

Team R467

**THE 2015 MONROE E. PRICE
INTERNATIONAL MEDIA LAW MOOT COURT COMPETITION**

Kutik and Centiplex Corporation,

Applicants,

v.

The Republic of Lydina,

Respondent.

MEMORIAL FOR RESPONDENT

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LIST OF ABBREVIATIONS

CIA	Content Integrity Act
ECD	E-Commerce Directive
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FOE	Freedom of Expression
FOR	Freedom of Religion
ICCPR	International Covenant on Civil and Political Rights
ISP	Internet Service Provider(s)
SMS	Social Media Speech (SMS) Charter
UDHR	Universal Declaration of Human Rights
UNHRC	United Nations Human Rights Committee

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STATEMENT OF RELEVANT FACTS

The coastal Republic of Lydina suffers from a centuries' old religious and cultural divide that has persistently threatened to tear the fragile nation asunder with violence, riots, and public disruptions.¹ Much like the religious breakdown in the countries surrounding Lydina, seventy-five percent of its population belongs to Parduism, while twenty percent belongs to the Saduja faith, with the remaining five percent belonging to the Hindu, Muslim, and Christian religions.² Whereas Parduism is a monotheistic religion with a deep belief in the divine origins of its holy text, the Zofftor, Saduja can best be described as a diverse set of intellectual and moral beliefs without any strict laws or a central scripture.³ In fact, Parduism's belief in One God is a critical distinguishing factor between it and the Saduja faith.⁴

Like its neighbors, a majority of Lydinans, including a small percentage of Sadujists, identify with the Malani ethnicity,⁵ and for the Malani countries where Parduism is the predominantly practiced religion, such as Lydina, Parduism has had strong cultural influences on the diet, music, dress, and social values.⁶ Similarly, since Parduism has been the majority religion in Lydina for centuries, it has developed as a strong cultural bond for Lydinan Malanis.⁷ Lydina's Constitution, for example, states that all Lydinan's believe in One God,⁸ and the

¹ Compromis ¶ 1, 2, 6.

² Compromis ¶ 5, 2.

³ Compromis ¶ 3, 10.

⁴ Compromis ¶ 6.

⁵ Compromis ¶ 5, 7.

⁶ Compromis ¶ 5.

⁷ Compromis ¶ 6.

⁸ Compromis ¶ 6.

government of Lydina pays a portion of the salary of the Grand Parder, the Pardu religious leader.⁹ Both the Lydinan president and the courts also routinely defer to the Grand Parder on matters of religious leadership.¹⁰

Increased Social Media Use Leads To Greater Religious Violence and Tensions

While the members of the two major religions have regularly clashed with one another, the dramatic increase in the use of social media in Lydina has led to heightened tensions and violence between the groups.¹¹ In Lydina, sixty-seven percent of households have Internet access while seventy percent of the total population, and eighty-two percent of persons aged 18-35 years old own smartphone technology.¹² The increased widespread use of social media sites, coupled with the marked rise in religious tensions and violence led Lydina to take certain prophylactic measures aimed at preventing religious-based violence within the country, including, *inter alia*, signing onto the regional Social Media Speech Charter (hereinafter “SMS Charter”).¹³

The Republic of Lydina Responds by Taking Decisive Action

In 2008, in response to the hostility resulting from the increased use of social media throughout the country, and to prevent further incidents of religious-based violence, the Republic of Lydina signed the SMS Charter.¹⁴ The Charter requires signatory nations to enact rules that encourage the use and development of modern technologies, while also promoting Malani

⁹ Compromis ¶ 13.

¹⁰ Compromis ¶ 19, 21.

¹¹ Compromis ¶ 4.

¹² Compromis ¶ 4.

¹³ Compromis ¶ 4, 15.

¹⁴ Compromis ¶ 15.

culture.¹⁵ Specifically, the Charter imposed several requirements on member states to ensure that media in their jurisdictions, *inter alia*, (1) complies with the religious and ethical values of Malani culture and society; (2) prevents incitement of hatred based on religion or ethnicity, and (3) prohibits “provocation,” which the was defined as “speech or conduct that deliberately hurts religious feelings or values of Malani culture and triggers violent protest inspired by Malani solidarity.”¹⁶

Pursuant to the SMS Charter, the Republic of Lydina enacted the Content Integrity Act (hereinafter “CIA”) in 2009. The CIA pertinently provides that “Internet service providers are not responsible for the content of any posts, blogs, or videos on its website so long as they do not broadcast illegal conduct.”¹⁷ The CIA defines “illegal conduct” as all conduct that violates any Lydinan, regional, or international law.¹⁸

The enactment of the SMS Charter is just the latest example of the great degree to which the Republic of Lydina values protecting and promoting the civil rights of its citizens. In 2000, several years prior to the enactment of the SMS Charter, the Republic of Lydina became a signatory to the International Covenant on Civil and Political Rights (hereinafter “ICCPR”).¹⁹ However, out of respect for the deep religious divide in the country and taking into account the long history of religious tensions among its citizenry, the Republic of Lydina made a reservation to the ICCPR when it ratified the covenant. Specifically, Lydina made a reservation to Articles

¹⁵ Compromis ¶ 15.

¹⁶ Compromis ¶ 15.

¹⁷ Compromis ¶ 17.

¹⁸ Compromis ¶ 17.

¹⁹ Compromis ¶ 18.

18-20 stating, in pertinent part, “Proselytism and other acts that may lead to division between religions are not protected by the Covenant,” which several state parties have since objected to.²⁰

Religious Tensions and Hostility Continue to Rise

Notwithstanding the efforts of the Republic to temper mounting religious tensions, hostilities between the two dominant religious groups—the Sadujas and Parduists—continued to escalate. In March 2012, for instance, several young Parduists with extreme religious leanings posted memes on Facebook depicting Saminder, the founder of Saduja, as a mime with the phrase “No one takes Saminder seriously except Sadujists. Sadujists take him seriously, and they’re a joke.”²¹ This meme in particular caused some uproar, though the reaction was primarily contained to social media sites.²² There was, however, one confirmed arson attempt on the home of a Parduist who had re-posted the meme on his own Facebook page, but no litigation was ever commenced against any of the meme-posters by either the state, or anyone else.²³ Tragically, not more than two years went by before the mounting religious tensions between the two groups finally hit a breaking point.

Deri Kutik’s DigiTube Video

On January 17, 2014, Deri Kutik, a young Sadujist man, uploaded a video on a video-sharing website DigiTube, which is owned by the Internet services company Centiplex Corporation (“Centiplex”).²⁴ In the video, Kutik asserted that Saduja is superior to Parduism because of its integration of reasoning and morality into its belief system, unlike Parduism,

²⁰ Compromis ¶ 18.

²¹ Compromis ¶ 4; Clarifications, question 12.

²² Compromis ¶ 18.

²³ Compromis ¶ 4.

²⁴ Compromis ¶ 8.

which Kutik stated stresses “blind belief” and a heavy reliance on scripture.²⁵ He also stated “all Parduists are inferior and should be converted – by any means – to believe in Saduja.”²⁶ Kutik also asserted that Chapter 3, Verse 130 (“3:130”) of the Parduistic scripture (the Zofftor) is false.²⁷ 3:130 describes the Parduist belief in a plague that was cured by a holy man.²⁸ Kutik stated in his video that this plague never occurred, and cited to alleged scientific evidence of fossils from the area described in the Zofftor, which he claimed proved that no plague historically took place in that region.²⁹ Kutik also spoke about the values of Saduja, part of which teaches that every human being is part divine.³⁰ This is directly contrary to the teachings of Parduism, which believes that humans have no divine element and that God, a higher being, cannot be connected to anything on this earth.³¹

The video went viral, spreading like wildfire across Lydina. Parduists who saw the video became outraged that a Sadujist was criticizing and (in their view) insulting their religion.³² Parduists began to riot, attacking Sadujist individuals and damaging sites, along with many businesses not associated with any religion.³³ Sadujists responded in turn by engaging in retaliatory riots against Parduists and their places of worship.³⁴ The Lydinan government

²⁵ Compromis ¶ 8.

²⁶ Compromis ¶ 8.

²⁷ Compromis ¶ 9.

²⁸ Compromis ¶ 9.

²⁹ Compromis ¶ 8.

³⁰ Compromis ¶ 10.

³¹ Compromis ¶ 10.

³² Compromis ¶ 11.

³³ Compromis ¶ 11.

³⁴ Compromis ¶ 11.

became increasingly concerned about the violence as a result of this video.³⁵ Although no one was killed in the violence, over 100 people were injured and numerous homes and businesses, including a local Centiplex facility, as well as a major Parduist historical place of worship dating back over 400 years were completely destroyed.³⁶

The Aftermath

In response to the Digitube video, the Lydinan government issued a press statement expressing the growing concerns of the President regarding the violence and unrest caused by the Applicants' video.³⁷ In the statement, the President vowed to continue taking steps to curb the religious violence and bring the men responsible to justice for violating Article 2 of the SMS Charter.³⁸ Finally, the President announced that she would be deferring to the Grand Parder to evaluate the significance of the statements contained in the Applicants' video, and expressed her trust in the Grand Parder that he would take the necessary steps to resolve the conflict.³⁹

On January 20, 2014 the Grand Parder issued a perdu, or a pronouncement of Parduist religious law, which stated that (1) the Digitube video was blasphemous, (2) the Sadujist beliefs (as articulated in the video) were insulting to Parduism, and (3) that Kutik's historical analysis of 3:130 was intentionally provocative.⁴⁰ While a small group of Parduists known as the New

³⁵ Compromis ¶ 11.

³⁶ Compromis ¶ 12.

³⁷ Compromis ¶ 19.

³⁸ Compromis ¶ 19.

³⁹ Compromis ¶ 19.

⁴⁰ Compromis ¶ 13.

Parduists were not offended by Kutik’s interpretation of 3:130 of the Zofftor, the majority of Paduists felt offended by the assertions in Kutik’s video.⁴¹

Several months later, on April 21, 2014, the Grand Parder brought the impugned action against Applicants Kutik and Centiplex in the domestic courts of Lydina.⁴² The lawsuit principally alleged that Kutik and Centiplex, through its broadcasting of the former’s video to all of Lydina, violated Articles 1 and 2 of the SMS Charter.⁴³ Specifically, the suit claimed, the Applicants’ video had violated the SMS Charter by stating that (1) Saduja is superior to Parduism; (2) all Parduists should be *converted by any means* to believe in Saduja; and (3) 3:130 of the Zofftor is disproven by historical evidence.⁴⁴

The Grand Parder prevailed on all claims in Lydina’s domestic courts.⁴⁵ The lower court deferred to the religious leadership of the Grand Parder and found that the statements in the Applicants’ DigiTube video violated Articles 1(b) and (d).⁴⁶ The court also rejected the Applicant’s counterclaim that the SMS Charter was invalid under the ICCPR.⁴⁷ Both rulings were appealed to the Lydina Supreme Court, the highest appellate court in the country, where the appeals were all denied.⁴⁸ Applicants now appeal to the Universal Freedom of Expression Court,

⁴¹ Compromis ¶ 14.

⁴² Compromis ¶ 20.

⁴³ Compromis ¶ 20.

⁴⁴ Compromis ¶ 20.

⁴⁵ Compromis ¶ 21.

⁴⁶ Compromis ¶ 21.

⁴⁷ Compromis ¶ 18.

⁴⁸ Compromis ¶ 22.

having exhausted all domestic remedies.⁴⁹ The Republic of Lydina accepts the Court's jurisdiction.⁵⁰

⁴⁹ Compromis ¶ 22.

⁵⁰ Compromis ¶ 22.

STATEMENT OF JURISDICTION

The Universal Freedom of Expression Court has jurisdiction to hear cases arising under the International Covenant on Civil and Political Rights (ICCPR), and the citizens of Republic of Lydina enjoy the rights guaranteed by the ICCPR.⁵¹ The Republic of Lydina (the Respondent) and Kutik and Centiplex Corporation (the Applicants) have submitted their differences under Articles 18, 19, 20, 26, and 27 of the ICCPR to the Universal Freedom of Expression Court.⁵² No law, domestic or international, restricts Applicants' standing to bring these challenges, and the Universal Freedom of Expression Court has jurisdiction in place of all other regional courts and is the final adjudicator when all national remedies have been exhausted.⁵³ The domestic courts of Lydina have decided Applicants' claims, on the merits, in favor of the Government of Lydina.⁵⁴ All legal remedies within the Lydinan legal system have thus been exhausted,⁵⁵ and this Court therefore has jurisdiction over Deri Kutik and DigiTube, as Applicants, and the Republic of Lydina, as Respondent.⁵⁶

All parties herein request this Honorable Court to issue a judgment in accordance with all relevant international law, including, but certainly not limited to, the International Covenant on Civil and Political Rights, conventions, treaties, jurisprudence developed by relevant courts, and all pertinent principals of international law.

⁵¹ Compromis, ¶ 18.

⁵² Compromis, ¶ 23.

⁵³ Price Media Law Moot Court Competition Rules, 2014-2015, § 5.4.

⁵⁴ Compromis, ¶ 21.

⁵⁵ Compromis, ¶ 22.

⁵⁶ Price Media Law Moot Court Competition Rules, 2014-2015, § 5.4.

QUESTIONS PRESENTED

The Respondent Republic of Lydina submits that the issues to be resolved do not violate the fundamental rights to freedom of religion and freedom of expression guaranteed under Articles 18 and 19 of the International Covenant of Civil and Political Rights and other international laws, as the laws of the Republic, and any acts taken thereunder, were necessary to protect the fundamental human rights of its citizens. The questions presented are as follow:

- I. Does the finding of the Lydinan courts that Applicants' DigiTube video breached Article 1(b) of the SMS Charter violate principles of freedom of religion under international law?
- II. Does the finding of the Lydinan courts that Applicants' DigiTube video breached Article 2(a) of the SMS Charter violate principles of freedom of expression under international law?
- III. Does the finding of the Lydinan Court that Applicants' DigiTube video breached Article 2(b) of the SMS Charter violate international law?
- IV. Is the SMS Charter consistent with international law and can liability be extended to Centiplex under the Content Integrity Act?

SUMMARY OF ARGUMENTS

I. The finding of the Lydinan courts that Applicants' DigiTube video violated Article 1(b) of the SMS Charter was in accordance with international law and not inconsistent with freedom of religion. The right to religious freedom, while universal, is not absolute. The use of violence and of undue pressure to convince others to abandon their religious faith and follow an alternative religion is a form of "improper proselytization," which is not a protected manifestation of religion under international law and the ICCPR. Article 1(b) of the SMS Charter, which the Applicants violated, is a reasonable and valid measure consistent with the ICCPR aimed at protecting the Lydinan population's right to religious freedom, free from external pressures and improper forms of proselytism. Even if the measure was not compatible with the ICCPR, however, the Republic of Lydina's reservation to Articles 18-20 proscribing certain forms of proselytism that leads to religious divisions is nevertheless valid and proper under international law. Accordingly, the finding of the Lydinan courts that the Applicants' DigiTube video violated Article 1(b) of the SMS Charter was consonant with freedom of religion.

II. The finding of the Lydinan courts that Applicants violated Article 2(a) of the SMS Charter was in accordance with principles of international law and not inconsistent with the Applicants' freedom of expression under Article 19 of the ICCPR. Freedom of expression, like the right to religious freedom, is one of the oldest and most important civil rights, but one that is nonetheless subject to reasonable restrictions. Article 2(a) was a valid, reasonable, and proportional measure enacted by the Republic of Lydina to prevent certain forms of online speech that incites religious hatred and speech that leads to division between and violence between religions. Applicants' DigiTube violated Article 2(a) of the SMS Charter by defaming and denigrating people of the Pardu faith, and by engaging in historical revisionism in challenging the veracity of 3:130 of the

Zofftor, an object of deep religious veneration to a majority of Lydian Malanis. As a result of, and in response to, the Applicants' video being broadcast all across Lydina over DigiTube, mass protests, riots, and violence fueled by religious animosity ensued that caused significant injuries and damage across the country. Accordingly, the finding that Applicants had violated Article 2(a) was not only consistent with Article 19 of the ICCPR, but was even compelled by Article 20 of the ICCPR. Had the Republic of Lydina not commenced litigation against the Applicants, it would have been in clear violation of Article 20 of the ICCPR, by failing to prohibit speech inciting hostility and violence and advocating religious hatred.

III. The finding of the Lydian courts that Applicants violated Article 2(b) of the SMS Charter was in accordance with principles of International law and not inconsistent with Applicants' freedoms of expression and religion. Lydina acted to ensure religious peace in the region by adopting and enforcing the SMS, particularly in light of the long-standing religious tension between Parduists and Sajduists in the region. Additionally, because of the close ties between Parduism and Malani culture, the outrage resulting from Applicants' video caused riots throughout the region, resulting in hundreds of injuries. The SMS is proscribed by law, pursues the legitimate aim of promoting the well being of all Lydian people, and the SMS is necessary to achieve those aims. As the SMS complies with the ICCPR, its application was a valid restriction of Applicants' FOR and FOE rights.

IV. The SMS Charter is valid under the ICCPR. Article 26 of the ICCPR provides that all persons are provided equal protection under the law. Consistent with this, the SMS Charter is facially neutral, speaking only in terms of Malani cultural and social values. While the SMS Charter was not enforced against the creator of a meme, which portrayed anti-Sadujist feelings, the reactions after the meme were purely in the form of non-violent speech on social media.

Unlikely this non-violent reactions, after Applicants' video was posted there were riots that resulted in hundreds of injuries and destroyed property. As states have a wide margin of discretion in assessing and responding to violence within their borders, Lydina acted in accordance with the ICCPR. Additionally, Centiplex can be held liable under the SMS for Kutik's actions through the Content Integrity Act. As the Content Integrity Act prohibits Centiplex from broadcasting illegal content and the video posted by Kutik constituted illegal conduct under the SMS Charter, Centiplex can also be held liable under the SMS Charter.

ARGUMENT

I. THE HOLDING OF THE LYDINAN COURTS THAT APPLICANTS VIOLATED ARTICLE 1(B) OF THE SMS CHARTER WAS IN ACCORDANCE WITH INTERNATIONAL LAW.

Applicants Deri Kutik (“Kutik”) and Centiplex Corporation (“Centiplex”), as DigiTube’s parent, violated Article 1(b) of the Social Media Speech Charter (“SMS”) by engaging in, and broadcasting, speech that failed to comply with the deeply rooted norms and values inherent in Malani culture and society. Under international law, freedoms of expression (“FOE”) and freedom of religion (“FOR”) are not absolute. The state may lawfully abridge religious freedom to ensure public safety, order, or public morals. Here, the Lydinan courts’ holdings were consistent with international law because it was aimed at protected public safety, order, and morals by permitting a limited restriction on religious freedom.

A. The finding that Applicants violated Article 1(b) of the SMS by insulting objects of religious veneration and hurting the religious feelings of Malani Lydinans was consistent with principles of religious freedom.

The right to manifest one’s religion or beliefs is not absolute.⁵⁷ Article 18 of the ICCPR expressly contemplates state-imposed restrictions on the right to outwardly manifest one’s religious beliefs.

Although proselytizing is a protected form of religious practice, not all types of proselytism are protected equally under international law. In *Kokkinakis v. Greece*, for example, the Applicants, two Jehovah’s Witnesses’ attempts to encourage others to abandon contrary religious beliefs through the “judicious and skillful explanations” of their own faith was

⁵⁷ *Sister Immaculate Joseph v. Sri Lanka*, UN Doc CCPR/C/85/D/1249/2004, (2006) 13 IHRR 348, IHRL 1607 (UNHRC 2005), 21st October 2005, Human Rights Committee [UNHRC]; *Ross v. Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000, Human Rights Committee [UNHRC].

protected.⁵⁸ However, the court distinguished “true evangelism” from “improper proselytism,” such as that which involves the use of violence or the exertion of undue pressure.⁵⁹ The latter, the court observed, would be wholly incompatible with respect for the freedom of thought, conscience, and religion of others.⁶⁰ Likewise, as the ECHR noted in *Wingrove v. United Kingdom* and *Otto-Preminger-Institut v. Austria*, the state has a legitimate interest in protecting its citizens’ right to practice their religion freely and to not be insulted in their religious feelings.⁶¹

Here, by failing to comply with the religious and ethical values of Malani culture and society, the Applicants’ DigiTube video violated the religious freedoms of Malani Lydinans. The strong ties between Parduism, Malani culture, and civil society in Lydina are undeniable. The Lydina Constitution states that all Lydinans believe in one God—a core Parduist belief.⁶² Lydina pays a portion of the salary of the Parduist religious leader, the Grand Parder.⁶³ Both the Lyndinan President⁶⁴ and the courts routinely defer to the Grand Parder on religious matters.⁶⁵ Furthermore, because Parduism is the overwhelming majority religion in Lydina and other

⁵⁸ *Kokkinakis v. Greece*, App no 14307/88, (ECtHR, 25 May 1993), para. 9.

⁵⁹ *Id.* at para. 48.

⁶⁰ *Id.*

⁶¹ *Wingrove v. United Kingdom*, App no 17419/90, (ECtHR, 25 November 1996), para. 48; *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994), para. 48.

⁶² Compomis ¶ 6.

⁶³ Compomis ¶ 13.

⁶⁴ Compomis ¶ 19.

⁶⁵ Compomis ¶ 21.

neighboring Malani countries, and has been for centuries, there are powerful and enduring influences of Parduism in Malani culture including in diet, music, dress, and social values.⁶⁶

Therefore, because the DigiTube video claimed that Parduists were inferior to Sadujists and should be converted “by any means,” Applicants’ video constituted “improper proselytism,” in that it called for the use of violence to sway one’s religious beliefs. This plainly violated the Lydinan Malanis’ right to freedom of religion under *Kokkinakis*. Moreover, by claiming that every human is part divine, the video challenged the divine origins of the Zofftor, the Pardu holy scripture and an object of deep religious veneration in Malani culture and Lydinan society, thereby unlawfully insulting their religious feelings under *Wingrove* and *Otto-Preminger-Institut*.

B. Article 1(b) of the SMS is a valid restriction on religious freedom under Article 18 of the ICCPR.

FOR is not absolute and may be subject to reasonable restrictions under international law.⁶⁷ Limitations on religious practice are permitted under international law to the extent that the restriction (1) is prescribed by law, (2) pursues a legitimate aim, and (3) is necessary to achieve those aims.⁶⁸ The Lydinan courts’ holding under Article 1(b) of the SMS Charter is a valid restriction on FOR because it meets the three-part test enshrined in Article 18 of the ICCPR.

⁶⁶ Compomis ¶ 5, 6.

⁶⁷ African Charter on Human and Peoples’ Rights (adopted 27 July 1981, entered into force 21 October 1986) 1520 UNTS 217 (‘ACHPR’) art 8; American Convention on Human Rights (adopted 22 November 1969, entered into force 18 July 1978) 1144 UNTS 143 (‘ACHR’) art 12; European Convention on Human Rights (adopted 4 November 1950, entered into force 3 September 1953) 213 UNTS 1932 (‘ECHR’) art 9(2); International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (‘ICCPR’) art 18(3).

⁶⁸ *Wingrove v. United Kingdom*, App no 17419/90 (ECtHR, 25 November 1996); *Manoussakis v. Greece*, App no 18748/91 (ECtHR, 26 September 1996); *Kokkinakis v. Greece*, App no 14307/88 (ECtHR, 25 May 1993); *The Sunday Times v. United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

1. The restriction is prescribed by law.

A restriction is prescribed by law if it has a basis in domestic law and is accessible, foreseeable, and precise.⁶⁹ A law is foreseeable if it is formulated with sufficient precision to allow the citizen to foresee the consequences that a given action may entail.⁷⁰ Article 1(b) of the SMS is accessible because it is publicly available.⁷¹ The law has a basis in domestic law because the Lydina legislature ratified the SMS in 2008. The law is also sufficiently precise. The ECHR has recognized that many laws, such as those aimed at protecting social and ethical values, are necessarily couched in terms “which, to a greater or lesser extent, are vague”.⁷² Since Article 1(b) has a basis in domestic law and is accessible, foreseeable, and precise, it is provided for by law.

2. The restriction pursues a legitimate aim.

As one of the oldest internationally accepted human rights, FOR belongs to the most fundamental class of all human rights.⁷³ Indeed, nearly every major human rights treaty contains clauses providing for FOR and includes patent prohibitions on discrimination of any kind based on religion.⁷⁴ Accordingly, states may legitimately consider it necessary to take measures aimed at repressing certain forms of conduct judged incompatible with the respect for FOR.⁷⁵ Indeed,

⁶⁹ *The Sunday Times v. United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

⁷⁰ *Muller v. Switzerland*, App no 10737/84 (ECtHR, 24 May 1988), para 29.

⁷¹ *Murphy v. Ireland*, App no 44179/98 (ECtHR, 10 July 2003), para 62.

⁷² *Muller v. Switzerland*, App no 10737/84 (ECtHR, 24 May 1988), para 29.

⁷³ Christian Walter, Freedom of Religion or Belief, International Protection, Max Planck Encyclopedia of Public Intl. Law, available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e867?rskey=QpBX4U&result=1&prd=EPIL>.

⁷⁴ ACHR arts 12 and 1(1); ACHPR arts 8 and 2; ECHR arts 9 and 14; ICCPR arts 18 and 2(1); Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III)('UDHR') arts 18 and 2.

⁷⁵ *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994), para 47.

the United Nations Human Rights Council (“UNHRC”) has expressed deep concern at the “derogatory stereotyping, negative profiling, and stigmatization of persons based on their religion or beliefs.”⁷⁶ The ICCPR permits states to restrict speech as necessary to protect the rights of its citizens, and even affirmatively requires signatory nations to prohibit advocacy of religious hatred.⁷⁷ Thus, insofar as the restriction contained in Article 1(b) of the SMS was aimed at preventing speech that would defame the religious beliefs of the citizenry, it was within Lydina’s legitimate interests.⁷⁸

3. *The restriction was necessary.*

Finally, the restriction must be necessary, which requires the existence of a pressing social need.⁷⁹ As courts have held, “it may be considered necessary . . . to sanction or even prevent improper attacks on objects of religious veneration, provided . . . that the restriction . . . be proportionate to the legitimate aim pursued.”⁸⁰ Since there is no uniform conception of the significance of religion in a particular society, states are generally afforded a wide margin of appreciation in assessing what constitutes a permissible interference on the right to FOE where such expression is directed against the religious beliefs.⁸¹ Similarly, what may cause offense to persons of a particular religious persuasion “varies from time to time and place to place”⁸² and may depend on whether a religion happens to be the dominant religion in the particular

⁷⁶ Human Rights Council, *Resolution 16/18*, para.1 (24 March 2011).

⁷⁷ ICCPR arts 18, 20.

⁷⁸ *Jersild v. Denmark*, App no 15890/89 (ECtHR, 23 September 1994), para 27.

⁷⁹ *Muller v. Switzerland*, App no 10737/84 (ECtHR, 24 May 1988).

⁸⁰ *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994), para. 49.

⁸¹ *Muller v. Switzerland*, App no 10737/84 (ECtHR, 24 May 1988); *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994).

⁸² *Handyside v. United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976).

country.⁸³ Thus, because national authorities are in a better position, relative to the international tribunal, to assess such matters and to give an opinion on the existence of a pressing social need, international courts ought to defer to the decision of the domestic courts regarding the necessity of the subject restriction.⁸⁴

In considering whether a restriction is necessary, international law compels an analysis of both the content and context of the impugned speech and all surrounding circumstances.⁸⁵ Considering the content of the Defendant’s video of “improper proselytism,” together with its context against the backdrop of mounting religious tensions between Parduists and Sadujists, of which the Defendant was surely aware, the Applicants’ DigiTube video caused people of the Parduist faith to be offended in their religious beliefs. Accordingly, the restriction contained in Article 1(b) of the SMS Charter proscribing defamatory and incendiary statements that fail to comply with the religious and ethical values of Malani culture and society was necessary to ensure religious peace and prevent people’s religious feelings from being offended.⁸⁶

C. Lydina’s reservation to the ICCPR is valid under international law.

Applicants’ Digitube video cannot be protected on the grounds that it constituted mere proselytization because of Lydina’s valid reservation to the ICCPR. The reservation stated that: “Proselytism and other acts that may lead to division between religions are not protected by the

⁸³ *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994), para. 56.

⁸⁴ *Fatullayev v. Azerbaijan*, App no 40984/07 (ECtHR, 22 April 2010); *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994); *Handyside v. United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976).

⁸⁵ *Zana v. Turkey*, App no 18954/91 (ECtHR, 25 November 1997); *Jersild v. Denmark*, App no 15890/89 (ECtHR, 23 September 1994).

⁸⁶ *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994), para. 47.

Covenant.”⁸⁷ A reservation is a unilateral statement made by a state or international organization when signing a treaty “whereby the State...purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that state.”⁸⁸ When a reservation specifically deals with a general human rights treaty, such as the ICCPR, states must also take note of the impact that the reservation has on the right or provision which is being reserved, as well as the interrelatedness of that right in relation to the others in the treaty.⁸⁹

States may also make objections to reservations made by other signatories to a treaty.⁹⁰ An objection is a statement made in response to a reservation by one state or international organization “whereby...[another] State or organization purports to exclude or to modify the legal effects of the reservation, or to exclude the application of the treaty as a whole, in relations with the reserving State or organization.”⁹¹ While five ICCPR signatories made an objection to Lydina’s reservation regarding proselytism and other acts that might lead to division between religions, this does not mean that the reservation is invalid.⁹² An objection to a reservation merely affects the impact of the treaty on relations between the objecting state and the reserving state.⁹³ Accordingly, other states’ objections have no impact on the reservation’s application to Lydina’s internal state actions. Lydina’s reservation continues to modify the ICCPR with respect to Lydina’s actions within its own borders, where divisive proselytism remains unprotected.

⁸⁷ Compomis ¶ 18.

⁸⁸ United Nations International Law Commission, *Guide to Practice on Reservations to Treaties* (2011), available at [http://legal.un.org/ilc/sessions/62/GuidetoPracticeReservations\(e\).pdf](http://legal.un.org/ilc/sessions/62/GuidetoPracticeReservations(e).pdf), 1.1

⁸⁹ *Id.* at 3.1.12

⁹⁰ *Id.* at 2.6.1

⁹¹ *Id.*

⁹² *Id.*

⁹³ United Nations International Law Commission, *Guide to Practice on Reservations to Treaties* (2011), available at [http://legal.un.org/ilc/sessions/62/GuidetoPracticeReservations\(e\).pdf](http://legal.un.org/ilc/sessions/62/GuidetoPracticeReservations(e).pdf), 2.6.1

Moreover, since Lydina’s reservation to the ICCPR does not run contrary to the spirit of the treaty, it is a valid.

II. THE LYDINAN COURTS’ FINDING THAT APPLICANTS VIOLATED ARTICLE 2(A) OF THE SMS CHARTER IS CONSISTENT WITH PRINCIPLES OF INTERNATIONAL LAW.

Since it carries with it “special duties and responsibilities,” the right to FOE may be “subject to certain restrictions. . . .”⁹⁴ For instance, the ICCPR permits, and even affirmatively requires, states to ban speech that infringes on the rights of others or calls for hatred against a particular group.⁹⁵ Applicants’ speech was properly restricted because it infringed others’ rights and called for hatred against Parduists.

A. The holding that Applicants breached Article 2(a) of the SMS Charter by inciting hatred based on religion, leading to division and violence between religious groups, was a permissible restriction on freedom of expression.

Lydina’s restriction of Applicants’ speech was lawful because the DigiTube video incited hatred based on religion, leading to division and violence between religious groups. The Applicants’ video incited hatred based on religion in two principal ways. *First*, it claimed that by virtue of Parduism’s religious beliefs, its followers are inferior to those of the Saduja faith. *Second*, it claimed that the historical events set forth in Chapter 3, Verse 130 (“3:130”) of the Parduistic holy religious scripture, the Zofftor, are false.⁹⁶

⁹⁴ ICCPR art 19(3).

⁹⁵ Toby Mendel, *Hate Speech Under International Law*, Centre for Law and Democracy (2010) <<http://www.law-democracy.org/wp-content/uploads/2010/07/10.02.hate-speech.Macedonia-book.pdf>> accessed 11 November 2014; ICCPR art 20(2).

⁹⁶ Compomis ¶ 9.

1. *The DigiTube video constitutes hate speech because it incites religious hatred by claiming that one religious group is superior to another.*

Hate speech refers to that which is intended to create, and actually results in, an “actual risk” of “imminent” danger for society.⁹⁷ Speech that advocates religious hatred that intends to incite violence is not protected speech under international law.⁹⁸ Here, the DigiTube video’s statements were intended to create an actual risk of imminent danger for society, and such danger in fact materialized when over a hundred people were injured in riots, and numerous businesses, along with a 400-year-old Parduist place of worship, were destroyed.⁹⁹ Given the history of religious tensions between Sadujists and Parduists,¹⁰⁰ it was “reasonable to anticipate” that by claiming the latter is an “inferior” group by virtue of its religious beliefs, resulting violence was likely to ensue.¹⁰¹

In *Ross v. Canada*, the Applicant, a school teacher, was prosecuted for publishing several books and pamphlets that were anti-Semitic in nature. The UNHRC held that his prosecution was permissible under the ICCPR because the Applicant’s writings had “denigrated the faith and beliefs of Jews” and not only questioned the validity of Jewish beliefs, but also held those of the

⁹⁷ *Erbakan v. Turkey*, App no 59405/00 (ECtHR, 6 July 2006), para. 68; *Brandenberg v. Ohio*, 395 U.S. 444, 447 (1969).

⁹⁸ UDHR art 7; Covenant on the Elimination of all forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) (CERD) art 4(a); ICCPR art 20(2); ACHR art 13(5); *Fatullayev v. Azerbaijan*, App no 40984/07 (ECtHR, 22 April, 2010); *Erbakan v. Turkey*, App no 59405/00 (ECtHR, 6 July 2006); *Virginia v. Black*, 538 U.S. 343 (2003); *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

⁹⁹ Compomis ¶ 12.

¹⁰⁰ Compomis ¶ 2, 4, 15.

¹⁰¹ *Fatullayev v. Azerbaijan*, App no 40984/07 (ECtHR, 22 April, 2010), para. 72; *Ross v. Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000, Human Rights Committee [UNHRC], para. 11.6.

Jewish faith and their ancestors in contempt for their religious beliefs.”¹⁰² The Applicant’s video similarly denigrated Parduist religious beliefs, and its adherents, by claiming that Parduists’ belief system was inferior to that of the Saduja faith because it stresses “blind belief” in everything contained in the Zofftor.¹⁰³ Because Applicant Kutik’s speech advocated for religious hatred and incited violence, it constitutes unprotected hate speech.

2. *The Applicants’ video constitutes hate speech because it incites hatred based on religion by engaging in historical revisionism.*

Speech that raises or strengthens religious hatred is unprotected “hate speech.”¹⁰⁴ Such speech may take the form of racist, xenophobic, or nationalistic statements,¹⁰⁵ but it also includes subtler manifestations, such as historical revisionism.¹⁰⁶ Statements denying or seeking to alter traditional conceptions of “clearly established” historical events, especially those of central importance to a particular group, can amount to religious defamation and incitement to hatred of that group.¹⁰⁷

When the Applicants’ video stated that 3:130 of the Zofftor was false, he engaged in unprotected hate speech, which led to religious division and violence, in violation of 2(a) of the SMS. Parduism holds as its main tenets that believers have deep faith in the divine origins of the

¹⁰² *Ross v. Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000, Human Rights Committee [UNHRC], para. 11.5.

¹⁰³ *Compomis* ¶ 8-9.

¹⁰⁴ *Faurisson v. France*, UN Doc CCPR/C/58/D/550/1993 (UNHRC 1996), 8th November 1996.

¹⁰⁵ Committee of Ministers of the Council of Europe, *Recommendation No. R 97(20)*, adopted 30 October 1997.

¹⁰⁶ *Garaudy v. France*, App no 65831/01 (ECtHR, 24 June 2003); *Faurisson v. France*, UN Doc CCPR/C/58/D/550/1993 (UNHRC 1996), 8th November 1996.

¹⁰⁷ Ioanna Tourkochoriti, *Should Hate Speech be Protected? Group Defamation Party Bans, Holocaust Denial, and the Divide Between France (Europe) and the United States*, 45 Colum. Hum. Rts. L. Rev. 552, 614 (2014).

Zofftor.¹⁰⁸ Consequently, challenging the veracity of 3:130 was tantamount to challenging the divine origins of the Zofftor itself, an object of deep religious veneration for all Parduists.¹⁰⁹ That Applicant Kutik suggests his assertions are based on scientific evidence is not dispositive; nearly all those who engage in historical negationism posit that their claims are supported with scientific proof.¹¹⁰

Finally, even if the validity of 3:130 is a matter of concern to the general public, the medium chosen by the Applicant to air his inflammatory grievances with Parduism belies any suggestion that he sought to meaningfully contribute to ongoing public debate. The present case is distinguishable from *Jersild v. Denmark*, as the Applicants' video here was not broadcast as part of a serious news program, nor was it intended for a well-informed audience.¹¹¹ Similarly, this case is distinguishable from *Fatullayev v. Azerbaijan*, where, rather than outright denying the 1992 Khojaly massacre, the Applicant sought to provide a descriptive account of events and assert an alternative hypothesis about the perpetrators.¹¹² Here, by contrast, the Applicant unambiguously claimed that the events described in the Zofftor were false. That kind of inflammatory speech, taken in the context of the other statements in the video, was not calculated to meaningfully contribute to an ongoing national dialogue, but was rather meant to express contempt for the Parduists and their purported blind faith in the Zofftor.

B. The holding that Applicants violated Article 2(b) of the SMS Charter complied with the ICCPR.

¹⁰⁸ Compomis ¶ 10.

¹⁰⁹ Compomis ¶ 10.

¹¹⁰ *Garaudy v. France*, App no 65831/01 (ECtHR, 24 June 2003); *Faurisson v. France*, UN Doc CCPR/C/58/D/550/1993 (UNHRC 1996), 8th November 1996.

¹¹¹ *Jersild v. Denmark*, App no 15890/89 (ECtHR 23 September 1994).

¹¹² *Fatullayev v. Azerbaijan*, App no 40984/07 (ECtHR, 22 April, 2010), para. 81.

While “FOE is a cornerstone upon which the very existence of a democratic society exists,”¹¹³ it is not an absolute right under international law. For example, Article 20 of the ICCPR provides that “[a]ny advocacy of . . . religious hatred that constitutes incitement to discrimination, hostility, or violence shall be prohibited by law.”¹¹⁴ Here, the Lydian courts’ holding not only complied with Article 19, but was compelled by Article 20 of the ICCPR.

1. The restrictions contained in Article 2(a) of the SMS Charter complied with Article 19 of the ICCPR.

Under Article 19, FOE may be lawfully restricted for two reasons: (1) to protect the rights and reputations of others, which applies not just to individuals, but the rights of communities as a whole;¹¹⁵ and (2) for the protection of national security or of public order, health, or morals.¹¹⁶

For the reasons stated above, the restrictions contained in Article 2(a) of the SMS Charter were both prescribed by law and were within the legitimate aims of a government in a modern democratic and pluralistic society.¹¹⁷ The remaining question is whether the restriction was “necessary.” In assessing whether a restriction on hate speech is necessary for the protection of the religious rights of others—in this case, of Parduists—international courts consider the totality of the circumstances surrounding the impugned statement(s), and look at factors including the

¹¹³ Costa Rica, Advisory Opinion OC-5/85, IACHR Series A No. 5, IHRL 3428 (IACtHR 1985).

¹¹⁴ ICCPR art 20.

¹¹⁵ *Ross v. Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000, Human Rights Committee [UNHRC], para. 11.5.

¹¹⁶ ICCPR art 19.

¹¹⁷ Part I.B.

content of the speech and the context in which it was broadcast, its purpose, and the medium of expression.¹¹⁸

Firstly, state authorities enjoy a considerable margin of appreciation in restricting expression directed against the religious feelings of others.¹¹⁹ While there is “little scope for restrictions on political speech or on debate on matters of public interest . . . where remarks constitute an incitement to violence against . . . a sector of the population,” states enjoy a wider margin of appreciation when determining whether a particular restriction on the right to freedom of expression is necessary to protect the religious rights of others.¹²⁰

Next, considering the totality of the circumstances, the Applicants’ speech was lawfully restricted in accordance with Article 19(3) of the ICCPR. The content was inflammatory.¹²¹ Its context was amidst the backdrop of religious violence and rising tensions in Lydina between the two religious groups.¹²² Its purpose was not to take part in a matter of public debate, but was rather broadcast to stoke religious tensions.¹²³ Finally, it was broadcast through a medium available to wide swaths of the population within seconds and with ease of access, as 67% of Lydinan households have internet access and 70% of the population, including 82% of 18-35 year olds, own smart technology, thereby putting Kutik’s hateful speech into thousands of palms

¹¹⁸ *Murphy v. Ireland*, App no 44179/98 (ECtHR 10 July 2003).

¹¹⁹ *Muller v. Switzerland*, App no 10737/84 (ECtHR, 24 May 1988); *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994).

¹²⁰ *Okcuoglu v. Turkey*, App no 24246/94 (ECtHR, 8 July 1999).

¹²¹ *Compomis* ¶ 8-9.

¹²² *Compomis* ¶ 2, 4, 15.

¹²³ Part II.A.2.

and pockets around the country.¹²⁴ Therefore, the holding that Applicants violated Article 2(a) of the SMS was valid.

2. Lydina’s enactment of Article 2(a) of the SMS Charter and its courts’ holding thereunder is compelled by Article 20 of the ICCPR.

Lydina was not only justified in restricting the speech of the Applicant for the protection of the religious rights of Lydinan Parduists, but under Article 20(2) of the ICCPR, the Republic was affirmatively required to take such action. For the reasons stated above, the speech amounted to advocacy of religious hatred that constituted incitement to hostility and violence.¹²⁵ In fact, devastating riots and public unrest ensued after the Defendant’s video was broadcast on DigiTube.¹²⁶ Accordingly, had Lydina not adopted the SMS and or if it had failed to commence litigation thereunder against Kutik and Centiplex, it would have been forced to violate Article 20(2) of the ICCPR.

III. APPLICANTS’ LIABILITY UNDER ARTICLE 2(B) OF THE SMS CHARTER WAS A PERMISSIBLE RESTRICTION ON FREE EXPRESSION UNDER THE ICCPR.

Applicants violated Article 2(b) of the SMS Charter because the video constitutes provocative speech that deliberately hurt Malani religious and cultural feelings and caused violent protests inspired by Malani solidarity. The video called viewers to convert Parduists by “any means necessary” to Sadjuism and insulted the Parduist belief in one God as “blind belief.”¹²⁷ Because Applicants’ video blatantly hurts both Parduist and Malani cultural feelings and provoked life-threatening violence throughout the country, Lydina properly held Kutik liable

¹²⁴ Compomis ¶ 4.

¹²⁵ Part II.A.

¹²⁶ Compomis ¶ 11-12.

¹²⁷ Compomis ¶ 8-9.

under Article 2(b) of the SMS Charter, a statute that is valid under both the ICCPR and other international law.

- A. Applicants' statements state that Parduists are inferior and should be converted by any means hurt religious feelings and caused violent protests that were inspired by Malani solidarity.

Kutik's speech hurt religious and cultural feelings and caused violent protests inspired by Malani solidarity. Malani culture and Parduism have a deep-rooted connection – Parduism influences many aspects of Malani culture including diet, music, dress, and social values.¹²⁸ In this video, Kutik not only subverted many of the main tenants of Parduism (stating that a portion of their religious text is historically inaccurate and that their belief that God is the only divine being is incorrect¹²⁹) but also explicitly stated that all Parduists should be converted by any means.¹³⁰ This explicit call to conversion, particularly with the explicit caveat to do whatever it takes to successfully convert Parduists, was foreseeably likely provoke violence inspired by hurt religious feelings and Malani solidarity because Malani culture is deeply aligned with Parduist teachings.¹³¹

The ECtHR has noted “[a] certain margin of appreciation is therefore to be left to the national authorities in assessing existence and extent of the necessity of such interference.”¹³² The ECtHR held that in a country where 78% of the populace was Roman Catholic, Australian authorities permissibly seized a film “to ensure religious peace in the region and to prevent that some people should feel the object of attacks on their religious belief in an unwarranted and

¹²⁸ Compromis ¶ 5.

¹²⁹ Compromis ¶ 8.

¹³⁰ Compromis ¶ 8-9.

¹³¹ Compromis ¶ 8-9.

¹³² *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994).

offensive manner."¹³³ Similarly, Lydina acted to ensure religious peace in the region, particularly in light of the hostile, violent reactions after the anti-Sadujist memes were posted.¹³⁴

B. The Lydinan courts' holding under Article 2(b) of the SMS Charter is a permissible interference with Applicants' freedoms of expression and religion.

Free expression is not absolute. To determine whether a state's restriction on freedom of expression and religion is acceptable under the ICCPR the restriction must pass a three part test: it must (a) be prescribed for by law, (b) pursue a legitimate aim, and (c) be necessary to restrict such aims.¹³⁵ Article 2(b)'s restriction on speech and religious conduct meets this three-part test and is therefore a valid restriction on both freedom of expression and religion.

1. *Article 2(b) is prescribed by law.*

A restriction is generally prescribed by law if the restriction has a basis in domestic law and is accessible, foreseeable, and precise.¹³⁶ The restriction in Article 2(b) of the SMS Charter is both accessible and comprehensible on its face and has a basis in domestic law established by Lydina's ratification of the Charter in 2008.¹³⁷ Article 2(b) cannot be considered unforeseeable in light of the long-standing religious violence between Parudists and Sadujists throughout Lydina.¹³⁸ Not only is there historical violence and tension between these two religions, in recent years social media has increasingly been a contributing factor to this violence.¹³⁹ Indeed a

¹³³ *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994).

¹³⁴ Compromis ¶ 4.

¹³⁵ *Wingrove v. United Kingdom*, App no 17419/90 (ECtHR, 25 November 1996); *Manoussakis v. Greece*, App no 18748/91 (ECtHR, 26 September 1996); *Kokkinakis v. Greece*, App no 14307/88 (ECtHR, 25 May 1993); *The Sunday Times v. United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

¹³⁶ *The Sunday Times v. United Kingdom*, App no 6538/74 (ECtHR, 26 April 1979).

¹³⁷ Compromis ¶ 15.

¹³⁸ Compromis ¶ 3-4.

¹³⁹ Compromis ¶ 3-4.

recent online meme posted on the social media website Facebook resulted in not only extreme uproar, but also an arson attempt on a private home.¹⁴⁰ As Article 2(b) is accessible, foreseeable, and has a basis in domestic law, it is prescribed by law.

2. *Article 2(b) pursues a legitimate aim.*

All states have a legitimate interest in ensuring public order and preventing violence and religious unrest within their borders. In fact, both the UNHRC and ICCPR require states to take action to prohibit advocacy of messages that constitute religious hatred.¹⁴¹ Furthermore, the threat or presence of actual violence as a result of these hurt feelings further supports action on the part of the Lydinan government, as the government has a responsibility to promote the well being of all the Lydinan people.

3. *Article 2(b) is necessary to achieve Lydina's legitimate aims.*

Lydina reasonably adopted Article 2(b) of the SMS Charter to prevent further¹⁴² foreseeable violence as a result of statements (particularly those on social media) that hurt religious feelings and trigger violent protest inspired by Malani solidarity.¹⁴³ In fact, the prior violence between Parduists and Sadjuists in response to the meme that depicted the leader of the Sadjuist faith in a negative light caused similarly violent riots and protests between the two religious groups,¹⁴⁴ further supporting the very real concern by the Lydinan government that some regulation of offensive expression was necessary to ensure public safety. The potential for

¹⁴⁰ Compromis ¶ 3-4.

¹⁴¹ ICCPR arts 18, 20; 18th October 2000, Human Rights Committee [UNHRC], para. 11.5.

¹⁴² Compromis ¶ 4, 11-12.

¹⁴³ See, Human Rights Council, *Resolution 16/18*, para.1 (24 March 2011); *Zana v. Turkey*, App no 18954/91 (ECtHR, 25 November 1997); *Jersild v. Denmark*, App no 15890/89 (ECtHR, 23 September 1994).

¹⁴⁴ Compromis ¶ 4.

extreme violence caused by similar videos and postings on social media portals throughout the region¹⁴⁵ demonstrates the SMS charter's necessity.

IV. THE SMS CHARTER IS VALID UNDER THE ICCPR.

The SMS Charter is consistent with Lydina's obligations as a signatory of the ICCPR and does not otherwise offend international law or norms. The validity of subsections 1(b), 2(a), and 2(b) of the SMS were described above in subsections I, II, and III. The remaining subsections do not otherwise violate the ICCPR.

A. The SMS Charter does not violate the ICCPR.

1. The holding is consistent with Article 26 of the ICCPR.

Article 26 of the ICCPR pertinently provides that “[a]ll persons are equal before the law and are entitled to the equal protection of the law.”¹⁴⁶ The SMS Charter is consistent with this principle because it is facially neutral—it only speaks in terms of Malani cultural and social values—and does not express any preference for Parduism. Even if the SMS Charter is not neutral on its face, it does not violate Article 26 of the ICCPR.

The response to the online memes was qualitatively different from the response to the Applicants' video. Lydina exercised reasonable discretion on neutral grounds when it enforced the SMS Charter against the Applicants because the violent response to their speech was far more extensive than the limited response to prior Anti-Sadujist memes.¹⁴⁷ Here, within a week of the DigiTube video's publication, over a hundred people were injured in riots, and numerous

¹⁴⁵Compromis ¶ 4, 11-12.

¹⁴⁶ ICCPR art 26.

¹⁴⁷Compromis ¶ 4.

businesses, along with a 400-year-old Parduist place of worship, were destroyed.¹⁴⁸ By contrast, with the exception of one confirmed arson attempt, the response to the memes occurred almost entirely over social media in the form of non-violent speech.¹⁴⁹ States have a wide margin of appreciation to use their discretion in assessing and responding to violence within their borders.¹⁵⁰

In *Wingrove*, the ECtHR held that “the uncontested fact that the law . . . does not treat on an equal footing the different religions practiced in the United Kingdom does not detract from the legitimacy of the aim pursued [by the statute].”¹⁵¹ In *Wingrove*, a British agency rejected an application to distribute a film that disrespectfully portrayed St. Theresa.¹⁵² Like the British Agency in *Wingrove*, Lydina was entitled to sanction a video that disparaged Parduism. This sanction did not violate the nondiscrimination principle.

2. *The holding is consistent with Article 27 of the ICCPR.*

Article 27 of the ICCPR provides that persons belonging to ethnic, religious, or linguistic minorities “shall not be denied the right [to]. . . enjoy their own culture, to profess and practice their own religion, or to use their language.”¹⁵³ The freedom to manifest one’s religion, whether a majority or minority religion, is not absolute and may be restricted in accordance with ICCPR

¹⁴⁸ Compomis ¶ 12.

¹⁴⁹ Compomis ¶ 4.

¹⁵⁰ *Muller v. Switzerland*, App no 10737/84 (ECtHR, 24 May 1988); *Otto-Preminger-Institut v. Austria*, App no 13470/87 (ECtHR, 20 September 1994); *Fatullayev v. Azerbaijan*, App no 40984/07 (ECtHR, 22 April 2010); *Handyside v. United Kingdom*, App no 5493/72 (ECtHR, 7 December 1976).

¹⁵¹ *Wingrove v. United Kingdom*, App no 17419/90 (ECtHR, 25 November 1996), para. 50.

¹⁵² *Id.*

¹⁵³ ICCPR art 27.

Article 18.¹⁵⁴ As such, while applicants may argue that the litigation commenced by the Grand Parder, and the deferential holdings of the Lydinan domestic courts, violated Article 27 because it unlawfully restricted their rights to practice their religion as they see fit, this argument is without merit. As shown above, the restriction at issue in the present case meets this test, and thus, is a valid restriction on the right to practice one’s religion.¹⁵⁵

B. Centiplex is liable under Articles 1(b), 2(a), and 2(b) of the SMS through the CIA for Kutik’s illegal conduct.

Under the Content Integrity Act (“CIA”) Centiplex (as Digitube’s parent) is liable for illegal content posted on its platform. The CIA states that Internet service providers (“ISPs”) are not liable for the content on their websites as long as they do not broadcast illegal conduct. Illegal conduct is defined as “all conduct that violates any Lydinan, regional, or international law.”¹⁵⁶ As explained in sections I, II, and III above, the video posted by Kutik violated Article 1(b), 2(a), and 2(b) of the SMS Charter, making his video illegal conduct under Lydinan law and Centiplex liable under the CIA.

The CIA is not the only act that prescribes ISP liability for hosting content that violates domestic or international law. The E-Commerce Directive (“ECD”) in the European Union also provides for ISP liability.¹⁵⁷ The ECD provides that service providers are not liable for

¹⁵⁴ Memorial Part I.B; *Sister Immaculate Joseph v. Sri Lanka*, UN Doc CCPR/C/85/D/1249/2004, (2006) 13 IHRR 348, IHRL 1607 (UNHRC 2005), 21st October 2005, Human Rights Committee [UNHRC]; *Ross v. Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000, Human Rights Committee [UNHRC].

¹⁵⁵ Memorial Part I.B; *Sister Immaculate Joseph v. Sri Lanka*, UN Doc CCPR/C/85/D/1249/2004, (2006) 13 IHRR 348, IHRL 1607 (UNHRC 2005), 21st October 2005, Human Rights Committee [UNHRC]; *Ross v. Canada*, UN Doc CCPR/C/70/D/736/1997, (1997) 8 IHRR 322m IHRL 1681 (UNHRC 2000), 18th October 2000, Human Rights Committee [UNHRC].

¹⁵⁶ Compromis ¶ 7.

¹⁵⁷ European Union Regulatory Framework for Commerce, (WTO, 18 June 2013), *available at* http://www.wto.org/english/tratop_e/serv_e/wkshop_june13_e/sparas_e.pdf

information provided by their users unless they (a) have actual knowledge of illegal activity or (b) upon receiving knowledge or awareness of such illegal activity fails to expeditiously remove or disable access to the information.¹⁵⁸ Actual awareness is “[a]wareness of facts or circumstances on the basis of which a diligent economic operator should have identified the illegality in question.”¹⁵⁹ The standard for ISP liability under the ECD is more stringent than the CIA because the CIA does not have a scienter requirement. Even under this stricter standard, Centiplex is liable.

Under the CIA, Centiplex must merely have broadcasted illegal content. As explained in sections I, II, and III above, the video posted by Kutik violated Article 1(b), 2(a), and 2(b) of the SMS Charter and as the SMS Charter is valid as applied and facially under international law. Accordingly, Centiplex is liable. Even under international ISP liability laws with higher standards of culpability (such as the ECD), Centiplex would still be liable. Centiplex cannot claim that it did not have actual knowledge of the illegal conduct it broadcast on its own website. The video posted by Kutik went viral and the video was shared widely across the Internet.¹⁶⁰ Within one week of the video’s posting, riots broke out across the country.¹⁶¹ One such riot took even place outside a Centiplex facility.¹⁶²

A recent ECtHR decision, *Delfi AS v. Estonia*, addressed ISP liability. The court found that Delfi AS (a news portal) had a responsibility to prevent clearly unlawful comments from

¹⁵⁸ European Union Regulatory Framework for Commerce, (WTO, 18 June 2013), available at http://www.wto.org/english/tratop_e/serv_e/wkshop_june13_e/sparas_e.pdf

¹⁵⁹ *Id.*

¹⁶⁰ Compromis ¶ 11.

¹⁶¹ Compromis ¶ 11-12.

¹⁶² Compromis ¶ 12.

being published in the portal's comments section.¹⁶³ Although Delfi AS removed the offensive comments as soon as they were notified about them, the ECtHR found that Delfi AS had an obligation to prevent the unlawful comments from being published in the first place.¹⁶⁴ In applying this reasoning to Digitube, Centiplex not only had an obligation to remove the video Kutik posted after learning that it was offensive (something they had actual knowledge of because widespread violent riots, including one that destroyed one of Centiplex's own buildings) but Centiplex was required to remove the video even before it was posted. The record is silent regarding Centiplex's reactions to the video, but assuming they failed to remove the video after the riots (or even before the riots) under the reasoning in Delfi AS by allowing the video to remain up at all Centiplex violated their obligation to remove the video.

¹⁶³ *Delfi AS v. Estonia*, App no 64569/09 (ECtHR, 10 October 2013).

¹⁶⁴ *Id.*

PRAYER FOR RELIEF

For the foregoing reasons, the Republic of Lydina respectfully requests this Honorable Court to adjudge and declare as follows:

1. The finding of the Lydinan courts that the Applicants violated Article 1(b) of the SMS Charter by engaging in speech that failed to comply with the religious and ethical values of Malani culture and society was consistent with international law and the Applicants' right to free exercise of religion.
2. The finding of the Lydinan courts that the Applicants violated Article 2(a) of the SMS Charter by engaging in speech that incited hatred based on religion, leading to division and violence between Sadujas and Parduists, was in accordance with international law and not inconsistent with the Applicants' right to freedom of expression.
3. The finding of the Lydinan courts that the Applicants violated Article 2(b) of the SMS Charter by engaging in speech that deliberately hurt religious feelings and the values of Malani culture, and triggered violent protest inspired by Malani solidarity was pursuant to valid principles of international law, and was not inconsistent with the Applicants' right to freedom of expression.
4. The SMS Charter enacted into law by the Republic of Lydina is valid and not incompatible with the international Covenant on Civil and Political Rights, to which it is a signatory.

On behalf of the Republic of Lydina,
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Agents for the Respondent