



*The University of Oklahoma*<sup>®</sup>

COLLEGE OF LAW

October 31, 2016

David A. Kaye  
UN Special Rapporteur on the Right to Freedom of Opinion and Expression  
Palais des Nations  
CH-1211 Geneva 10, Switzerland

RE: Study on Telecommunications and Internet Access Sector

Dear Mr. Kaye:

The Center for International Business & Human Rights at the University of Oklahoma College of Law welcomes your commitment to pursuing a multi-year examination of freedom of expression and the private sector in the digital age. We also welcome your commitment to seeking contributions from civil society with respect to your study. In response to your call for submissions from NGOs and other stakeholders, we would like to bring to your attention my article titled *The Role of U.S. Technology Companies as Enforcers of Europe's New Hate Speech Ban*. This article is forthcoming in the *Columbia Human Rights Law Review Online* and can be accessed here: <http://ssrn.com/abstract=2829175>.

This article raises serious concerns about whether the Code of Conduct on hate speech is consistent with the legality prong of ICCPR Article 19.3's test for speech restrictions (as hate speech is phrased in a vague and broad manner in the Code). The article also raises serious concerns about whether the Code is consistent with the necessity prong of Article 19.3's test for speech restrictions as the Code is based on a framework that contemplates criminal sanctions. In addition, the article highlights the importance of the UN Guiding Principles on Business and Human Rights in assessing the Code as well as the private sector's role in its implementation. We hope that you will consider the issues that are raised in this article in your study. We also hope that you will shine a spotlight on alternative means of achieving legitimate governmental goals of promoting tolerance without resorting to speech bans. The toolkit for promoting tolerance that is set forth in Human Rights Council Resolution 16/18 is a robust one and worthy



of your consideration in this regard. It would be useful if you could assess how many countries are actually implementing properly this toolkit before resorting to speech bans to combat hate speech and promote tolerance.

If you have any questions or if we can be of further assistance in your important study, please do not hesitate to reach out to us.

Best wishes,

Evelyn Aswad

Director, Center for International Business & Human Rights (@OULawIBHR)

Professor of Law and Herman G. Kaiser Chair in International Law

University of Oklahoma College of Law

Norman, Oklahoma

aswadem@ou.edu