

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
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4 August 2017

Dear Mr. Cook,

In my role as the United Nations Special Rapporteur on freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18, it is my responsibility to evaluate issues pertaining to freedom of expression worldwide. I report to the Human Rights Council and the UN General Assembly, conduct country missions, and communicate with governments, civil society and corporations in all regions of the world. In particular, my work, under appointment and mandate of the Human Rights Council, involves monitoring state implementation of the rights that people enjoy, under international human rights law, to seek, receive and impart information, regardless of frontiers of all kinds and through any media. As you can imagine, digital rights lay at the center of much of my work. Indeed, only last year I [filed a letter](#) before the federal magistrate judge handling the Apple-FBI litigation, my points largely in support of Apple's position in that case¹.

I am writing now in connection with the recent reporting, and your own confirmation, concerning Apple's removal of VPN applications from the App Store. According to a statement issued by Apple on 30 July 2017:

Earlier this year China's MIIT [Ministry of Industry and Information Technology] announced that all developers offering VPNs must obtain a license from the government. We have been required to remove some VPN apps in China that do not meet the new regulations. These apps remain available in all other markets where they do business.

On 1 August 2017, in an earnings call, you indicated that Apple "would obviously rather not remove the apps," but that Apple is constrained to "follow the law wherever we do business." You noted further your own hope "that over time the restrictions that we're seeing are loosened because innovation really requires freedom to collaborate and communicate, and I know that that is a major focus there." You concluded by saying, "that [compliance with domestic law] doesn't mean that we don't state our point of view in the appropriate way. We always do that."

I am mindful of the challenges that your business and other technology and media companies face in expanding access to your products in China, products which often expand communication and access to information. In recent years, China has expanded the scope of its censorship tools and efforts, coming at the expense of individual rights to freedom of expression, access to information, freedom of association, and other

¹ Letter of 2 March 2016

fundamental human rights. Chinese restrictions put you in the position – unenviable, and likely reluctantly – of having to mediate between your customers, Chinese citizens, and Chinese law. Indeed, earlier this year, when accepting the Newseum 2017 Free Expression Award, you stated that “we defend, we work to defend these freedoms by enabling people around the world to speak up. And second, we do it by speaking up ourselves. Because companies can, and should have values.”

Your stated commitment to freedom of expression aligns Apple with [many of its peers](#), and [internationally accepted standards of corporate responsibility](#). Your statements also embrace Apple’s critical role in protecting fundamental rights in the digital age: While it may be a natural target for government censorship, it has also become indispensable to the lives of hundreds of millions of users worldwide, and therefore uniquely qualified to speak truth to power and stand up for their rights.

Given these statements, and in keeping with my mandate to investigate key freedom of expression challenges worldwide, I would like to follow up on your statements that Apple states a point of view and speaks up in the context of restrictions on fundamental rights. In particular, I would be pleased if you would respond to the following questions:

1. Did Chinese authorities issue a request or demand, formal or informal, to remove the subject Apps from the App Store?
2. What legal analysis led Apple to believe that it would be required by Chinese law to remove the subject applications from the App Store? Did Apple conclude that removal was compelled by operation of Chinese law?
3. Did Apple object to or otherwise resist the application of Chinese law in these cases? On what basis, if any, did you object or resist?
4. Did Apple raise legal concerns with Chinese authorities with respect to the VPN regulations, whether in the instant cases or in the development of the regulations themselves? I recall that the Government carried out a formal call for comments as it was developing its internet regulations (for which I also [submitted comments](#))².
5. In making legal assessments, if any, did Apple take into account China’s obligations under international human rights law?
6. Did Apple raise non-legal concerns with Chinese authorities, such as the impact that restrictions on VPNs may have on individual security, innovation, and commercial connections both inside and outside China?
7. In making your assessment about proceeding with the takedown from the App Store, did Apple take into account international instruments such as

² Communication of 4 August 2015

the UN Guiding Principles on Business and Human Rights or the Global Network Initiative's Principles on Freedom of Expression? Did Apple consider options other than application removal to protect the rights of Chinese consumers? For example, did Apple seek to restrict the number or types of Apps that were taken down? Did Apple provide Chinese customers with information about what Apps were taken down, and the reasons for such removals?

8. How does Apple make such decisions about whether to restrict App Store content in the face of government requests such as the instant one? Apart from your General Counsel, which other divisions participate in such decision-making?

Thank you very much for your engagement on this critical issue. I address these questions not as a judge of Apple's choices in this situation but as part of my effort to understand, and thereafter report to UN bodies, the state of freedom of expression worldwide. I stand ready to provide you and your team with further information about my mandate and would be pleased to have further discussion about these issues at your convenience.

I would like to inform that, in due course, and in keeping with my own commitment to transparency in the work of my mandate, a copy of this letter will be made available publicly and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression, and I would hope to have your consent to the public disclosure of any response you provide as well:

(<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>).

A copy of this letter will be sent to the Permanent Mission of the People's Republic of China to the United Nations Office at Geneva and other international organizations in Switzerland, in line with our interest in transparency in businesses operating in Member States.

Sincerely,

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