

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

Clément Voule
UN Special Rapporteur on the rights to freedom of
peaceful assembly and of association

2 December 2019

Re: Restrictions on NGOs by Paypal – Prostasia Foundation case

Dear Mr Kaye and Mr Voule,

We are writing to you on behalf of Prostasia Foundation and ARTICLE 19 to raise concerns about the restrictions on funding for civil society organisations by PayPal; and specifically about the lack of transparency and grievance mechanisms of this company in its processes and policies and their impact on human rights. This problem has been recently highlighted by the suspension of the Paypal account of Prostasia Foundation.

We appreciate the attention you gave to respect of digital companies for human rights, including the rights to freedom of assembly and association and freedom of opinion and expression, in your respective mandates. We also appreciate that in your reports, you have provided further guidance for digital companies on their duties to prevent, address and remedy human rights abuses committed in business operations and how to comply with the *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*. Hence, we strongly urge you to bring attention to this case, and to provide the case with the scrutiny that it deserves.

1. Circumstances of the case

Prostasia Foundation is a child sexual abuse prevention organization, registered in the USA (it is s.501(c)(3) nonprofit, EIN 82-4969920).

On 22 July 2019, Prostasia Foundation received notification from PayPal that the account that they use for receiving membership subscriptions and donations had been permanently shut down, and that there would be no appeal. The notification stated: “At PayPal, we value a safe community in which all our customers can do business. We noticed activity on your account that’s inconsistent with our User Agreement and can no longer offer you PayPal services.”¹

Before receiving this notification, Prostasia Foundation had received no communications from PayPal about any problem concerning their account. After their account was shut down, the only further communication that Prostasia Foundation received from PayPal indicated that “the decision to part ways would be final,” and to say that “there is no other information I can provide in this situation.”²

¹ Prostasia Foundation, *PayPal fails to shut down Prostasia*, 23 July 2019, <https://prostasia.org/blog/paypal-fails-to-shut-down-prostasia/>

² *Ibid.*

With no further information, no possibility of being granted further information, nor the possibility of an appeal, the Prostasia Foundation has been left to speculate on which parts of PayPal's Acceptable Use Policy (AUP) they are alleged to have infringed. Taking a broad view, Prostasia Foundation have identified those prohibitions relating to "transactions involving (...) items that encourage, promote, facilitate or instruct others to engage in illegal activity, (...) items that are considered obscene, (...) certain sexually oriented materials or services."

This is a concerning application of the AUP, particularly given that Prostasia Foundation, as a child sexual abuse prevention organization, have a zero tolerance policy towards child sexual abuse, including the distribution of unlawful images and videos of minors.

2. Lack of transparency and dispute resolution mechanism

One of the most concerning aspects of the case is that PayPal has undertaken this suspension without providing any transparency about their actions (including the reason for their decision to suspend the account), and have provided no mechanism to appeal the decision.

PayPal's lack of transparency about their actions – including to give a reason for their decision – and the lack of a mechanism for appeal, has led the Prostasia Foundation to conclude that "the only interpretation of PayPal's actions that makes sense to us is that PayPal doesn't want us even *talking* about these issues."³ The suspension has led Prostasia Foundation to speculate whether PayPal may have "some obscure unwritten policy which set off Prostasia's permanent ban."⁴ Whether this was the rationale behind the suspension of the account or not, the effect of the suspension amounts to an attempt at the censorship of an NGO by a private company.

While this appears to be the first time these opaque policies have been applied against a child sexual abuse prevention organization, it is not the first time they have been used. The decision by PayPal to suspend the Prostasia Foundation account forms part of a concerning trend of a lack of transparency on the part of PayPal. For example, the Prostasia Foundation has taken note of another case in which PayPal has refused to do business on the basis of policies not contained within their AUP, and thereby in violation of the standard of transparency required by international norms on freedom of expression and information.⁵

3. Lack of access to financial resources as a threat to respect for human rights

We are concerned about the potential threat that the Paypal action poses to the rights to freedom of assembly and association, and to the rights to freedom of opinion and expression.

We recall that an ability of NGOs to receive funding for its activities has been recognised as a part of freedom of expression and freedom of asocial by several international and regional bodies. Civil society organisations exercise an important "public watchdog" function in a manner that is equivalent to that of the press, and should not be hampered in undertaking their reporting and advocacy activities. For instance:

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.* Prostasia Foundation have reported on a presentation given by Cathy Beardsley, the CEO of payment processing company, SegPal, that specialises in helping adult content providers to process payments. Beardsley reported that banks, card brands and intermediaries like PayPal have refused to process payments on the basis of policies which are not mentioned within PayPal's AUPs, such as the prohibition of sexually-themed illustrations of aliens.

- In his 2013 report, the Special Rapporteur on the rights to freedom of peaceful assembly and of association defined the ability of associations to access financial resources as a vital part of the right to freedom of association, and any constraints on this access violate article 22 of the International Covenant on Civil and Political Rights, and other human rights instruments.⁶ The ability to seek, secure and use resources is essential to the existence and effective operations of any association,⁷ and the term “resources” is considered as a broad concept which encompass financial transactions and other forms of funding.⁸
- The ‘Joint Guidelines on Freedom of Association’ of the European Commission for Democracy through Law (the Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (ODIHR) also emphasise in principle 7 the freedom to seek, receive and use resources.⁹
- In December 2010, during the ongoing developments related to the release of diplomatic cables by Wikileaks, the UN High Commissioner for Human Rights expressed over the “pressure exerted on private companies, including banks, credit card companies and service providers to close down credit lines for donations to WikiLeaks, as well as to stop hosting the website or its mother sites.”¹⁰ In a similar vein, the joint statement of the former mandate-holder on the right to freedom of opinion and expression, and the Inter-American Commission on Human Rights, Special Rapporteur on Freedom of Expression criticised the interference in or pressure by governments in the case, and emphasised that “corporations that provide Internet services should make an effort to ensure that they respect the rights of their clients to use the Internet without arbitrary interference.”¹¹

We find that the actions of PayPal in suspending the account of the ProStasia Foundation constitute a direct interference with the enjoyment of the right to freedom of expression, and of the right to freedom of peaceful assembly and association. We believe it is greatly important that this case receives the independent scrutiny that your mandates can provide. We urge you to use your mandates to communicate your concerns to PayPal or to issue a statement on the case. We would be happy to provide any further or analysis that you may require in order to do so.

Thank you for your consideration.

Yours sincerely,

Barbora Bukovska
ARTICLE 19

Jeremy Malcolm
ProStasia Foundation

⁶ OHCHR, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, *Maina Kiai*, 24 April 2013, para 20.

⁷ *Ibid.*, para 8.

⁸ *Ibid.*, para 10.

⁹ European Commission for Democracy through Law, *Joint Guidelines on freedom of association*, 14 December 2014, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)046-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)046-e)

¹⁰ YouTube, *UN Human Rights chief concerned about pressure on WikiLeaks*, 10 December 2010, <https://www.youtube.com/watch?v=GABYtLfMu8>

¹¹ Organization of American States, *Joint statement on Wikileaks*, 21 December 2010, <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=829&IID=1>