NOTICE OF FILING

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Registrar

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Form 59
Rule 29.02(1)

AFFIDAVIT

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NEW SOUTH WALES
DIVISION: GENERAL

NO NSD 474 OF 2024

ESAFETY COMMISSIONER
Applicant

X CORP.
Respondent

Affidavit of:	Joshua Matz
Address:	1050 K Street, NW Suite 1040, Washington, DC, 20001
Occupation:	Lawyer
Date affirmed:	5 May 2024

Contents:

I, Joshua Matz of 1050 K Street, NW Suite 1040 in Washington D.C, Lawyer, affirm:

1. I am a partner at Kaplan Hecker & Fink LLP.

2. Annexed to this affidavit and marked **JM-1** is a copy of a preliminary report prepared by me and dated 5 May 2024, which sets out my answers to the questions contained in a letter of instruction from the Australian Government Solicitor to me dated 5 May 2024 (AEST) (**Report**).

Deponent: .....

Joshua Adam Matz

Notarized remotely online using communication technology via Proof.

05/05/2024

Made before: .....

Online Notary

CAROLA VILLAMIZAR
Notary Public - State of Florida
Commission # HH 427034
Expires on July 31, 2025

Florida

Filed on behalf of the Applicant, eSafety Commissioner

File ref: 24003626

Prepared by: Matthew Garey
AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

Address for Service:
The Australian Government Solicitor,
Level 10, 60 Martin Place, Sydney, NSW 2000
Matthew.Garey@ags.gov.au

Telephone: 02 9581 7625
Lawyer's Email:
Matthew.Garey@ags.gov.au
Facsimile: 02 6169 3054

3. The opinions I express in the Report are held honestly and the facts referred to in the Report are true to the best of my knowledge and belief.

4. I have read the Federal Court Expert Evidence Practice Note, which annexes the Harmonised Expert Witness Code of Conduct (**Practice Note**). I understand, complied with and agreed to be bound by the Practice Note.

Affirmed by the deponent

at ...WASHINGTON.....

in the ..DISTRICT OF COLUMBIA

on .....MAY 5 2024.....

.....

Before me:

Signature of witness:

Carola Villamizar 05/05/2024

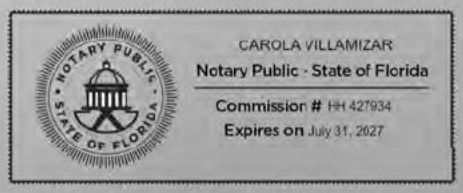
Name of witness:

Carola Villamizar

Qualification of witness:

Online Notary Florida

Notarized remotely online using communication technology via Proof.



Page 2

ANNEXURE JM-1

FEDERAL COURT OF AUSTRALIA
DISTRICT REGISTRY: NSW
DIVISION: GENERAL

NO NSD 474 OF 2024

ESAFETY COMMISSIONER
Applicant

X CORP
Respondent

The following 176 pages is the annexure marked JM-1 referred to in the affidavit of Joshua Matz made on 5 May 2024 before me:

Carola Villamizar 05/05/2024
.....
Signature Carola Villamizar

Online Notary Florida
.....
Qualification

Notarized remotely online using communication technology via Proof.

CAROLA VILLAMIZAR
Notary Public · State of Florida
Commission # HH 427934
Expires on July 31, 2027

Filed on behalf of the Applicant, eSafety Commissioner
File ref: 24003626

Prepared by: Matthew Garey
AGS lawyer within the meaning of s 55I of the *Judiciary Act 1903*

Address for Service:
The Australian Government Solicitor,
Level 10, 60 Martin Place, Sydney, NSW 2000
Matthew.Garey@ags.gov.au

Telephone: 02 9581 7625
Lawyer's Email:
Matthew.Garey@ags.gov.au
Facsimile: 02 6169 3054

KAPLAN HECKER & FINK LLP

350 FIFTH AVENUE | 63RD FLOOR
NEW YORK, NEW YORK 10118

1050 K STREET NW | SUITE 1040
WASHINGTON, DC 20001

TEL (212) 763-0883 | FAX (212) 564-0883

WWW.KAPLANHECKER.COM

DIRECT DIAL 929.294.2537
DIRECT EMAIL jmatz@kaplanhecker.com

May 5, 2024

BY EMAIL
LEGALLY PRIVILEGED & CONFIDENTIAL
SUBJECT TO LITIGATION PRIVILEGE

Matthew Garey
Senior Executive Lawyer
Australian Government Solicitor
Level 5, 4 National Circuit Barton ACT 2600
Locked Bag 35 Kingston ACT 2604
T 02 6253 7000

Re: Preliminary Expert Opinion Regarding Application of U.S. Law

Dear Mr. Garey:

I am a partner in the law firm Kaplan Hecker & Fink LLP (KHF). KHF has been retained by the Australian Government Solicitor (AGS), acting for the eSafety Commissioner, to provide an expert report in connection with Federal Court of Australia proceeding NSD474/2024.

As you know, I was retained by AGS on May 3, 2024. Given the schedule in advance of the interlocutory hearing on May 10, 2024, you have requested that I provide you with a letter that summarizes my preliminary expert opinions. This letter constitutes that report and provides my preliminary answers to certain questions that you posed to me. As described herein, I would require two additional weeks to prepare a full report, and this preliminary report is necessarily limited by the scope of the legal research and the nature of the inquiries I was able to complete on an expedited timeframe. Of course, I fully appreciate that my paramount duty as an expert is to the Court.

Summary of Qualifications

1. My CV is attached as **Appendix A**.

2. I am a lawyer admitted to practice before the United States Supreme Court, eight of the thirteen federal appellate courts in the United States, six federal district courts in the United States, and courts in the State of New York and the District of Columbia.

3. I am a graduate of the University of Pennsylvania (*magna cum laude*, 2008), Oxford University (*distinction*, 2009), and Harvard Law School (*magna cum laude*, 2012). While in law school, I served as Articles Chair of the *Harvard Law Review*.

4. I have served as a law clerk to Judge J. Paul Oetken of the Southern District of New York, Judge Stephen Reinhardt of the United States Court of Appeals for the Ninth Circuit, and Justice Anthony M. Kennedy of the United States Supreme Court.

5. I have co-authored two books on constitutional law—and several articles on the same subject—with Professor Larry Tribe of Harvard Law School. I have published on constitutional issues in *The Washington Post*, *The Wall Street Journal*, *The Harvard Law Review Forum*, *The University of Chicago Law Review*, *The Daily Journal*, *The Guardian*, *The Atlantic*, and *Wired Magazine*, and I have lectured on constitutional issues at Harvard Law School and the National Constitution Center. Since 2018, I have taught an advanced seminar on constitutional litigation at Georgetown Law School.

6. I have substantial experience litigating First Amendment questions and have advised individuals, companies, non-profits, and policymakers on a wide range of First Amendment free speech issues. I have also litigated cases involving Section 230 of the Communications Decency Act (CDA), and I have advised individuals, companies, non-profits, and policymakers on the proper interpretation and application of that provision.

7. I have received substantial professional recognition for the quality of my legal work. For example, I have been described as a "Rising Star of the Courtroom" by *Business Insider* (2022), an "Appellate Rising Star" by *Law360* (2022), and a "Young Lawyer of the Year" by *American Lawyer* (2021). I have been included on "40 Under 40" lists by *Benchmark Litigation* and *Bloomberg Law*, and I have been named one of the "500 Most Influential People" by *Washingtonian Magazine*. Several years ago, the Governor of Kentucky named me a "Kentucky Colonel" for successfully defending his COVID-19 public health measures against a First Amendment attack at the U.S. Supreme Court.

8. In preparing this report, I was assisted by Joseph Posimato, an associate with KHF. I also briefly consulted on the First Amendment issues with Professor Larry Tribe of Harvard Law School, who is Of Counsel with KHF. However, I did not rely on either Mr. Posimato or Professor Tribe to form my opinion. This report is based wholly on the knowledge, training, study, and experience that I have described above.

9. I have reviewed, understood, complied with, and agree to be bound by the Federal Court's Expert Evidence Practice Note (GPN-EXPT) and Harmonised Expert Witness Code of Conduct, the latter of which is attached as **Appendix B**.

10. Because this report is preliminary in character, I have made the inquiries that I believe are desirable and appropriate at this preliminary stage, and no matters of significance which I regard as relevant have, to my knowledge, been withheld.

Summary of Preliminary Opinions

11. As outlined in Schedule 1 of the letter of instruction attached as **Appendix C**, AGS has asked me to prepare an expert report addressing four questions:

    a. Do you agree or disagree with Ms Ambika Kumar's expert opinion dated 1 May 2024 (**the Kumar Report**) to the extent that she concludes that the Removal Notice would be contrary to the First Amendment, and why?

    b. Do you agree or disagree with the Kumar Report to the extent that she concludes that the Removal Notice would be contrary to section 230 of the Communications Decency Act, 28 U.S.C. § 230, and why?

    c. Do you agree or disagree with the Kumar Report that a court in the United States would decline to enforce an order of an Australian court enforcing the Removal Notice, and why?

    d. Would X Corp. be in breach of the First Amendment or section 230 of the Communications Decency Act, 28 U.S.C. § 230 if it were to comply with:

        i. the Removal Notice;

        ii. an order of an Australian court enforcing the Removal Notice?

12. My preliminary opinions are as follows:

    a. Based on my preliminary research, I agree with the Kumar Report to the extent it opines that the Removal Notice would be contrary to the First Amendment if it were imposed by a government actor in the United States and if it restricted the ability of users in the United States to access the Video.

    b. Based on my preliminary research, I do not agree with the Kumar Report that the Removal Notice would be contrary to Section 230 of the Communications Decency Act (CDA), 28 U.S.C. § 230, if it were imposed by a government actor in the United States.

    c. Based on my preliminary research, I agree with the Kumar Report that it is highly likely that courts in the United States would decline to enforce an Australian court order enforcing the Removal Notice—either because they would view such an Australian court order as repugnant to the public policy of the United States or because they might view such an Australian court order as penal in character (and U.S. courts do not enforce foreign penal orders).

    d. Based on my preliminary research, it is my opinion that X. Corp. would not be in breach of the First Amendment or Section 230 of the CDA if it were to comply—without the involvement of United States government actors—with the Removal Notice or an Australian court order enforcing the Removal Notice.

Assumptions and Materials Reviewed

13. In providing this preliminary opinion, I have assumed the truth of the facts set forth in the "Background" section of my letter of instruction (**Appendix C**).

14. I also base my opinion upon a review of the following materials, copies of which I can provide upon request:

    a. The Kumar Report

    b. April 16, 2024 Removal Notice ("Removal Notice")

Basis for Preliminary Opinions

In this section, I briefly describe the basis for my preliminary opinions. Because I have drafted this preliminary opinion on an expedited basis, I identify several areas where I would intend to engage in further legal research and analysis before arriving at a final conclusion, and (more generally) I refer to significant legal authorities without purporting to comprehensively survey precedent.

Applicable United States Legal Authority

15. Applicable law is set forth in the United States Constitution and the United States Code (including Section 230 of the CDA, 47 U.S.C. § 230). I have also relied on federal judicial opinions interpreting and applying principles of federal and state law.

Principles Governing the Enforcement of Foreign Judgments in United States Courts

16. When a party seeks to enforce a foreign judgment in the United States, they ordinarily must file a new, separate lawsuit in a court in the United States seeking recognition and enforcement of that foreign judgment. *See Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1212–13 (9th Cir. 2006) (en banc) (opinion of Judge Fletcher, joined by Chief Judge Schroeder and Judge Gould) ("Fletcher Op.").

17. Such lawsuits are generally governed by the law of the state in which enforcement is sought. *Id.* Although there is some inter-state variation, courts in the United States will generally decline to enforce a foreign judgment where the cause of action or defense on which the judgment is based is repugnant either to the public policy of the United States or the public policy of the specific state where recognition and enforcement of the foreign judgment is sought. *See Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 990-1014 (9th Cir. 2013); *Yahoo!*, 433 F.3d at 1212-14 (Fletcher Op.) (collecting cases); Restatement (Third) of the Foreign Relations Law of the United States § 4824(2)(d).

18. The repugnancy standard constitutes a "high bar." *Naoko Ohno*, 723 F.3d at 1002. The issue not whether "the foreign judgment or cause of action is contrary to our public policy, but whether either is so offensive to our public policy as to be prejudicial to recognized standards of morality and to the general interests of the citizens." *Id.* (citation and quotation marks omitted). Accordingly, "public policy is violated only if recognition or enforcement of the foreign country judgment would tend clearly to injure

public health, the public morals, or the public confidence in the administration of law, or would undermine that sense of security for individual rights, whether of personal liberty or of private property, which any citizen ought to feel." *Id.* at 1003.

19. In addition, courts in the United States generally (in the absence of a specific treaty obligation) will not enforce the penal judgments of foreign nations. *See Yahoo!*, 433 F.3d at 1218-20 (Fletcher Op.). The classification of a foreign judgment as "penal" for these purposes does not turn on labels and formalities, but rather on the judgment's "essential character and effect." *Id.* at 1119 (citation omitted). For example, judgments that seek to punish offenses against the public—or that aim to deter threats to internal public order through fines payable to the government—may qualify as "penal." *Id.*

20. If afforded more time, I would conduct further research to more precisely describe the nature of relevant inter-state variation on these issues; to more fully research whether any relevant courts have defined a different standard for the enforcement of foreign country injunctions, as compared to money judgments (my preliminary conclusion is that these are treated the same); and to better appreciate the settings in which foreign judgments have been characterized as "penal" by courts in the United States.

Opinions Concerning the First Amendment, the Removal Notice, and Foreign Judgments

21. As relevant, the First Amendment provides that Congress shall make no law "abridging the freedom of speech." This freedom of speech limitation applies not only to Congress, but also to the entire federal government (by virtue of the First Amendment) and to state and local governments (by virtue of the Fourteenth Amendment).

22. Obviously, foreign governments are not bound by the First Amendment, which instead restricts only governmental actors (and other "state actors") within the United States. *See, e.g.*, *Manhattan Cmty. Access Corp. v. Halleck*, 587 U.S. 802, 804 (2019). As a result, the First Amendment does not apply directly to the Removal Notice itself—or, for that matter, to any order or judgment issued by any Australian official or court.

23. However, if a governmental actor in the United States had issued the Removal Notice, or if a court in the United States had imposed such a requirement, the First Amendment would be implicated to the extent that this governmental action restricted the ability of users in the United States to access the Video. *See Garcia v. Google, Inc.*, 786 F.3d 733, 747 (9th Cir. 2015) (en banc) (observing that a judicial takedown order can be a prior restraint in violation of the First Amendment). I highlight the point about whose access to the Video is affected because it would be a thornier issue if the restriction affected only foreign users. *See Yahoo!*, 433 F.3d at 1217 (Fletcher Op.) ("The extent of First Amendment protection of speech accessible solely by those outside the United States is a difficult and, to some degree, unresolved issue." (collecting cases)).

24. The First Amendment restricts government actors in the United States from imposing prior restraints on speech and from imposing content-based limitations on speech. *See, e.g.*, *Reed v. Town of Gilbert*, 576 U.S. 155 (2015); *Alexander v. United States*, 509 U.S. 544 (1993). In my view, the Removal Notice and any corresponding court order

would offend both restrictions to the extent that they limited the ability of users in the United States to access the Video. To the extent any such action could be justified under First Amendment doctrine, the most unforgiving judicial scrutiny would apply. Under these circumstances, I think it is exceedingly unlikely that any court in the United States would find an order to remove the Video was permissible under the First Amendment.

25. The principal basis on which to avoid that conclusion would be an argument that the First Amendment simply does not protect the type of speech in the Video. But any such argument would be foreclosed by binding precedent from the United States Supreme Court, which has very narrowly defined the scope of exceptions to First Amendment protection. *See, e.g.*, *United States v. Stevens*, 559 U.S. 460, 468 (2010). Based on my experience and study of these doctrinal categories, as well as the information that I have been provided, the Video does not constitute incitement, a true threat, defamation, speech integral to criminal conduct, or any other recognized category of unprotected expression. To the contrary, recent precedent reflects an understanding that depictions of violence are protected by the First Amendment—a view that would likely apply with added force to a depiction of an act of violence involving a figure of widespread social, political, and religious significance. *See, e.g.*, *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786 (2011); *Snyder v. Phelps*, 562 U.S. 443 (2011); *Stevens*, 559 U.S. at 468.

26. I have reviewed the older precedents identified by the ASG in their letter of instruction. Those cases do not alter my conclusion. Justice Douglas's non-controlling concurrence in *Samuels v. Mackell* observed only that acts of violence (as opposed to depictions of violence) are unprotected by the First Amendment. 401 U.S. 66, 75 (1971) (Douglas, J., concurring) ("Certainly violence has no sanctuary in the First Amendment, and the use of weapons, gunpowder, and gasoline may not constitutionally masquerade under the guise of 'advocacy.'"). In *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982), the Supreme Court reaffirmed that conclusion, again focusing only on acts rather than depictions of violence. Although the First Amendment does not protect violent conduct, it does protect speech that includes depictions of violent conduct, unless that speech otherwise falls into a recognized exception to the First Amendment.

27. Accordingly, it is my opinion that the Removal Notice (and any corresponding court order) would be contrary to the First Amendment if it were imposed by a government actor in the United States and if it restricted the ability of users in the United States to access the Video. Indeed, I view that conclusion as straightforward and indisputable.

28. I have also been asked whether courts in the United States would decline to enforce an Australian court order enforcing the Removal Notice. Based on my preliminary research, my opinion is that courts very likely would decline to enforce such an order.

29. To be clear, at this preliminary stage, I have not found a case squarely addressing the issue—and, based on my initial review, the cases cited by the Kumar Report are either non-precedential or materially distinguishable or both. Therefore, my conclusions are based on a preliminary survey of relevant authorities (including those cited in the Kumar Report), as well as my general knowledge of First Amendment legal principles. If afforded more time, I would undertake a more comprehensive analysis of this issue.

30. With respect to both the Removal Notice and an Australian court order enforcing it, I believe it is highly likely that courts in the United States would deem the recognition and enforcement of such requirements to be repugnant to the public policy of the United States as reflected in the First Amendment. The most significant authority is the *Yahoo!* case, where eight out of eleven federal judges on the panel strongly indicated (albeit in non-controlling opinions) that they would forbid the enforcement of foreign judgments requiring a company to block access by users in the United States to constitutionally protected speech. As I understand it, that concern would be directly implicated here.

31. More broadly, it is my opinion that United States courts would be extraordinarily wary of any circumstance in which a foreign power seeks to use the United States legal system to require the global takedown of speech that is otherwise constitutionally protected in the United States. There are many nations in the world, with a broad range of agendas and diverse views of individual liberty. The rule adopted by a United States court for this case would be seen as having more general applications and implications. That policy concern is supported by the SPEECH Act cited in the Kumar Report. Thus, where the First Amendment fully protects certain speech, and where enforcing a foreign court judgment would deprive United States users of the ability to access that speech, courts in the United States are highly likely to invoke the repugnancy principle.

32. Separately, my preliminary assessment is that an Australian court order enforcing the Removal Notice may potentially qualify as an unenforceable foreign "penal" order, given that it arises from a government enforcement action and seeks to punish and deter rather than compensate private individuals. I would require further factual instruction on this point, as well as the opportunity to conduct more fulsome research into United States law, to offer a final opinion. But I would be remiss not to raise this possibility.

Opinions Concerning CDA 230, the Removal Notice, and Foreign Judgments

33. Most fundamentally, Section 230 of the CDA prohibits courts from treating a provider of an interactive computer service as the "publisher or speaker" of third-party content posted on its platform. 47 U.S.C. 230(c)(1). In addition, Section 230(c)(2) states that "[n]o provider or user of an interactive computer service shall be held liable on account of … any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable." 47 U.S.C. 230(c)(2)(A).

34. Although the Kumar Report tends to describe Section 230 of the CDA as reflecting a United States public policy prohibiting virtually any liability for platforms arising from the content they publish, that interpretation is overstated. As recently explained by the Solicitor General of the United States in a Supreme Court filing, Section 230 of the CDA is best interpreted to prohibit courts from holding a website liable for failing to block or remove third-party content, but not to immunize other aspects of the website's own conduct (or to confer some kind of all-purpose shield from liability). *See* Brief for the United States as Amicus Curiae, *Gonzalez v. Google*, No. 21-1333, at 8 (SCOTUS).

35. In my opinion, applying Section 230 of the CDA to this case involves a classic "round peg, square hole" dilemma. This is not an action in which a private party claims injury from user-generated content and seeks to sue the platform on a theory of secondary liability for hosting or failing to remove the alleged injurious content (the core concern of Section 230 of the CDA). Instead, as I understand it at this point, the Commissioner has proceeded directly against X Corp. on the theory that X Corp. has violated its own independent legal obligation not to make certain content available online to users in Australia. This action is simply not analogous to a suit under Section 230 of the CDA and reflects, in part, cross-national differences in how to approach platform regulation. If permitted more time for a final version of this report, I would undertake further research and analysis to illuminate the distinction that I have drawn in this paragraph.

36. Regardless, in my opinion it is highly unlikely that courts in the United States would view this as a matter of such immense public importance as to justify non-enforcement of a foreign judgment based on the repugnancy principle. Repugnancy is a "high bar" and applies only to foreign judgments "prejudicial to recognized standards of morality and to the general interests of the citizens." *Naoko Ohno*, 723 F.3d at 1002. Whereas preventing United States users from accessing constitutionally protected speech meets that standard, an expanded view of platform liability and legal obligations very likely does not. In my opinion, this conclusion is supported by the presence of ongoing and very substantial public, political, and legal debate about the wisdom and boundaries of Section 230 of the CDA—a debate which tends to undermine claims about its centrality to United States public policy or its urgency in assessing foreign judgments. *See, e.g.*, Valerie C. Brannon, *Section 230: An Overview*, CONGRESSIONAL RESEARCH SERVICE (January 4, 2024); Rosie Moss, *The Future of Section 230,* NATIONAL ASSOCIATION OF ATTORNEYS GENERAL (July 21, 2023); David Morar and Chris Riley, *A Guide for Conceptualizing the Debate Over Section 230*, BROOKINGS INSTITUTE (April 9, 2021).

37. Thus, based on my preliminary analysis, I do not agree with the Kumar Report that the Removal Notice would be contrary to Section 230 of the CDA if it were imposed by a government actor in the United States. Nor do I agree with the Kumar Report's view that courts in the United States would decline to enforce the Removal Notice on the ground that it is repugnant to public policy as expressed in Section 230 of the CDA.

Opinions Concerning X Corp.'s Compliance Without U.S. Governmental Involvement

38. I have been asked whether X Corp. would be in breach of the First Amendment or Section 230 of the CDA if it were to comply with the Removal Notice or an Australian court order enforcing the Removal Notice.

39. Based on my preliminary research, it is my opinion that X. Corp. would *not* be in breach of the First Amendment or Section 230 of the CDA if it were to comply—without the involvement of United States government actors—with either of these requirements.

40. As explained above, the First Amendment applies only to governmental actors, not to private parties. Therefore, subject to narrow and unusual exceptions (often referred to as "state action"), conduct by private parties cannot violate the First Amendment. That

includes conduct undertaken at the behest, urging, or demand of a foreign authority: such activity is not understood as an exercise of United States governmental power and is therefore not constrained by the First Amendment of the United States Constitution.

41. If anything, the First Amendment affirmatively protects the prerogatives of a private company like X Corp. to exercise editorial judgment about what content to publish or remove, including in response to dealings with other private and foreign actors. *See, e.g.*, *Hurley v. Irish-Am. Gay, Lesbian, & Bisexual Grp. of Boston*, 515 U.S. 557, 569-70 (1995); *Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622 (1994); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974). The nature and extent of this First Amendment protection is currently the subject of two pending cases at the United States Supreme Court. *See Moody v. NetChoice LLC*, No. 22-277; *NetChoice, LLC v. Paxton*, No. 22-555. It is quite likely, however, that the Supreme Court will recognize some First Amendment protection for content moderation decisions by platforms.

42. In these respects, the First Amendment protects rather than prohibits the authority of X Corp. to engage in content moderation decisions for a wide range of reasons, and I do not perceive any basis for concluding that it would violate the First Amendment for X Corp. to remove the Video in response to dealings with Australian authorities or courts.

43. Nor, in my preliminary opinion, would X Corp. violate Section 230 of the CDA by removing the Video pursuant to the Removal Notice or an Australian court order enforcing the Removal Notice. Section 230 does not impose an affirmative legal duty on platforms to retain offensive content that they would rather restrict (or that they are required by law to remove). Indeed, Section 230(c)(2)(A) expressly protects good faith takedowns of material that a platform deems to be "obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable" (a characterization would plainly cover the Video, if X Corp. were to decide in good faith to remove that content).

Preliminary Conclusions

44. I agree with Ms. Kumar to the extent she opines that the Removal Notice would be contrary to the First Amendment if it were imposed by a government actor in the United States and if it restricted the ability of users in the United States to access the Video.

45. I do not agree with the Kumar Report that the Removal Notice would be contrary to Section 230 of the Communications Decency Act (CDA), 28 U.S.C. § 230, if it were imposed by a government actor in the United States.

46. I agree with the Kumar Report that it is highly likely that courts in the United States would decline to enforce an Australian court order enforcing the Removal Notice—either because they would view such an Australian court order as repugnant to the public policy of the United States or because they might view such an Australian court order as penal in character (and U.S. courts do not enforce foreign penal orders).

47. X. Corp. would not be in breach of the First Amendment or Section 230 of the CDA if it were to comply—without the involvement of United States government actors—with the Removal Notice or an Australian court order enforcing the Removal Notice.

Sincerely

Joshua Matz

JAM:

Appendix A

JOSHUA MATZ

1050 K St NW, Suite 1040 • Washington, DC 20001 • (202) 763-0883 • jmatz@kaplanhecker.com

EXPERIENCE

KAPLAN HECKER & FINK, LLP, Washington, DC
Counsel, 2017-2020 / Partner, 2020-Present

Selected Matters:

- Successfully represent the Commonwealth of Pennsylvania at the U.S. Supreme Court in defending its administration and certification of the 2020 presidential election.
- Successfully represent the Governor of Kentucky at the U.S. Supreme Court in opposing an emergency application seeking to block the enforcement of COVID-19 public health orders.
- Successfully represent the Governors of Wisconsin and Pennsylvania at the U.S. Supreme Court in opposing emergency applications challenging their states' congressional districts.
- Successfully represent the SEIU in opposing a petition for certiorari asking the U.S. Supreme Court to review whether a state access to information law complied with the First Amendment.
- Successfully represent a victim of workplace sex discrimination in persuading the Fifth Circuit to reverse a grant of summary judgment against her Title VII claims.
- Successfully represent the Federal Defenders of New York in a Second Circuit appeal concerning their ability to maintain suit against the U.S. Bureau of Prisons for denial of attorney access.
- Successfully represent E. Jean Carroll in a sexual abuse and defamation lawsuit against Donald J. Trump, including appellate victories before the Second Circuit and D.C. Court of Appeals.
- Successfully represent an election nonprofit in opposing a lawsuit alleging fraud in the 2020 election, obtaining sanctions against plaintiffs' counsel, and defeating Tenth Circuit appeals of those rulings.
- Successfully represent Liz Mair in obtaining dismissal of two defamation suits filed by Devin Nunes.

GEORGETOWN LAW SCHOOL, Washington, DC
Adjunct Professor, 2018-Present
Co-teach an advanced seminar entitled "Constitutional Litigation and the Executive Branch."

HOUSE JUDICIARY COMMITTEE, Washington, DC
Impeachment Counsel, 2019-2020 & 2021
Served among counsel for the first impeachment and trial of President Donald J. Trump. Returned as counsel for the second trial of President Trump following the events of January 6, 2021.

TAKE CARE, Washington, DC
Publisher, 2017-2019
Publisher of a website dedicated to legal analysis of questions arising from the Trump Administration.

GUPTA WESSLER, PLLC, Washington, DC
Of Counsel, 2017-2019

ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTEREINER & SAUBER, LLP, Washington, DC
Associate, 2015-17

JUSTICE ANTHONY M. KENNEDY, UNITED STATES SUPREME COURT, Washington, DC
Law Clerk, 2014-15

JUDGE STEPHEN REINHARDT, NINTH CIRCUIT COURT OF APPEALS, Los Angeles, CA
Law Clerk, 2013-14

JUDGE J. PAUL OETKEN, SOUTHERN DISTRICT OF NEW YORK, New York, NY
Law Clerk, 2012-13

HARVARD LAW REVIEW, Cambridge, MA
Articles & Book Reviews Chair, 2011-2012

EDUCATION

HARVARD LAW SCHOOL, JD, Magna Cum Laude *2012*

OXFORD UNIVERSITY, MSt, Distinction in History of the United States *2009*

UNIVERSITY OF PENNSYLVANIA, BA in History and Philosophy, Magna Cum Laude, Phi Beta Kappa *2008*

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POSITIONS AT NON-PROFIT ORGANIZATIONS

Board of Directors, American Constitution Society

Board of Directors, Citizens for Responsibility and Ethics in Washington

Amicus Committee, Families Against Mandatory Minimums

FEDERAL COURT OF AUSTRALIA

Expert Evidence Practice Note (GPN-EXPT)

J L B Allsop, Chief Justice 25 October 2016

General Practice Note

1. Introduction

1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* ("**Code**") (see **Annexure A**) and the *Concurrent Expert Evidence Guidelines* ("**Concurrent Evidence Guidelines**") (see **Annexure B**), applies to any proceeding involving the use of expert evidence and must be read together with:

(a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework ("**NCF**") of the Federal Court and key principles of case management procedure;

(b) the Federal Court of Australia Act 1976 (Cth) ("**Federal Court Act**");

(c) the *Evidence Act 1995* (Cth) ("**Evidence Act**"), including Part 3.3 of the Evidence Act;

(d) Part 23 of the Federal Court Rules 2011 (Cth) ("**Federal Court Rules**"); and

(e) where applicable, the Survey Evidence Practice Note (GPN-SURV).

1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. Approach to Expert Evidence

2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.

2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the Evidence Act).

2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:

(a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the Evidence Act); and

(b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.

2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

3. Interaction with Expert Witnesses

3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.

3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.

3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness[1] should, at the earliest opportunity, be provided with:

(a) a copy of this practice note, including the Code (see Annexure A); and

(b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.

3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

4. Role and Duties of the Expert Witness

4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.

4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.

4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

Harmonised Expert Witness Code of Conduct

4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.

4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

5. Contents of an Expert's Report and Related Material

5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).

5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:

(a) acknowledge in the report that:

(i) the expert has read and complied with this practice note and agrees to be bound by it; and

(ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;

(b) identify in the report the questions that the expert was asked to address;

(c) sign the report and attach or exhibit to it copies of:

(i) documents that record any instructions given to the expert; and

(ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

6. Case Management Considerations

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

(a) whether a party should adduce evidence from more than one expert in any single discipline;

(b) whether a common expert is appropriate for all or any part of the evidence;

(c) the nature and extent of expert reports, including any in reply;

(d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;

(e) the issues that it is proposed each expert will address;

(f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);

(g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and

(h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

7. Conference of Experts and Joint-report

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in Annexure A).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("conference of experts"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("Conference Facilitator") to act as a facilitator at the conference of experts.

7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:

(a) who should prepare any joint-report;

(b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties o r the experts should assist in preparing such a list;

(c) **t**he agenda for the conference of experts; and

(d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference ("**conference report**").

Conference of Experts

7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.

7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:

(a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;

(b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;

(c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.

7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.

7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).

7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

Joint-report

7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.

7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

8. Concurrent Expert Evidence

8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.

8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

9. Further Practice Information and Resources

9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.

9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP
Chief Justice
25 October 2016

Annexure A

Harmonised Expert Witness Code of Conduct[2]

Application of Code

1. This Code of Conduct applies to any expert witness engaged or appointed:

(a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or

(b) to give opinion evidence in proceedings or proposed proceedings.

General Duties to the Court

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

Content of Report

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:

(a) the name and address of the expert;

(b) an acknowledgment that the expert has read this code and agrees to be bound by it;

(c) the qualifications of the expert to prepare the report;

(d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];

(e) the reasons for and any literature or other materials utilised in support of such opinion;

(f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;

(g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

(h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

(i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that

no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;

(j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

Supplementary Report Following Change of Opinion

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.

5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

Duty to Comply with the Court's Directions

6. If directed to do so by the Court, an expert witness shall:

(a) confer with any other expert witness;

(b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and

(c) abide in a timely way by any direction of the Court.

Conference of Experts

7. Each expert witness shall:

(a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and

(b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

Annexure B

Concurrent Expert Evidence Guidelines

Application of the Court's Guidelines

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

Objectives of Concurrent Expert Evidence Technique

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique[3] will be utilised by the Court in appropriate circumstances (see r 23.15 of the Federal Court Rules 2011 (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.

3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.

4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.

5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

Case Management

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.

7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing,

so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:

(a) the agenda;

(b) the order and manner in which questions will be asked; and

(c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.

8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.

9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

Conference of Experts & Joint-report or List of Issues

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.

11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

Procedure at Hearing

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.

13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.

14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

(a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;

(b) the experts will be grouped and called to give evidence together in their respective fields of expertise;

(c) the experts will take the oath or affirmation together, as appropriate;

(d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;

(e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;

(f) the judge will guide the process by which evidence is given, including, where appropriate:

(i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;

(ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;

(iii) inviting legal representatives to identify the topics upon which they will cross-examine;

(iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and

(v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.

16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.

17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.

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[1] Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

[2] Approved by the Council of Chief Justices' Rules Harmonisation Committee

[3] Also known as the "hot tub" or as "expert panels".

Australian Government Solicitor
Level 5, 4 National Circuit Barton ACT 2600
Locked Bag 35 Kingston ACT 2604
T 02 6253 7000
www.ags.gov.au

Canberra
Sydney
Melbourne
Brisbane
Perth
Adelaide
Hobart
Darwin

Our ref. 24003626

5 May 2024

Joshua Matz
Partner, Kaplan Hecker & Fink LLP
1050 K Street, NW Suite 1040
Washington, D.C. 20001
United States of America

By email: jmatz@kaplanhecker.com

Privileged & Confidential

Dear Mr Matz

NSD474/2024 eSafety Commissioner v X Corp.

1. We act for the eSafety Commissioner (the **Commissioner**) in relation to proceedings instituted by the Commissioner against X Corp. in the Federal Court of Australia (the **Proceedings**).

2. Please mark all correspondence and any communications you send to us as "Legally Privileged and Confidential – Subject to Litigation Privilege".

Background

3. On 15 April 2024 in Sydney in the State of New South Wales in Australia, Bishop Mar Mari Emmanuel was stabbed by a teenage boy while delivering a sermon at the Good Shepherd Church which was being livestreamed on the internet.

4. A number of users of X (formerly known as Twitter) posted or shared the video of the attack. A copy of the video is among the material provided to you and listed in **Schedule 2** to the letter.

5. A description of what the video depicts is as follows:

> The video shows a bishop inside a church standing on a pulpit facing towards a camera. The bishop is heard speaking in a non-English language. From this point, a person (the attacker) appears in front of the camera dressed in a dark coloured jumper and approaches the bishop to the left of the screen. When the attacker is near the bishop, the attacker raises their right arm and lunges, bringing their right hand down and into contact with the bishop. The attacker appears to be holding a pointed object (a knife) in their right hand. The attacker is seen to strike the bishop with the knife several times (5) to the head and upper body. The bishop falls backwards with the attacker standing over him. Screams can be heard coming from other people inside the church, several

people stand up in front of the camera, and rush towards the pulpit. The camera pans to the left.

6. On 16 April 2024, the eSafety Commissioner sent an informal removal request to X Corp in respect of 65 URLs via its Legal Request reporting portal. The eSafety Commissioner received no response to this informal removal request.

7. On 16 April 2024, the Commissioner gave X Corp. a notice requiring X Corp. to take all reasonable steps to ensure the removal from X of the material identified in the notice within 24 hours (**Removal Notice**), which material was identified in the Removal Notice by reference to specific URLs.[1]

8. Screenshots of what appeared at those URLs is **Item 7** in Schedule 2 to this letter.

9. The Notice was issued under section 109 of the *Online Safety Act 2021* (Cth) (**Online Safety Act**).

10. The eSafety Commissioner was satisfied that the video footage was "class 1 material" under section 106 of the Online Safety Act because, relevantly, it has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) and it would be likely to be refused classification if it were to be classified under that statute because it depicts matters of crime, cruelty and real violence in such a way that it offends against the standards of morality, decency and propriety generally to the extent that it should not be classified.

11. There is a real risk that video of the attack will be accessed, downloaded, distributed and reproduced for the purpose of encouraging others in Australia to join a terrorist organisation or to undertake or support the commission of terrorist attacks. Accessing such videos is a significant risk factor contributing to a person's radicalisation.

12. The video may be distressing or disturbing to people who watch it.

13. The video footage at the URLs identified in the Removal Notice is available elsewhere on the internet, including on X.

14. X Corp. took steps to geo-block the specific URLs in Australia such that an X user with an IP address in Australia could not access those URLs. However, users in Australia could access the material at those URLs by using, for example, a virtual private network (**VPN**). A VPN allows Australian users to appear as if they were in a location other than Australia.

15. On 22 April 2024, the Commissioner instituted the Proceedings in the Federal Court of Australia claiming that X Corp. had not complied with the Removal Notice to the extent it was capable of doing so, contrary to section 111 of the Online Safety Act.

[1] The Notice can be found at Tab 2 of Schedule 2 to this brief.

16. On 22 April 2024, Justice Kennett of the Federal Court of Australia issued the following orders:[2]

> *In these orders, a reference to the Notice refers to the removal notice given to the respondent under s 109 of the Online Safety Act 2021 (Cth) on 16 April 2024.*
>
> ***THE COURT ORDERS THAT:***
>
> 1. *There be an interim injunction under s 122(1)(b) of the Regulatory Powers (Standard Provisions) Act 2014 (Cth) requiring the respondent, as soon as reasonably practicable and no later than within 24 hours, to hide the material identified in the Notice behind a notice such that an X user can only see the notice, not the material identified in the Notice, and cannot remove the notice to reveal the material*'.
> 2. *Order 1 has effect until 5 pm on Wednesday 24 April 2024 or earlier order.*
>
> *…*

17. On 24 April 2024, Justice Kennett of the Federal Court of Australia issued the following orders:[3]

> ***THE COURT ORDERS THAT:***
>
> 1. *There be an interim injunction under s 122(1)(b) of the Regulatory Powers (Standard Provisions) Act 2014 (Cth) requiring the respondent forthwith to hide the material identified in the notice given to the respondent under s 109 of the Online Safety Act 2021 (Cth) (Removal Notice) behind a notice such that an X user can only see the notice, not the material identified in the Removal Notice, and cannot remove the notice to reveal the material.*
> 2. *Order 1 has effect until 5.00 pm on 10 May 2024.*

18. There will be a further hearing on 10 May 2024 before Justice Kennett of the Federal Court of Australia.

19. On 2 May 2024, X Corp filed a report from its expert, Ms Ambika Kumar, a partner at Davis Wright Tremaine LLP (**Kumar Report**).

Instructions

20. You have been engaged to provide an expert report on issues relating to your expertise in relation to the law of the United States of America.

21. We ask that you prepare a report stating your opinion on the questions in **Schedule 1** to this letter. We understand that the report may be in the form of a letter to us setting out a brief summary of your opinions to the extent you have been able to form them in the time available on the current court timetable.

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[2] A copy of the order dated 22 April 2024 can be found at Tab 3 of Schedule 2 to this brief.

[3] A copy of the order dated 24 April 2024 can be found at Tab 4 of Schedule 2 to this brief.

22. Please identify such principles of law as you consider relevant to the questions, and explain your reasoning with reference to applicable statutes or legislation, case law or academic literature or other material upon which your opinion is based. Please also provide us with a copy of any material you cite.

23. Please also identify all factual assumptions on which your report/letter is based. If there are any factual matters that may bear upon your analysis about which you require further instructions, please advise us or otherwise identify those matters in your report.

24. Please identity anyone who assisted you in reaching the opinions expressed in your letter.

25. Finally, please confirm in the letter that it contains your opinions and that you have made all the inquiries which you believe are desirable and appropriate, and that no matters of significance which you regard as relevant have, to your knowledge, been withheld from the court in reaching the conclusions expressed in the letter.

26. As we have explained above, the matter is next listed for interlocutory hearing on 10 May 2024. On the current court timetable, the eSafety Commissioner is to file responsive evidence by **Monday 6 May** at **2:00am EDT** (being **6 May** at **4:00pm** AEST). Should the matter proceed beyond 10 May 2024, we may contact you further about the provision of any additional report.

Engagement as an expert witness in Australia

27. We anticipate filing your letter with the Court, and serving it on X Corp.

28. You may also be required at a later date (we do not expect this to be 10 May 2024) to provide a more detailed report and to give oral evidence at a hearing. We will discuss arrangements with you in due course should that be required.

29. Please find enclosed, at **Schedule 3** to this letter, the Federal Court's Expert Evidence Practice Note dated 25 October 2016 (the **Practice Note**) which includes, at Annexure A, the Harmonised Expert Witness Code of Conduct.

30. Please read the Practice Note and ensure that you understand it. You are required to comply with it. We draw your attention in particular to the explanation of the role of the expert witness.

31. We have also provided you, at **Schedule 4** to this letter, with a copy of Rule 23.13 of the *Federal Court Rules 2011* (Cth), which is referred to in the Practice Note and imposes requirements that overlap significantly with the Practice Note.

32. In accordance with your obligations in the Practice Note, you must (among other things):

    a. conform with the requirements prescribed in the Harmonised Expert Witness Code of Conduct;

    b. state that you have read and complied with the Practice Note and agree to be bound by it;

c. state that your opinions are based wholly or substantially on specialised knowledge arising from your training, study or experience;

d. identify in your letter the questions that you were asked to address;

e. attach or exhibit a copy of this letter; and

f. identify the specific material you have relied upon for your analysis.

33. Please also provide a description of your area of expertise in your letter. Please also attach a current curriculum vitae.

34. In terms of formatting, please use continuous paragraph numbers.

Conflicts

35. You must not accept any other appointment or retainer to provide assistance or services to any other party in relation to the Proceedings or the events surrounding the Proceedings.

36. In accepting this engagement as an expert witness, you confirm that you have disclosed to us all information that is material to your engagement, including but not limited to the nature of any services that you may have provided to any other party to the Proceedings, any real or apparent conflicts of interest that you may have in relation to the Proceedings, and your qualifications and expertise as far as they are relevant. Please tell us promptly about any matters of the sort listed in this paragraph that become known to you or change significantly after the date of this letter.

Confidentiality

37. As set out in your contract of engagement, all communications, including any written materials, between the Kaplan Hecker & Fink LLP, yourself, AGS, the eSafety Commissioner and her office, or any barristers representing the eSafety Commissioner may be subject to legal professional privilege and must be treated by the Kaplan Hecker & Fink LLP and yourself as confidential.

38. You must not, without prior written authorisation from AGS, disclose any information developed, received or collected by or on behalf of AGS or the eSafety Commissioner to which you gain access under or in connection with your contract of engagement to any person unless required to do so by law.

Yours sincerely

Matthew Garey
Senior Executive Lawyer
T 02 9581 7625
matthew.garey@ags.gov.au

Schedule 1

1. Do you agree or disagree with Ms Ambika Kumar's expert opinion dated 1 May 2024 (**the Kumar Report**) to the extent that she concludes that the Removal Notice would be contrary to the First Amendment, and why?

2. Do you agree or disagree with the Kumar Report to the extent that she concludes that the Removal Notice would be contrary to section 230 of the Communications Decency Act, 28 U.S.C. § 230, and why?

3. Do you agree or disagree with the Kumar Report that a court in the United States would decline to enforce an order of an Australian court enforcing the Removal Notice, and why?

4. Would X Corp. be in breach of the First Amendment or section 230 of the Communications Decency Act, 28 U.S.C. § 230 if it were to comply with:

   a. the Removal Notice;

   b. an order of an Australian court enforcing the Removal Notice?

Schedule 2 – Index of documents

Tab	Document
1	*Online Safety Act 2021* (Cth) sections 106(b), 109 and 111.
2	Removal Notice given by the eSafety Commissioner to X Corp. on 16 April 2024
3	Order dated 22 April 2024 made by Kennett J of the Federal Court of Australia.
4	Order dated 24 April 2024 made by Kennett J of the Federal Court of Australia.
5	Affidavit of Ambika Kumar filed in the Proceedings containing the Kumar Report.
6	Video of the 15 April 2024 attack in Sydney in the State of New South Wales in Australia.
7	Screenshots of the URLs contained in the Removal Notice.

Schedule 3 – Federal Court's Expert Evidence Practice Note dated 25 October 2016

EXPERT EVIDENCE PRACTICE NOTE (GPN-EXPT)

General Practice Note

1. INTRODUCTION

1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* ("**Code**") (see Annexure A) and the *Concurrent Expert Evidence Guidelines* ("**Concurrent Evidence Guidelines**") (see Annexure B), applies to any proceeding involving the use of expert evidence and must be read together with:

(a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework ("**NCF**") of the Federal Court and key principles of case management procedure;

(b) the Federal Court of Australia Act 1976 (Cth) ("**Federal Court Act**");

(c) the *Evidence Act 1995* (Cth) ("**Evidence Act**"), including Part 3.3 of the Evidence Act;

(d) Part 23 of the *Federal Court Rules 2011* (Cth) ("**Federal Court Rules**"); and

(e) where applicable, the Survey Evidence Practice Note (GPN-SURV).

1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. APPROACH TO EXPERT EVIDENCE

2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.

2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the Evidence Act).

2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:

(a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the Evidence Act); and

(b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.

2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

3. INTERACTION WITH EXPERT WITNESSES

3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.

3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.

3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness[1] should, at the earliest opportunity, be provided with:

(a) a copy of this practice note, including the Code (see Annexure A); and

(b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.

3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

[1] Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

4. ROLE AND DUTIES OF THE EXPERT WITNESS

4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.

4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.

4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

Harmonised Expert Witness Code of Conduct

4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.

4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

5. CONTENTS OF AN EXPERT'S REPORT AND RELATED MATERIAL

5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).

5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:

(a) acknowledge in the report that:

(i) the expert has read and complied with this practice note and agrees to be bound by it; and

(ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;

(b) identify in the report the questions that the expert was asked to address;

(c) sign the report and attach or exhibit to it copies of:

(i) documents that record any instructions given to the expert; and

(ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

6. CASE MANAGEMENT CONSIDERATIONS

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

(a) whether a party should adduce evidence from more than one expert in any single discipline;

(b) whether a common expert is appropriate for all or any part of the evidence;

(c) the nature and extent of expert reports, including any in reply;

(d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;

(e) the issues that it is proposed each expert will address;

(f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);

(g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and

(h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

7. CONFERENCE OF EXPERTS AND JOINT-REPORT

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in Annexure A).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("**conference of experts**"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("**Conference Facilitator**") to act as a facilitator at the conference of experts.

7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:

(a) who should prepare any joint-report;

(b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties o r the experts should assist in preparing such a list;

(c) the agenda for the conference of experts; and

(d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference ("**conference report**").

Conference of Experts

7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.

7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:

(a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;

(b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;

(c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.

7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.

7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).

7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

Joint-report

7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.

7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

8. CONCURRENT EXPERT EVIDENCE

8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.

8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

9. FURTHER PRACTICE INFORMATION AND RESOURCES

9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.

9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP
Chief Justice
25 October 2016

Annexure A

HARMONISED EXPERT WITNESS CODE OF CONDUCT[2]

APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
   (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
   (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
   (a) the name and address of the expert;
   (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
   (c) the qualifications of the expert to prepare the report;
   (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
   (e) the reasons for and any literature or other materials utilised in support of such opinion;
   (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
   (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
   (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
   (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the

[2] Approved by the Council of Chief Justices' Rules Harmonisation Committee

knowledge of the expert, been withheld from the Court;

(j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.

5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

6. If directed to do so by the Court, an expert witness shall:

(a) confer with any other expert witness;

(b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and

(c) abide in a timely way by any direction of the Court.

CONFERENCE OF EXPERTS

7. Each expert witness shall:

(a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and

(b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

ANNEXURE B

CONCURRENT EXPERT EVIDENCE GUIDELINES

APPLICATION OF THE COURT'S GUIDELINES

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique[3] will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.

3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.

4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.

5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

[3] Also known as the "hot tub" or as "expert panels".

CASE MANAGEMENT

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.

7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:

   (a) the agenda;

   (b) the order and manner in which questions will be asked; and

   (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.

8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.

9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.

11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

PROCEDURE AT HEARING

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.

13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.

14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

(a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;

(b) the experts will be grouped and called to give evidence together in their respective fields of expertise;

(c) the experts will take the oath or affirmation together, as appropriate;

(d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;

(e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;

(f) the judge will guide the process by which evidence is given, including, where appropriate:

(i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;

(ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;

(iii) inviting legal representatives to identify the topics upon which they will cross-examine;

(iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and

(v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.

16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.

17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.

Schedule 4 – Federal Court Rules 2011 (Cth) Rule 23.13

23.13 Contents of an expert report

(1) An expert report must:

(a) be signed by the expert who prepared the report; and

(b) contain an acknowledgement at the beginning of the report that the expert has read, understood and complied with the Practice Note; and

(c) contain particulars of the training, study or experience by which the expert has acquired specialised knowledge; and

(d) identify the questions that the expert was asked to address; and

(e) set out separately each of the factual findings or assumptions on which the expert's opinion is based; and

(f) set out separately from the factual findings or assumptions each of the expert's opinions; and

(g) set out the reasons for each of the expert's opinions; and

(ga) contain an acknowledgement that the expert's opinions are based wholly or substantially on the specialised knowledge mentioned in paragraph (c); and

(h) comply with the Practice Note.

(2) Any subsequent expert report of the same expert on the same question need not contain the information in paragraphs (1)(b) and (c).

Online Safety Act 2021

No. 76, 2021

Compilation No. 1

Compilation date:	23 January 2022
Includes amendments up to:	Act No. 77, 2021
Registered:	3 February 2022

Prepared by the Office of Parliamentary Counsel, Canberra

Part 9—Online content scheme

Division 1—Introduction

105 Simplified outline of this Part

- The provider of a social media service, relevant electronic service or designated internet service may be given a notice (a ***removal notice***) requiring the provider to remove certain material.
- A hosting service provider may be given a notice (a ***removal notice***) requiring the provider to cease hosting certain material.
- The provider of an internet search engine service may be given a notice (a ***link deletion notice***) requiring the provider to cease providing a link to certain material.
- The provider of an app distribution service may be given a notice (an ***app removal notice***) requiring the provider to cease enabling end-users to download an app that facilitates the posting of certain material on a social media service, relevant electronic service or designated internet service.
- Bodies and associations that represent sections of the online industry may develop industry codes.
- The Commissioner may make an industry standard.
- The Commissioner may make service provider determinations regulating service providers in the online industry.

106 Class 1 material

(1) For the purposes of this Act, ***class 1 material*** means:

(a) material where the following conditions are satisfied:
  (i) the material is a film or the contents of a film;
  (ii) the film has been classified as RC by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or

(b) material where the following conditions are satisfied:
  (i) the material is a film or the contents of a film;
  (ii) the film has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
  (iii) if the film were to be classified by the Classification Board under that Act—the film would be likely to be classified as RC; or

(c) material where the following conditions are satisfied:
  (i) the material is a publication or the contents of a publication;
  (ii) the publication has been classified as RC by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or

(d) material where the following conditions are satisfied:
  (i) the material is a publication or the contents of a publication;
  (ii) the publication has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
  (iii) if the publication were to be classified by the Classification Board under that Act—the publication would be likely to be classified as RC; or

(e) material where the following conditions are satisfied:
  (i) the material is a computer game;
  (ii) the computer game has been classified as RC by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or

(f) material where the following conditions are satisfied:
  (i) the material is a computer game;
  (ii) the computer game has not been classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*;
  (iii) if the computer game were to be classified by the Classification Board under that Act—the computer game would be likely to be classified as RC; or

(g) material where the following conditions are satisfied:
  (i) the material is not a film, the contents of a film, a computer game, a publication or the contents of a publication;
  (ii) if the material were to be classified by the Classification Board in a corresponding way to the way in which a film would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*—the material would be likely to be classified as RC.

Note: See also section 160 (Commissioner may obtain advice from the Classification Board).

(2) Section 22CF of the *Classification (Publications, Films and Computer Games) Act 1995* (which deals with classification using an approved classification tool) applies for the purposes of this section in a corresponding way to the way in which it applies for the purposes of that Act.

107 Class 2 material

(1) For the purposes of this Act, ***class 2 material*** means:
  (a) material where the following conditions are satisfied:
    (i) the material is a film or the contents of a film;
    (ii) the film has been classified as X 18+ by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*; or
  (b) material where the following conditions are satisfied:
    (i) the material is a film or the contents of a film;

Division 2—Removal notices relating to class 1 material

109 Removal notice given to the provider of a social media service, relevant electronic service or designated internet service

(1) If:

(a) material is, or has been, provided on:

(i) a social media service; or

(ii) a relevant electronic service; or

(iii) a designated internet service; and

(b) the Commissioner is satisfied that the material is or was class 1 material; and

(c) the material can be accessed by end-users in Australia; and

(d) the service is not:

(i) an exempt Parliamentary content service; or

(ii) an exempt court/tribunal content service; or

(iii) an exempt official-inquiry content service;

the Commissioner may give the provider of the service a written notice, to be known as a ***removal notice***, requiring the provider to:

(e) take all reasonable steps to ensure the removal of the material from the service; and

(f) do so within:

(i) 24 hours after the notice was given to the provider; or

(ii) such longer period as the Commissioner allows.

(2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the provider of the service to comply with the notice.

110 Removal notice given to a hosting service provider

(1) If:

(a) material is, or has been, provided on:

(i) a social media service; or

(ii) a relevant electronic service; or
(iii) a designated internet service; and

(b) the Commissioner is satisfied that the material is or was class 1 material; and

(c) the material can be accessed by end-users in Australia; and

(d) the service is not:
(i) an exempt Parliamentary content service; or
(ii) an exempt court/tribunal content service; or
(iii) an exempt official-inquiry content service; and

(e) the material is hosted by a hosting service provider;

the Commissioner may give the hosting service provider a written notice, to be known as a ***removal notice***, requiring the provider to:

(f) take all reasonable steps to cease hosting the material; and

(g) do so within:
(i) 24 hours after the notice was given to the provider; or
(ii) such longer period as the Commissioner allows.

(2) So far as is reasonably practicable, the material must be identified in the removal notice in a way that is sufficient to enable the hosting service provider to comply with the notice.

111 Compliance with removal notice

A person must comply with a requirement under a removal notice given under section 109 or 110 to the extent that the person is capable of doing so.

Civil penalty: 500 penalty units.

112 Formal warning

The Commissioner may issue a formal warning if a person contravenes section 111.

16 April 2024

X Corp.

Submitted via X's Legal Requests Submission form: legalrequests.x.com

Our Reference: CYR-0511323, CYR-0511326, CYR-0511327 and CYR-0511328

Removal notice requiring you to remove class 1 material from your service

(Under section 109 of the *Online Safety Act 2021* (Cth))

I am a delegate of the eSafety Commissioner for the purposes of section 109 of the *Online Safety Act 2021* (Cth) (**the Act**).

Please see enclosed a removal notice given to you under section 109 of the Act (**the Notice**). The Notice requires you to take all reasonable steps to ensure the removal of the specified class 1 material from your service within 24 hours after being given the Notice.

Background

On 15 April 2024, the eSafety Commissioner became aware of class 1 material, specifically material that depicts matters of crime, cruelty and real violence in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it is likely to be classified as RC (Refused Classification) by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) which is available on your service (**the Material**).

On 16 April 2024, the eSafety Commissioner sent an informal request to X Corp. via X's Legal Request reporting portal at: https://legalrequests.twitter.com/forms/landing_disclaimer requesting removal of the Material under your Terms of service Policy. No response was received, and the Material remains available on your service at the time of giving you the Notice.

The decision to give you the Notice

The Material is described in **Attachment A** to the Notice.

I am satisfied that:

a) the Material is provided on your service, which is a Social Media Service within the meaning of section 13 of the Act
b) the Material is or was class 1 material within the meaning of section 106 of the Act
c) the Material can be accessed by end-users in Australia, and
d) the Material on your service is not an exempt service under section 109 (1)(d) of the Act.

On this basis, I have decided to give you the Notice.

Required action

The Notice requires you to remove **all instances** of the class 1 material specified in the Attachment A to the Notice. Please note that the URLs included in Attachment A have been provided to assist you to locate certain instances of the specified class 1 material. However, there may be further instances of the same class 1 material being accessible at other URLs on your service. You are required to take reasonable steps to remove all instances of the specified class 1 material and not only the material that appears at the URLs provided.

Please email **requests@esafety.gov.au** once you have removed the Material in compliance with the Notice.

If you have any questions about the Notice, or if you require a longer period of time to comply, contact our office by email to **requests@esafety.gov.au** as soon as you receive this Notice.

Failure to comply

Under section 111 of the Act, you must comply with a requirement under a removal notice given under section 109 of the Act to the extent that you are capable of doing so.

Failure to comply with the Notice may result in enforcement action, including the commencement of civil penalty proceedings for a civil penalty order of up to a maximum penalty of $782,500 (AUD) for a single contravention by a body corporate.

Review rights

You have a right to seek an internal or external review of the decision to give you a removal notice.

An internal review is a review conducted by the eSafety Commissioner under the Internal Review Scheme. There is no fee associated with a request for an internal review.

An external review is a review conducted by the Administrative Appeals Tribunal (**AAT**). The enclosed information sheet sets out your rights regarding the different review options available to you, as well as other options if you do not agree that the Notice should have been given to you.

Please note that you are required to comply with the Notice even if you have made an application for internal or external review, unless you receive notice that the eSafety Commissioner or the AAT has decided otherwise.

Manager, Illegal and Restricted Content
Delegate of the eSafety Commissioner

Attachments: Notice under section 109 of the Act
Information Sheet

REMOVAL NOTICE RELATING TO CLASS 1 MATERIAL GIVEN TO THE PROVIDER OF A SOCIAL MEDIA SERVICE.

Under section 109 of the *Online Safety Act 2021* (Cth)

To: **X Corp.**

Submitted via X's Legal Requests Submission form: legalrequests.x.com

I am a delegate of the eSafety Commissioner for the purposes of section 109 of the *Online Safety Act 2021* (Cth) (t**he Act**).

This removal notice is given to you under section 109 of the Act and requires you to take all reasonable steps to ensure the removal of the class 1 material specified in **Attachment A.**

You are required to comply within 24 hours of being given this notice, or within such longer period as I allow if contacted by you with a request for an extension.

Section 111 of the Act provides that a person must comply with a requirement under a removal notice given under section 109 of the Act to the extent the person is capable of doing so.

Failure to comply with a removal notice may result in enforcement action, including the commencement of civil penalty proceedings for a civil penalty order of up to a maximum penalty of $782,500 (AUD) for a single contravention by a body corporate.

Date: 16 April 2024

Manager, Illegal and Restricted Content
Delegate of the eSafety Commissioner

ATTACHMENT A

Service on which the material is provided:	X Corp.
Location of material:	[redacted]

	
Description of material:	front of the camera dressed in a dark coloured jumper and approaches the priest to the left of screen. When the attacker is near the priest, they raise their right arm and lunge, bringing their right hand down and into contact with priest. The attacker appears to be holding a pointed object (a knife) in their right hand. The attacker is seen to strike the priest with the knife several times (5) to the head and upper body. The priest falls backwards with the attacker standing over him. Screams can be heard coming from other people inside the church, several people stand up in front the camera, and rush towards the pulpit. The camera pans to the left. The content is class 1 material under the *Online Safety Act 2021* (Cth), for depicting matters of crime, cruelty and real violence in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it would likely be classified RC.

Information sheet: Right of Review

Internal review by the eSafety Commissioner

You have a right to seek an internal review of this decision under the Internal Review Scheme. An internal review is an impartial review of the merits of a decision. The purpose of an internal review is to consider whether the original decision made was the correct one.

You must make an application for an internal review **within 30 days** of receiving the notice of this decision. If you are unable to make your application within 30 days, please email internalreview@eSafety.gov.au.

There are no fees associated with an application for internal review.

To request an internal review, you will need to download and complete the **Request for internal review form** available on eSafety's website: www.esafety.gov.au/about-us/corporate-documents/internal-review.

Please fill the form out and email it or post a hard copy to eSafety.

Email: internalreview@esafety.gov.au
Post: **Attention:** Internal Review

eSafety Commissioner
PO Box Q500
Queen Victoria Building
NSW 1230

For additional information on eSafety's Internal Review Scheme, including the **eSafety Internal Review Procedure** and the **Online Safety (Internal Review Scheme) Instrument 2022**, please visit eSafety's website: www.esafety.gov.au/about-us/corporate-documents/internal-review.

External review by the Administrative Appeals Tribunal

You have a right to seek review of this decision by the Administrative Appeals Tribunal (AAT). You can also request that the AAT review a decision that has been made under the Internal Review Scheme.

It is recommended that you seek an internal review prior to seeking a review by the AAT however, there is no requirement to do so. You can choose to apply directly to the AAT.
The AAT is an independent body that can, among other things:

- confirm the eSafety Commissioner's decision
- vary the eSafety Commissioner's decision; or
- set the eSafety Commissioner's decision aside and replace it with its own decision.

You must apply to the AAT for review in writing. The AAT has a form available on its website which you can use.

Applications for review should be made **within 28 days** of being told about the decision.
You must enclose the application fee with your application. If you want to apply for the application fee to be waived, you can obtain the application form for this from the AAT.

The AAT website (www.aat.gov.au) has more information. If you have any questions about the AAT's procedures and requirements, please contact the AAT. Information about how to contact the AAT is available at www.aat.gov.au/contact-us.

Requesting a statement of reasons for decision

If we have not provided the reasons for this decision, you may request a statement of reasons under section 28 of the *Administrative Appeals Tribunal Act 1975* (Cth). Your request needs to be made in writing **within 28 days** of being told of this decision. To request a statement of reasons, please email internalreview@esafety.gov.au.

Access to documents

You have a right to seek access to documents held by the eSafety Commissioner under the *Freedom of Information Act 1982* (**FOI Act**).

You must apply to the eSafety Commissioner in writing through one of the following options:

Online: Using the **Contact Us** form on the eSafety Commissioner's website

Post: **Attention:** The FOI Coordinator
eSafety Commissioner
PO Box Q500
Queen Victoria Building
NSW 1230

Email: enquiries@esafety.gov.au

When you make your application, you should:

- state that the request is an application for the purpose of the FOI Act;
- provide information about each document to which you are seeking access to enable us to process your request, and
- provide a postal, email or fax address for us to reply to and which we can use to communicate with you about your application.

The eSafety Commissioner's website has more information on how to make an FOI application: www.eSafety.gov.au/about-us-corporate-documents/freedom-of-information

Complaints

If you are dissatisfied with the way that the eSafety Commissioner has handled this matter, we ask that you contact us using the **Contact Us** form on the eSafety Commissioner's website so that we can try to help resolve any issues.

If you are still dissatisfied, you may make a complaint to the Commonwealth Ombudsman. The Ombudsman usually prefers that your concerns are raised with the eSafety Commissioner first.

There is a Commonwealth Ombudsman office in each capital city. Further information may be obtained at www.ombudsman.gov.au.

Judicial Review
Applications for review of decisions may also be made under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) in certain circumstances. More information is available at: www.fcfcoa.gov.au/gfl/administrative-adjr.

Federal Court of Australia

District Registry: New South Wales Registry

Division: General No: NSD474/2024

ESAFETY COMMISSIONER
Applicant

X CORP.
Respondent

ORDER

JUDGE: Justice Kennett

DATE OF ORDER: 22 April 2024

WHERE MADE: Sydney

In these orders, a reference to **the Notice** refers to the removal notice given to the respondent under s 109 of the *Online Safety Act 2021* (Cth) on 16 April 2024.

THE COURT ORDERS THAT:

1. There be an interim injunction under s 122(1)(b) of the *Regulatory Powers (Standard Provisions) Act 2014* (Cth) requiring the respondent, as soon as reasonably practicable and no later than within 24 hours, to hide the material identified in the Notice behind a notice such that an X user can only see the notice, not the material identified in the Notice, and cannot remove the notice to reveal the material.

2. Order 1 has effect until 5 pm on Wednesday 24 April 2024 or earlier order.

3. Pursuant to s 37AI of the *Federal Court of Australia 1976* (Cth) (the Act) and on the grounds referred to in s 37AG(1)(a) and (b) of the Act, until the determination of the application for an ongoing suppression order under s 37AF, there be no disclosure, by publication or otherwise, of Confidential Annexure TAD-2 to the affidavit of Toby Allan Dagg, affirmed on 22 April 2024.

4. Order 3 does not prevent disclosures to and between the following authorised persons:

    4.1. Judges of this Court;

    4.2. necessary Court staff (including transcription service providers);

    4.3. the parties;

    4.4. legal representatives of the parties instructed in these proceedings;

4.5. witnesses or proposed witnesses in the proceedings;

4.6. Commonwealth officers acting in the course of their duties; and

4.7. judicial officers and necessary staff of any court hearing an appeal from any decision made in the course of this proceeding.

5. Order 3 does not prevent disclosure of the information referred to in that Order by a Commonwealth officer acting in the course of their duties.

6. Order 3 operates throughout the Commonwealth of Australia.

7. No person is to be allowed to access Confidential Annexure TAD-2 on the Court file until further order.

Date that entry is stamped: 22 April 2024

Registrar

Federal Court of Australia

District Registry: New South Wales Registry

Division: General

No: NSD474/2024

ESAFETY COMMISSIONER
Applicant

X CORP.
Respondent

ORDER

JUDGE: Justice Kennett

DATE OF ORDER: 24 April 2024

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. There be an interim injunction under s 122(1)(b) of the Regulatory Powers (Standard Provisions) Act 2014 (Cth) requiring the respondent forthwith to hide the material identified in the notice given to the respondent under s 109 of the *Online Safety Act 2021* (Cth) (**Removal Notice**) behind a notice such that an X user can only see the notice, not the material identified in the Removal Notice, and cannot remove the notice to reveal the material.

2. Order 1 has effect until 5.00 pm on 10 May 2024.

3. The application for interlocutory orders be listed for hearing at 10.30 am on 10 May 2024.

4. The parties are to consult as to a timetable for the provision of affidavits and written submissions and provide agreed or competing short minutes of order to chambers by 12.00 pm on 26 April 2024.

5. Costs reserved.

6. Liberty to apply.

Date that entry is stamped: 24 April 2024

Registrar

Placeholder - Tab 6

Video of the 15 April 2024 attack in Sydney in the State of New South Wales in Australia.

NOTICE OF FILING

Details of Filing

Document Lodged:	Affidavit - Form 59 - Rule 29.02(1)
Court of Filing	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	2/05/2024 3:47:06 PM AEST
Date Accepted for Filing:	2/05/2024 3:47:10 PM AEST
File Number:	NSD474/2024
File Title:	ESAFETY COMMISSIONER v X CORP.
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA

Registrar

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.

The date of the filing of the document is determined pursuant to the Court's Rules.

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: **Ambika Kumar**

Address: 920 Fifth Avenue, Suite 3300, Seattle WA 98104-1610

Occupation: Lawyer

Date: 1 May 2024

Contents

I Ambika Kumar, lawyer affirm:

1. I am a partner at Davis Wright Tremaine LLP.

2. Annexed to this affidavit and marked **AK-1** is a copy of a report, including annexures, prepared by me and dated 1 May 2024, which sets out my answers to the question

Filed on behalf of (name & role of party) X Corp., Respondent
Prepared by (name of person/lawyer) Robert Todd
Law firm (if applicable) Ashurst
Tel (02) 9258 6000 Fax (02) 9258 6888
Email Robert.todd@ashurst.com / andrew.carter@ashurst.com / imogen.loxton@ashurst.com
Address for service (include state and postcode) Level 9, 5 Martin Place Sydney NSW 2000

contained in a letter of instruction from Ashurst to me dated 2 May 2024 (Australian Eastern Standard Time) (**Report**).

3. The opinions I express in the Report are held honestly and the facts referred to in the Report are true to the best of my knowledge and belief.

4. I have read the Federal Court Expert Evidence Practice Note, which annexes the Harmonised Expert Witness Code of Conduct (**Practice Note**). I have adhered to the Practice Note and have agreed to be bound by it in preparing the Report.

Affirmed by the deponent)
at Seattle)
in Washington)
on 1 May 2024)
Before me:)

DocuSigned by:
Ambika Kumar
3AB65BC2152F4BA...
Signature of deponent

DocuSigned by:
Megan Huffman
AC1478264CEA4B2...
Signature of witness

MEGAN HUFFMAN
NOTARY PUBLIC
STATE OF WASHINGTON
Commission #127453
My Comm. Expires 5/19/2027

Form 59
Rule 29.02(1)

No. NSD474 of 2024

Federal Court of Australia

District Registry: New South Wales

Division: General

eSafety Commissioner

Applicant

X Corp.

Respondent

Affidavit of:	**Ambika Kumar**
Address:	920 Fifth Avenue, Suite 3300, Seattle WA 98104-1610
Occupation:	Lawyer
Date:	1 May 2024

ANNEXURE AK-1

This is the Annexure marked "**AK-1**" annexed to the affidavit of Ambika Kumar affirmed on 1 May 2024.

Filed on behalf of (name & role of party) X Corp., Respondent
Prepared by (name of person/lawyer) Robert Todd
Law firm (if applicable) Ashurst
Tel (02) 9258 6000 Fax (02) 9258 6888
Email Robert.todd@ashurst.com / andrew.carter@ashurst.com / imogen.loxton@ashurst.com
Address for service (include state and postcode) Level 9, 5 Martin Place
Sydney NSW 2000

Davis Wright Tremaine LLP

Suite 3300
920 Fifth Avenue
Seattle, WA 98104-1610

Ambika Kumar
(206) 757-8030 tel
(206) 757-7030 fax

AmbikaKumar@dwt.com

May 1, 2024

Federal Court of Australia
District Registry: New South Wales Registry
General No: NSD474/2024

Re: Expert Opinion Regarding Application of United States Law

To the Court:

I am a partner in the law firm Davis Wright Tremaine, LLP ("DWT"). DWT has been retained to provide an expert report by Ashurst Australia, lawyers for X Corp. ("X"), in connection with Federal Court of Australia proceeding NSD474/2024.

Summary of Qualifications

1. My qualifications for this engagement are set out in my CV, which is attached as **Appendix A**.

2. I am a lawyer admitted to practice before the United States Supreme Court, ten of the thirteen federal appellate courts, and the courts of the State of Washington. I am a graduate of Duke University (2002) and the University of Chicago Law School (2006, with honors), where I served on the staff of the *Chicago Journal of International Law* and authored a note entitled "Using Courts to Enforce the Free Speech Provisions of the International Covenant on Civil and Political Rights." CHICAGO JOURNAL OF INTERNATIONAL LAW, Vol. 7: No. 1, Article 17.

3. In the nearly two decades I have been practicing law, I have focused the vast majority of my work on media and internet law. Since 2016, I have served as the co-chair of DWT's Media Law Practice, widely regarded as one of the strongest practices devoted to work concerning freedom of speech and the press in the United States.

4. I have authored articles and spoken about the application of U.S. law to online intermediaries, that is, services that host content that originated with a third party, such as "comments" on a newspaper article or "posts" on social media platforms. I regularly advise clients on these issues, including some of the largest technology companies in the United States. Through this work, I am familiar with the principles of U.S. law that govern online content liability, including constitutional and statutory principles that apply to online platforms sued for either removing or failing to remove user-generated content.

5. In preparing this report, I was assisted by Caesar Kalinowski IV, an associate with DWT, and Ari Holtzblatt, a partner in the law firm Wilmer Cutler Pickering Hale and Dorr LLP, the latter of whom acts from time to time as counsel for X Corp. However, I did not rely on either Mr. Kalinowski or Mr. Holtzblatt to form my opinion. This report is based wholly on the knowledge and experience that I have identified in the above paragraphs.

6. I have reviewed, understood, complied with, and agree to be bound by the Federal Court's Expert Evidence Practice Note (GPN-EXPT) and Harmonised Expert Witness Code of Conduct, the latter of which is attached as **Appendix B**. I have made all the inquiries I believe are desirable and appropriate, and no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.

Summary of Opinions

7. As outlined in the letter of instruction attached as **Appendix C**, X has asked me to prepare an expert opinion concerning:

    a. Whether there is any principle of law in the United States of America which would prevent or affect the enforcement of the Removal Notice, or the enforcement of any curial order giving effect to the Removal Notice (for example, the orders of the Federal Court of Australia referred to above), in the United States of America;

    b. Please explain what rights to free speech and free press exist under United States law, with specific attention to the circumstances of this case; and

c. Please identify and explain any legislation and case law in the United States concerning freedom of speech on the internet, with specific attention to the circumstances of this case.

8. My considered opinions are as follows:

a. Neither the Removal Notice nor a court order to enforce the Removal Notice ("Enforcement Order") would be enforceable in the United States. U.S. courts do not enforce judgments that offend the nation's public policy.

b. U.S. public policy is reflected by the First Amendment to the United States Constitution, which provides broad protections for speech, except in limited circumstances (circumstances that are not present here).

c. U.S. public policy is also reflected by Section 230 of the Communications Decency Act, 28 U.S.C. § 230, a statute enacted in 1996 to promote the dissemination of information on the internet, which generally forbids the imposition of any kind of liability on an online service arising from their decisions to post, withdraw, or even revise third-party content. A copy of the text of Section 230 is attached as **Appendix D**.

Assumptions and Materials Reviewed

9. In providing this opinion, I have assumed the truth of the facts in the "Background" section of the letter of instruction (**Appendix C**).

10. I also base my opinion on a review of the following materials, copies of which I can provide upon request:

a. April 16, 2024 Removal Notice ("Removal Notice")

b. April 18, 2024 letter from counsel for eSafety Commissioner to X

c. April 19, 2024 letter from counsel for Australian Government Solicitor to X

d. April 19, 2024 letter from counsel for X to eSafety Commissioner

e. eSafety Commissioner's April 22, 2024 Originating Application

f. April 22, 2024 Submissions of the eSafety Commissioner On Interim Relief

g. eSafety Commissioner's April 22, 2024 Concise Statement in support of its application for injunctive relief

h. April 22, 2024 Affidavit of Toby Dagg, including the Confidential Annexure TAD-2

i. Transcript of April 22, 2024 Hearing on the eSafety Commissioner's Request for a Temporary Interim Injunction

j. April 22, 2024 Order issued by Justice Kennett

k. April 24, 2024 Affidavit of Matthew Garey in support of the application for interlocutory injunction

11. Based on these materials, I have identified the following additional facts, which I also assume to be true.

a. On April 15, 2024, an attack on Bishop Mar Mari Emmanuel was live streamed through the YouTube channel for the Christ the Good Shepherd Church;

b. On April 16, 2024, the Applicant sent a demand and Removal Notice to X, stating that the recording of the attack (the "Video") is "class 1 material under the *Online Safety Act 2021* (Cth), for depicting matters of crime, cruelty and real violence in such a way that it offends against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that it would likely be classified RC"; and

c. It is not possible for X to "hide" the Video for all users in Australia—such as those accessing X's platforms through a Virtual Private Network that circumvents geo-blocking of

content when access is attempted from an Australian IP address—without effectively "hiding" the Video for all users, everywhere in the world.

Basis for Opinions

Applicable United States Legal Authority

12. The United States Constitution and federal statutory law enacted by the U.S. Congress are imposed on all 50 states under the principle that federal law is the supreme law of the land.[1] As discussed in more detail below, two federal authorities have particular significance here: (i) the First Amendment to the United States Constitution, which among other things, protects freedom of speech and of the press; and (iii) Section 230 of the Communications Decency Act, 47 U.S.C. § 230, which protects freedom of speech on the internet by providing internet platforms such as X immunity from liability for claims arising from the dissemination of content from third-party users. All of this authority applies to claims brought anywhere in the United States.

13. For interpretation of federal law, I rely on the decisions of the United States Supreme Court (as reported in United States Reporters, "U.S."); the intermediate federal appellate court, the United States Court of Appeals, composed of thirteen geographic Circuits (reported in the Federal Reporter, "F.2d" and "F.3d"); and the federal trial court in each state, the United States District Court (reported in the Federal Supplement, "F. Supp.").

A U.S. Court Would Not Enforce the Removal Notice or Enforcement Order

14. It is my opinion that, under U.S. federal law, neither the Removal Notice nor an Enforcement Order would be enforced by any court in the United States. The United States is not a signatory to any convention or treaty requiring U.S. courts to recognize foreign judgments. U.S. Department of State, "Enforcement of Judgments," *available at* https://travel.state.gov/content/travel/en/legal/travel-legal-

[1] Citations in this Report to federal statutes refer to the United States Code ("U.S.C."), which is the codification of federal statutory law.

considerations/internl-judicial-asst/Enforcement-of-Judges.html (last visited May 1, 2024). Accordingly, a party seeking to enforce a foreign nation's judgment in the United States must file a new lawsuit in the United States and seek an order both recognizing and enforcing the judgment. *See Hilton v. Guyot*, 159 U.S. 113 (1895).

15. Absent a statute, the recognition and enforcement of judgments is governed state law, which varies somewhat from state to state. In general, however, a U.S. court will find that a foreign judgment should be recognized where (1) the parties have been given notice and an opportunity to be heard; (2) the foreign court had original jurisdiction; and (3) the foreign judgment does not offend the public policy of the state. *See* "Considerations Governing Grant or Denial of Comity to Judgments of Foreign Nations," 30 Am. Jur. 2d § 585.

16. With respect to the third factor, under the Restatement (Third) of the Foreign Relations Law of the United States, on which U.S. courts frequently rely, a U.S. court will not enforce a judgment of "the cause of action on which the judgment was based, or the judgment itself, is repugnant to the public policy of the United States or of the State where recognition is sought." Restatement (Third) of the Foreign Relations Law of the United States § 4824(2)(d).

17. This standard generally also is applied in state and federal courts. *Yahoo! Inc. v. La Ligue Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1214 (9th Cir. 2006) (citing *Hilkmann v. Hilkmann*, 858 A.2d 58 (2004) (Pennsylvania); *Alberta Sec. Comm'n v. Ryckman*, 30 P.3d 121 (2001) (Arizona); *Panama Processes, S.A. v. Cities Serv. Co.*, 796 P.2d 276, 283 (1990) (Oklahoma); *Greschler v. Greschler*, 414 N.E.2d 694 (1980) (New York)); *see also id.* (citing *Jaffe v. Accredited Sur. & Cas. Co.*, 294 F.3d 584, 593 (4th Cir. 2002); *In re Schimmelpenninck*, 183 F.3d 347, 365 (5th Cir. 1999); *Turner Ent. Co. v. Degeto Film GmbH*, 25 F.3d 1512, 1519 (11th Cir. 1994)).

18. The United States has in at least two contexts demonstrated a policy of protecting speech from foreign law that is less protective.

    a. Since 2010, a federal law—the "Securing the Protection of our Enduring and Established Constitutional Heritage Act ("SPEECH Act"), 28 U.S.C. §§ 4101-4105—has prohibited all

courts in the United States from enforcing foreign libel judgments that are inconsistent with free-speech protections available under U.S. law. According to its legislative history, the SPEECH Act was prompted by concerns that foreign libel judgments inconsistent with the First Amendment were "significantly chilling American free speech and restricting both domestic and worldwide access to important information." S. REP. NO. 111–224, at 2 (2010); *see* Pub. L. 111-223, § 2(5). Congress intended the statute to apply to online publications, recognizing that "the advent of the internet and the international distribution of foreign media also create the danger that one country's unduly restrictive libel law will affect freedom of expression worldwide on matters of valid public interest." Pub. L. 111–223, § 2(4). Thus, the SPEECH Act bars enforcement of a foreign defamation judgment against online platforms if the judgment would be inconsistent with Section 230. 28 U.S.C. § 4102(c) (U.S. courts "shall not recognize or enforce" judgments that do not comply with Section 230).

i. Applying the SPEECH Act, the U.S. District Court for the Northern District of California refused to enforce an Australian injunction obtained by a patentee against an American technology nonprofit organization because the injunction would not have withstood First Amendment scrutiny. The injunction required the nonprofit to remove an article from its website and references to the article from "any and all" other websites, stop publishing the article, refrain from publishing any content about the patentee's intellectual property, or else have its assets seized and its directors imprisoned. *Elec. Frontier Found. v. Glob. Equity Mgmt. (SA) Pty Ltd.*, 290 F. Supp. 3d 923 (N.D. Cal. 2017)

b. Section 230's protections have also been incorporated in U.S. treaties with foreign nations. For example, the United States-Mexico-Canada Agreement extends Section 230's protections to neighboring countries. Under the Agreement, in recognition of "the importance of the promotion of interactive computer services… as vital to the growth of digital trade," "[n]o Party

> shall adopt or maintain measures that treat a supplier or user of an interactive computer service as an information content provider in determining liability for harms related to information stored, processed, transmitted, distributed, or made available by the service, except to the extent the supplier or user has, in whole or in part, created, or developed the information." United States-Mexico-Canada Agreement art. 19.17, Nov. 30, 2018, https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between. The U.S.-Japan Digital Trade Agreement Text contains nearly identical language. United States-Japan Digital Trade Agreement art. 18, Oct. 7, 2019 https://ustr.gov/sites/default/files/files/agreements/japan/Agreement_between_the_United_States_and_Japan_concerning_Digital_Trade.pdf

19. U.S. courts asked to enforce foreign judgments that implicate speech have refused to do so where the judgment conflicts with U.S. policy. *See, e.g., In re Application of Storag Etzel GmbH*, 2020 WL 2949742, at *15 (D. Del. 2020) (denying request to seal documents based on German law requirements because "[p]rinciples of comity do not extend so far as to require American courts, when assisting foreign tribunals in the adjudication or enforcement of judgments, to violate fundamental principles of public policy, including the First Amendment guarantees that American courts are constitutionally bound to respect").

20. For example, a majority of the judges sitting en banc[2] for the U.S. Court of Appeals for the Ninth Circuit held in a similar case that a French takedown order, if it required online service "to block access by users in the United States," would present "a much easier case" for establishing repugnancy and accordingly, unenforceability in U.S. courts. *La Ligue*, 433 F.3d at 1222 (opinion of three judges); *see id.* at 1253 (opinion of five judges) (rejecting as "facially unconstitutional" governmental directives that "prohibit[] otherwise permitted speech

[2] "En banc" review is a special procedure where all judges of a particular federal appellate court hear a case, generally when members of the court believe the matters are especially complex or important. *See Calderon v. Thompson*, 524 U.S. 965 (1998).

solely on the basis of the subjects the speech addresses," and reasoning that "we should not allow a foreign court order to be used as leverage to quash constitutionally protected speech"); *see also, e.g., Yahoo!, Inc. v. La Ligue Contre Le Racisme et L'Antisemitisme*, 169 F. Supp. 2d 1181, 1192 (N.D. Cal. 2001), *rev'd on other jurisdictional grounds*, 433 F.3d 1199 (9th Cir. 2006) (court "may not enforce a foreign order that violates the protections of the United States Constitution by chilling protected speech that occurs simultaneously within our borders.").

21. Accordingly, the U.S. District Court for the Northern District of California refused to enforce a Canadian takedown order in circumstances similar to those here. *See Equustek Solutions*, 2017 WL 5000834, at *3. The Canadian court had issued an order requiring Google to globally remove certain URLs from certain search results, notwithstanding that Google had already "blocked more than 300 … websites from appearing in its Canada-specific search results." *Id.* at *1. The U.S. court held "[t]he Canadian order treats Google as a publisher because the order would impose liability for failing to remove third-party content from its search results." *Id.* at *3. Accordingly, Section 230 prohibited enforcement in the United States of the Canadian order. *See id.*; *see also Google LLC v. Equustek Solutions Inc.*, 2017 WL 11573727 (N.D. Cal. Dec. 14, 2017) (issuing permanent injunction).

22. U.S. policy concerning protections for free speech on the internet are further demonstrated by jurisprudence applying the First Amendment and Section 230, as follows.

First Amendment Protections for Violent and Other Objectionable Speech

23. The First Amendment provides that Congress "shall make no law… abridging the freedom of speech, or of the press." As the United States Supreme Court has noted, "[i]f there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable." *Snyder v. Phelps*, 562 U.S. 443, 458 (2011) (quoting *Texas v. Johnson*, 491 U.S. 397, 414 (1989)). Rather, "the point of all speech protection ... is to shield just those choices of content that in someone's eyes are misguided, or even hurtful." *Id.*

(quoting *Hurley v. Irish–American Gay, Lesbian and Bisexual Group of Boston, Inc.*, 515 U.S. 557, 574 (1995)).

24. Only certain narrowly defined categories of speech fall outside the First Amendment's protection—namely, obscenity, defamation, fraud, incitement, "true threats," and speech integral to criminal conduct—and the Supreme Court has rejected attempts to expand these categories. *United States v. Stevens*, 559 U.S. 460, 470 (2010). Applying these principles, the Court has uniformly held unconstitutional and thus unenforceable laws that aim to shield an audience from the harms of speech, including, for example, laws that prohibit the sale of violent video games, *Brown v. Ent. Merchants Ass'n*, 564 U.S. 786, 804-05 (2011); lying about receiving military honors, *United States v. Alvarez*, 567 U.S. 709, 729-30 (2012); the sale of prescriber-identifying data by pharmaceutical companies, *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 573 (2011); the registration of disparaging trademarks, *Matal v. Tam*, 582 U.S. 218, 243-44 (2017); the sale of videos depicting extreme cruelty toward animals, *Stevens*, 559 U.S. at 481; and protests at military funerals, *Snyder*, 562 U.S. at 458.

25. During the April 22, 2024 hearing, the Applicant's counsel asserted that "the Supreme Court of the United States has made it very clear in this sort of categorical way, rules rather than balancing, that the *depictions of violence* are not actually entitled to first amendment protection." Transcript at P-17:2-4 (emphasis added); *see also id.* at P-19:14-16 ("there's no relevant free speech or it's so slight an interest when it comes to actual depictions of violence that that kind of consideration can't be given significant weight at all"). This is incorrect as a matter of United States law.

26. For example, in *Stevens*, the Supreme Court analyzed a challenge to a statute restricting all "visual [and] auditory depiction[s]" of illegal "conduct in which a living animal is intentionally harmed." 559 U.S. at 468. In dismissing the government's arguments "that those particular depictions are intrinsically related to criminal conduct or are analogous to obscenity (if not themselves obscene), and that the ban on such speech is narrowly tailored to reinforce restrictions on the underlying conduct, prevent additional crime arising from the depictions, or safeguard public mores," the Supreme Court held that the law violates the First

Amendment. *Id.* at 481. It explained: "The First Amendment's guarantee of free speech does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits. The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs. Our Constitution forecloses any attempt to revise that judgment simply on the basis that some speech is not worth it." *Id.* at 470.

27. As another example, in *Brown*, the Supreme Court ruled unconstitutional a law restricting the distribution of violent video games, reasoning that arguments focused on the offensive content of speech raised the specter that "the ideas expressed by speech—whether it be violence, or gore, or racism—and not its objective effects, may be the real reason for governmental proscription." 564 U.S. at 799.

28. The Supreme Court has held that these protections apply with equal force to speech on the internet. *Reno v. ACLU,* 521 U.S. 844 (1997).

29. The Video—the truthful depiction of a violent act that I understand was publicized, analyzed, and commented on worldwide—does not fall within any unprotected category of speech. By its nature, the Video is not defamatory, obscene, or fraudulent. It also does not fall within the other categories that counsel for Applicant referenced, which are related to inciting or threatening violence.

    a. "Incitement" under U.S. law requires showing both that the speaker intended to produce imminent lawless action and that the speech was likely to produce such action. *See Counterman v. Colorado*, 600 U.S. 66, 73 (2023) (quoting *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969)) (defining "incitement" as "statements 'directed [at] producing imminent lawless action,' and likely to do so"). "Intent" must be "specific intent, presumably equivalent to purpose or knowledge." *Id.* at 81.

    The Video is not "incitement" under U.S. law unless there is evidence—and I am not aware of any—that the individuals who posted the Video intended to produce any "imminent lawless action." It is possible, for example, that the posts were meant to spread awareness of or comment on an act of terrorism. In addition, the Video is not incitement as a matter of U.S. law even

if it is used by someone to encourage violence. The Supreme Court has held that "the mere abstract teaching … of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action." *Brandenburg*, 395 U.S. at 447-448.

b. A "true threat" is a "'serious expression' conveying that a speaker means to 'commit an act of unlawful violence,'" for which the speaker "consciously disregard[ed] a substantial [and unjustifiable] risk that the conduct will cause harm to another." *Counterman*, 600 U.S. at 79-80. It is a "violation of the First Amendment" to prohibit even allegedly "true threats" without showing "any awareness on [the] part [of the speaker] that his statements could be understood that way." *Id.* at 82.

   The Video is not a "true threat" under U.S. law because it does not convey a threat to commit violence.

c. Speech "integral to criminal conduct" is speech intended to bring about "particular unlawful conduct," such as the promotion of contraband, solicitation of unlawful employment, or picketing whose "sole, unlawful [and] immediate objective" is to "induce" a target to violate the law. *United States v. Hansen*, 599 U.S. 762, 783 (2023).

   Although the Video may depict criminal conduct, it is not itself "integral to criminal conduct" under U.S. law because it does not seek to bring about "particular unlawful conduct."

30. Under U.S. law, the government may limit publication of protected speech (like the Video) only in limited circumstances.

31. Under well-established precedent, "content-based laws" or orders—those that target speech based on its communicative content—are "presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert, Ariz.*, 576 U.S. 155, 163 (2015). Called "strict scrutiny," this is a "demanding standard," and "'[i]t is rare that a regulation restricting speech because of its content

will ever be permissible.'" *Brown*, 564 U.S. at 790-91 (quoting *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 818 (2000)).

32. The Removal Notice and any Enforcement Order would be considered content-based restrictions on speech because they target particular content for removal. That means they would only be allowed if narrowly tailored to serve a compelling state interest.

33. In my professional opinion, neither the Removal Notice nor any Enforcement Order would survive strict scrutiny. I understand that the delegate of the eSafety Commissioner has taken the position that the Video "offends against the standards of morality, decency and propriety generally accepted by reasonable adults," Removal Notice at 2, and that there is "intrinsic harm to people viewing such material," Transcript at P-18:9. However, under well-established U.S. law—confirmed repeatedly and resoundingly by the nation's highest court—such justifications are insufficient to show "compelling state interests." *Reed*, 576 U.S. at 163. Simply put, in the United States, "disgust is not a valid basis for restricting expression." *Brown*, 564 U.S. at 798; *Stevens*, 559 U.S. at 478-81.

34. I understand the Applicant also argues that making the Video available will allow it to "be co-opted by those seeking to advance propaganda and radicalize others." Transcript at P-18:10-11. But the risk that an unidentified speaker might "co-opt" protected speech to encourage violence does not provide a basis to restrict speech under U.S. law. Even "'mere advocacy' of illegal acts" remains protected under the First Amendment and has been described as "falling within the First Amendment's core." *Counterman*, 600 U.S. at 77.

35. The Removal Notice and any Enforcement Order are also "prior[s] restraint on speech and publication"—both because they requires removing the Video and to the extent they require X to prevent the reposting of the Video. "Permanent injunctions—i.e., court orders that actually forbid speech activities—are classic examples of prior restraints." *Alexander v. United States*, 509 U.S. 544, 550 (1993); s*ee Metro. Opera Ass'n, Inc. v. Local 100, Hotel Emps. & Rest. Emps. Int'l Union*, 239 F.3d 172, 176 (2d Cir. 2001) ("When a prior restraint takes the form of a court-issued injunction, the risk of infringing on speech protected under the First Amendment increases."); *Twitter, Inc. v.*

Sessions, 263 F. Supp. 3d 803, 806 (N.D. Cal. 2017) (explaining that certain "restrictions on Twitter's speech [we]re content-based prior restraints subject to the highest level of scrutiny under the First Amendment").

36. Prior restraints "are the most serious and the least tolerable infringement on First Amendment rights." *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976); *Alexander*, 509 U.S. at 550. "Any system of prior restraints of expression comes to th[e U.S. Supreme] Court bearing a heavy presumption against its constitutional validity." *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963). Thus, for example, in *N.Y. Times Co. v. United States*, 403 U.S. 713, 714 (1972), the Supreme Court found an order forbidding The New York Times and The Washington Post from publishing the so-called "Pentagon Papers"—a report on the origins and development of the Vietnam War commissioned in 1967 by U.S. Secretary of Defense Robert McNamara—violated the First Amendment, despite the government's claim that the report contained information that threatened national security. *See id.* at 730 (prior restraints must be the only means to address a "direct, immediate, and irreparable" interest of the highest magnitude) (Stewart, J., concurring).

37. Some courts have held that prior restraints are subject to the same strict scrutiny as content-based restrictions on speech. *See, e.g., In re Dan Farr Prods.*, 874 F.3d 590, 593 n.2 (9th Cir. 2017). Some legal scholars, however, have suggested that the prior restraint standard is stricter. *E.g.*, Amyn Sumar, *Prior Restraints and Digital Surveillance: The Constitutionality of Gag Orders Issued Under the Stored Communications Act*, 20 YALE J.L. & TECH. 74, 91 (2018) ("[t]he best reading of these cases is that prior restraints must endure something more than traditional strict scrutiny"). In my professional view, the latter conclusion best reflects the decisions of the U.S. Supreme Court. It does not matter, however, which standard applies to any restriction of the Video. If the Removal Notice and any Enforcement Order cannot survive strict scrutiny, they necessarily cannot survive the stricter form of scrutiny that should apply to prior restraints.

Statutory Protections for Online Publishers of Third-Party Content

38. Similar speech-protective policies are evident by the enactment and interpretation of Section 230 of the Communications Decency Act, 47 U.S.C. § 230.

39. Enacted by the U.S. Congress in 1996, Section 230 was intended to promote "freedom of speech in the new and burgeoning Internet medium." *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997), *cert. denied*,[3] 524 U.S. 937 (1998). Congress enacted Section 230(c)(1) in part to respond to a New York state court decision from 1995, which held that an internet service provider could be liable for defamation based on third-party content posted on its message boards. *Stratton Oakmont, Inc. v. Prodigy Servs. Co*., 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995). In acting to expressly abrogate that decision, Congress sought "to encourage the unfettered and unregulated development of free speech on the Internet." *Batzel v. Smith*, 333 F.3d 1018, 1027 (9th Cir. 2003) (superseded by statute on other grounds).

40. The U.S. Court of Appeals for the Fourth Circuit summarized the purposes and scope of Section 230 immunity in the seminal *Zeran* decision:

> Interactive computer services have millions of users. [ ]The amount of information communicated via interactive computer services is therefore staggering. The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. It would be impossible for service providers to screen each of their millions of postings for possible problems. Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages

[3] "*Cert. denied*" means that the United States Supreme Court declined a petition for a writ of certiorari, or in other words, a request by a party for the Court to exercise discretionary review of the decision. To date, the Supreme Court has granted review in only one case involving Section 230, *Gonzalez v. Google*, 598 U.S. 617, 622 (2023), and in that case, declined to review the lower court's Section 230 ruling.

> posted. *Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect*.

129 F.3d at 331 (emphasis added) (internal citation omitted).

41. Congress's intent is also evident from the enacted preamble of Section 230, which includes the following finding: "The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity." 47 U.S.C. § 230(a)(3). The preamble further declares: "It is the policy of the United States … to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation …." *Id.* § 230(b)(2).

42. Courts applying Section 230 also have recognized that it was designed to provide an "*immunity from suit* rather than a mere defense to liability," such that its protection would be "effectively lost" if a case is improperly allowed to proceed. *Nemet Chevrolet, Ltd. v. Consumer-affairs.com, Inc.*, 591 F.3d 250, 254 (4th Cir. 2009) (quotation marks and citation omitted); *accord Jones v. Dirty World Entm't Recordings LLC*, 755 F.3d 398, 417 (6th Cir. 2014) (Section 230 "immunity… should be resolved at an earlier stage of litigation" given the law's purpose to protect "an open and robust internet"). As a result, the application of Section 230 does not require the court to resolve disputed facts or credibility at trial about the specific content of the statements at issue; instead, Section 230 provides an early legal defense that bars judgment against an intermediary under U.S. law if the intermediary did not create the offending content.

43. The primary provision of Section 230 states: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." *Id.* § 230(c)(l). The statute also contains express language rendering any contrary state or local law preempted: "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.* § 230(e)(3).

44. In the more than twenty-five years since *Zeran*, courts across the country have consistently ruled that Section 230 broadly protects services from a wide range of claims arising from their publication of tortious or unlawful content that originated with third parties. The U.S. Court of Appeals for the Ninth Circuit—the federal intermediate appellate court whose jurisdiction includes California, where X and several other major technology companies are headquartered—has decided more cases involving Section 230 than any other federal appellate court. The Ninth Circuit has consistently recognized that Section 230 "protects websites from liability for material posted on the website by someone else." *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 850 (9th Cir. 2016); *see also Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119 1123 (9th Cir. 2003) ("§ 230(c) provides broad immunity for publishing content provided primarily by third parties.").[4]

45. This interpretation is consistent with rulings from other Circuit courts. "In light of Congress's objectives, the Circuits are in general agreement that the text of Section 230(c)(1) should be construed broadly in favor of immunity." *Force v. Facebook, Inc.*, 934 F.3d 53, 64 (2d Cir. 2019) (collecting cases from the D.C., Fourth, Fifth, Sixth, and Eleventh Circuits); *see also, e.g.*, *Bennett v. Google, LLC*, 882 F. 3d 1163, 1166 (D.C. Cir. 2018) (noting a "dividing line" between "interactive computer service providers—which are generally eligible for CDA section 230 immunity—and information content providers, which are not."); *Jane Doe No. 1 v. Backpage.com, LLC*, 817 F.3d 12, 18-19 (1st Cir. 2016), *cert. denied*, 137 S. Ct. 622 (2017) (observing "near-universal agreement" that Section 230 should be construed broadly).[5]

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[4] *See also Dyroff v. Ultimate Software Group, Inc.*, 934 F.3d 1093, 1097 (9th Cir. 2019); *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016); *Fair Hous. Council of San Fernando Valley v. Roommates.com*, 521 F.3d 1157, 1163 (9th Cir. 2008) (en banc); *Batzel*, 333 F.3d at 1020.

[5] *See also Ricci v. Teamsters Union Local 456*, 781 F.3d 25, 27 (2d Cir. 2015); *Jones,* 755 F.3d at 406; *Klayman v. Zuckerberg,* 753 F.3d 1354, 1356 (D.C. Cir. 2014); *Johnson v. Arden*, 614 F.3d 785, 791 (8th Cir. 2010); *Doe v. MySpace, Inc.*, 528 F.3d 413, 418 (5th Cir. 2008); *Chi. Lawyers' Comm. for Civil Rights Under Law, Inc. v. Craigslist, Inc.*, 519 F. 3d 666, 671 (7th Cir. 2008); *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007); *Green v. Am. Online*, 318 F.3d 465, 471

46. Section 230 protection does not depend on the nature of the content at issue. For example, in *Force*, the U.S. Court of Appeals for the Second Circuit held that Section 230 prohibited the imposition of liability against Facebook, even though the terrorist organization Hamas had allegedly "used Facebook to post content that encouraged terrorist attacks in Israel," "to celebrate these attacks and others, to transmit political messages, and to generally support further violence against Israel." 934 F.3d at 59, 64-71. Because Facebook "did not 'develop' the content of" Hamas's postings, Section 230 prohibited liability or injunction, even where it was alleged that "Facebook ha[d] chosen to undertake efforts to eliminate objectionable and dangerous content but ha[d] not been effective or consistent in those efforts." *Id.* at 71.

47. Courts in the United States apply a three-part test to decide whether a defendant is entitled to immunity. A defendant is entitled to immunity where (1) it qualifies as a "provider . . . of an interactive computer service"; (2) the plaintiff's claim pertains to allegedly unlawful or tortious information "provided by another information content provider"; and (3) the plaintiff's claim seeks to "treat[]" the defendant as the "publisher or speaker" of that information.[6] Based on my understanding of the facts, each of these elements is satisfied, and Section 230 would prohibit a U.S. court or agency from enforcing the Removal Notice or issuing an Enforcement Order.

48. An "interactive computer service" is defined to include "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server." 47 U.S.C. § 230(f)(2). Courts in the United States have consistently held

(3d Cir. 2003), *cert. denied,* 540 U.S. 877 (2003); *Ben Ezra, Weinstein, & Co. v. Am. Online, Inc.*, 206 F.3d 980, 984-85 (10th Cir. 2000), *cert. denied,* 531 U.S. 824 (2000).

[6] While Section 230's protections are subject to several enumerated exceptions, *see* 47 U.S.C. § 230(e), those exceptions are confined to prosecutions under any federal criminal statute, *id.* § 230(e)(1), claims under the U.S. federal Electronic Communications Privacy Act of 1986 or similar state laws, *id.* § 230(e)(4), claims under certain intellectual property laws, *id.* § 230(e)(2), and claims relating to the promotion or facilitation of human trafficking, *id.* § 230(e)(5). None apply here.

that "the most common interactive computer services are websites." *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1268 (9th Cir. 2016).

49. In my opinion, X qualifies for the protections of Section 230. As one court held, X (then referred to as Twitter) "provides the prototypical service entitling it to protections of [Section 230]," and "[e]very decision the [U.S. District Court for the Northern District of California] has seen to consider the issue has treated Twitter as an interactive computer service provider, even at the motion to dismiss stage." *Al-Ahmed v. Twitter, Inc.*, 603 F. Supp. 3d 857, 880-881 (N.D. Cal. 2022).

50. The content for which X faces potential penalties in this case constitutes "information provided by another information content provider," defined as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3). *Roommates.com, LLC*, 521 F.3d at 1162 (website operator is a "service provider" with respect to content "created entirely by third parties"). I understand that posts featuring the Video were created and posted by third parties on X's platform and that X played no role in the creation or development of the posts. As such, the posts identified in the Removal Notice and any Enforcement Order would constitute information provided by another content provider under Section 230.

51. The Removal Notice and any Enforcement Order would impose liability on X by treating X as the "publisher or speaker" of the posts it has been ordered to remove. Courts have concluded that suits seeking to impose liability on an interactive service provider for injury or harm that allegedly results from the dissemination of third-party content impermissibly "treat" the service provider as the "publisher or speaker" of that information. *See, e.g.*, *Force*, 934 F.3d at 65 (providing a user with a "forum with which to communicate" and an "alleged failure to delete content from … Facebook pages" was conduct that "falls within the heartland of what it means to be the 'publisher' of information under Section 230(c)(1)"); *Kimzey*, 836 F.3d at 1270 (Section 230 protected service provider from liability for "posting user-generated content" and "disseminating the same content in essentially the same format to a search engine."); *Carafano,* 339 F.3d at 1124 ("Under § 230(c) . . . so long as a third party willingly provides the essential published content,

the interactive service provider receives full immunity regardless of the specific editing or selection process."); *Zeran*, 129 F.3d at 330 ("§ 230 creates a federal immunity to *any cause of action* that would make service providers liable for information originating with a third-party user") (emphasis added).

52. Section 230 equally bars injunctions that would require the provider to remove, block, or restrict access to allegedly tortious or unlawful third-party content. *See, e.g., Ben Ezra,* 206 F.3d at 983, 986 (applying Section 230 to claims for injunctive relief); *Equustek Solutions Inc.*, 2017 WL 5000834, at *4 (Section 230 renders unenforceable a Canadian court order requiring Google to globally remove links to third-party material from search results); *Hinton v. Amazon.com.dedc, LLC*, 72 F. Supp. 3d 685, 687, 692 (S.D. Miss. 2014) (claims seeking injunctive relief and damages based on alleged sale of recalled hunting equipment barred by Section 230); *Dart v. Craigslist, Inc*., 665 F. Supp. 2d 961, 963, 969 (N.D. Ill. 2009) (rejecting public nuisance claim, including injunctive relief request); *Smith v. Intercosmos Media Group, Inc.*, 2002 WL 31844907, at *5 (E.D. La. 2002) ("any claim made by the plaintiffs for damages *or injunctive relief* with regard to either defamation and libel, or negligence and fault . . . are precluded by the immunity afforded by Section 230(c)(1)") (emphasis added).

53. Section 230 bars liability even if an online service is aware of the unlawful nature of the content it hosts. As the U.S. Court of Appeals for the First Circuit stated, it is "well established that notice of the unlawful nature of the information provided is not enough to make it the service provider's own speech." *Lycos*, 478 F.3d at 420. This is consistent with decisions across the country. *Caraccioli v. Facebook, Inc.*, 700 F. App'x 588, 590 (9th Cir. 2017) ("Facebook did not become the 'information content provider' under § 230(c)(1) merely by virtue of reviewing the contents of the suspect account and deciding not to remove it"), *cert. denied* 138 S. Ct. 1027 (2018); *Doe v. GTE Corp.*, 347 F.3d 655, 659 (7th Cir. 2003) ("[a] web host, like a delivery service or phone company, is an intermediary and normally is indifferent to the content of what it transmits. Even entities that know the information's content do not become liable for the sponsor's deeds."). Instead of government regulation, Congress sought through Section 230 "to encourage *voluntary* monitoring for offensive or obscene material.'" *Carafano,*

339 F.3d at 1122 (emphasis added). This intent would be defeated if "liability upon notice" were imposed on services like X for claims based on third-party content.

54. Based on the language of Section 230 and court decisions construing it, as well as my understanding of the facts at issue here, it is my opinion that the Removal Notice and any Enforcement Order are contrary to Section 230 and thus offend U.S. public policy.

Conclusion

55. It is my professional opinion that no U.S. court would enforce the Removal Notice or any Enforcement Order because they both offend the public policy of the United States.

Very truly yours

Davis Wright Tremaine LLP

Ambika Kumar

Appendix A

AMBIKA KUMAR

Seattle, WA
206.356.0397
ambikakumar@dwt.com

EXPERIENCE

Partner & Co-Chair, Media Law Practice | **Davis Wright Tremaine LLP**

2014-PRESENT

Advise on and litigate issues concerning liability for publication of content, with a particular focus on the protections for publication of user-generated content. Recent practice highlights include:

- Obtained order preliminarily enjoining enforcement of ban on TikTok by then-President Trump in 2020 and by the State of Montana in 2023
- Defeated attempt by social media service Parler LLC to force Amazon Web Services to reinstate public's access to Parler's platform following Parler's refusal to address threatening user posts
- Defending online dating application Grindr in several cases alleging Grindr is responsible for messages exchanged between users that led to offline assault of one user by the other

Associate | **Davis Wright Tremaine LLP**

2006-2014

EDUCATION

J.D. with Honors | **University of Chicago Law School**

2003-2006

Staff member, *Chicago Journal of International law*

BA Economics & French | **Duke University**

1998-2002

William J. Griffith University Service Award.
Editor-in-chief and president of *The Chronicle*, the student-run, independent daily newspaper

SELECT PUBLICATIONS

"Supreme Court is Positioned to Consider the Future of the First Amendment Online," Los Angeles & San Francisco Daily Journal (2022)

Co-author, "Die Hard: Will Constitutional Roadblocks and a Lack of Consensus Stall Section 230 Reform?," MLRC Bulletin (2021)

"The Test of Time: Section 230 of the Communications Decency Act Turns 20," MLRC Bulletin (2016)

"Fair Housing Council of San Fernando Valley v. Roommates.com: The Ninth Circuit Court of Appeals Announces A New Legal Test For Mixed-Content Websites," New York State Bar Association Entertainment, Arts and Sports Law Journal, Vol. 18, No. 3 (2008)

RECOGNITIONS

One of "America's Top 200 Lawyers," Forbes, 2024

"MVP of the Year" in Media & Entertainment, Law360, 2021

"Trailblazer" in First Amendment, National Law Journal, 2020

ACTIVITIES

Member, Board of Directors, National Coalition Against Censorship, 2024-present

Member, Board of Directors, Federal Bar Association of Western District of Washington, 2020-2023

Member, Governing Committee, American Bar Association Forum on Communications Law, 2015-2017

FEDERAL COURT OF AUSTRALIA

EXPERT EVIDENCE PRACTICE NOTE (GPN-EXPT)

General Practice Note

1. INTRODUCTION

1.1 This practice note, including the *Harmonised Expert Witness Code of Conduct* ("**Code**") (see **Annexure A**) and the *Concurrent Expert Evidence Guidelines* ("**Concurrent Evidence Guidelines**") (see **Annexure B**), applies to any proceeding involving the use of expert evidence and must be read together with:

(a) the Central Practice Note (CPN-1), which sets out the fundamental principles concerning the National Court Framework ("**NCF**") of the Federal Court and key principles of case management procedure;

(b) the Federal Court of Australia Act 1976 (Cth) ("**Federal Court Act**");

(c) the *Evidence Act 1995* (Cth) ("**Evidence Act**"), including Part 3.3 of the Evidence Act;

(d) Part 23 of the *Federal Court Rules 2011* (Cth) ("**Federal Court Rules**"); and

(e) where applicable, the Survey Evidence Practice Note (GPN-SURV).

1.2 This practice note takes effect from the date it is issued and, to the extent practicable, applies to proceedings whether filed before, or after, the date of issuing.

2. APPROACH TO EXPERT EVIDENCE

2.1 An expert witness may be retained to give opinion evidence in the proceeding, or, in certain circumstances, to express an opinion that may be relied upon in alternative dispute resolution procedures such as mediation or a conference of experts. In some circumstances an expert may be appointed as an independent adviser to the Court.

2.2 The purpose of the use of expert evidence in proceedings, often in relation to complex subject matter, is for the Court to receive the benefit of the objective and impartial assessment of an issue from a witness with specialised knowledge (based on training, study or experience - see generally s 79 of the Evidence Act).

2.3 However, the use or admissibility of expert evidence remains subject to the overriding requirements that:

(a) to be admissible in a proceeding, any such evidence must be relevant (s 56 of the Evidence Act); and

(b) even if relevant, any such evidence, may be refused to be admitted by the Court if its probative value is outweighed by other considerations such as the evidence

being unfairly prejudicial, misleading or will result in an undue waste of time (s 135 of the Evidence Act).

2.4 An expert witness' opinion evidence may have little or no value unless the assumptions adopted by the expert (ie. the facts or grounds relied upon) and his or her reasoning are expressly stated in any written report or oral evidence given.

2.5 The Court will ensure that, in the interests of justice, parties are given a reasonable opportunity to adduce and test relevant expert opinion evidence. However, the Court expects parties and any legal representatives acting on their behalf, when dealing with expert witnesses and expert evidence, to at all times comply with their duties associated with the overarching purpose in the Federal Court Act (see ss 37M and 37N).

3. INTERACTION WITH EXPERT WITNESSES

3.1 Parties and their legal representatives should never view an expert witness retained (or partly retained) by them as that party's advocate or "hired gun". Equally, they should never attempt to pressure or influence an expert into conforming his or her views with the party's interests.

3.2 A party or legal representative should be cautious not to have inappropriate communications when retaining or instructing an independent expert, or assisting an independent expert in the preparation of his or her evidence. However, it is important to note that there is no principle of law or practice and there is nothing in this practice note that obliges a party to embark on the costly task of engaging a "consulting expert" in order to avoid "contamination" of the expert who will give evidence. Indeed the Court would generally discourage such costly duplication.

3.3 Any witness retained by a party for the purpose of preparing a report or giving evidence in a proceeding as to an opinion held by the witness that is wholly or substantially based in the specialised knowledge of the witness[1] should, at the earliest opportunity, be provided with:

(a) a copy of this practice note, including the Code (see Annexure A); and

(b) all relevant information (whether helpful or harmful to that party's case) so as to enable the expert to prepare a report of a truly independent nature.

3.4 Any questions or assumptions provided to an expert should be provided in an unbiased manner and in such a way that the expert is not confined to addressing selective, irrelevant or immaterial issues.

[1] Such a witness includes a "Court expert" as defined in r 23.01 of the Federal Court Rules. For the definition of "expert", "expert evidence" and "expert report" see the Dictionary, in Schedule 1 of the Federal Court Rules.

4. ROLE AND DUTIES OF THE EXPERT WITNESS

4.1 The role of the expert witness is to provide relevant and impartial evidence in his or her area of expertise. An expert should never mislead the Court or become an advocate for the cause of the party that has retained the expert.

4.2 It should be emphasised that there is nothing inherently wrong with experts disagreeing or failing to reach the same conclusion. The Court will, with the assistance of the evidence of the experts, reach its own conclusion.

4.3 However, experts should willingly be prepared to change their opinion or make concessions when it is necessary or appropriate to do so, even if doing so would be contrary to any previously held or expressed view of that expert.

Harmonised Expert Witness Code of Conduct

4.4 Every expert witness giving evidence in this Court must read the *Harmonised Expert Witness Code of Conduct* (attached in Annexure A) and agree to be bound by it.

4.5 The Code is not intended to address all aspects of an expert witness' duties, but is intended to facilitate the admission of opinion evidence, and to assist experts to understand in general terms what the Court expects of them. Additionally, it is expected that compliance with the Code will assist individual expert witnesses to avoid criticism (rightly or wrongly) that they lack objectivity or are partisan.

5. CONTENTS OF AN EXPERT'S REPORT AND RELATED MATERIAL

5.1 The contents of an expert's report must conform with the requirements set out in the Code (including clauses 3 to 5 of the Code).

5.2 In addition, the contents of such a report must also comply with r 23.13 of the Federal Court Rules. Given that the requirements of that rule significantly overlap with the requirements in the Code, an expert, unless otherwise directed by the Court, will be taken to have complied with the requirements of r 23.13 if that expert has complied with the requirements in the Code and has complied with the additional following requirements. The expert shall:

(a) acknowledge in the report that:

(i) the expert has read and complied with this practice note and agrees to be bound by it; and

(ii) the expert's opinions are based wholly or substantially on specialised knowledge arising from the expert's training, study or experience;

(b) identify in the report the questions that the expert was asked to address;

(c) sign the report and attach or exhibit to it copies of:

(i) documents that record any instructions given to the expert; and

(ii) documents and other materials that the expert has been instructed to consider.

5.3 Where an expert's report refers to photographs, plans, calculations, analyses, measurements, survey reports or other extrinsic matter, these must be provided to the other parties at the same time as the expert's report.

6. CASE MANAGEMENT CONSIDERATIONS

6.1 Parties intending to rely on expert evidence at trial are expected to consider between them and inform the Court at the earliest opportunity of their views on the following:

(a) whether a party should adduce evidence from more than one expert in any single discipline;

(b) whether a common expert is appropriate for all or any part of the evidence;

(c) the nature and extent of expert reports, including any in reply;

(d) the identity of each expert witness that a party intends to call, their area(s) of expertise and availability during the proposed hearing;

(e) the issues that it is proposed each expert will address;

(f) the arrangements for a conference of experts to prepare a joint-report (see Part 7 of this practice note);

(g) whether the evidence is to be given concurrently and, if so, how (see Part 8 of this practice note); and

(h) whether any of the evidence in chief can be given orally.

6.2 It will often be desirable, before any expert is retained, for the parties to attempt to agree on the question or questions proposed to be the subject of expert evidence as well as the relevant facts and assumptions. The Court may make orders to that effect where it considers it appropriate to do so.

7. CONFERENCE OF EXPERTS AND JOINT-REPORT

7.1 Parties, their legal representatives and experts should be familiar with aspects of the Code relating to conferences of experts and joint-reports (see clauses 6 and 7 of the Code attached in Annexure A).

7.2 In order to facilitate the proper understanding of issues arising in expert evidence and to manage expert evidence in accordance with the overarching purpose, the Court may require experts who are to give evidence or who have produced reports to meet for the purpose of identifying and addressing the issues not agreed between them with a view to reaching agreement where this is possible ("**conference of experts**"). In an appropriate case, the Court may appoint a registrar of the Court or some other suitably qualified person ("**Conference Facilitator**") to act as a facilitator at the conference of experts.

7.3 It is expected that where expert evidence may be relied on in any proceeding, at the earliest opportunity, parties will discuss and then inform the Court whether a conference of experts and/or a joint-report by the experts may be desirable to assist with or simplify the giving of expert evidence in the proceeding. The parties should discuss the necessary arrangements for any conference and/or joint-report. The arrangements discussed between the parties should address:

(a) who should prepare any joint-report;

(b) whether a list of issues is needed to assist the experts in the conference and, if so, whether the Court, the parties o r the experts should assist in preparing such a list;

(c) **t**he agenda for the conference of experts; and

(d) arrangements for the provision, to the parties and the Court, of any joint-report or any other report as to the outcomes of the conference ("**conference report**").

Conference of Experts

7.4 The purpose of the conference of experts is for the experts to have a comprehensive discussion of issues relating to their field of expertise, with a view to identifying matters and issues in a proceeding about which the experts agree, partly agree or disagree and why. For this reason the conference is attended only by the experts and any Conference Facilitator. Unless the Court orders otherwise, the parties' lawyers will not attend the conference but will be provided with a copy of any conference report.

7.5 The Court may order that a conference of experts occur in a variety of circumstances, depending on the views of the judge and the parties and the needs of the case, including:

(a) while a case is in mediation. When this occurs the Court may also order that the outcome of the conference or any document disclosing or summarising the experts' opinions be confidential to the parties while the mediation is occurring;

(b) before the experts have reached a final opinion on a relevant question or the facts involved in a case. When this occurs the Court may order that the parties exchange draft expert reports and that a conference report be prepared for the use of the experts in finalising their reports;

(c) after the experts' reports have been provided to the Court but before the hearing of the experts' evidence. When this occurs the Court may also order that a conference report be prepared (jointly or otherwise) to ensure the efficient hearing of the experts' evidence.

7.6 Subject to any other order or direction of the Court, the parties and their lawyers must not involve themselves in the conference of experts process. In particular, they must not seek to encourage an expert not to agree with another expert or otherwise seek to influence the outcome of the conference of experts. The experts should raise any queries they may have in relation to the process with the Conference Facilitator (if one has been appointed) or in

accordance with a protocol agreed between the lawyers prior to the conference of experts taking place (if no Conference Facilitator has been appointed).

7.7 Any list of issues prepared for the consideration of the experts as part of the conference of experts process should be prepared using non-tendentious language.

7.8 The timing and location of the conference of experts will be decided by the judge or a registrar who will take into account the location and availability of the experts and the Court's case management timetable. The conference may take place at the Court and will usually be conducted in-person. However, if not considered a hindrance to the process, the conference may also be conducted with the assistance of visual or audio technology (such as via the internet, video link and/or by telephone).

7.9 Experts should prepare for a conference of experts by ensuring that they are familiar with all of the material upon which they base their opinions. Where expert reports in draft or final form have been exchanged prior to the conference, experts should attend the conference familiar with the reports of the other experts. Prior to the conference, experts should also consider where they believe the differences of opinion lie between them and what processes and discussions may assist to identify and refine those areas of difference.

Joint-report

7.10 At the conclusion of the conference of experts, unless the Court considers it unnecessary to do so, it is expected that the experts will have narrowed the issues in respect of which they agree, partly agree or disagree in a joint-report. The joint-report should be clear, plain and concise and should summarise the views of the experts on the identified issues, including a succinct explanation for any differences of opinion, and otherwise be structured in the manner requested by the judge or registrar.

7.11 In some cases (and most particularly in some native title cases), depending on the nature, volume and complexity of the expert evidence a judge may direct a registrar to draft part, or all, of a conference report. If so, the registrar will usually provide the draft conference report to the relevant experts and seek their confirmation that the conference report accurately reflects the opinions of the experts expressed at the conference. Once that confirmation has been received the registrar will finalise the conference report and provide it to the intended recipient(s).

8. CONCURRENT EXPERT EVIDENCE

8.1 The Court may determine that it is appropriate, depending on the nature of the expert evidence and the proceeding generally, for experts to give some or all of their evidence concurrently at the final (or other) hearing.

8.2 Parties should familiarise themselves with the *Concurrent Expert Evidence Guidelines* (attached in Annexure B). The Concurrent Evidence Guidelines are not intended to be exhaustive but indicate the circumstances when the Court might consider it appropriate for

concurrent expert evidence to take place, outline how that process may be undertaken, and assist experts to understand in general terms what the Court expects of them.

8.3 If an order is made for concurrent expert evidence to be given at a hearing, any expert to give such evidence should be provided with the Concurrent Evidence Guidelines well in advance of the hearing and should be familiar with those guidelines before giving evidence.

9. FURTHER PRACTICE INFORMATION AND RESOURCES

9.1 Further information regarding Expert Evidence and Expert Witnesses is available on the Court's website.

9.2 Further information to assist litigants, including a range of helpful guides, is also available on the Court's website. This information may be particularly helpful for litigants who are representing themselves.

J L B ALLSOP
Chief Justice
25 October 2016

Annexure A

HARMONISED EXPERT WITNESS CODE OF CONDUCT[2]

APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:

   (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or

   (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:

   (a) the name and address of the expert;

   (b) an acknowledgment that the expert has read this code and agrees to be bound by it;

   (c) the qualifications of the expert to prepare the report;

   (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];

   (e) the reasons for and any literature or other materials utilised in support of such opinion;

   (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;

   (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;

   (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;

   (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the

[2] Approved by the Council of Chief Justices' Rules Harmonisation Committee

knowledge of the expert, been withheld from the Court;

(j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;

(k) whether any opinion expressed in the report is not a concluded opinion because of insufficient research or insufficient data or for any other reason; and

(l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.

5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

6. If directed to do so by the Court, an expert witness shall:

(a) confer with any other expert witness;

(b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and

(c) abide in a timely way by any direction of the Court.

CONFERENCE OF EXPERTS

7. Each expert witness shall:

(a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and

(b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.

ANNEXURE B

CONCURRENT EXPERT EVIDENCE GUIDELINES

APPLICATION OF THE COURT'S GUIDELINES

1. The Court's Concurrent Expert Evidence Guidelines ("**Concurrent Evidence Guidelines**") are intended to inform parties, practitioners and experts of the Court's general approach to concurrent expert evidence, the circumstances in which the Court might consider expert witnesses giving evidence concurrently and, if so, the procedures by which their evidence may be taken.

OBJECTIVES OF CONCURRENT EXPERT EVIDENCE TECHNIQUE

2. The use of concurrent evidence for the giving of expert evidence at hearings as a case management technique[3] will be utilised by the Court in appropriate circumstances (see r 23.15 of the *Federal Court Rules 2011* (Cth)). Not all cases will suit the process. For instance, in some patent cases, where the entire case revolves around conflicts within fields of expertise, concurrent evidence may not assist a judge. However, patent cases should not be excluded from concurrent expert evidence processes.

3. In many cases the use of concurrent expert evidence is a technique that can reduce the partisan or confrontational nature of conventional hearing processes and minimises the risk that experts become "opposing experts" rather than independent experts assisting the Court. It can elicit more precise and accurate expert evidence with greater input and assistance from the experts themselves.

4. When properly and flexibly applied, with efficiency and discipline during the hearing process, the technique may also allow the experts to more effectively focus on the critical points of disagreement between them, identify or resolve those issues more quickly, and narrow the issues in dispute. This can also allow for the key evidence to be given at the same time (rather than being spread across many days of hearing); permit the judge to assess an expert more readily, whilst allowing each party a genuine opportunity to put and test expert evidence. This can reduce the chance of the experts, lawyers and the judge misunderstanding the opinions being expressed by the experts.

5. It is essential that such a process has the full cooperation and support of all of the individuals involved, including the experts and counsel involved in the questioning process. Without that cooperation and support the process may fail in its objectives and even hinder the case management process.

[3] Also known as the "hot tub" or as "expert panels".

CASE MANAGEMENT

6. Parties should expect that, the Court will give careful consideration to whether concurrent evidence is appropriate in circumstances where there is more than one expert witness having the same expertise who is to give evidence on the same or related topics. Whether experts should give evidence concurrently is a matter for the Court, and will depend on the circumstances of each individual case, including the character of the proceeding, the nature of the expert evidence, and the views of the parties.

7. Although this consideration may take place at any time, including the commencement of the hearing, if not raised earlier, parties should raise the issue of concurrent evidence at the first appropriate case management hearing, and no later than any pre-trial case management hearing, so that orders can be made in advance, if necessary. To that end, prior to the hearing at which expert evidence may be given concurrently, parties and their lawyers should confer and give general consideration as to:

   (a) the agenda;

   (b) the order and manner in which questions will be asked; and

   (c) whether cross-examination will take place within the context of the concurrent evidence or after its conclusion.

8. At the same time, and before any hearing date is fixed, the identity of all experts proposed to be called and their areas of expertise is to be notified to the Court by all parties.

9. The lack of any concurrent evidence orders does not mean that the Court will not consider using concurrent evidence without prior notice to the parties, if appropriate.

CONFERENCE OF EXPERTS & JOINT-REPORT OR LIST OF ISSUES

10. The process of giving concurrent evidence at hearings may be assisted by the preparation of a joint-report or list of issues prepared as part of a conference of experts.

11. Parties should expect that, where concurrent evidence is appropriate, the Court may make orders requiring a conference of experts to take place or for documents such as a joint-report to be prepared to facilitate the concurrent expert evidence process at a hearing (see Part 7 of the Expert Evidence Practice Note).

PROCEDURE AT HEARING

12. Concurrent expert evidence may be taken at any convenient time during the hearing, although it will often occur at the conclusion of both parties' lay evidence.

13. At the hearing itself, the way in which concurrent expert evidence is taken must be applied flexibly and having regard to the characteristics of the case and the nature of the evidence to be given.

14. Without intending to be prescriptive of the procedure, parties should expect that, when evidence is given by experts in concurrent session:

(a) the judge will explain to the experts the procedure that will be followed and that the nature of the process may be different to their previous experiences of giving expert evidence;

(b) the experts will be grouped and called to give evidence together in their respective fields of expertise;

(c) the experts will take the oath or affirmation together, as appropriate;

(d) the experts will sit together with convenient access to their materials for their ease of reference, either in the witness box or in some other location in the courtroom, including (if necessary) at the bar table;

(e) each expert may be given the opportunity to provide a summary overview of their current opinions and explain what they consider to be the principal issues of disagreement between the experts, as they see them, in their own words;

(f) the judge will guide the process by which evidence is given, including, where appropriate:

(i) using any joint-report or list of issues as a guide for all the experts to be asked questions by the judge and counsel, about each issue on an issue-by-issue basis;

(ii) ensuring that each expert is given an adequate opportunity to deal with each issue and the exposition given by other experts including, where considered appropriate, each expert asking questions of other experts or supplementing the evidence given by other experts;

(iii) inviting legal representatives to identify the topics upon which they will cross-examine;

(iv) ensuring that legal representatives have an adequate opportunity to ask all experts questions about each issue. Legal representatives may also seek responses or contributions from one or more experts in response to the evidence given by a different expert; and

(v) allowing the experts an opportunity to summarise their views at the end of the process where opinions may have been changed or clarifications are needed.

15. The fact that the experts may have been provided with a list of issues for consideration does not confine the scope of any cross-examination of any expert. The process of cross-examination remains subject to the overall control of the judge.

16. The concurrent session should allow for a sensible and orderly series of exchanges between expert and expert, and between expert and lawyer. Where appropriate, the judge may allow for more traditional cross-examination to be pursued by a legal representative on a particular issue exclusively with one expert. Where that occurs, other experts may be asked to comment on the evidence given.

17. Where any issue involves only one expert, the party wishing to ask questions about that issue should let the judge know in advance so that consideration can be given to whether

arrangements should be made for that issue to be dealt with after the completion of the concurrent session. Otherwise, as far as practicable, questions (including in the form of cross-examination) will usually be dealt with in the concurrent session.

18. Throughout the concurrent evidence process the judge will ensure that the process is fair and effective (for the parties and the experts), balanced (including not permitting one expert to overwhelm or overshadow any other expert), and does not become a protracted or inefficient process.

Ashurst

Ashurst Australia
Level 11
5 Martin Place
Sydney NSW 2000
Australia

GPO Box 9938
Sydney NSW 2001
Australia

Tel +61 2 9258 6000
Fax +61 2 9258 6999
www.ashurst.com

Our ref:
RJT\ACA\1000-199-372
Partner:
Robert Todd
+61 2 9258 6082
robert.todd@ashurst.com
Contact:
Andrew Carter
+61 2 9258 6581
andrew.carter@ashurst.com

2 May 2024

Confidential and privileged
By email

Ms Ambika Kumar
Davis Wright Tremaine LLP
920 Fifth Avenue
Suite 3300
Seattle WA 98104-1610

Dear Ms Kumar

X Corp. ats eSafety Commissioner
Federal Court Proceeding No. NSD474/2024

We act for X Corp. in relation to proceedings before the Federal Court of Australia initiated by the Australian eSafety Commissioner (the **Proceedings**).

Please mark all correspondence and any documents you send to us as "Legally Privileged & Confidential – Subject to Litigation Privilege."

Background

1. On 15 April 2024 in Sydney, Bishop Mar Mari Emmanuel was stabbed by a teenage boy while delivering a sermon which was being livestreamed on the internet.

2. A number of users of X (formerly known as Twitter) posted or shared the video of the attack.

3. On 16 April 2024, X Corp. received a notice from the eSafety Commissioner requiring X Corp. to take all reasonable steps to remove certain posts on X containing the video, providing a list of URLs (the **Removal Notice**) (copy **attached**).

4. X Corp. took steps to geoblock the relevant URLs in Australia.

5. The eSafety Commissioner took the position that X Corp. had not taken sufficient steps to comply with the Removal Notice.

6. On 22 April 2024, the eSafety Commissioner filed an application with the Federal Court of Australia, seeking an injunction against X Corp. to require the removal of the posts listed in the Removal Notice. We have provided you with a copy of the originating application and interlocutory application.

7. On 22 April 2024, his Honour Justice Kennett issued the following order (copy **attached**):

> *There be an interim injunction under s 122(1)(b) of the Regulatory Powers (Standard Provisions) Act 2014 (Cth) requiring the respondent, as soon as reasonably practicable and no later than within 24 hours, to hide the*

material identified in the Notice behind a notice such that an X user can only see the notice, not the material identified in the Notice, and cannot remove the notice to reveal the material.

8. A further order continuing that injunction was made on 24 April 2024 (copy **attached**).

9. As of 24 April 2024, this interim injunction is in place until 10 May 2024, at which time there will be a further hearing.

Instructions

10. You have been engaged to provide an expert report on issues relating to your expertise in relation to the law of the United States of America (the **Field**).

11. Any confidential information that you may receive, or be asked to prepare, is confidential and legally privileged to X Corp.

12. We would be grateful if you would prepare a report stating your opinion in relation to the following questions:

    (a) Whether there is any principle of law in the United States of America which would prevent or affect the enforcement of the Removal Notice, or the enforcement of any curial order giving effect to the Removal Notice (for example, the orders of the Federal Court of Australia referred to above), in the United States of America;

    (b) Please explain what rights to free speech and free press exist under United States law, with specific attention to the circumstances of this case; and

    (c) Please identify and explain any legislation and case law in the United States concerning freedom of speech on the internet, with specific attention to the circumstances of this case.

13. In preparing your report, please assume the factual matters stated in the section headed **Background** above. Please identify any factual assumptions on which your report is based. Please identify such principles of law as you consider relevant to the above question, and explain your reasoning with reference to applicable statutes or legislation, case law or academic literature or other material upon which your opinion is based.

Your role as an expert

14. With respect to the Federal Court's Expert Evidence Practice Note (GPN-EXPT) (**Practice Note**) (including Annexure A – Harmonised Expert Witness Code of Conduct) (**Code of Conduct**), which we have **enclosed**, we ask that you:

    (a) carefully read and fully comply with the Practice Note and Code of Conduct when preparing your report, in particular, we draw to your attention the matters at paragraph 3 of the Code of Conduct entitled 'Content of Report';

    (b) confirm in your report that you have read, understood, complied with and agree to be bound by the Code of Conduct; and

    (c) confirm in your report that you have made all the inquires which you believe are desirable and appropriate and no matters of significance which you regard as relevant have, to your knowledge, been withheld from the court.

15. As an expert, your overriding duty is to assist the Court on matters relevant to your area of expertise. You should act independently and if you consider you may have conflict of interest disclose it to us and in your report. It is not your role to advocate for a party.

16. You should identify in your report any persons who have assisted you. However, the report must contain your own opinion.

17. Your report may be used at the hearing of the matter and you may be asked to provide an affidavit (which we will draft), to which your report will be annexed or exhibited. You may also be asked to participate in a conferral of experts and prepare a joint report, and to appear at a time and place, or by means (which may if the Court permits include videolink) to give evidence.

18. Please address your report to 'the Federal Court of Australia'.

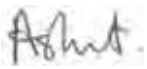
Qualifications

19. We ask that you include a statement of your expertise in the report (in other words, your relevant experience, training or study). We ask that you attach a copy of your current curriculum vitae to the report.

Thank you for your assistance.

If you have any queries regarding the above, please contact Andrew Carter on +61 2 9258 6581.

Yours faithfully



Ashurst
Enc.

(e) Cost recovery for Communications Assistance for Law Enforcement Act compliance

(1) Petitions authorized

A common carrier may petition the Commission to adjust charges, practices, classifications, and regulations to recover costs expended for making modifications to equipment, facilities, or services pursuant to the requirements of section 103 of the Communications Assistance for Law Enforcement Act [47 U.S.C. 1002].

(2) Commission authority

The Commission may grant, with or without modification, a petition under paragraph (1) if the Commission determines that such costs are reasonable and that permitting recovery is consistent with the public interest. The Commission may, consistent with maintaining just and reasonable charges, practices, classifications, and regulations in connection with the provision of interstate or foreign communication by wire or radio by a common carrier, allow carriers to adjust such charges, practices, classifications, and regulations in order to carry out the purposes of this chapter.

(3) Joint board

The Commission shall convene a Federal-State joint board to recommend appropriate changes to part 36 of the Commission's rules with respect to recovery of costs pursuant to charges, practices, classifications, and regulations under the jurisdiction of the Commission.

(June 19, 1934, ch. 652, title II, § 229, as added Pub. L. 103–414, title III, § 301, Oct. 25, 1994, 108 Stat. 4292.)

Editorial Notes

REFERENCES IN TEXT

The Communications Assistance for Law Enforcement Act, referred to in subsecs. (a) and (e), is title I of Pub. L. 103–414, Oct. 25, 1994, 108 Stat. 4279, which is classified generally to subchapter I (§ 1001 et seq.) of chapter 9 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of this title and Tables.

This chapter, referred to in subsecs. (d) and (e)(2), was in the original ''this Act'', meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

§ 230. Protection for private blocking and screening of offensive material

(a) Findings

The Congress finds the following:

(1) The rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.

(2) These services offer users a great degree of control over the information that they receive, as well as the potential for even greater control in the future as technology develops.

(3) The Internet and other interactive computer services offer a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.

(4) The Internet and other interactive computer services have flourished, to the benefit of all Americans, with a minimum of government regulation.

(5) Increasingly Americans are relying on interactive media for a variety of political, educational, cultural, and entertainment services.

(b) Policy

It is the policy of the United States—

(1) to promote the continued development of the Internet and other interactive computer services and other interactive media;

(2) to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation;

(3) to encourage the development of technologies which maximize user control over what information is received by individuals, families, and schools who use the Internet and other interactive computer services;

(4) to remove disincentives for the development and utilization of blocking and filtering technologies that empower parents to restrict their children's access to objectionable or inappropriate online material; and

(5) to ensure vigorous enforcement of Federal criminal laws to deter and punish trafficking in obscenity, stalking, and harassment by means of computer.

(c) Protection for "Good Samaritan" blocking and screening of offensive material

(1) Treatment of publisher or speaker

No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.

(2) Civil liability

No provider or user of an interactive computer service shall be held liable on account of—

(A) any action voluntarily taken in good faith to restrict access to or availability of material that the provider or user considers to be obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable, whether or not such material is constitutionally protected; or

(B) any action taken to enable or make available to information content providers or others the technical means to restrict access to material described in paragraph (1).[1]

(d) Obligations of interactive computer service

A provider of interactive computer service shall, at the time of entering an agreement with a customer for the provision of interactive computer service and in a manner deemed appropriate by the provider, notify such customer that parental control protections (such as computer hardware, software, or filtering services) are commercially available that may assist the

[1] So in original. Probably should be ''subparagraph (A).''

customer in limiting access to material that is harmful to minors. Such notice shall identify, or provide the customer with access to information identifying, current providers of such protections.

(e) Effect on other laws

(1) No effect on criminal law

Nothing in this section shall be construed to impair the enforcement of section 223 or 231 of this title, chapter 71 (relating to obscenity) or 110 (relating to sexual exploitation of children) of title 18, or any other Federal criminal statute.

(2) No effect on intellectual property law

Nothing in this section shall be construed to limit or expand any law pertaining to intellectual property.

(3) State law

Nothing in this section shall be construed to prevent any State from enforcing any State law that is consistent with this section. No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.

(4) No effect on communications privacy law

Nothing in this section shall be construed to limit the application of the Electronic Communications Privacy Act of 1986 or any of the amendments made by such Act, or any similar State law.

(5) No effect on sex trafficking law

Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

(A) any claim in a civil action brought under section 1595 of title 18, if the conduct underlying the claim constitutes a violation of section 1591 of that title;

(B) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 1591 of title 18; or

(C) any charge in a criminal prosecution brought under State law if the conduct underlying the charge would constitute a violation of section 2421A of title 18, and promotion or facilitation of prostitution is illegal in the jurisdiction where the defendant's promotion or facilitation of prostitution was targeted.

(f) Definitions

As used in this section:

(1) Internet

The term ''Internet'' means the international computer network of both Federal and non-Federal interoperable packet switched data networks.

(2) Interactive computer service

The term ''interactive computer service'' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(3) Information content provider

The term ''information content provider'' means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

(4) Access software provider

The term ''access software provider'' means a provider of software (including client or server software), or enabling tools that do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

(June 19, 1934, ch. 652, title II, §230, as added Pub. L. 104–104, title V, §509, Feb. 8, 1996, 110 Stat. 137; amended Pub. L. 105–277, div. C, title XIV, §1404(a), Oct. 21, 1998, 112 Stat. 2681–739; Pub. L. 115–164, §4(a), Apr. 11, 2018, 132 Stat. 1254.)

Editorial Notes

REFERENCES IN TEXT

The Electronic Communications Privacy Act of 1986, referred to in subsec. (e)(4), is Pub. L. 99–508, Oct. 21, 1986, 100 Stat. 1848. For complete classification of this Act to the Code, see Short Title of 1986 Amendment note set out under section 2510 of Title 18, Crimes and Criminal Procedure, and Tables.

CODIFICATION

Section 509 of Pub. L. 104–104, which directed amendment of title II of the Communications Act of 1934 (47 U.S.C. 201 et seq.) by adding section 230 at end, was executed by adding the section at end of part I of title II of the Act to reflect the probable intent of Congress and amendments by sections 101(a), (b), and 151(a) of Pub. L. 104–104 designating §§201 to 229 as part I and adding parts II (§251 et seq.) and III (§271 et seq.) to title II of the Act.

AMENDMENTS

2018—Subsec. (e)(5). Pub. L. 115–164 added par. (5).

1998—Subsec. (d). Pub. L. 105–277, §1404(a)(3), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (d)(1). Pub. L. 105–277, §1404(a)(1), inserted ''or 231'' after ''section 223''.

Subsecs. (e), (f). Pub. L. 105–277, §1404(a)(2), redesignated subsecs. (d) and (e) as (e) and (f), respectively.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2018 AMENDMENT

Pub. L. 115–164, §4(b), Apr. 11, 2018, 132 Stat. 1254, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Apr. 11, 2018], and the amendment made by subsection (a) shall apply regardless of whether the conduct alleged occurred, or is alleged to have occurred, before, on, or after such date of enactment.''

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–277 effective 30 days after Oct. 21, 1998, see section 1406 of Pub. L. 105–277, set out as a note under section 223 of this title.

SAVINGS

Pub. L. 115–164, §7, Apr. 11, 2018, 132 Stat. 1255, provided that: ''Nothing in this Act [see Short Title of 2018

Amendment note set out under section 1 of Title 18, Crimes and Criminal Procedure] or the amendments made by this Act shall be construed to limit or preempt any civil action or criminal prosecution under Federal law or State law (including State statutory law and State common law) filed before or after the day before the date of enactment of this Act [Apr. 11, 2018] that was not limited or preempted by section 230 of the Communications Act of 1934 (47 U.S.C. 230), as such section was in effect on the day before the date of enactment of this Act.''

SENSE OF CONGRESS

Pub. L. 115–164, §2, Apr. 11, 2018, 132 Stat. 1253, provided that: ''It is the sense of Congress that—

''(1) section 230 of the Communications Act of 1934 (47 U.S.C. 230; commonly known as the 'Communications Decency Act of 1996') was never intended to provide legal protection to websites that unlawfully promote and facilitate prostitution and websites that facilitate traffickers in advertising the sale of unlawful sex acts with sex trafficking victims;

''(2) websites that promote and facilitate prostitution have been reckless in allowing the sale of sex trafficking victims and have done nothing to prevent the trafficking of children and victims of force, fraud, and coercion; and

''(3) clarification of such section is warranted to ensure that such section does not provide such protection to such websites.''

Executive Documents

EXECUTIVE ORDER NO. 13925

Ex. Ord. No. 13925, May 28, 2020, 85 F.R. 34079, which related to moderation of content posted on social media platforms, was revoked by Ex. Ord. No. 14029, §1, May 14, 2021, 86 F.R. 27025.

§ 231. Restriction of access by minors to materials commercially distributed by means of World Wide Web that are harmful to minors

(a) Requirement to restrict access

(1) Prohibited conduct

Whoever knowingly and with knowledge of the character of the material, in interstate or foreign commerce by means of the World Wide Web, makes any communication for commercial purposes that is available to any minor and that includes any material that is harmful to minors shall be fined not more than $50,000, imprisoned not more than 6 months, or both.

(2) Intentional violations

In addition to the penalties under paragraph (1), whoever intentionally violates such paragraph shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(3) Civil penalty

In addition to the penalties under paragraphs (1) and (2), whoever violates paragraph (1) shall be subject to a civil penalty of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(b) Inapplicability of carriers and other service providers

For purposes of subsection (a), a person shall not be considered to make any communication for commercial purposes to the extent that such person is—

(1) a telecommunications carrier engaged in the provision of a telecommunications service;

(2) a person engaged in the business of providing an Internet access service;

(3) a person engaged in the business of providing an Internet information location tool; or

(4) similarly engaged in the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication made by another person, without selection or alteration of the content of the communication, except that such person's deletion of a particular communication or material made by another person in a manner consistent with subsection (c) or section 230 of this title shall not constitute such selection or alteration of the content of the communication.

(c) Affirmative defense

(1) Defense

It is an affirmative defense to prosecution under this section that the defendant, in good faith, has restricted access by minors to material that is harmful to minors—

(A) by requiring use of a credit card, debit account, adult access code, or adult personal identification number;

(B) by accepting a digital certificate that verifies age; or

(C) by any other reasonable measures that are feasible under available technology.

(2) Protection for use of defenses

No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this subsection or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

(d) Privacy protection requirements

(1) Disclosure of information limited

A person making a communication described in subsection (a)—

(A) shall not disclose any information collected for the purposes of restricting access to such communications to individuals 17 years of age or older without the prior written or electronic consent of—

(i) the individual concerned, if the individual is an adult; or

(ii) the individual's parent or guardian, if the individual is under 17 years of age; and

(B) shall take such actions as are necessary to prevent unauthorized access to such information by a person other than the person making such communication and the recipient of such communication.

(2) Exceptions

A person making a communication described in subsection (a) may disclose such information if the disclosure is—

(A) necessary to make the communication or conduct a legitimate business activity related to making the communication; or

Table: X Corp Removal Notice - Screenshots with date and time of capture (between 12:30 PM to 1 PM on 26 April 2024) with VPN displaying traffic routing through the US (United States IP used this session was 3.19.67.208 (Columbus, Ohio, US) and (between 4:10 PM to 4:15 PM on 26 April 2024) with VPN displaying traffic routing through US (United States IP used this session was 54.187.128.147 (Boardman, Oregon, US).

Investigations	Locators relevant to the Notice	Content as viewed with US IP

[redacted]

◀ Firefox 12:28 pm Fri 26 Apr

VPN 50%

Post

Ronny
@ibledgreen

Follow

#Breaking
Assyrian #priest stabbed on camera during mass in #Sydney, #Australia.
Footage of the alleged #stabbing was shared online.
It comes just days after a knifeman killed six people in a mall in #BondJunction, #Sydney
#SydneyAttack
#AustraliaAttack

8:36 pm · 15/4/2024 From Earth · **1.7K** Views

2 Likes **1** Bookmark

JT @xXSwaggDaddyXx1 · 16/4/2024
@jacksonhart135

Post your reply

Post

VINCENT OSHANA
@VincentOshana

Follow

WARNING: GRAPHIC VIDEO

Assyrian Bishop Mar Mari Emmanuel was stabbed multiple times in Sydney, Australia.

It happened Monday night around 7pm at Wakeley's Christ The Good Shepherd Church during a LIVE stream.

I Pray to GOD he is ok.

From **Conspiracy News**

8:37 pm · 15/4/2024 From Earth · **178K** Views

251 Reposts **53** Quotes **1.3K** Likes **156** Bookmarks

Post your reply

[redacted]

◀ Firefox 12:28 pm Fri 26 Apr

VPN 50%

Post

Aja baja 🖕
@DABoooomB

Follow

När man trodde att världen skulle bli mera civiliserad nej.. nej 🤦

Ännu en knivattack i Sydney vad fan🤬

Translate post

8:31 pm · 15/4/2024 From Earth · **180K** Views

218 Reposts **24** Quotes **1.2K** Likes **88** Bookmarks

Åby1kenåby @aby1kenaby · 15/4/2024
Borde du inte radera den har tweeten? x.com/DABoooomB/stat...

Visibility limited: this Post may violate X's rules against Violent Speech. Learn more

View

Post your reply

[redacted]

(URL redirect)

◀ Firefox 12:29 pm Fri 26 Apr

VPN 50%

Post

Steven
@nogulagsagain

Follow

This is in Sydney now.

We don't want his.

From **mark leach**

8:48 pm · 15/4/2024 From Earth · **222K** Views

400 Reposts **61** Quotes **2K** Likes **202** Bookmarks

Bitcoin Aussie @aussie_btc · 15/4/2024

Still bullish on Sydney property - analysis coming in SMH shortly

Post your reply

[redacted]

Post

Disclose.tv ✓
@disclosetv

Follow

NOW - Christian leader stabbed multiple times in Sydney's west.

From **VISION**

8:18 pm · 15/4/2024 From Earth · **3.2M** Views

3.6K Reposts **1.5K** Quotes **15K** Likes **2.5K** Bookmarks

Disclose.tv ✓ @disclosetv · 15/4/2024

UPDATE - Four people stabbed at Christ The Good Shepherd Church in a western Sydney suburb. Major police operation underway.

47 332 2.3K 208K

INV-2024-11301 [redacted]

(URL redirect)

Firefox 12:29 pm Fri 26 Apr

VPN 50%

Post

Sulaiman Ahmed
@ShaykhSulaiman

Follow

BREAKING: ISRAELI SOCIAL MEDIA GROUPS ARE CELEBRATING STABBING OF ANTI-ZIONIST CHRISTIAN BISHOP MAR MARI EMMANUEL IN AUSTRALIA

1:26 am · 16/4/2024 From Earth · **124K** Views

Post your reply

[redacted]

Firefox 12:30 pm Fri 26 Apr

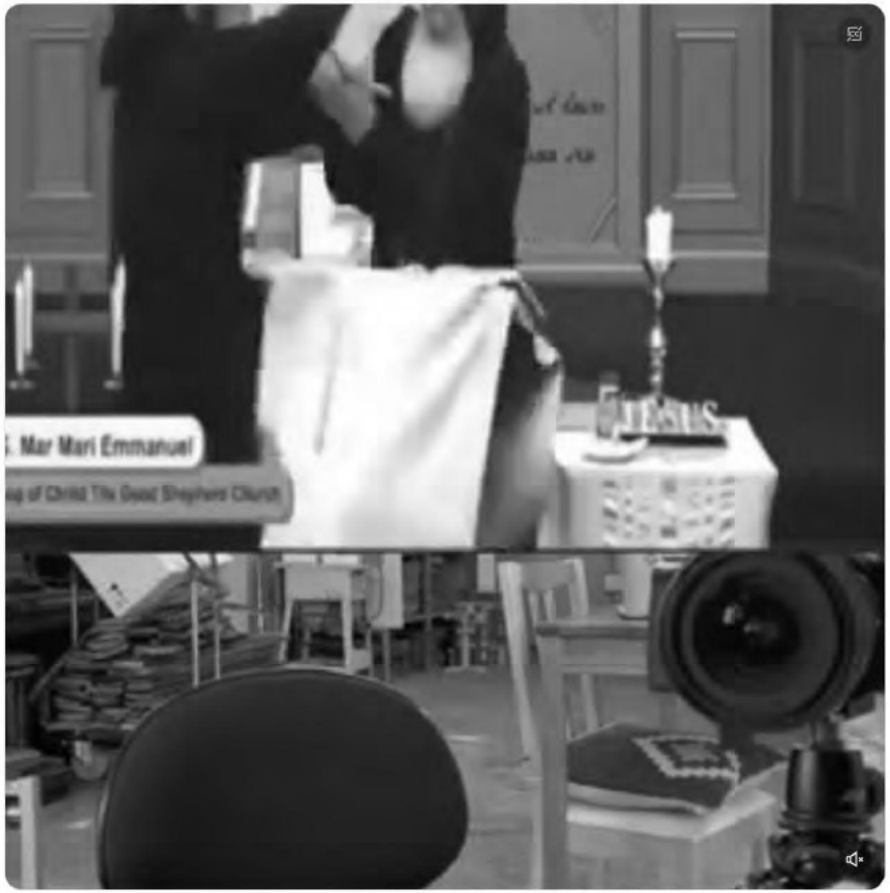
VPN 50%

Post

Lexit
@LexitMovement1

Follow

⚠️(Graphic Warning)⚠️ Christian Bishop attacked by Muslim chanting Allahu Akbar. Bishop Mar Mari Emmanuel was attacked and stabbed during the service at the Christ the Good Shepherd church - barely 48 hours after an earlier mass stabbing attack in the city.



4:03 am · 16/4/2024 From Earth · **119K** Views

Post your reply

INV-2024-11303	[redacted] Post removed	

[redacted]

Firefox 12:30 pm Fri 26 Apr

VPN 49%

Post

Lauren Witzke
@LaurenWitzkeDE

Follow

Another stabbing in Syndey, this time in a church.

Looks like another refugee or migrant, but of course the Media hasn't exactly revealed the attacker's status.

They're getting more hostile.

8:28 pm · 15/4/2024 From Earth · **23K** Views

115 Reposts **10** Quotes **485** Likes **47** Bookmarks

Ronald John @rontech777 · 15/4/2024
Don't be quick to judge.
Do you even know that yesterday's mass mall stabbing was done by the White Australian.

Post your reply

INV-2024-11305

[redacted]

(URL redirect)

◀ Firefox 12:30 pm Fri 26 Apr

VPN 49%

Post

Ace
@ThatUchihaGuy

Follow

From **Australian Jewish Association**

12:18 am · 16/4/2024 From Earth · **2.2K** Views

4 Reposts **3** Quotes **13** Likes **6** Bookmarks

Veronique Helmridge-Marsillian @VeroniqueAlba · 16/4/2024

Thank you for showing this. I don't believe in hiding horror.

1 47

INV-2024-11306

[redacted]

(URL redirect)

Firefox 12:31 pm Fri 26 Apr

VPN 49%

Post

Pavvy G
@pavyg

Follow

Another shocking stabbing caught on video today in Sydney in a church. I hope the priest is ok. 🙏

From **VISION**

8:25 pm · 15/4/2024 From Earth · **36K** Views

14 Reposts **4** Quotes **142** Likes **19** Bookmarks

Kate_Lex_Bee24 @K8_Bee24_Lex · 15/4/2024
Not watching it, just wondering what the f is happening and why everyone is seemingly ok to let it carry on.

1 8 2K

Pavvy G @pavyg · 15/4/2024

Post your reply

[redacted]

◀ Firefox 12:31 pm Fri 26 Apr

VPN 49%

Post

UniversalTimes
@UniversalTimes_

Follow

Bishop Mari Mari Emmanuel of the Assyrian Church in Australia has been attacked during a church service in Western Sydney.

#SydneyAttack #sydneyattacks #Bishop #BishopMari #MariMari #Emmanuel #Australia #Sydney #Christian #Catholic

From **Aussie Cossack**

7:30 am · 16/4/2024 From Earth · **985** Views

1 Quote **3** Likes **1** Bookmark

Todd Brumsley | Great American Society Plan @Todd... · 16/4/2024
x.com/toddbrumsley/s...

Post your reply

[redacted]

◀ Firefox 12:32 pm Fri 26 Apr

VPN 49%

Post

WCA NGO
@wca_ngo

Follow

1/2 We vehemently condemn the attack on Sydney's Aramean Bishop Mar Mari Emmanuel & Fr. Isaac Royel during the Bishop's Aramaic sermon! Thank God, both have survived & remain stable.

Following the wishes of the 2 men of peace, we invite everyone to pray not only for the victims

7:11 am · 16/4/2024 From Earth · **14K** Views

12 Reposts **4** Quotes **52** Likes **21** Bookmarks

WCA NGO @wca_ngo · 16/4/2024
but also for Muslim perpetrator, embodying Jesus' teaching to choose LOVE over hatred.

When will we create peace btwn our communities? We call upon Muslim leaders to stand with us in embracing our differences and fighting for peaceful coexistence.

Post your reply

[redacted]

Firefox 12:33 pm Fri 26 Apr

VPN 49%

Post

Americas Tribune
@AmericasTribune

Follow

MUSLIM ATTACKS CHRISTIAN PREACHER!
#Christians around the world are outraged by 15 year old Muslim who #attacked popular #Christian teacher #Bishop Mar Mari Emmanuel as he was speaking at his #church in #Sydney #Australia. God was on the side of the Bishop, as the knife "malfunctioned" in the hand of #Muslim attacker. #God was protecting him.

Post your reply

[redacted]

◀ Firefox 12:34 pm Fri 26 Apr

VPN 48%

Post

PUREBLOOD. I WILL NOT COMPLY 💪
@EYESPY59822344

Follow

WARNING: GRAPHIC VIDEO

Assyrian Bishop Mar Mari Emmanuel was stabbed multiple times in Sydney, Australia.

6:27 am · 16/4/2024 From Earth · **1.1K** Views

Post your reply

[redacted]


◀ Firefox 12:34 pm Fri 26 Apr
VPN 48%
Pray for Bishop Mari Mari
BREAKING NEWS
Mar Mari has just been attacked
during live stream
TikTok
@ zeeshan_0724
00:01 / 10:40
DR. Kek
@Thekeksociety · 16/4/2024
Follow
CONTROVERSIAL
BISHOP
226
1.6K
3.9K
539K
Swipe up for more

[redacted]

◀ Firefox 12:34 pm Fri 26 Apr

VPN 48%

Post

Bud...
@bud_cann

Follow

Anti-Israel protesters are shutting down Chicago's O'Hare Airport, the Golden Gate Bridge, and Wall Street, while In Sydney, Australia, Bishop Mar Mari Emmanuel, is attacked and stabbed by a Muslim Jihadi yelling "Allah Akbar." The complete, utter stupidity, among anti-Israel, pro-Palestinian, Muslim, supporters, especially the LGBTQ+ community, is astounding, these religious Islamic fanatics want all Christians, Jews, LGBTQ+, and non-Muslims dead!

Post your reply

[redacted]

Firefox 12:35 pm Fri 26 Apr

48%

Post

PUREBLOOD. I WILL NOT COMPLY

@EYESPY59822344

Follow

WARNING: GRAPHIC VIDEO

Assyrian Bishop Mar Mari Emmanuel was stabbed multiple times in Sydney, Australia.

conspiracyfiles

Post your reply

[redacted]

◀ Firefox 12:35 pm Fri 26 Apr

VPN 48%

Post

Armando Bennett
@Tesla_Armando

Follow

What is happening to our world? Is there no place left for people to feel safe? A Christian community in Sydney, Australia was rattled by a disturbing incident during a sermon on Monday.

Assyrian Bishop Mar Mari Emmanuel and multiple churchgoers were viciously stabbed by a 15-year-old assailant, who was armed with a knife. This shocking incident has sparked outrage among the local Christian community.

Post your reply

[redacted]

◀ Firefox 12:35 pm Fri 26 Apr

VPN 48%

Post

Bree A Dail
@breeadail

Follow

SYDNEY, AUSTRALIA—
Christian leader stabbed during Monday evening liturgy.

Assyrian Christian Bishop Mar Mari Emmanuel (@HGBishopMariEm1) known for his fiery sermons, as an outspoken critic of Islam, government overreach, was stabbed, yesterday, during liturgy.

WARNING: GRAPHIC

Last edited 10:52 pm · 15/4/2024 From Earth · **355K** Views

485 Reposts **90** Quotes **1.5K** Likes **212** Bookmarks

This reply was hidden by the original Post author. Learn more

Post your reply

[redacted]

Firefox 12:36 pm Fri 26 Apr

48%

Post

Yavuz Kartal
@YavuzKartal03

Follow

Avusturalya'nın Sidney kenti yakınlarında vaaz veren antisiyonist Psikopos Mar Mari Emmanuel, Gazze'deki deneyimlerini anlatıp, Gazze'de küçük çocukların öldürülmemesi gerektiğini anlatırken bıçaklı saldırıya uğradı

Translate post

9:14 pm · 15/4/2024 From Earth · **30K** Views

801 Reposts **24** Quotes **1.1K** Likes **27** Bookmarks

Yüksel Yılmaz @adilvemakul1453 · 15/4/2024
Saldırgan kim
1 · 1.5K

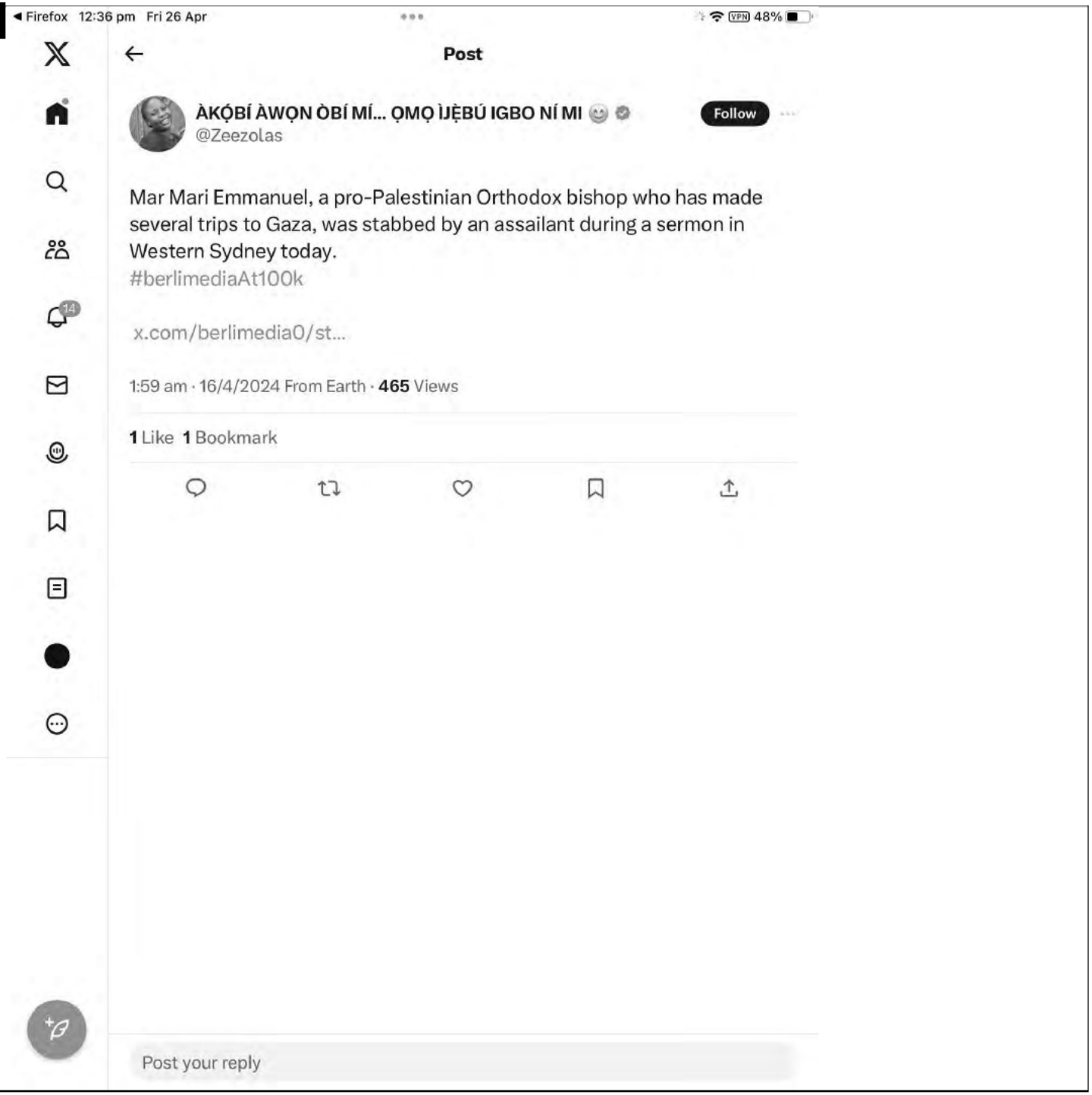
Yavuz Kartal @YavuzKartal03 · 15/4/2024
Henüz ismi açıklanmadı

Post your reply

INV-2024-11317

[redacted]

Source video removed – No longer class 1



[redacted]

Post

Andre Nuta
@andre_nuta

Follow

Christian Bishop Mar Mari Emmanuel was stabbed multiple times in suburb of Sydney during livestream of his service. The Bishop is a big free speech advocate who calls out the media lies and is an ardent supporter of President Trump and will recover fully.

From **VISION**

1:25 am · 16/4/2024 From Earth · **407** Views

1 Repost **3** Bookmarks

Post your reply

[redacted]

◀ Firefox 12:37 pm Fri 26 Apr

VPN 47%

Post

kevin blue
@kevinblue345

Follow

Wait, but white people are not violent. Don't Pray for this man Bishop Mar Mari Emmanuel who leads the Christ the Good Shepherd Church in Wakeley in Sydney's western suburbs.

1:09 am · 16/4/2024 From Earth · **508** Views

Post your reply

Post

Sanatan Prabhat
@SanatanPrabhat

Follow

Bishop Mar Mari Emmanuel, severely injured in a stabbing attack at the Christ the Good Shepherd Church, in Wakeley, Sydney while delivering his sermon.

This is just days after the Sydney shopping center mass stabbing that killed six.

From **Australian Jewish Association**

12:55 am · 16/4/2024 From Earth · **2K** Views

26 Reposts **1** Quote **28** Likes

Post your reply

[redacted]

Post

Edward
@DonKlericuzio

Follow

Bishop Mar Mari Emmanuel was preaching at Christ The Good Shepherd Church in Wakeley in Sydney's west Australia on Monday just after 7pm when a man dressed in black while live streaming walked up to the altar and stabbed him multiple times alongside other priests.

The culprit was already wanted for driving into a church and blaring quranic verses from car speaker.

Bishop Emmanuel of the Aramiac church is in stable condition in the hospital.

Last edited 12:53 am · 16/4/2024 From Earth · **5.9K** Views

24 Reposts **7** Quotes **13** Likes **6** Bookmarks

Post your reply

[redacted]

◀ Firefox 12:38 pm Fri 26 Apr

VPN 47%

Post

Vivid. 🇮🇱
@VividProwess

Follow

Bishop Mari Emmanuel was brutally stabbed in Sydney, Australia.

The demon behind this heinous act screamed ‘allah akbar’, obviously proud of his despicable actions.

It's clear who the culprit is, and justice will be served.

From **Aussie Cossack**

12:47 am · 16/4/2024 From Earth · **33K** Views

94 Reposts **18** Quotes **282** Likes **47** Bookmarks

Vivid. 🇮🇱 @VividProwess · 16/4/2024
This demon mercilessly attacks Christians for daring to criticize Islam. He

Post your reply

[redacted]

Post

Faizan Sarwar Khan
@faizansarwar__

Follow

Prayers for Bishop Mari Emmanuel in Sydney, stabbed whilst celebrating the Mass.

I understand he and the other injured worshippers will survive this evil attack.

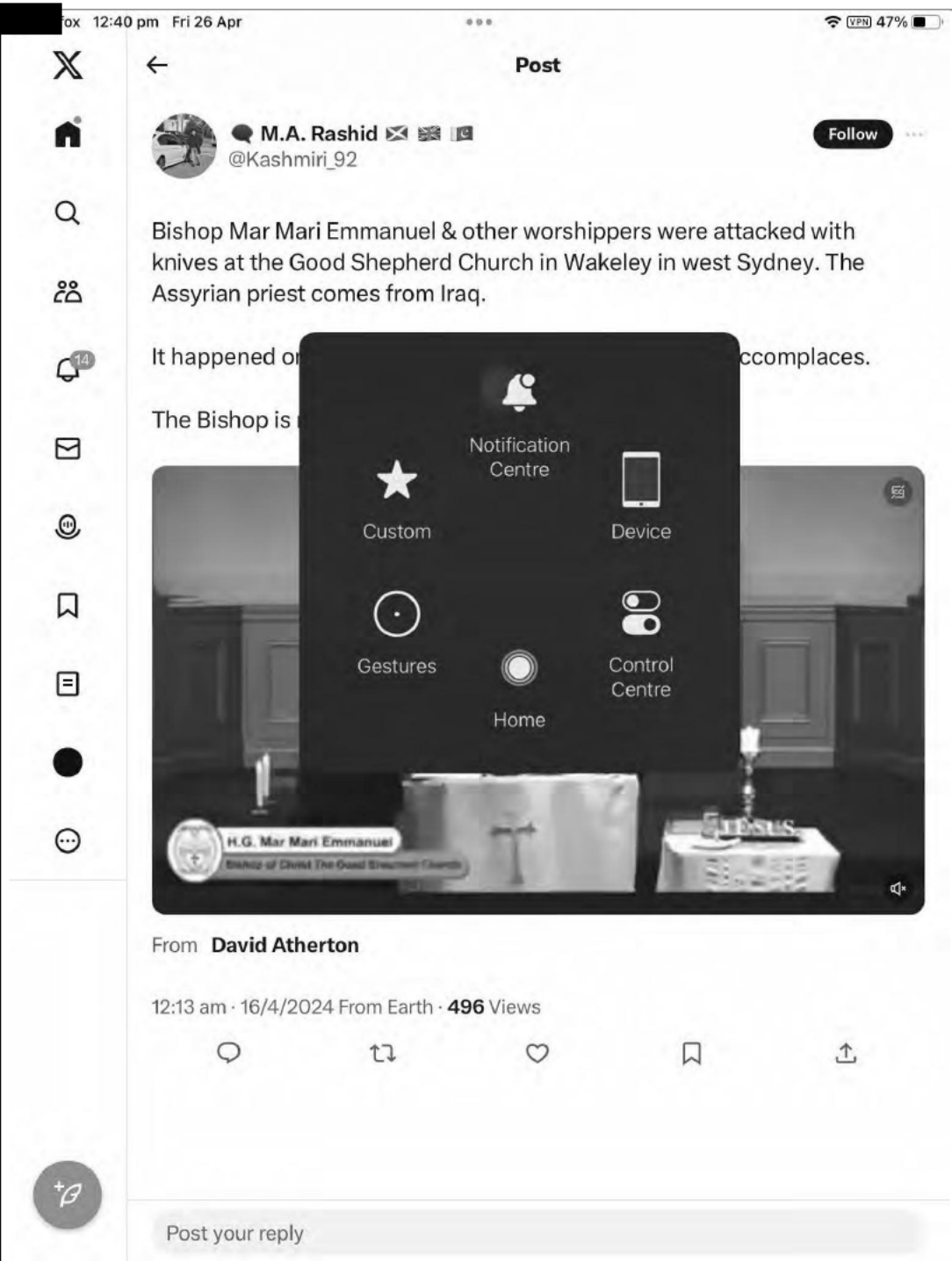
Christian persecution is growing.
Our prayers must grow to match.

From **Visegrád 24**

12:19 am · 16/4/2024 From Earth · **224** Views

2 Likes

Post your reply

INV-2024-11324	[redacted] Didn't capture correctly first time. Second capture between 4:10 PM to 4:15 PM on 26 April 2024 **with VPN displaying traffic routing through US (United States IP used this session was 54.187.128.147 (Boardman, Oregon, US).**	

◀ Firefox 4:13 pm Fri 26 Apr

VPN 34%

Post

M.A. Rashid

@Kashmiri_92

Follow

Bishop Mar Mari Emmanuel & other worshippers were attacked with knives at the Good Shepherd Church in Wakeley in west Sydney. The Assyrian priest comes from Iraq.

It happened on Monday after 7.00 & the attacker had 2 accomplaces.

The Bishop is not hurt.

From **David Atherton**

12:13 am · 16/4/2024 From Earth · **498** Views

Post your reply

[redacted]

◀ Firefox 12:41 pm Fri 26 Apr

VPN 47%

Post

David Atherton
@DaveAtherton20

Follow

🚨 Breaking News 🚨

Bishop Mar Mari Emmanuel & other worshippers were attacked with knives at the Good Shepherd Church in Wakeley in west Sydney. The Assyrian priest comes from Iraq.

It happened on Monday after 7.00 & the attacker had 2 accomplaces.

The Bishop is not hurt.

8:48 pm · 15/4/2024 From Earth · **111K** Views

293 Reposts **60** Quotes **826** Likes **90** Bookmarks

Dame Jane Michael @JaneMichael62 · 15/4/2024

Post your reply

[redacted]

Post

Shanthosh
@shanthosh

Follow

Mar Mari Emmanuel, a pro-Palestinian Orthodox bishop who has made several peregrinations to Gaza, was stabbed by an assailant during a sermon in Western Sydney today.

From **Denis Rogatyuk**

11:27 pm · 15/4/2024 From Earth · **505** Views

2 Reposts **1** Bookmark

Post your reply

[redacted]

◀ Firefox 12:42 pm Fri 26 Apr

VPN 46%

Post

ENG. H.K.Z 🇺🇸
@The__Leader_

Follow

🪨 Sydney: Attack on an anti-Israel Christian bishop.

Israelis on X celebrate the stabbing of Christian Bishop Mar Mari Emmanuel in a church in Sydney because of his anti-Israeli aggression on Palestinians.
#Israel
#Gaza
#IsraeliTerrorists

Post your reply

[redacted]

◀ Firefox 12:42 pm Fri 26 Apr

VPN 46%

Post

micdu
@kafankafan

Follow

pic.twitter.com/wtOTHL5wgf Graphic video
Israelis on X celebrate stabbing of Christian Bishop Mar Mari Emmanuel in a church in Sydney because of his anti-Israeli aggression on Palestinians
Does X consider the issue of hate speech?!

What do Christian world leaders think of this?'

Post your reply

[redacted]

Firefox 12:42 pm Fri 26 Apr

VPN 46%

Post

Shakeel Ahmed
@shakelahmad0331

Follow

Bishop Mar Mari Emmanuel who publicly expressed support for the Palestinians and criticized Israel was stabbed several times during mass in Sydney, Australia.
#Iran #Isreal #IsraeliTerrorists #Drones #WWIII
#TelAviv #Iranians

From **VISION**

11:08 pm · 15/4/2024 From Earth · **9.4K** Views

10 Reposts **1** Quote **17** Likes **6** Bookmarks

M31 @M311846911M31 · 15/4/2024
x.com/cepocambiario/...

Post your reply

[redacted]

◀ Firefox 12:43 pm Fri 26 Apr

VPN 46%

Post

Harish Mali
@HarishMali06

Follow

Bishop Mar Mari Emmanuel was stabbed multiple times in Sydney by a suspected Islamic extremist who reportedly shouted “Allahu Akbar” as he was tackled to the ground.

From **Tommy Robinson**

11:07 pm · 15/4/2024 From Earth · **388** Views

1 Repost **1** Quote **3** Likes

Cheryl Campbell @cruachaner · 15/4/2024
This is horrifying!

36

Show more replies

[redacted]

Firefox 12:43 pm Fri 26 Apr

VPN 46%

Post

Global Watch Feed
@GlobalWatchFeed

Follow

Israelis on X celebrate the stabbing of Christian Bishop Mar Mari Emmanuel in a church in Sydney because of his anti-Israeli aggression on Palestinians.

#stabbing
#IsraeliTerrorists

Post your reply

[redacted]

◀ Firefox 12:44 pm Fri 26 Apr

VPN 46%

Post

DSTAP
@bok95358974

Follow

⚡Mar Mari Emmanuel, a pro-Palestinian Orthodox bishop who has made several trips to Gaza, was stabbed by an assailant during a sermon in Western Sydney today.

Thankfully the bishop survived.

From **Denis Rogatyuk**

10:49 pm · 15/4/2024 From Earth · **290** Views

1 Like **1** Bookmark

Show additional replies, including those that may contain offensive content

Show

Post your reply

[redacted]

◀ Firefox 12:44 pm Fri 26 Apr

VPN 46%

Post

jewels
@Jewels_MsJay

Follow

Bishop Mar Mari Emmanuel was stabbed live in Wakeley, #Sydney, while delivering his sermon.

Wtf..

From **Andrew Tate**

10:28 pm · 15/4/2024 From Earth · **512** Views

Post your reply

[redacted]

(URL redirect)

◀ Firefox 12:44 pm Fri 26 Apr

VPN 45%

Post

James Porrazzo
@JamesPorrazzo

Follow

Second Terror Attack in Sydney, Australia: Orthodox Priest stabbed during service 🇦🇺
Will the ultra-liberal Australian state try to lie about the facts surrounding this as well? This is the **second attack** by a **religious extremist** in days...

James Porrazzo @JamesPorrazzo · 15/4/2024

🇷🇺🇦🇺 Russian saves Australian lives from terrorist in Sydney. Mainstream media stays quiet.

A Russian man found himself in a dilemma in one of the most liberal places on planet Earth: a Sydney, Australia, shopping mall.

Shoppers were being attacked by a knife-wielding lunatic,... Show more

Post your reply

[redacted]

◀ Firefox 12:45 pm Fri 26 Apr

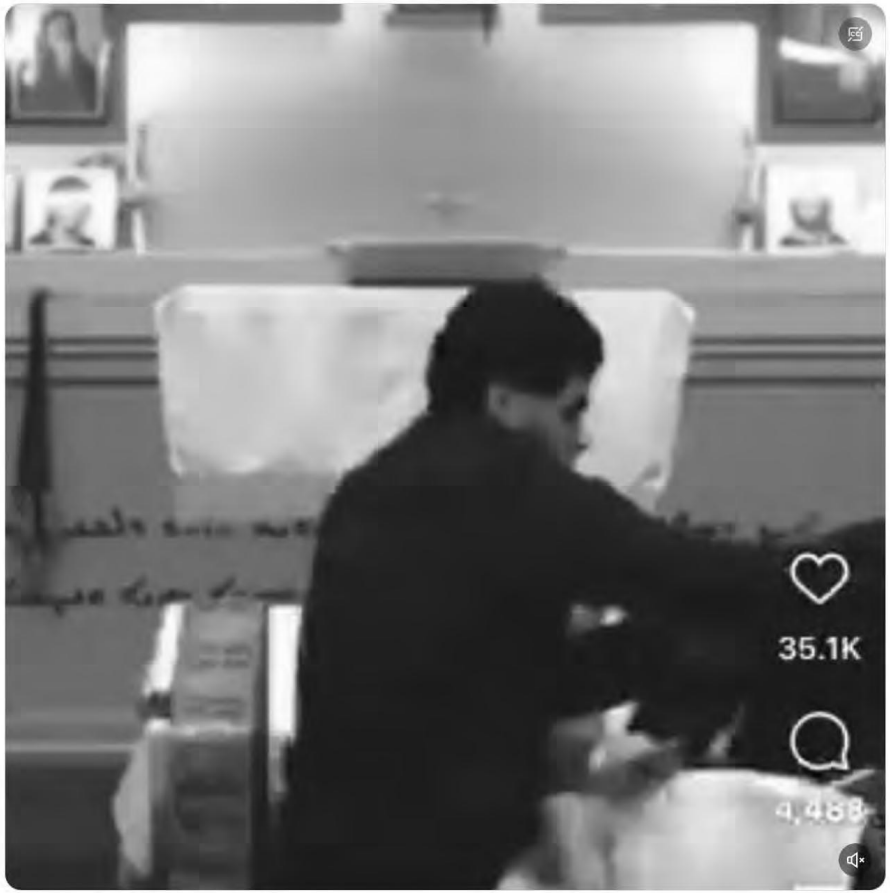
VPN 45%

Post

Jason Neptune
@SobrietyCM

Follow

Eastern (Assyrian) Christian Bishop Mar Mari Emmanuel stabbed by crazed assailant in Australia. His next sermon was expected to address Transgenderism....
****



10:37 am · 16/4/2024 From Earth · **484** Views

Post your reply

[redacted]

◀ Firefox 12:45 pm Fri 26 Apr

VPN 45%

Post

Zlatko NO DM ✋❌🚫
@Vistandcompany

Follow

Why The Bishop, Mar Mari Was Attacked...???

10:14 am · 16/4/2024 From Earth · **391** Views

Post your reply

INV-2024-11337

[redacted]

(URL redirect)

◀ Firefox 12:46 pm Fri 26 Apr

VPN 45%

Post

Jeckov Kanani
@JeckovKanani

Follow

Assyrian Bishop Mar Mari Emmanuel stabbed in Australia during a sermon, sparking outrage among the local Christian community! ✝️

WTF

2:00 am · 16/4/2024 From Earth · **120K** Views

Post your reply

[redacted]

Firefox 12:46 pm Fri 26 Apr

45%

Post

MiguelArrázola
@PMiguelArrazola

Follow

Bishop Mar Mari Emmanuel Pastor De la Iglesia Cristo el Buen Pastor en Australia fue apuñalado por un fundamentalista islámico mientras daba su sermón, otra pastor de la congregación también resultó herido.

Los Cristianos somos el grupo más perseguidos en el mundo.

Translate post

9:34 am · 16/4/2024 From Earth · **1.6K** Views

7 Reposts **16** Likes **4** Bookmarks

monica marcela florez neira @FlorezMarc8861 · 16/4/2024
Jeremías 3:33

Post your reply

[redacted]

Firefox 12:47 pm Fri 26 Apr

45%

Post

Tommy Robinson
@TRobinsonNewEra

Follow

Bishop Mar Mari Emmanuel has been attacked and stabbed by a suspected Islamist during a service in Sydney Australia.

Or it could be another white Christian with mental health issues.

You decide.

8:37 pm · 15/4/2024 From Earth · **1.3M** Views

1.5K Reposts **209** Quotes **5.2K** Likes **325** Bookmarks

Johnny K @PatriotTommy1 · 15/4/2024
Imagine what would happen if a Christian walked into a mosque and stabbed an imam?

Post your reply

[redacted]

◀ Firefox 12:47 pm Fri 26 Apr

VPN 45%

Post

bluetack

@N_Ohesitation

Follow

🇮🇱🇦🇺14/4/24, BREAKING: STABBING ATTACK AT SYDNEY CHURCH THIS EVE

*** WARNING - confronting violent content

Bishop Mar Mari was just attacked during live stream in Wakeley, Sydney (near Fairfield) while delivering his sermon.🇦🇺🇮🇱

Post your reply

[redacted]

◀ Firefox 12:47 pm Fri 26 Apr

VPN 44%

Post

Addicted
@Halifaximir

Follow

#BishopMarMari

Bishop Mar Mari was just attacked live in Wakeley, Sydney while delivering his sermon by a suspected Islamist.

I hope he survives this. Bishop Mari is a true warrior

#Sydneystabbing

From **VISION**

10:02 pm · 15/4/2024 From Earth · **670** Views

Post your reply

[redacted]

Firefox 12:48 pm Fri 26 Apr

VPN 44%

Post

Catholic Arena
@CatholicArena

Follow

SYDNEY

Bishop Mar Mari stabbed and attacked in terrorist attack during Mass

8:17 pm · 15/4/2024 From Earth · **624K** Views

1.2K Reposts **409** Quotes **3.8K** Likes **484** Bookmarks

Ancestral Vril @AncestralVril · 15/4/2024
Either a Jew, Muslim or atheist did it.
39 24 453 26K

Joaquin Martinez @JoaquinMar67151 · 15/4/2024
Australian gun control laws only served to leave Australians defenseless against these attacks. These attacks will become more frequent until

Post your reply

[redacted]

◀ Firefox 12:48 pm Fri 26 Apr

VPN 44%

Post

UltimateMaster
@ultimateemaster

Follow

Stabbing in Sydney, Australia once again. World knows who is behind this..

From **Visegrád 24**

Last edited 10:02 pm · 15/4/2024 From Earth · **456** Views

4 Likes

Show more replies

Post your reply

[redacted]

◀ Firefox 12:49 pm Fri 26 Apr

VPN 44%

Post

X Secular @XSecular_

Follow

Anger erupts as hundreds of Australians surround the scene of a stabbing rampage.

Crowds have gathered outside Christ The Good Shepherd Church in Wakeley, Sydney after a man shouting “Allahu Akbar” stabbed a Bishop and 3 Christians.

Riot police have been deployed.

10:01 pm · 15/4/2024 From Earth · **1.8K** Views

9 Reposts **1** Quote **12** Likes

Rebecca Galbraith @Musicalically · 15/4/2024

can't hear it. Wait for facts.

1 67

INV-2024-11345

[redacted]

(URL redirect)

◀ Firefox 12:49 pm Fri 26 Apr

VPN 44%

Post

Mitchelle Kennedy
@Trip2025

Follow

Sydney church stabbing: Bishop stabbed during sermon - reports

A bishop and several other people have been stabbed during a sermon in Sydney that was being streamed online, local media report.

10:00 pm · 15/4/2024 From Earth · **218** Views

Mitchelle Kennedy @Trip2025 · 15/4/2024

The incident reportedly happened on Monday night in the suburb of Wakeley.

Police responded to reports that a number of people had been stabbed but said none of their injuries were life-threatening.

They added that a man had been arrested.

1 132

Post your reply

[redacted]

◀ Firefox 12:50 pm Fri 26 Apr

VPN 44%

Post

VISION @Vision_iii

Follow

#BishopMarMari

Bishop Mar Mari was just attacked live in Wakeley, Sydney while delivering his sermon by a suspected Islamist.

I hope he survives this. Bishop Mari is a true warrior

#Sydneystabbing

7:46 pm · 15/4/2024 From Earth · **272K** Views

549 Reposts **281** Quotes **1.4K** Likes **311** Bookmarks

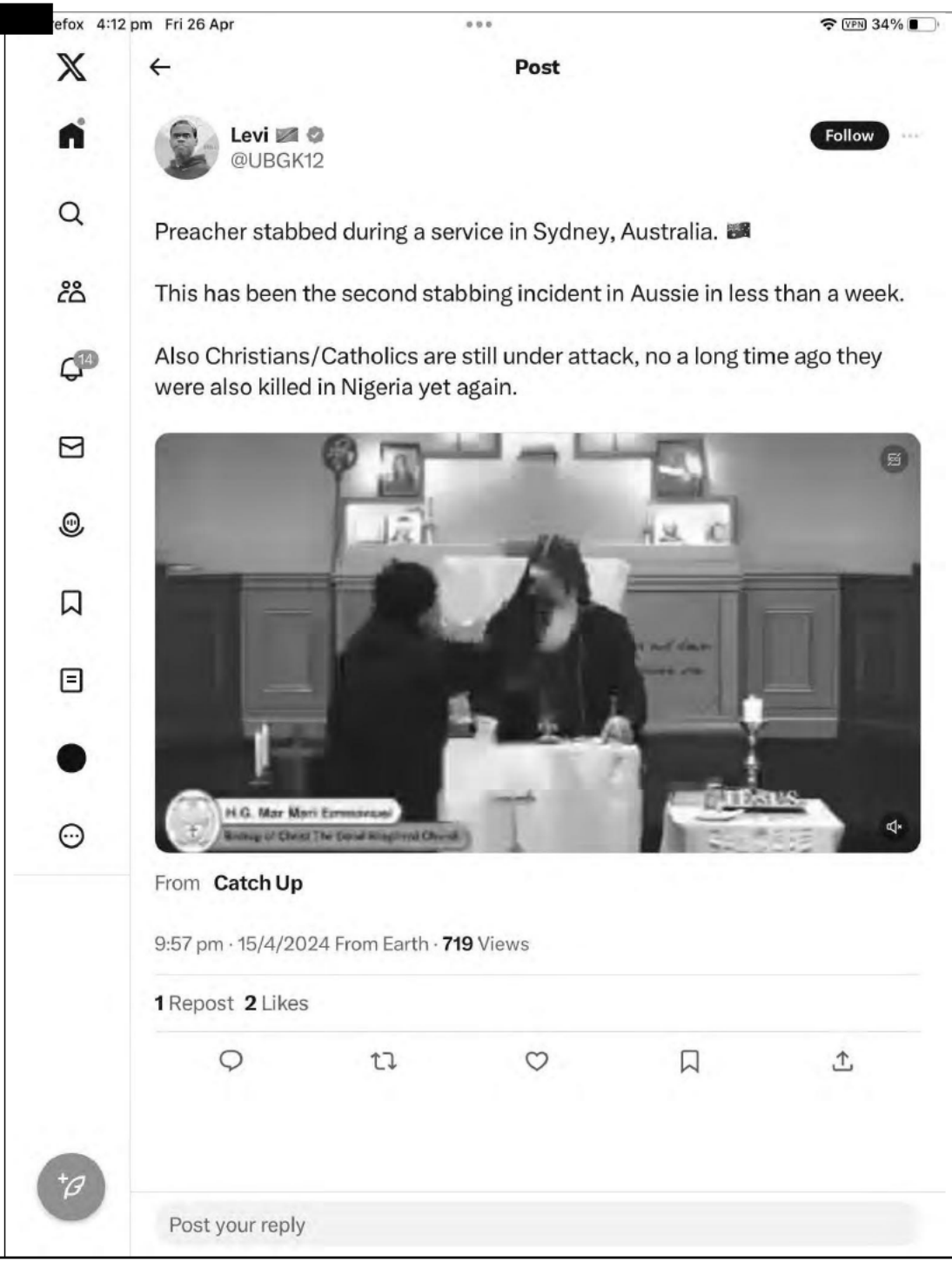
VISION @Vision_iii · 15/4/2024

In his own words while being detaining, the attacker says (Arabic

Post your reply

INV-2024-11347 [redacted]

Didn't capture correctly first time. Second capture between 4:10 PM to 4:15 PM on 26 April 2024 **with VPN displaying traffic routing through US (United States IP used this session was 54.187.128.147 (Boardman, Oregon, US).**



INV-2024-11348 [redacted]

(URL redirect)

◀ Firefox 12:51 pm Fri 26 Apr VPN 43%

Post

@NicoVantii

Follow

‼️ BREAKING: ‼️

A bishop named Mar Mari Emmanuel, the bishop at Christ the Good Shepherd. and several worshippers have been stabbed & attacked during a mass stabbing at The Good Shepherd Church in Wakeley, located in Sydney's western suburbs.

The attack occurred a few hours ago (Monday Evening) while Bishop Mari Emmanuel was delivering a sermon, and the horrifying incident was captured on the church's live social media broadcast.

- Bishop Mari Emmanuel was preaching at The Good Shepherd Church in Wakeley, Sydney's west, when the attack took place.
- An attacker approached the altar and stabbed the bishop multiple times, targeting his face and head.
- Several worshippers were also reportedly attacked during the incident.
- The shocking attack was captured on the church's live social media broadcast, which showed Bishop Emmanuel's astonishment as the attacker unleashed a series of blows.
- This incident comes shortly after another mass stabbing that recently occurred in Sydney, highlighting the city's ongoing struggle with such violent acts.
- The motive behind the attack and the condition of the victims have not been disclosed at this time.
- Local authorities are expected to investigate the incident thoroughly and provide more information as it becomes available.

Post your reply

◀ Firefox 12:51 pm Fri 26 Apr

VPN 43%

Post

Insider Paper
@TheInsiderPaper

Follow

BREAKING: *ANOTHER MASS STABBING* - A bishop and several worshippers have been attacked in another mass stabbing in Wakeley, Sydney

From **VISION**

8:22 pm · 15/4/2024 From Earth · **362K** Views

604 Reposts **170** Quotes **1.2K** Likes **201** Bookmarks

Alexander ✝ @praisethechrist · 15/4/2024
If he is a muslim...

Post your reply

[redacted]

◀ Firefox 12:52 pm Fri 26 Apr

VPN 43%

Post

The Narco's Blog
@narcoblogger_en

Follow

El obispo Mar Mari acaba de ser atacado a puñaladas en vivo por un islamista en Wakeley, oeste de Sydney, mientras pronunciaba su sermón.

#Sydneystabbing

From javieroliver.co

9:50 pm · 15/4/2024 From Earth · **6.7K** Views

12 Reposts **1** Quote **102** Likes **7** Bookmarks

jp2014 @Jv4life2014 · 15/4/2024

Post your reply

[redacted]

◀ Firefox 12:52 pm Fri 26 Apr

VPN 43%

Post

Rosy
@rose_k01

Follow

🟥🟥🟥 Another Stabbing in #Sydney Bishop Mar Mari was just attacked while delivering his sermon in Sydney

9:49 pm · 15/4/2024 From Earth · **4.3K** Views

29 Reposts **1** Quote **68** Likes **2** Bookmarks

Dachshund Lover @DachshundLove17 · 15/4/2024
@cnnbrk @MSNBC @maddow @JoeNBC

67

Bhartiye Hamesha !!(मैं भी मोदी का परिवार) @romi2465 · 16/4/2024

Post your reply

[redacted]

◀ Firefox 12:52 pm Fri 26 Apr

VPN 43%

Post

(Khuzi)
@Huzaifa45555

Follow

Anti Zionist preacher "Stopping killing little Muslim girls, they are little angels" stabbed in Sydney Australia

From **Andrew Tate**

9:23 pm · 15/4/2024 From Earth · **341** Views

1 Quote

Post your reply

[redacted]

◀ Firefox 12:53 pm Fri 26 Apr

VPN 43%

Post

Forsige Breaking News
@ForsigeNews

Follow

🎥WATCH: Is Sydney the new hub of terror attack in Europe?

Controversy has erupted over the recent stabbing of a priest inside a church during a sermon in Sydney drawing a correlation to the Bondi Junction attack.
#BondiJunction #BondiTerrorAttack #BondiWestfield #SydneyAttack

9:44 pm · 15/4/2024 From Earth · **1.4K** Views

emotional support camel @doritoeubanks · 15/4/2024
Terror, NO.
Europe, DEFINITELY NOT.

32

Jane Mac @MaxKatandJane · 15/4/2024
NO

Post your reply

◀ Firefox 12:53 pm Fri 26 Apr

VPN 43%

Post

Visegrád 24
@visegrad24

Follow

An attack on a priest has just been captured on a live stream at the Christ the Good Shepherd Church in the Sydney suburb of Wakeley.

7:59 pm · 15/4/2024 From Earth · **2.8M** Views

5.4K Reposts **1K** Quotes **18K** Likes **1.9K** Bookmarks

Paul @PaulDHeenan · 15/4/2024

In Egypt - due to attacks from Muslims - Christians get a tattoo of a Coptic cross on their wrist, so that they can check if someone entering a church is a Christian.

As mass, unregulated Islamic migration continues into the West we might soon have to do the same.

Post your reply

[redacted]

◀ Firefox 12:54 pm Fri 26 Apr

VPN 42%

Post

THE SQUADRON
@THE_SQUADRØN

Follow

🇦🇺🚨 A few days after the Bondi Junction stabbing in Sydney, Australia, an unknown man just went to the Altar with a knife to stab the pastor at the Christ the Good Shepherd Church on Livestream. 2nd Incident in 3 days

#BondiJunction #SydneyAttack #terrorist #AustraliaAttack #Australia

10:51 pm · 15/4/2024 From Earth · **1.5K** Views

2 Reposts **7** Likes

Post your reply

[redacted]

◀ Firefox 12:54 pm Fri 26 Apr

VPN 42%

Post

Censored Men
@CensoredMen

Follow

🇻🇦 🇦🇺 #BREAKING: Sydney priest, Mari Mari Emmanuel, was just attacked during a live sermon.

It looks as though the attacker was armed with a knife.

Emmanuel is a very well known Orthodox priest all around the world.

Absolutely terrible, praying for his good health 🙏🖤

Last edited 8:15 pm · 15/4/2024 From Earth · **4.3M** Views

4.4K Reposts **1K** Quotes **21K** Likes **3.1K** Bookmarks

Censored Men @CensoredMen · 15/4/2024
In November he talked about his trip to Gaza

Post your reply

INV-2024-11408

[redacted]

(URL redirect)

◀ Firefox 12:54 pm Fri 26 Apr

VPN 42%

Post

Fr Calvin Robinson
@calvinrobinson

Follow

Prayers for Bishop Mari Emmanuel in Sydney, stabbed whilst celebrating the Mass.

I understand he and the other injured worshippers will survive this evil attack.

Christian persecution is growing.
Our prayers must grow to match.

From **Visegrád 24**

10:54 pm · 15/4/2024 From Earth · **245K** Views

843 Reposts **120** Quotes **4.1K** Likes **136** Bookmarks

Eleanor @eleanorzjames · 15/4/2024

Post your reply

(URL redirect)

◀ Firefox 12:54 pm Fri 26 Apr

VPN 42%

Post

VINCENT OSHANA
@VincentOshana

Follow

WARNING: GRAPHIC VIDEO

Assyrian Bishop Mar Mari Emmanuel was stabbed multiple times in Sydney, Australia.

It happened Monday night around 7pm at Wakeley's Christ The Good Shepherd Church during a LIVE stream.

I Pray to GOD he is ok.

From **Conspiracy News**

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Raymond Arroyo
@RaymondArroyo

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BREAKING: Sydney. Bishop Mar Mari is stabbed during a sermon. The assailant shouted “Allahu Akbar” and stabbed 3 others as he was wrestled to the ground. The bishop’s wounds are not considered life threatening. Pray for the bishop and the injured.

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