125] HRC, 'Concluding observations of the Human Rights Committee – Cameroon' (1999) CCPR/C/79/Add.116, ¶24; 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 "Fake News", Disinformation And Propaganda' (2017) FOM.GAL/3/17 (***'Joint Declaration on Fake News 2017'***); *US v Alvarez* (n 7) 2545

[126] Moot Proposition, ¶12.1

[127] Moot Proposition, ¶8.3

[128] *Frank La Rue Report 2011* (n 11) ¶23; *Malcolm Ross v Canada* Communication no 736/1997 (HRC, 2000) UN Doc CCPR/C/70/D/736/1997, (***'Ross v Canada'***) ¶11.1; *Perincek v Switzerland* App no 27510/99 (ECtHR, 15 October 2015), (***'Perincek v Switzerland'***) ¶117; *Cumpănă v Romania* (n 40), ¶84; *Alfreðsson and Eide* (n 11) 409; *Dirk Ehler* (n 11) 106

[129] Moot Proposition, ¶8.3

[130] *Wingrove v United Kingdom* App no 17419/90 (ECtHR, 25 November 1996), ¶58

[131] *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); *Marilou Rickert v Washington Public Disclosure Commission* 168 P.3d 833 (Supreme Court of the State of Washington, 04 October 04 2007) (***'Rickert v Washington'***); *Magda v Ohio Election Commission* (Court of Appeals for Ohio Tenth Appellate District, 21 July 2016); *Commonwealth v Mellisa Lucas* 34 N.E.3d 1255 (Supreme Court of Massachusetts, 07 May 2015) (***'Commonwealth v Lucas'***); Simon Rodell, 'False Statements v Free Debate: Is the First amendment a License to Lie in Elections?' (2008) 60 Florida Law Review 4 (***'Simon Rodell'***) 953; Jason Zenor, 'A Reckless Disregard for Truth? A Constitutional Right to Lie in Politics' (2016) 38 Campbell Law Review 1, (***'Jason Zenor'***) 52

[132] *General Comment 34* (n 2) ¶36; *Ilmari Länsman v Finland* Communication no 511/1992 (HRC, 14 October 1993) UN Doc CCPR/C/52/D/511/1992, ¶9.4; Sarah Joseph and Melissa Castan, *The International Covenant on Civil and Political Rights: Cases, Materials and Commentary* (OUP 2013) (***'Joseph, Schultz and Castan ICCPR Commentary'***) 625

B. THE INTERFERENCE WITH PEAPS' RIGHT TO FREEDOM OF EXPRESSION IS NOT JUSTIFIED UNDER ARTICLE 19(3) ICCPR.

39. The Applicants submit that any interference must be justified using the three-part test of legality, legitimacy, and necessity.[135] This test has been universally accepted by various international bodies[136] and international courts.[137]

40. Hence, while the prosecution of Peaps may fulfill a legitimate aim of maintaining public order[138] it is unjustified since *firstly*, it is not prescribed by law **(i)**, and *secondly*, it is not necessary is a democratic society **(ii)**.

(i) The prosecution is not prescribed by law as Section 1(b) is vague, overbroad, and without adequate safeguards.

[133] *Ceylan v Turkey* App no 23556/94 (ECtHR, 08 July 1999), (***'Ceylan v Turkey'***) ¶34; *Perincek v Switzerland* (n 128) ¶197

[134] *General Comment 34* (n 2) ¶38; *Arslan v Turkey* App no 57908/00 (ECtHR, 10 January 1996), (***'Arslan v Turkey'***) ¶46; *Eon v France* App no 26118/10 (ECtHR, March 14, 2013), (***'Eon v France'***) ¶59; *Sürek v Turkey (No 1)* App no 26682/95 (ECtHR, 8 July 1999), (***'Sürek v Turkey (No 1)'***) ¶61; *Feldek v Slovakia* App no 29032/95 (ECtHR, 12 July 2001), (***'Feldek v Slovakia'***) ¶74

[135] *Siracusa Principles* (n 5) ¶17; *Joseph, Schultz and Castan ICCPR Commentary* (n 132) 524; Oliver Castendyk, Egbert J Dommering and Alexander Scheuer, *European Media Law* (Kluwer Law International 2008) 43; Mohamed Elawa Badar, 'Basic Principles Governing Limitations on Individual Rights and Freedoms in Human Rights Instruments' 7(4) International Journal of Human Rights 63 (2003)

[136] *Vladimir Petrovich Laptsevich v Belarus* Communication no 780/1997 (HRC, 13 April 2000) UN Doc CCPR/C/68/D/780/1997, ¶8.2; *Mukong v Cameroon* Communication no 458/1991 (HRC, 21 July 1994) UN Doc CCPR/C/51/D/458/1991, ¶9.7; *Lovell v Australia* Communication no 920/2000 (HRC, 13 May 2004) UN Doc CCPR/C/80/D920/2000, ¶9.3; *Special Rapporteur Report 2013* (n 12) ¶29

[137] *Handyside v UK* (n 3), ¶43; *Sunday Times v UK* (n 13), ¶45; *Éditions Plon v France* App no 58148/00 (ECtHR, 18 May 2004), ¶23; *Interights and Others v Mauritania* Comm 242/2001 (ACommHPR, 2004) (***'Interights v Mauritania'***); *Media Rights Agenda v Nigeria* Communications 105/93, 128/94, 130/94 and 152/96 (ACommHPR, 2000), ¶64-71; *Constitutional Rights Project and Civil Liberties Organization v Nigeria* Communication 143/95 and 150/96 (ACommHPR, 2000); *Zimbabwe Lawyers for Human Rights & Institute for Human Rights and Development in Africa v Zimbabwe* Communication 294/04 (ACommHPR, 2009), ¶74-75; ACommHPR, 'Resolution on the Adoption of the Declaration of Principles of Freedom of Expression in Africa' (2002) ACHPR/Res 62(XXXII)02 Principle II; *Herrera v Costa Rica* (n 5) ¶120; *Francisco Martorell v Chile* Case 11.230 (IACtHR, 3 May 1996), ¶55; IACtHR, 'Report of the Special Rapporteur for Freedom of Expression' (2009) OEA/SER L/V/II Doc 51, ¶58–64; IACtHR, 'Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism' Advisory Opinion OC-5/85 (13 November 1985) (***'IACtHR on Compulsory Membership in Journalism'***)

[138] *Siracusa Principles* (n 5) ¶ 22

41. For a prosecution to be justified under domestic law, the law must not only exist but should be of a certain quality.[139] It must be accessible,[140] adequately foreseeable to allow an individual to regulate their conduct,[141] and use least restrictive means.[142] Hence, laws which are vague[143] and overbroad[144] fail to meet this requirement. Furthermore, laws which grant discretion must define the scope of such discretion,[145] and contain adequate safeguards.[146]

42. The Applicants submit that Section 1(b) of the FIA is vague **(a)**, overbroad **(b)**, and without adequate safeguards **(c)**.

(a) Section 1(a) of the FIA is vague.

43. The Applicants submit that Section 1(b) it is vague for three reasons.

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[139] *Malone v United Kingdom* App no 8691/79 (ECtHR, 2 August 1984), ¶67; *Kruslin v France* App no 11801/85, (ECtHR, 24 April 1990), (***'Kruslin v France'***) ¶27

[140] *Leander v Sweden* App No 9248/81 (ECtHR, 26 March 1987), ¶50; *Leyla Şahin v Turkey* App no 44774/98 (ECtHR, 10 November 2005), ¶84; *Sunday Times v UK* (n 13) ¶49; *Margareta and Roger Andersson v Sweden*, App no 12963/87 (ECtHR, 25 February 1992), (***'Andersson v Sweden'***) ¶75

[141] *Rekvényi* v *Hungary* App no 25390/94 (ECtHR, 20 May 1999), ¶34; *Sunday Times v United Kingdom (No 2)* App no 13166/87 (ECtHR, 26 November 1991), ¶49; IACHR, 'Report on the Situation of Human Rights in Nicaragua' OAS Doc OEA/Ser/V/11.53 (1981), ¶118

[142] *Herrera v Costa Rica* (n 5) ¶121; *Amnesty International and others v Sudan* Communication 48/90, 50/91, 52/91, 89/93 (ACommHPR, 1999), (***'Amnesty v Sudan'***) ¶80; *Sable v FCC* (n 59) 126; *Shelton v Tucker* 364 US 479 (1960)

[143] *Jordan v DeGeorge* 341 US 223 (1951); *Gorin v United States* 312 US 19 (1940); *Keyishian v Board of Regents* 385 US 589 (1967); *Grayned v Rockford* (n 21); *Jones v Opelika* 316 US 584 (I942); *Lovell v City of Griffin* 303 US 444 (1938)

[144] *Broadrick v Oklahoma* 413 US 601 (1973); *New York v Ferber* (n 36); *Zwickler v Koota* 389 US 241 (1967)

[145] *Andersson v Sweden* (n 140), ¶75; *Moiseyev v Russia* App no 62936/00 (ECtHR, 9 October 2008), ¶266; *Sanoma Uitgevers BV v The Netherlands* App no 38224/03 (ECtHR, 14 September 2010), ¶82

[146] 'The Johannesburg Principles on National Security, Freedom of Expression and Access to Information' (1996) UN Doc E/CN 4/1996/39, (***'Johannesburg Principles'***) principle 1.1(b); *Çetin & Ors v Turkey* App no 40153/98 (ECtHR, 13 February 2002), ¶61; *Pinkney v Canada* Communication no 17/1978 (HRC, 29 October 1981) UN Doc CCPR/C/OP/1, ¶34; *Al-Nashif v Bulgaria* App no 50963/99 (ECtHR, 20 June 2002), ¶119; *Liu v Russia (No 2)* App no 29157/09 (ECtHR, 26 July 2011), ¶88

44. *First*, what is 'false' is often contested,[147] especially in matters of political debate.[148] Therefore, it is incapable of being determined legally.[149] In doing so, courts risk imposing their version of 'truth', thus violating freedom to hold opinions.[150]

45. *Second*, statements are combinations of fact and opinion, which are incapable of being separated in many cases.[151] Since an individual cannot be made to prove his opinion,[152] Courts will not be able to provide definitive judgments. Similar provisions in Canada,[153] Antigua and Barbuda,[154] Zimbabwe,[155] Uganda,[156] and Zambia[157] have also been struck down on the same ground. Hence, individuals will be unable to regulate their conduct and may even refrain from making true statements for the fear of prosecution, thereby causing a 'chilling effect'.[158]

46. *Third*, Section 1(b) does not define phrases "*civil unrest*", "*hatred*", and "*national unity*" leading to ambiguity. The Special Rapporteur has previously criticized Vietnam's penal code

[147] *R v Zundel* [1992] 2 SCR 747 (Supreme Court of Canada, 27 August 1992) (***'R v Zundel'***)

[148] *Commonwealth v Lucas* (n 131); Damian Tambini, 'Fake News: Public Policy Responses' (2017) London School of Economics Media Policy Brief 2.0 (***'Damian Tambini'***) 7

[149] Robert S Summers, 'Formal Legal Truth and Substantive Truth in Judicial Fact-Finding – Their Justified Divergence in Some particular Cases' (1999) Cornell Law Faculty Publications Paper 1186

[150] *R v Zundel* (n 147)

[151] *Rickert v Washington* (n 131)

[152] *Lingens v Austria* (n 6) ¶46

[153] *R v Zundel* (n 147)

[154] *Hector v Attorney General of Antigua and Barbuda* [1990] 2 AC 312 (Judicial Committee of Privy Council)

[155] *Chavunduka and Anor v Minister of Home Affairs and Anor* 2000 (1) ZLR 571 (S) (Supreme Court of Zimbabwe, 22 May 2000)

[156] *Charles Onyango Obbo and Andrew Mujuni Mwenda v Attorney General* (2004) AHRLR 256 (Supreme Court of Uganda, 11 February 2004)

[157] *Chipenzi v The People* HPR/03/2014 (High Court for Zambia, 04 December 2014)

[158] *US v Alvarez* (n 7) (Breyer J Concurring); *281 Care Committee v Arneson* 638 F.3d 629 (Court of Appeals for the Eight Circuit of the United States) (***'Care Comm v Arneson'***); 'The Chilling Effect in Constitutional Law' (1969) 69 Colum L Rev 808

for using the phrase "*attempt to undermine national unity*", terming it vague.[159] Similarly, Constitutional Court of South Africa struck down an incitement provision since "*prejudic*[ing]…*relations between sections of the population*" was termed vague.[160]

(b) Section 1(b) of the FIA is overbroad.

47. The Applicant submits that Section 1(b) is overbroad since the FIA was passed to preserve the "*integrity of democratic process*" and prevent "*hijacking of elections*".[161] However, it has not been limited to elections or statements about candidates unlike similar legislations in United States,[162] United Kingdom,[163] and India.[164] Hence, it may be used to penalize false statements made in private conversations,[165] which was not its original aim.

(c) Section 1(b) of the FIA lacks adequate safeguards.

48. Adequate safeguards must be present in a provision to prevent unfettered discretion. One possible safeguard is judicial review,[166] which must be guaranteed.[167] This is even more

[159] UNECOSOC, 'Report submitted by Mr. Abdelfattah Amor, Special Rapporteur, in accordance with Commission on Human Rights resolution 1998/18 – Addendum - Visit to Vietnam' (29 December 1998) E/CN.4/1999/58/Add.2, ¶¶26-27

[160] *Islamic Unity Convention v. Independent Broadcasting Authority* (4) SA 294 (CC) (Constitutional Court of South Africa)

[161] Moot Proposition, ¶11.1

[162] Colorado Revised Statutes Title 1, s 1-13-109; Florida Annotated Statutes Title IX, s 104.271; Oregon Revised Statutes Section 260, s 260.532; North Dakota Century Code Title 16.1, s 16.1-10-04; Tennessee Code Annotated Title 2, Chapter 19, Part 1, s 2-19-142; Utah Code Annotated Title 20A, Chapter 11, Part 11, s 20A-11-1103; West Virginia Code Annotated Chapter 3, Article 8, s 3-8-11; North Carolina General Statute Annotated Chapter 163A, s 163A-1388; Mississippi Code Annotated Title 23, Chapter 15, Article 27, s 23-15-875; Wisconsin Statute Annotated Chapter 12, s 12.05

[163] Representation of People's Act 1983, (08 February 1983), s 106

[164] The Indian Penal Code, Act No 45 of 1860 (06 October 1980), s 171G

[165] *US v Alvarez* (n 7) (Breyer J Concurring); *Commonwealth v Lucas* (n 131)

[166] *Klass v Germany* App no 5029/71 (ECtHR, 6 September 1978), ¶56; *Ross v Canada* (n 128) ¶11.4; *Uzun v Germany* App no 35623/05 (ECtHR, 2 September 2010), ¶72; *Gurtekin v Cyprus* App nos 60441/13, 68206/13, 68667/13 (ECtHR, 11 March 2014), ¶28

necessary in a 'false information' statute since the Court will otherwise be the final arbiter of 'truth'.[168] Since Turtonia lacks a guaranteed appeal of its trial court decisions,[169] and Supreme Court of Turtonia has refused Peaps' appeal,[170] there is an absence of an adequate safeguard.

(ii) The prosecution is not necessary is a democratic society since it disproportionally restricts legitimate political speech which did not intend to incite.

49. To show interference is necessary in a democratic society, *firstly*, there must be a pressing social need[171] **(a)**, and *secondly*, the interference must be proportionate to its aim **(b)**.[172]

(a) There is no pressing social need for the interference since Peaps' post did not intend to incite violence.

50. For a prosecution under Section 1(b), Peaps must have *both*: knowledge of the falsity of the information *and* intention to incite,[173] since false rumors are part of any democracy.[174] Hence, there was no pressing need to prosecute Peaps since his post was innocent speech. This is for five reasons.

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[167] HRC, 'General Comment 32' in 'Article 14: Right to equality before courts and tribunals and to a fair trial' (2007) UN Doc CCPR/C/GC/32, ¶48

[168] *Rickert v Washington* (n 131); *Care Comm v Arneson* (n 158); *Jason Zenor* (n 131) 70

[169] Moot Proposition, ¶2.2

[170] Moot Proposition, ¶14.2

[171] *Lingens v Austria* (n 6) ¶39; *Handyside v UK* (n 3) ¶48; *Sunday Times v UK* (n 13), ¶59; *Guardian v UK* (n 57), ¶59; *Cumpănă v Romania* (n 40), ¶88; *Muller v Switzerland* App No 10737/84 (ECtHR, 24 May 1988), ¶32; *Herrera v Costa Rica* (n 5) ¶108; *IACtHR on Compulsory Membership in Journalism* (n 137) ¶30

[172] *Siracusa Principles* (n 5) cl 10(c); *Morais v Angola* (n 5) ¶3.9; *Goodwin v The United Kingdom* App no 17488/90 (ECtHR, 27 March 1996), (***'Goodwin v UK'***) ¶40; *Dalban v Romania* App no 28114/95 (ECtHR, 28 September 1999), ¶47; *Amnesty v Sudan* (n 142) ¶82; *Interights v Mauritania* (n 137) ¶78-79; Jeremy McBride, 'Proportionality and the European Convention of Human Rights' in Evelyn Ellis (ed), *The Principle of Proportionality in the Laws of Europe* (Hart Publishing 1999) 23

[173] Moot Proposition, ¶11.2

[174] *Simon Rodell* (n 131) 959

51. *First*, knowledge, or reckless disregard, constitutes the standard of 'actual malice' which excludes information that may be false but is communicated in good faith.[175] In the present case, Peaps legitimately believed in the veracity of his post since he thought XYZ News was about to break it, as can be evidenced by his attempt to check if someone had posted the information before him.[176] Therefore, he does not satisfy the standard of 'actual malice'.

52. *Second*, Peaps had no intention[177] to incite, which can be judged based on the content[178] of his post and the context[179] in which it was posted. He was merely highlighting the threat that True Religion poses,[180] which is a widely acknowledged terrorist group,[181] and had recently conducted an attack in a neighboring country.[182] Furthermore, he acknowledged that he only broke the story to maximise his influencer score on Scoops,[183] and not for any nefarious purposes.

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[175] *Masson v New Yorker Magazine* 501 US 496, 510 (1991); *NYT v Sullivan* (n 7)

[176] Moot Proposition, ¶12.2

[177] *Johannesburg Principles* (n 146) 9; Sandra Coliver, 'Commentary to: The Johannesburg Principles on National Security, Freedom of Expression and Access to Information' (1998) 20 Human Rights Quarterly 12, 38; *Bradenburg v Ohio* 395 US 444 (1969) (***'Bradenburg v Ohio'***); *Hess v Indiana* 414 US 105, 108-09 (1973) (***'Hess v Indiana'***); *Faurisson v France* Communication No 550/1993 (HRC, 1996) UN Doc CCPR/C/58/D/550/1993, ¶9.6-9.7; UNGA, 'Contribution of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression' (2001) UN Doc A/CONF.189/PC.2/24, ¶12

[178] *Surek v Turkey (No 1)* (n 134) ¶58; *Gündüz v Turkey* App No 35071/97 (ECtHR, 4 December 2003), (***'Gündüz v Turkey'***) ¶42; *Ceylan v Turkey* (n 133), ¶32; *Lehideux and Isroni v France* App no 24662/94 (ECtHR, 23 September 1998), ¶51; *Incal v Turkey* App no 22678 (ECtHR, 9 June, 1998), ¶48; *Zana v Turkey*, App no 18954/91 (ECtHR, 25 November 1997), (***'Zana v Turkey'***) ¶51

[179] *Watts v US* 394 US 705 (1969); *Bradenburg v Ohio* (n 177) (Krupansky J); *Glen v Hongisto* 438 F Supp 10, 18 (ND Cal 1977); *In re Welfare of MAH & JLW* 572 NW 2d 752, 759 (Minn Ct App 1997); *Hess v Indiana* (n 177); *Surek v Turkey (No 1)* (n 134) ¶58; *Zana v Turkey* (n 178), ¶51; *Erbakan v Turkey* App No 59405/00 (ECtHR, 6 July 2006); *Arslan v Turkey* (n 134), ¶48; *Karatas v Turkey* App no 23168/94 (ECtHR, 08 July 1999), ¶48-49; *Jersild v Denmark* App No 15890/89 (ECtHR, 23 September 1994), ¶31; *Balsyte-Lideikiene v Lithuania* App no 72596/01 (ECtHR, 4 February 2009), ¶77; *Gündüz v Turkey* (n 178) ¶42; John Cronan, 'The Next Challenge for the First Amendment: The Framework for an Internet Incitement Standard (2001-02) 51 Catholic University Law Review 425, 441

[180] Moot Proposition, ¶8.3

[181] Moot Proposition, ¶3.2

[182] Moot Proposition, ¶3.1

[183] Moot Proposition, ¶12.2

53. *Third*, the post was unlikely to incite violence. While incitement may be an inchoate offence,[184] the likelihood and imminence of action[185] as a direct consequence of speech must be shown.[186] Peaps' post did not use language which demonised the Aquarians as a whole[187] or issue a specific call for action against them.[188] Furthermore, Peaps' post even misspelled the name of Prinsov Parkta as "*Princev Parkta*"[189] which would have led readers to consider it false news in the form of political satire.[190]

54. *Fourth*, the death of two Aquarian immigrants by a mob[191] was not a likely result of Peaps' post. Anti-Aquraian sentiments were preexistent in Turtornia before Peaps' post.[192] In any case, his post referred *only* to members of True Religion.[193] It was the opinion piece in TurtonTimes which conflated the threat of True Religion with increased influx of Aquarian immigrants.[194]

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[184] Joseph Jaconelli, 'Incitement: A Study in Language Crime' Criminal Law, Philosophy (2017) https://doi.org/10.1007/s11572-017-9427-8

[185] *Siracusa Principles* (n 5) c1I(C)(54); IACtHR, 'Annual Report of the Inter-American Commission on Human Rights 1994' (17 February 1995) OEA/SerL/V/V 211 Doc 9; *Bradenburg v Ohio* (n 177); *Hess v Indiana* (n 177); *NAACP v. Claiborne Hardware Co*. 458 U.S. 886 (1982); Michael Curtis, *Free Speech, 'The People's Darling Privilege'* (Michael Kent Curtis 2000) 394–397; James Weinstein and Ivan Hare, *Extreme Speech and Democracy* (OUP 2010) 41; Lucas Powe, 'Brandenburg: Then and Now' (2011) 44 Texas Tech Law Review 69, 75–77; Susan Gilles, 'Brandenburg v State of Ohio: An "Accidental", "Too Easy", and "Incomplete" Landmark Case' (2010) 38 Capital University Law Review 517, 522–525

[186] *Sürek v Turkey (No 1)* (n 134) (Bonello J Partly Dissenting); *Schenck v. United States* 294 US 52 (1919)

[187] *Soulas v France* App no 15948/03 (ECtHR, 10 July 2008); *Feret v Belgium* App no 15615/07 (ECtHR, 16 July 2009); *Le Pen v France* App No 18788/09 (ECtHR, 07 May 2010) (***'Le Pen v France'***)

[188] *Alves Da Silva v Portugal* App no 41665/07 (ECtHR, 20 October 2009); *Perincek v Switzerland* (n 128); *S. Rangarajan v PJ Ram* 1989 (2) SCR 204 (Supreme Court of India); *S v Nathie* [1964] (3) SA 588 (AD) (South Africa); Anne Weber, 'Manual on Hate Speech' (COE, September 2009); Iginio Gagliardone and others, 'Countering Online Hate Speech' (UNESCO, 2015);

[189] Clarifications (Africa Regional Rounds), No 6

[190] *Damian Tambini* (n 148) 4

[191] Moot Proposition, ¶9.5

[192] Moot Proposition, ¶4.1

[193] Moot Proposition, ¶8.3

[194] Moot Proposition, ¶9.3

55. *Finally,* the likelihood of violence is lesser when individuals are exposed to different points of view,[195] which is increasingly possible on social media due to its nature.[196] In the present case itself, XYZ News and Kola Wani's Office released official statements questioning Peaps' post the same day.[197] Hence, while Peaps' post may have had 21,000 shares and 145,000 views,[198] it does not suggest people were not exposed to opposite views. In a similar situation, it was unclear whether posts calling for violence by Russian-linked Facebook accounts in the United States had any actual influence even though they has multiple likes, comments, and shares.[199]

(b) The fine of USD 100,000 imposed on Peaps' was disproportionate to the interference.

56. The interference must be proportionate to the aim sought to be achieved, to balance an individuals' interest with that of the community.[200] While pecuniary damage may be prescribed for incitement,[201] excessive damage can be disproportionate and cause a chilling effect.[202]

57. In the present case, Peaps was fined USD 100,000 for his post.[203] However, the European Court of Human Rights in *Le Pen v France* stated that a fine of EUR 10,000 was adequate even

[195] *Gündüz v Turkey* (n 178), ¶51; *Tristan Donoso v Panama*, Preliminary Objections, Merits, Reparations and Costs Judgment (IACtHR, 27 January 2009), ¶121

[196] Terri L Towner, 'Campaigns and Election in a Web 2.0 World: Uses, Effects, and Implications for Democracy' in Christopher G Reddick and Stephen K Aikins (eds) *Web 2.0 Technologies and Democratic Governance* (Springer 2012) 201

[197] Moot Proposition, ¶9.1

[198] Moot Proposition, ¶9.2

[199] Kurt Devine, ''Kill them all' – Russian-linked Facebook accounts called for violence' (*CNN Media*, 31 October 2017) <http://money.cnn.com/2017/10/31/media/russia-facebook-violence/index.html> accessed 04 January 2018

[200] *Cossey v UK* App no 10843/84 (ECtHR, 27 September 1990), ¶37; *Ozgur Gundem v Turkey* App no 23144/92 (ECtHR, 16 March 2000), ¶43; *Goodwin v UK* (n 172) ¶72; Rolv Ryssdal, 'Opinion: The Coming Age of the European Convention on Human Rights' (1996) 1 European Human Rights Law Review 18, 26

[201] *COE on Hate Speech* (n 63) principle 2

[202] Article 19, 'Prohibiting incitement to discrimination, hostility, and violence' (December 2012) Policy Brief <https://www.article19.org/data/files/medialibrary/3548/ARTICLE-19-policy-on-prohibition-to-incitement.pdf> accessed 04 January 2018

though Le Pen was President of France, wielding greater influence, and had degraded the Muslim community as a whole leading to greater possibly of incitement.[204] In contrast, Peaps is not someone with great influence. Therefore, the fine on him was disproportionate.

[203] Moot Proposition, ¶12.1

[204] *Le Pen v France* (n 187)

IV. THE PROSECUTION OF SCOOPS BY TURTONIA UNDER THE FALSE INFORMATION ACT VIOLATES ITS RIGHT TO FREEEDOM OF EXPRESSION UNDER ARTICLE 19 ICCPR

58. In the digital age, social media has become the new[205] "*marketplace of ideas*".[206] Hence, regulation of social media curbs not only the freedom of expression of the intermediary,[207] but also of individuals using it who have a right to both impart ideas and receive them.[208] Therefore, the prosecution of Scoops Section 1(a) of the FIA[209] is interference under Article 19 ICCPR.[210] And any interference with freedom of expression must satisfy the three part test of legality, legitimacy, and necessity.[211]

59. Therefore, while there may have been a legitimate interest to protect the right and reputation of Wani Kola,[212] the Applicants submit, *firstly*, it was not prescribed by law **(A)**, and *secondly*, it was not necessary in a democratic society **(B)**.

A. THE PROSECUTION IS NOT PRESCRIBED BY LAW SINCE SECTION 1(A) IS OVERBROAD.

60. As stated above,[213] the domestic law must not only exist but must also be of sufficient quality. Hence, a law cannot be overbroad since individuals will be unable to regulate their conduct.[214]

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[205] Jack M Balkin, 'Digital Speech and Democratic Culture: A Theory of Freedom of Expression for the Information Society' (2004) 79 NYU Law Review 1; Adam Lamparello, 'The Internet is the New Marketplace of Ideas: Why Riley v. California Supports Net Neutrality' (2015) 25 DePaul Journal of Art, Technology & Intellectual Property Law 2

[206] *Abrams v United States* 250 US 616 (1919) (Holmes J Dissenting)

[207] *Autronic v Switzerland* (n 118) ¶47; *Delfi 2015* (n 75) ¶118; *Cengiz v Turkey* App nos 48226/10, 14027/11 (ECtHR, 1 December 2015), ¶49

[208] *Handyside v UK* (n 3), ¶49; *Lingens v Austria* (n 6), ¶41-42; *Thorgeir Thorgeirson v Iceland* App no 13778/88 (ECtHR, 25 June 1992), ¶63; *Bladet Tromsø v Norway* (n 5), ¶62

[209] Moot Proposition, ¶13.1.2

[210] Frank La Rue Report 2011 (n 11) ¶23; *Ross v Canada* (n 128) ¶11.1; *Perincek v Switzerland* (n 128) ¶117; *Cumpănă v Romania* (n 40) ¶84; *Alfreðsson and Eide* (n 11) 409; *Dirk Ehler* (n 11) 106

[211] *Siracusa Principles* (n 5) ¶ 17; *Joseph, Schultz and Castan ICCPR Commentary* (n 132) 524

[212] *General Comment 34* (n 2) ¶21

61. Section 1(a) is overbroad since the standard for imputing 'infringement' applied on an intermediary hosting content is equal to that of a publisher with editorial discretion.[215] Therefore, it places a heavy burden on the intermediaries to determine if the content violates Section 1, without providing specific guidelines[216] to determine the 'falsity' of the information. Thus, the discretion given to the intermediaries has not been meaningfully constrained[217] leading to arbitrary and discriminatory enforcement.[218]

B. THE PROSECUTION IS NOT NECESSARY IN A DEMOCRATIC SOCIETY SINCE SCOOPS IS A MERE HOST AND QUALIFIES FOR IMMUNITY.

62. The Applicants submit that for an interference to be necessary it must, *firstly*, fulfill a pressing social need **(i)**, and *secondly*, be proportionate to its aim **(ii)**.[219] And *finally*, in any case, Scoops qualifies for immunity under Section 3 of FIA **(iii)**.

(i) There is no pressing social need for the interference since Scoops is a mere host.

63. The Applicants submit that social media platforms such as Scoops[220] are widely considered as "hosts" of a user's content.[221] Hence, there exists no pressing social need for four reasons.

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[213] *See* supra ¶41

[214] *Shreya Singhal v UOI* (n 14)

[215] C. McManus, "Rethinking Defamation Liability for Internet Service Providers" (2001) 35 Suffolk University Law Review 651

[216] *Frank La Report 2011* (n 11) ¶26; *Gresham v Peterson* 225 F 3d 899, 907 (7th Cir 2000)

[217] Erwin Chemerinsky, *Constitutional Law: Principles and Policies* (3rd edn, Aspen 2006) 964-65

[218] *Kruslin v France* (n 139) ¶36; *Herczegfalvy v Austria* App no 10533/83 (ECtHR, September 24 1992), ¶91

[219] *See* supra ¶49

[220] Moot Proposition, ¶5.1

[221] Daithi Mac Sithigh, 'Contempt of court and new media' in David Mangan and Laura E Gillies (eds) *The Legal Challenges of Social Media* (Elgar 2017) 101

64. *First*, Scoops acts as a mere host for its users' content. Users upload their own profile on Scoops along with their topics of interest.[222] Any update must also be tagged with a topic of interest by the user making it.[223] Hence, while Scoops may use an algorithm to transfer a users' post to 20 individuals,[224] its role in that is technical,[225] automatic and passive,[226] since the algorithm still requires a user to *act*[227] by tagging the post with topics of interest.

65. *Second*, the requirement on Scoops to have known Peaps' subjective knowledge of the falsity of his post is too onerous. This requires a value judgment on the author's knowledge.[228] In light of this, courts in Ireland,[229] Canada,[230] and Argentina[231] have provided immunity to intermediaries for any defamatory or false content hosted on their platform.

66. *Third*, intermediaries such as Scoops cannot fairly adjudicate matters concerning freedom of expression since they require careful balancing of interests.[232] Therefore, an intermediary such as Scoops should not be made to act as a proxy censor without the presence of a court order.[233]

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[222] Moot Proposition, ¶5.1

[223] ibid

[224] ibid

[225] 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> accessed 10 January 2018

[226] *Metropolitan Schools v Designtechnica* (n 73); Susan Corbett, 'Search engines and the automated process: Is a search engine provider a publisher of defamatory material?' (2014) 20 NZBLQ 200; Jani McCutcheon 'The Vanishing Author in Computer-Generated Works: A Critical Analysis of Recent Australian Case Law" (2012-13) 36 MULR 915, 927

[227] *Crookes v Newton* (n 73)

[228] Moot Proposition, ¶11.2

[229] *Fred Muwema v Facebook Ireland Ltd* [2016] IEHC 519 (High Court of Ireland)

[230] *Pritchard v Van Nes* [2016] BCSC 686 (Supreme Court of British Columbia, Canada)

[231] *Rodriguez v Google Inc* 99.613/06 (Supreme Court of Argentina)

[232] *Frank La Report 2011* (n 11) ¶42; *Urban and Quilter* (n 108)

67. *Finally*, an intermediaries' fear of prosecution may lead to a 'chilling effect' since they do not have any incentive to accurately distinguish between content that is permissible and impermissible.[234] Hence, they will engage in overcautious screening.[235] Draft legislations by California,[236] Germany,[237] and Philippines[238] which aim to regulate fake news by pushing the liability on intermediaries have come under criticism for the same reason.

(ii) The fine of USD 100,000 imposed on Sccops was disproportionate to the interference.

68. The fine of USD 100,000 on Scoops[239] was disproportionate. Since the purpose of the FIA was to preserve the *"integrity of the democratic process*",[240] a fine does not help fulfill it. A less

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[233] *Frank La Report 2011* (n 11) ¶43; *Lamont v Postmaster General* 381 US 301 (1965); *Seth Kreimer* (n 87); Felix T. Wu, 'Censorship and the Limits of Intermediary Immunity', (2013) 87 Notre Dame Law Review 295-296

[234] *Joint Declaration on Fake News 2017* (n 125) art 1(d); 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 & technology 172; Article 19, 'Internet Intermediaries: Dilemma of Liability' (2013) Policy Brief <https://www.article19.org/data/files/Intermediaries_ENGLISH.pdf> accessed 10 January 2018

[235] *Zeran v America Online* 129 F3d 327 (1997)

[236] Dave Mass, 'California Bill To Ban "Fake News" Would Be Disastrous for Political Speech' (*EFF*, 27 March 2017) <https://www.eff.org/deeplinks/2017/03/california-bill-ban-fake-news-would-be-disastrous-political-speech> accessed 04 January 2018

[237] Emma Lonso, 'German Social Media Law Creates Strong Incentives for Censorship' (*CDT*, 07 July 2017) <https://cdt.org/blog/german-social-media-law-creates-strong-incentives-for-censorship/> accessed 04 January 2018; Anthony Faiola and Stephanie Kirchner, 'How do you stop fake news? In Germany, with a law.' (*Washington Post*, 05 April 2017) <https://www.washingtonpost.com/world/europe/how-do-you-stop-fake-news-in-germany-with-a-law/2017/04/05/e6834ad6-1a08-11e7-bcc2-7d1a0973e7b2_story.html?utm_term=.b85a3b74f07e> accessed 04 January 2018

[238] Mong Palatino, 'Could Philippine senator's bill criminalising fake news lead to censorship?' (*Business Standard*, 10 July 2017) <http://www.business-standard.com/article/international/could-philippine-senator-s-bill-criminalising-fake-news-lead-to-censorship-117071000229_1.html> accessed 04 January 2018; Llanesca T Panti, 'Fake news bill imperils freedom of expression' (*Manila Times*, 23 June 2017) <http://www.manilatimes.net/fake-news-bill-imperils-freedom-expression/334510/> accessed 04 January 2018

[239] Moot Proposition ¶13.1.2

[240] Moot Proposition, ¶11.1

restrictive measure would be to issue an apology or offer a clarification, since the best answer to false speech is "more speech".[241]

(iii) In any case, Scoops has immunity under Section 3 of FIA since it acted expeditiously to remove the post.

69. Section 3(b) of FIA is *pari materia* to Section 512(c)(1) of the Digital Millennium Copyright Act.[242] Courts in the United States have narrowly read this *'red flag'*[243] provision,[244] since it is difficult to make judgments as to whether the conduct is infringing.[245]

70. Since intermediaries have no general obligation to monitor,[246] notifications must specifically point out the infringing post,[247] and provide details of the infringement.[248] In the present case, Wani Kola's legal counsel submitted a letter to scoops which claimed Peaps' post was defamatory.[249] However, intermediaries cannot remove posts when they are defamatory *per se*, but only when they know the posts can be actionable.[250] In the present case, Peaps' post must not only cause harm but must also be false with Peaps' knowledge of such falsity.

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[241] *US v Alvarez* (n 7) 2545; *Rickert v Washington* (n 131); *Care Comm v Arneson* (n 158)

[242] Digital Millennium Copyright Act, s 512(c)(1) (United States of America)

[243] Report of the Senate Committee on the Judiciary, S. REP. No. 105-190 (1998) (***'Senate Comm Report'***) 44

[244] Digital Millennium Copyright Act, s 512(m); Edward Lee, 'Decoding the DMCA Safe Harbors' (2009), 32 Columbia Journal of Law & the Arts . 233, 25.

[245] *Senate Comm Report* (n 243) 32; *Corbis Corp v Amazon.com, Inc.*, 351 F.Supp.2d 1090, 1101 (2004)

[246] *E-Commerce Directive* (n 84) art 15; *Manila Principles* (n 84) principle 1(d)

[247] *Perfect 10 v CCBill* (n 103); *Manila Principles* (n 84) principle 2(b)

[248] *Perfect 10 v CCBill* (n 103); *Perfect 10, Inc v Amazon.com, Inc*, 487 F.3d

[249] Moot Proposition, ¶9.2

[250] Jaani Riordan, *The Liability of Internet Intermediaries* (OUP 2016) ¶12.131

71. Even upon receiving a proper notification, Scoops is not required to remove the content *immediately* as it is obligated to balance the competing interests involved.[251] The nature of 'expeditious' is a fact specific analysis and is determined upon the nature of the content, the subject-matter of the content, ease of assessing the infringement, popularity of the intermediary[252] and the nature and cost of the action needed.[253] Courts have even held take-downs which took a few days to be expeditious.[254]

72. In the present case, Peaps' post dealt with matters of public interest, and hence could only be removed if the need was greater on a balance of interests.[255] Courts in Republic of Korea upheld a journalist's post alleging an affair between the President and her aide because it simultaneously also addressed a matter of public interest.[256]

73. Furthermore, Scoops is the most popular social media platform in Turtonia,[257] and encounters high levels of traffic. Hence, while XYZNews and Kola's office may have denied the veracity of Peaps' post,[258] and it may have had a lot of shares and views,[259] it does not make the

[251] Niva Elkin-Koren, 'Making Technology Visible: Liability of Internet Service Providers for Peer-to-Peer Traffic', (2006) 9 NYU Journal of Legislation & Public Policy 15, 28

[252] Eugene C. Kim, Note, 'YouTube: Testing the Safe Harbors of Digital Copyright Law' (2007) 17 Southern California Interdisciplinary Law Journal 139

[253] *Senate Comm Report* (n 243) 44

[254] *Perfect 10 v CCBill* (n 103)

[255] *General Comment 34* (n 2) ¶38; *Arslan v Turkey* (n 134) ¶46; *Eon v France* (n 134) ¶59; *Sürek v Turkey (No 1)* (n 134) ¶61; *Feldek v Slovakia* (n 134) ¶74

[256] Choe Sang-Hun, 'Court Acquits Journalist Accused of Defaming South Korean President' (*NY Times*, 17 December 2015) <https://www.nytimes.com/2015/12/18/world/asia/south-korea-park-geun-hye-defamation-verdict.html?_r=0> accessed 04 January 2018

[257] Moot Proposition, ¶5.1

[258] Moot Proposition, ¶9.1

[259] Moot Proposition, ¶9.2

infringement apparent. Keeping the latitude of the task at hand, Scoops' removal of the post in 50 hours was expeditious.[260]

[260] *Io Group, Inc v Veoh Networks, Inc* 586 F.Supp.2d 1132, 1150 (2008)

PRAYER

Wherefore in light of the questions presented, arguments advanced and authorities cited, the Applicants respectfully request this Court to adjudge and declare that:

I. Turtonia's prosecution under the Online Digital Protection Act of 2015 of Peaps violates Article 19 of the ICCPR.

II. Turtonia's prosecution under the Online Digital Protection Act of 2015 of Scoops violates the same international principle.

III. Turtonia's prosecution under the Information Act of 2006 of Peaps violates Article 19 of the ICCPR.

IV. Turtonia's prosecution under the Information Act of 2006 of Scoops violates the same international principle.

All of which is respectfully submitted.

On Behalf of the Applicants

COUNSEL FOR APPLICANTS