

NOTICE OF FILING

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Sia Lagos

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Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

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Form 59
Rule 29.02(1)

Affidavit

No. NSD474 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

ESAFETY COMMISSIONER

Applicant

X CORP.

Respondent

AFFIDAVIT OF AARON TERR

Address: 510 Walnut Street, Suite 900, Philadelphia, Pennsylvania, 19106, United States
Occupation: Director of Public Advocacy at the Foundation for Individual Rights and Expression
Date: 9 May 2024
Prepared by: Johnson Winter Slattery
Level 14, 50 Bridge Street
Sydney NSW 2000

I, Aaron Terr, of 345 N 12th Street, Apt 3C, Philadelphia, Pennsylvania, 19107, United States, affirm:

1. I am the Director of Public Advocacy of the Foundation for Individual Rights and Expression (**FIRE**).
2. I am authorised to make this affidavit in support of FIRE's application to intervene or for it to be appointed *amicus curiae*.
3. Now produced and shown to me and marked "**AT-1**" is a paginated bundle of documents

Filed on behalf of (name & role of party)	Foundation for Individual Rights and Expression, Applicant intervener	
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referred to in this affidavit (**Exhibit Bundle**). Where in this affidavit I refer to a page number of Exhibit AT-1, I am referring to a page number of that bundle.

4. In this affidavit I will describe:
 - (a) my background and work experience;
 - (b) FIRE's background and its current role; and
 - (c) the specific concerns FIRE has if a global takedown order is made by the Federal Court.

My background and work experience

5. I graduated from Vassar College in 2007 with a Bachelor of arts in Biology. I subsequently enrolled in the University of Virginia School of Law, and I graduated with a Juris Doctorate in Law.
6. Between 2012 and October 2013, I was a law clerk for the New Jersey Superior Court, Appellate Division.
7. From November 2013 to February 2014, I volunteered for the American Civil Liberties Union of Pennsylvania (**ACLU**). I reviewed submissions concerning violations of civil liberties, including free speech rights, and recommended whether the ACLU should intervene.
8. Between March 2014 and December 2016, I was a law clerk for the Superior Court of Pennsylvania. Thereafter, I was employed as a Central Legal Staff Attorney for the same Court, where my responsibilities included drafting legal memoranda to judicial panels concerning complex motions and appeals.
9. I joined FIRE in January 2021. I was initially employed as a Program Officer in the Individual Rights Defense Program. In February 2022, I became a Senior Program Officer for its Campus Rights Advocacy Team. By November 2022, I was appointed director of its Public Advocacy Team. In that role I am responsible for non-litigious free speech advocacy. This includes:
 - (a) writing letters to government entities on behalf of individuals facing rights violations;
 - (b) contributing to FIRE's public awareness efforts (including in relation to Free Speech/Freedom of Expression) by creating content for FIRE's website, social media feeds, external publications, and speaking with the media;
 - (c) authoring position papers and talking points on issues concerning expressive rights as part of FIRE's mission to advance those rights and to support a culture of free expression. At pages 1-16 of Exhibit AT-1 is examples of articles that I have

published on that topic.

10. A copy of my curriculum vitae may be seen at pages 17-19 of Exhibit AT-1.
11. I make this affidavit based on my own knowledge and belief and from review of records and articles from FIRE, except where otherwise indicated. Where I express opinions in this affidavit, I do so based on my experience set out above and I shall use the phrase: "*In my experience*". Where I depose to matters on the basis on information and belief, I believe such matters to be true and correct.

FIRE

12. FIRE is a non-partisan, non-profit organisation dedicated to defending free speech and free thought of all Americans.
13. Since 1999, FIRE has successfully defended free speech on college campuses across the United States through public advocacy, targeted litigation, and *amicus curiae* filings in cases that implicate expressive rights.
14. Until June 2022, FIRE had a particular focus on protecting these rights on college campuses. After that date, FIRE expanded its work to include off-campus free speech issues, including government regulation of the internet and social media platforms. FIRE articles detailing its experience in protecting such rights is at pages 19-28 of Exhibit AT-1.
15. FIRE actively advocates against countries' speech restrictions extending beyond their borders, as it believes these threaten free speech rights globally. Consequently, FIRE actively monitors the news for notable cases of censorship extending beyond a country's borders. FIRE articles detailing its experience in advocating against countries' speech restrictions is at pages 29-37 of Exhibit AT-1.
16. FIRE produces numerous publications directed to free speech. For example, Senior Scholar, Global Expression Sarah McLaughlin is responsible for producing FIRE's "Free Speech Dispatch," a regular series of publications online that covers new and continuing censorship trends and challenges around the world to help readers better understand the global context of free expression. Similarly, FIRE Senior Fellow Jacob Mchangama has published numerous articles on the topic of free speech in his capacity as Senior Fellow. In May 2023, his article "How to Kill online free speech" was published in Time Magazine. Mr Mchangama is also the founder and CEO of the Copenhagen-based think tank Justitia and author of the book "Free Speech: A History from Socrates to Social Media," and he writes extensively on the global climate for free expression.

The Interlocutory Order and FIRE

17. On 23 April 2024, I became aware from media reports that the Federal Court of Australia granted an interim injunction. Copies of the media report is at pages 38-41 of Exhibit AT-1.
18. I understood from the terms of the interlocutory injunction that the Federal Court had compelled X Corp. to restrict content globally in order to comply with a notice served on it by Australia's E-Safety Commissioner. I further understood that the Court would finally determine that issue at a later hearing in May 2024 (**Order**).
19. As I briefly explained above, FIRE exists to protect the freedoms and interests that are affected by the Order. To that extent, FIRE has a direct interest in the outcome of these proceedings. In particular, the Order has the capacity to affect the content US citizens may see on the internet without apparent consideration to the protection afforded by the First Amendment to the Constitution of the United States.
20. FIRE seeks to be heard in proceedings where such freedoms and interests may be affected in the United States. Indeed, FIRE has represented parties or presented a "Brief of Amicus Curiae" in several cases of note. Copies of US cases in which FIRE has appeared and presented a brief of amicus curiae appears between pages 42-146 of Exhibit AT-1.
21. Consequently, I believe that FIRE would be substantially affected by the Interim Order so as to warrant its intervention in these proceedings. Alternatively, I believe that FIRE may significantly assist the Court in its capacity as *amicus curiae* in these proceedings.
22. I confirm that FIRE would consent to any conditions the Court considered necessary to enable it to intervene in the proceedings.

FIRE's concerns

23. In my experience, a global takedown order has the capacity to:
 - (a) undermine principles of national sovereignty; and
 - (b) restrict access to information that is protected by other countries' laws.
24. The following are recent publicly reported incidents whereby online communication platforms or media outlets, upon being served with domestic takedown orders, have chosen to remove that content globally. I believe that this hinders communication and access to information for speakers and audiences globally, and has a chilling effect on free speech:
 - (a) In June 2020, the videoconferencing platform Zoom temporarily suspended the accounts of three human rights activists for hosting meetings commemorating the

anniversary of the Tiananmen Square massacre. The Chinese government reportedly warned Zoom that such activities were illegal and demanded it terminate the meetings and the organisers' accounts, even though the organisers did not live in China. A report of this incident, upon which I base my belief, is at pages 146-148 of Exhibit AT-1. The incident illustrated how an authoritarian regime could attempt to erase history and silence dissent not only within its own country, but around the world. That same month, FIRE, along with the free expression groups National Coalition Against Censorship and PEN America, wrote a letter to Zoom calling on it to explain how universities can rely on its services to provide education across borders. A copy of the letter to Zoom is at pages 149-152 of Exhibit AT-1.

- (b) In February 2024, an Indian court ordered Reuters to take down a report about Appin, an Indian company accused of providing "hack-for-hire" services. Rather than use geo-blocking tools to block the article only in India, Reuters took it down globally. Appin's co-founder then used the court order to pressure other media outlets outside India to withdraw their coverage of the story. A copy of an article written and published by FIRE on this topic at pages 153-158 of Exhibit AT-1.
25. In addition to the above, there are recent publicly reported incidents that illustrate the potential consequences of extraterritorial censorship:
- (a) In 2020, China imposed a national security law on Hong Kong, applicable even to speech outside Hong Kong by non-residents, that imposes a vague ban on "separatism and subversion." Authorities have used the ban to crack down on pro-democracy protests and arrest journalists. An article written and published by FIRE on this topic is at pages 159-161 of Exhibit AT-1.
 - (b) In 2023, Russia's escalating suppression of LGBTQ activism and expression had consequences in North America, as several National Hockey League teams with Russian players declined to celebrate Pride night with Pride-themed jerseys during pregame warmups. An article written and published by FIRE on this topic is at pages 162-164 of Exhibit AT-1.
26. FIRE's website lists many instances of "faculty and students at campuses around the world [making] changes to their teaching, research, class participation, and activism to adjust to the law." An example on University Responses to Chinese Censorship is at 165-173 of Exhibit AT-1.
27. Further, there is growing evidence of governments around the world escalating censorship, including increased pressure on social media platforms to remove content:

- (a) Government takedown requests directed at social media companies appear to be on the rise. In 2018, India demanded X, then Twitter, take down 224 posts or accounts. In 2022, that number rose to 3,417. The Washington Post reports that “India has perfected the use of regulations to stifle online dissent and already inspired governments in countries as varied as Nigeria and Myanmar to craft similar legal frameworks.” The Washington Post article on this topic is at pages 175-180 of Exhibit AT-1.
 - (b) In recent years, various countries have passed vague “disinformation” laws to smother dissent and journalism under the guise of stemming the spread of false information. A copy of a Reuters article published on 2 November 2023 on this topic is at pages 181-191 of Exhibit AT-1.
 - (c) Russia has engaged in mass censorship since launching a full-scale invasion of Ukraine in 2022. It has jailed hundreds of dissidents, journalists, opposition politicians, artists, and other perceived threats to the regime. This has been widely reported, but an ABC News article on this topic published on 25 May 2023 is at pages 192-200 of Exhibit AT-1.
 - (d) A Thai court recently sentenced a man to 50 years in prison for insulting the monarchy. This has been reported to be the harshest punishment ever imposed under the country’s lèse-majesté law. A copy of a CNN article published on 18 January 2024 on this topic is at pages 201-209 of Exhibit AT-1.
 - (e) A Court in Pakistan recently sentenced a 22-year-old student to death over sharing photos and videos on WhatsApp that allegedly disparaged the Prophet Muhammed. A copy of the New York Post article published on 10 March 2024 on this topic is at pages 210-219 of Exhibit AT-1.
 - (f) Secular democracies like Denmark are also passing religious blasphemy laws. An Associated Press article published on 8 December 2023 on this topic is at pages 220-224 of Exhibit AT-1.
28. The method by which the above domestic governments have restricted free speech has amplified FIRE’s concerns about those domestic restrictions being exported globally through the coercion of social media platforms and websites.
29. Based on the above, and in my experience, if a respected Western country like Australia compels X Corp. to restrict content globally, there is a real risk that it may provide validation to authoritarian governments/regimes in attempting to do the same. This outcome could undermine Australia’s standing to oppose similar actions by other governments and result in a significant erosion of free expression worldwide.

Virtual Private Networks (VPNs)

- 30. I have read news articles that Australia’s eSafety Commissioner has complained that X Corp has only geo-blocked the content complained of rather than removing it globally. Whilst that might prevent some Australian users from seeing that content, other Australians may use a VPN to circumvent the restriction. A copy of the reports I have read are at pages 38-41 of Exhibit AT-1.
- 31. I am aware that VPNs allow users to connect to the internet through a server in another location. I am also aware that this can be used to bypass geo-blocking restrictions.
- 32. However, an order requiring X Corp. to remove content globally because of the possibility of some Australians bypassing the geo-blocking restrictions via VPNs is, in principle, no different than a demand that other sovereign countries should abide by Australia’s speech restrictions to prevent its citizens from bypassing them when they travel outside Australia. In my experience, the concern about VPNs does not justify infringing on the sovereignty of other countries where X Corp. lawfully operates and the rights of their citizens to access the content it makes available for publication is protected by law.

Sworn / Affirmed by the deponent)
 at)
 in)
 on)
 Before me:)

.....
 Signature of deponent

.....
 Signature of witness

[Name and qualification of witness]

EXHIBIT CERTIFICATE

No. NSD474 of 2024

Federal Court of Australia
District Registry: New South Wales
Division: General

ESAFETY COMMISSIONER

Applicant

X CORP.

Respondent

EXHIBIT "AT-1"

This is the exhibit marked "AT-1" referred to in the affidavit of **Aaron Terr** sworn on 9 May 2024

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Signature of witness

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