



THE PERMANENT MISSION  
OF THE  
UNITED STATES OF AMERICA  
TO THE  
UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS  
IN GENEVA

April 10, 2018

David Kaye  
Special Rapporteur on the promotion of the right to  
freedom of opinion and expression

Dear Mr. Kaye:

Thank you for your letter dated January 23, 2018, requesting input for your June 2018 report to the UN Human Rights Council, which will focus on online content regulation.

Please find the response of the United States attached.

Sincerely,

A handwritten signature in blue ink that reads "Jason Mack".

Jason R. Mack  
U.S. Deputy Permanent  
Representative to the UN Human  
Rights Council

**SUBJECT: U.S. response to request for submissions on social media, search, and freedom of expression**

The United States provides strong support at the Human Rights Council and the UN General Assembly on resolutions calling for the promotion and protection of freedom of expression, whether it is exercised offline or online. We support the mandate and work of the UN Special Rapporteur for Freedom of Opinion and Expression.

In the United States, freedom of expression receives strong protection, whether it is exercised offline or online. The First Amendment to the U.S. Constitution states that “Congress shall make no law ... abridging the freedom of speech.” Freedom of expression in the United States may only be restricted in narrow circumstances.

The Supreme Court has identified a limited number of narrowly-defined categories of speech that do not receive First Amendment protection. Generally, the government may restrict unprotected speech, such as child pornography or incitement to imminent lawless action.

Further, the Supreme Court has determined there are some circumstances in which the government may restrict speech otherwise protected by the First Amendment. For example, the government may restrict speech based on its content where the restrictions are able to survive the highest level of judicial scrutiny – commonly referred to as strict scrutiny. Under this standard, content-based restrictions on speech must advance a compelling government interest and must be the least restrictive means for furthering that interest,<sup>[1]</sup> an extremely high bar. The Supreme Court has concluded that online speech warrants First

Amendment protection and that generally content-based restrictions of online speech content are subject to strict scrutiny.<sup>[2]</sup>

As a general matter, U.S. law does not impose an obligation on internet companies to remove, restrict, or otherwise regulate online content that is protected under the First Amendment. Online content that is hosted within the United States' jurisdiction that might include speech, such as obscenity or incitement to imminent violence, is addressed most often through civil or criminal litigation, similar to how offline content is treated. Generally, U.S. law does not impose civil liability on internet companies for online content hosted or removed by third parties, subject to certain exceptions.<sup>[3]</sup> Again, such matters are typically addressed through the judicial process – with its attendant constitutional safeguards and protections.

We would like to note that a number of major internet companies periodically issue publicly-available reports that provide information on government requests for removal of content, including from the U.S. government. Finally, internet companies, of their own volition, may and do remove online content that violates their terms of service.

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<sup>[1]</sup> *Sable Communications of California, Inc. v. Federal Communications Commission*, 492 U.S. 115 (1989).

<sup>[2]</sup> *Reno v. American Civil Liberties Union*, 521 U.S. 844 (1997). *See also* *Packingham v. North Carolina*, 582 U.S. \_\_\_ (2017).

<sup>[3]</sup> Communications Decency Act of 1996, 47 U.S.C. § 230(c).