



Testimony of Professor David Kaye
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Before the U.S. Commission on International Religious Freedom

“Combating Online Hate Speech and Disinformation Targeting Religious Communities”

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Thank you, Chair Manchin, and thank you to the entire Commission for the opportunity to join you this morning for this important hearing.

In my remarks, I would like to highlight four specific areas that serve as some background to the important question with respect to hate speech and religious freedom online.

I will begin with a general question of the sources of law, the sources of decision-making that should be at issue in this area. I will say a few words about the companies, a few words about governments, and a few specific remarks about the role of the U.S. government.

First, permit me to make a point that is drawn from the bipartisan history of the American commitment to international human rights law. The United States ratified the International Covenant on Civil and Political Rights (ICCPR) in 1992, following the strong recommendation of President George H.W. Bush.

The ICCPR, drawn from the principles and language of the Universal Declaration of Human Rights of 1948, whose drafting committee the United States chaired under the leadership of Eleanor Roosevelt, protects everyone's right to thought, conscience and religion (Article 18). Further, Article 19 of the ICCPR promotes and protects everyone's right to seek, receive and impart information and ideas of all kinds, regardless of frontiers – thus, it is in fact an international, or even transnational, right – and through any media of one's choice.

These two rights together – the rights of religion, belief and conscience, on the one hand, and expression, on the other – establish *as a matter of international law* the essential principles that bind governments and that may provide a basis for thinking about the rules that multinational companies ought also to promote and protect. Many of the most dominant companies, of course, are American companies, and yet they are not simply bound by or enjoy the protections of the First Amendment in the United States. They also operate in countries around the world where their users and the public enjoy these fundamental human rights without regard to the First Amendment (which is generally neither binding nor protective of those outside American jurisdiction). It is also critical to note that human rights law involves permissible limitations of these rights, drawn narrowly to ensure that the restrictions do not swallow the guaranteed rights. For instance, under Article 19, restrictions must be provided by law and be necessary and proportionate to protect legitimate government objectives (such as the rights of others, public order, and public health). Article 20 of the ICCPR – which the United States reserved upon

ratification, and thus does not consider binding on it – requires States Parties to prohibit incitement to discrimination, hostility or violence that results from advocacy of national, racial or religious hatred.

So the first point I want to make is that international human rights law, as a body of law binding on the United States and governments worldwide, provides a source of law and a source of decision-making that can be relevant to the considerations of this hearing.

Second, as the Commission focuses on companies in particular, there may be an interest and at times a necessity to consider their content standards and how they align with the ICCPR and other norms of human rights law. However, I would urge also consideration of rules of transparency, rules that may be drawn from the United Nations Guiding Principles on Business and Human Rights. The companies are rather opaque both in their adoption of rules and their enforcement of those rules, a fact that interferes with our understanding of the interaction of platforms, speech, their rules, and religious belief.

One of the problems that we have, both as researchers and you as commissioners and as advisors to legislators and to the executive branch, to policymakers, is understanding not just the rules but how the rules are made and how they are implemented. I would strongly encourage the conversation, if not today, over time, to focus on transparency and the importance of companies being transparent about their work. Otherwise, the conversation tends to be asymmetrical, where the companies have all of the information and we enjoy only the shadows of the information. I would add that a focus on transparency would enable the conversation to move *toward* a regulatory environment that is respectful of fundamental rights.

Third, a point about government responsibility. I believe the commissioners have already highlighted the problem and the problems that we see around the world with respect to governments inciting violence, and promoting discrimination, and we have seen this in many parts of the world. We have seen not only the spread of anti-blasphemy laws, the spread of hate speech, anti-hate speech laws, and the spread of disinformation or “fake news” laws.

Around the world, those laws are often used as tools against vulnerable minorities, whether they are ethnic minorities or religious minorities or others, and I think this fact may serve as a key agenda item for a Commission that has historically paid attention to these kinds of issues. Further, because these laws are now being applied with extra-vigor and extra penalty to online services and users, a major question presents itself: is government regulation serving to promote religious freedom or is it serving to undermine religious freedom? All too often it is having the latter effect (and often intention).

Very often governments will make demands of internet companies to either take down content or take action against users or accounts. Thus, part of the effort moving forward should be not just focusing on the companies but also on the governments that create a hostile environment to religious freedom and freedom of expression.

Finally, please permit me to say a word about the U.S. government and its global role. The United States – in part because of its historic protection of religious freedom and promotion of religious tolerance, and its historic protection of the freedom of expression, both of which are found in the First Amendment – has a strong role to play internationally in promoting these values, in promoting them in governments around the world, in promoting them in the United Nations and in promoting them with respect to companies.

However, to the extent that the United States removes itself from the institutions of international governance, such as removing itself from the U.N. Human Rights Council, or to the extent that the United States seeks to privilege one set of rights over other rights, the United States loses its moral authority to advocate for protection, promotion, and change.

Human rights are interdependent. Freedom of expression depends on freedom of religion, which depends on freedom of assembly, which depends on nondiscrimination, and so forth. All of these rights are connected to one another, and so as the Commission and others move forward, I think it is important for the United States to reengage with the institutions of international law to regain a credibility that frankly has been lost over several years, to reengage domestically by making the human rights conversation not only a conversation about *what they're doing over there*, but about *what we do here*, and make it a conversation about how we interact and bring international human rights law, which applies by its terms to governments, to the conversation about companies.

So with that, again, thank you very much for your time and for this opportunity.