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June 19, 2020

Ms. Monika Bickert
Head of Global Policy Management
Facebook
1 Hacker Way
Menlo Park, California 94025

Re: Ickonic Enterprises and David Icke / Facebook Censorship

Dear Ms. Bickert:

The Rutherford Institute has been retained by David Icke¹ and Ickonic Enterprises² to represent their First Amendment interests in serving as an uncensored platform for news and information that provides a counterpoint to the curated news and information disseminated by the mainstream corporate media, acting at times as a mouthpiece for government agencies.

As a civil liberties organization that works to ensure a robust First Amendment, especially as it pertains to free speech and a free press,³ The Rutherford Institute is gravely concerned about the possibility that Facebook and other social media platforms deactivated the social media platforms for Icke and Ickonic Enterprises at the bidding of the U.S. government in order to silence views of which the government disapproved.⁴

Such a de-platforming of a speech forum constitutes government action in violation of the First Amendment's guarantee of free speech and the Universal Declaration of Human Rights.

¹ David Icke is an internationally renowned author, lecturer and vocal critic of Orwellian tendencies in society, government and among corporations to manipulate information to reinforce its own positions, while suppressing any views that run counter to or challenge those embraced or approved of by the Establishment.

² Ickonic Enterprises, an international media organization based in the United Kingdom, was founded by David Icke and is operated by Gareth and Jaymie Icke.

³ The Rutherford Institute is a non-profit legal and educational organization that assists individuals whose civil liberties are threatened or infringed and works to safeguard the constitutional and human rights of all persons.

⁴ In March 2020, the United States government held a meeting with Facebook, Google (YouTube's owner) and other tech giants for the purpose of enlisting their assistance in suppressing information related to the COVID-19 pandemic. This top-level meeting led to a joint statement from the tech giants pledging to work together to censor information on social media that the government deems dangerous and a threat to the orthodoxy about public health that it wants perpetuated.

Factual Background

David Icke, a lecturer, commentator and author of more than 20 books, is known for voicing controversial opinions that challenge mainstream beliefs and the status quo. Ickonic Enterprises, founded by Icke and run by Jaymie and Gareth Icke, is a media company that operates in accordance with Icke's mission to provide the public with a source of information that is not beholden to international corporate interests and does not parrot the conventional, politically correct viewpoints so prevalent within the mainstream media.

This commitment by Icke and Ickonic Enterprises to serving as an uncensored source of news and information has garnered significant followers on their social media platforms: as of April 2020, they had amassed over 800,000 followers on Facebook and nearly 1 million views of their YouTube content. They had also made substantial investments towards growing their online presence, spending close to \$120,000 per year for advertising on Facebook alone.

Nevertheless, on May 1, 2020, Facebook deactivated Ickonic Enterprises' Facebook account, as well as those of Ickonic's founder and spokesman, David Icke.⁵ A message from Facebook explained that the de-platforming was done "for going against the Facebook Community Standards on health misinformation that could cause physical harm."

Around that time, YouTube, Vimeo and MailChimp also deleted the accounts of Ickonic and Icke.⁶ MailChimp, an email marketing service, disabled their accounts, asserting violation of its terms of use. Vimeo, a video platform, removed Ickonic's account, asserting a violation of a rule forbidding content that is false or promotes hoaxes. YouTube, without warning, also deactivated Icke's account and deleted his channel because of policies "prohibiting any content that disputes the existence and transmission of Covid-19 as described by the [World Health Organization] and the [National Health Service]".⁷

This mass de-platforming occurred right after Icke, publicly and on Ickonic's various social media channels, questioned the prevailing orthodoxy regarding the COVID-19 pandemic, which has confounded the science and medical community. Icke had also challenged the authoritarian nature of the international community's governmental response to managing the pandemic and whether COVID-19 was actually as cataclysmic a public health threat as portrayed by governments worldwide and their international corporate partners.

Following on the heels of a March 2020 meeting between social media corporations and the United States government, the simultaneous de-platforming appears to be part and parcel of a

⁵ "Coronavirus: David Icke kicked off Facebook," *BBC News* (May 1, 2020), <https://www.bbc.com/news/technology-52501453>.

⁶ "Coronavirus: David Icke's channel deleted by YouTube," *BBC News* (May 2, 2020), <https://www.bbc.com/news/technology-52517797>.

⁷ "Coronavirus: David Icke's channel deleted by YouTube," *BBC News* (May 2, 2020), <https://www.bbc.com/news/technology-52517797>.

conspiracy by the world's most powerful social media platforms working in conjunction with government entities to censor and/or limit the freedom of expression of Icke and Ickonic Enterprises.⁸

The combined effect of this mass de-platforming, ostensibly in an effort to silence Icke and Ickonic from voicing ideas that did not comport with government messaging regarding the COVID-19 pandemic, has essentially muzzled Icke and stymied his ability to speak to and be heard on matters of public importance by the millions of individuals who follow him across these social media platforms.

This mass de-platforming has also caused incalculable economic harm to Ickonic Enterprises and its related ventures. All of the work and investment by Icke and Ickonic Enterprises to build a significant audience has been severely threatened by the social media mass de-platforming of their brands by social media companies.⁹

Technofascism and the Collusion of Corporations and Governments to Suppress Speech

The issue is not whether Icke and his organization may have been spreading disinformation about COVID-19. The issue is the rise of “technofascism” and the coordinated actions of large technology corporations with control over information colluding with governments and government entities to stifle any forms of dissent that challenge an elitist status quo. While clothed in public health and safety justifications, this form of technofascism is a slippery slope that starts with censoring so-called illegitimate ideas and ends by silencing truth.¹⁰

What we are witnessing is the modern-day equivalent of book burning which involves doing away with controversial ideas—legitimate or not—and the people who espouse them. Equally alarming, censorship of the kind Icke and his organization have been subjected to is increasing at a rate that poses a serious threat to the freedoms of all people, regardless of their views. As one journalist observed:

What matters is that we're seeing a consistent and accelerating pattern of powerful plutocratic institutions collaborating with the US-centralized empire to

⁸ In March 2020, the United States government held a meeting with Facebook, Google (YouTube's owner) and other tech giants for the purpose of enlisting their assistance in suppressing information related to the COVID-19 pandemic. This top-level meeting led to a joint statement from the tech giants pledging to work together to censor information on social media that the government deems dangerous and a threat to the orthodoxy about public health that it wants perpetuated.

⁹ At the time of the de-platforming by Facebook, Ickonic Enterprises had over 800,000 followers of their Facebook pages and had nearly 1 million views of their YouTube content.

¹⁰ John Whitehead, “Technofascism: Digital Book Burning in a Totalitarian Age,” *The Rutherford Institute* (May 5, 2020), https://www.rutherford.org/publications_resources/john_whiteheads_commentary/technofascism_digital_book_burning_in_a_totalitarian_age.

control what ideas people around the world are permitted to share with each other, and it's a very unsafe trajectory.¹¹

Moreover, the manner in which Facebook has allowed its “false news” and “community standards” policies to be applied to Icke and Ickonic Enterprises, as well as other independent information sources, violates the First Amendment, the Universal Declaration of Human Rights, and the principles of freedom of speech and the press.

Not only have these “false news” labels resulted in significant damage to the reputation and standing of Ickonic and Icke, but they also have threatened the very existence and economic viability of the organization by limiting its reach and readership, which are essential for driving traffic to its website and generating the ad revenues that fund its news operations.¹²

Restricting a news organization's access to a social media platform because of the opinions it espouses is contrary to the international community's commitment to freedom of expression and fails to give the press the kind of “breathing room” the First Amendment is meant to foster.¹³ Moreover, it is wholly contrary to universal principles of freedom of speech that are the foundation for representative democracy.

The Deactivation of the Ickonic and Icke Accounts Violates the First Amendment

In 2017, the U.S. Supreme Court recognized that maintaining access to places where people can speak and listen is essential to protecting the right of freedom of speech.

Today, the most important of those places, as the Court noted, “is cyberspace—the ‘vast democratic forums of the Internet’ in general, . . . , and social media in particular.”¹⁴

The Court went on to rule that government action forbidding persons from accessing social media (and Facebook, in particular) violates the First Amendment because it “bars access to what for many are the principal sources for knowing current events, . . . , speaking and listening in the modern public square[.] . . . These websites can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.”¹⁵

¹¹ Caitlin Johnstone, “Why You Should Oppose The Censorship Of David Icke (Hint: It Has Nothing To Do With Icke),” *Medium.com* (May 2, 2020), <https://medium.com/@caityjohnstone/why-you-should-oppose-the-censorship-of-david-icke-hint-its-got-nothing-to-do-with-icke-4cb72d19481c>.

¹² Because Facebook's “false news” policies provide that domains found to have published false news will have the distribution of their content reduced and their ability to monetize and advertise removed, Ickonic and Icke have seen a drastic reduction of its reach and traffic at its website, which has greatly reduced its ability to generate revenues needed to fund its news operations.

¹³ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964).

¹⁴ *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. ACLU*, 521 U.S. 844, 868 (1997)).

¹⁵ *Packingham v. North Carolina*, 137 S. Ct. at 1737.

Heretofore, Facebook has largely avoided the First Amendment's restrictions on censorship on the basis that it is not a government entity to which the Constitution applies. For example, a 2018 federal court decision found that social media platforms are private corporations that need not regulate their actions in censoring speech according to the strictures of the First Amendment.¹⁶

However, in the case of the censorship of Ickonic Enterprises and David Icke, Facebook cannot avail itself of the claim that it acted as a "private corporation" because its decision was plainly at the behest of the government of the United States.

If a private person or entity acts in concert with government officials for the purpose of depriving others of their constitutional rights, they are subject to the strictures of the First Amendment. When a private actor enters into a conspiracy with the government or its agents or is a willful participant in joint action with them, the private actor's actions are under color of law and subject to the limitations of the Constitution. As a federal court recently ruled in *Federal Agency of News LLC v. Facebook, Inc.*, "Ultimately, joint action exists when the [government] has so far insinuated itself into a position of interdependence with [the private entity] that it must be recognized as a joint participant in the challenged activity."¹⁷

That Facebook and other social media platforms silenced Ickonic Enterprises and Icke in collusion with the United States government is demonstrated by the meeting between tech giants and White House officials in March 2020. Numerous media outlets reported that on or about March 11, 2020, the White House held a meeting with tech companies, including Facebook and Google, in which the White House chief technology officer asked for the companies' help in spreading accurate information and preventing the spread of misinformation about the coronavirus outbreak.¹⁸

As reported by *The Washington Post*, White House chief technology officer Michael Kratsios met with representatives of the tech companies to enlist their help in augmenting the government's efforts in the fight against the coronavirus, hoping that Silicon Valley might foster the government's efforts to track the outbreak and disseminate accurate information:

"Cutting edge technology companies and major online platforms will play a critical role in this all-hands-on-deck effort," Michael Kratsios, the White House's chief technology officer, said in a statement. "Today's meeting outlined an initial path forward and we intend to continue this important conversation."¹⁹

¹⁶ *Prager Univ. v. Google LLC*, 2018 WL 1471939, at *8 (N.D. Cal. Mar. 26, 2018)

¹⁷ *Federal Agency of News LLC v. Facebook, Inc.*, No. 18-CV-07041-LHK (N.D. Cal. Jan. 13, 2020), slip op. at 20.

¹⁸ See, e.g., Taylor Hatmaker, "White House asks tech leaders for help with coronavirus response," *TechCrunch.com* (March 11, 2020), <https://techcrunch.com/2020/03/11/white-house-cto-kratsios-tech-facebook-google-meeting/>.

¹⁹ Tony Romm, "White House asks Silicon Valley for help to combat coronavirus, track its spread and stop misinformation," *The Washington Post* (March 11, 2020), <https://www.washingtonpost.com/technology/2020/03/11/white-house-tech-meeting-coronavirus/>.

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A focus of the meeting was in getting such corporate entities as Facebook and Twitter to stop the spread of any so-called coronavirus conspiracy theories on their platforms.²⁰

Acting on this government mandate, on March 16, Facebook, Google and other tech companies issued a joint statement pledging to “jointly combat[] fraud and misinformation about the virus, elevating authoritative content on our platforms, and sharing critical updates in coordination with government healthcare agencies around the world.”²¹

By all appearances, Facebook acted in conjunction with the U.S. government and other social media companies to censor Icke and Ickonic. Because of this joint action, it is subject to the restraints of the Constitution, including the First Amendment. As such, the de-platforming of Icke and Ickonic Enterprises (their content removed and they themselves banned from the public forum that is Facebook) violates the First Amendment.

As a general matter, under the strictures of the First Amendment, the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.²² Only very narrow categories of expression, such as obscenity and inciting violence, are beyond the protection of the First Amendment, and the speech expressed by Icke and Ickonic does not fall into any of those categories.

While opinions expressed on their social media sites may be controversial, they may not be banned by the government or those acting for the government.

Indeed, the First Amendment affirmatively protects speech that is alleged to be false and may not be banned or punished solely in the interest of maintaining what the government may deem to be “truthful” discourse. As such, the U.S. Supreme Court has rejected the idea that the government may act like the “Ministry of Truth” in Orwell’s *1984*.

Except where speech is used to gain a material advantage, there is no broad censorial power over even demonstrably false speech. As the U.S. Supreme Court has ruled, “The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.”²³

²⁰ Sean Kean, Ian Sherr, “White House asks tech companies for help battling coronavirus,” *C/NET* (March 12, 2020), <https://www.cnet.com/news/white-house-asks-tech-companies-for-help-battling-coronavirus/>.

²¹ Catherine Shu, Jonathan Shieber, “Facebook, Reddit, Google, LinkedIn, Microsoft, Twitter and YouTube issue joint statement on misinformation,” *TechCrunch.com* (March 16, 2020), <https://techcrunch.com/2020/03/16/facebook-reddit-google-linkedin-microsoft-twitter-and-youtube-issue-joint-statement-on-misinformation/>.

²² *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002).

²³ *United States v. Alvarez*, 567 U.S. 709, 723 (2012).

The Coordinated Actions Against Icke and Ickonic Enterprises Violate Anti-Trust Laws

As pointed out above, the actions against Icke and Ickonic arose out of a White House meeting where Facebook and other dominant social media/tech companies were asked to join with the government's program to censor content it deems harmful and false.

Not only have these companies agreed to carry out the instructions of the federal government, they have entered into a combination and agreement to “jointly combat[] fraud and misinformation about the virus, elevating authoritative content on our platforms, and sharing critical updates in coordination with government healthcare agencies around the world.”²⁴ This kind of concerted action to prevent disfavored persons and organization from having access to social media is a patent violation of U.S. antitrust laws. Thus, the Sherman Act provides that “[e]very contract, combination ..., or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.”²⁵

If the various platforms had a conscious commitment to a common scheme designed to prevent users and account holders from having access to social media, there is an illegal and actionable combination in restraint of trade.²⁶

Facebook, with its commitment to creating a worldwide community for the sharing of information, should have policies that foster and support independent voices that challenge users' preconceived ideas and cause them to question whether so-called authorities may be misleading the public. Instead, it is now engaged in a course of action that not only violates the laws of the United States, but seeks to replace the marketplace of ideas with the information age equivalent of an international totalitarian regime.

Historic Ideals of Freedom and Free Speech Undergird the First Amendment

In the 17th century, John Milton, one of the early proponents of free speech, wrote in opposition to British laws that attempted to suppress political opposition and unorthodox religious thought by requiring that authors have licenses and be approved by the government. His pamphlet *Areopagitica* advocated for a society in which decisions are based upon open discussion, in which the sources of information are not controlled by authority, and in which political unity is secured not by force but by a consensus that respects variety of opinion.²⁷

²⁴ Catherine Shu, Jonathan Shieber, “Facebook, Reddit, Google, LinkedIn, Microsoft, Twitter and YouTube issue joint statement on misinformation,” *TechCrunch.com* (March 16, 2020), <https://techcrunch.com/2020/03/16/facebook-reddit-google-linkedin-microsoft-twitter-and-youtube-issue-joint-statement-on-misinformation/>.

²⁵ 15 U.S.C. § 1.

²⁶ *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 764 (1984).

²⁷ “Areopagitica; A Speech Of Mr. John Milton For The Liberty Of Unlicenc'd Printing, To The Parlament Of England,” *The John Milton Reading Room*, http://www.dartmouth.edu/~milton/reading_room/areopagitica/text.html.

Thereafter, the preeminent philosopher John Stuart Mill argued for a broad protection for expression and for fostering a “marketplace of ideas” as the best course for societies. Mill argued that there ought to exist the fullest liberty of professing and discussing, as a matter of ethical conviction, any doctrine, however immoral it may be considered.”²⁸ He went on to write that “[i]f all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person than he, if he had the power, would be justified in silencing mankind.”²⁹

In the 20th century, the ideals of freedom of speech and of the press were championed by Alexander Meiklejohn, who believed free expression was an essential component for healthy democracies and a government of the people. He argued that the knowledgeable and informed electorate necessary for democracy to flourish requires that the flow of information remain unfettered and free from manipulation by those in power. To that end, Meiklejohn advocated for a system in which people are exposed to new and revolutionary ideas and thoughts:

The primary social fact which blocks and hinders the success of our experiment in self-government is that our citizens are not educated for self-government. We are terrified by ideas, rather than challenged and stimulated by them. Our dominant mood is not the courage of people who dare to think. It is the timidity of those who fear and hate whenever conventions are questioned.³⁰

These ideals are not only embodied in the First Amendment to the U.S. Constitution but are also represented in Article 19 of the Universal Declaration of Human Rights. Indeed, the principles embodied by the First Amendment have universal application regardless of nationality and across borders. As Article 19 of the Universal Declaration of Human Rights affirms: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”³¹

Facebook Must Renounce the Mantle of Censorship

If the ideals of the First Amendment and Article 19 of the Universal Declaration of Human Rights are to survive, David Icke and Ickonic Enterprises and others like them that have been the targets of coordinated and government-directed censorship must be allowed to speak and be heard.

Icke speaks with an independent voice on matters of grave public concern and has a fundamental right to be heard.

²⁸ John Stuart Mill, *On Liberty* 106 (Batoche Books 2001), available at <https://socialsciences.mcmaster.ca/econ/ugcm/3113/mill/liberty.pdf>.

²⁹ *Id.* at 18.

³⁰ Alexander Meiklejohn, “The First Amendment Is an Absolute,” 1961 *Sup. Ct. Rev.*

³¹ <https://www.un.org/en/universal-declaration-human-rights/>.

The right to speak and hear information is not only a human right, but is an indispensable aspect of democracy and self-governance.

To the detriment of all, Facebook, YouTube and other tech giants are surely and quickly eroding the universal right to free speech by engaging in a coordinated campaign against information and ideas they deem controversial and dangerous. Moreover, this campaign has been accelerated by way of the COVID-19 pandemic, which is being used against those, such as Icke, who dare to question so-called government “experts” and are silenced in the supposed interest of protecting the public.

Despite the carefully constructed platitudes to justify such de-platforming, these forms of social media and internet censorship are not protecting the public from dangerous, disinformation campaigns about COVID-19. Rather, they are laying the groundwork, with Icke and others as easy targets, to preempt any allegedly “dangerous” ideas that might challenge the power elite’s stranglehold over our lives.

It is a short step from this kind of “altruistic” censorship to the kind of authoritarian and totalitarian control of information we now see in China.

Time is of the essence in this matter.

With each passing day that Icke and Ickonic are unable to communicate with their thousands of followers from around the world who seek to think for themselves and rely on alternative news sources as a means of balancing the carefully crafted information / disinformation campaigns put forth by the corporate media acting in concert with government agencies, Icke, Ickonic and their followers suffer the irreparable harm that results when expression is censored.

Moreover, the economic harm to Icke and Ickonic continues to mount as the reach of their enterprises and ability to monetize and advertise on Facebook have been eliminated.³²

The monetary damages they will incur will no doubt be substantial by any measure.

Silence Coerced by Law Is the Greatest Menace to Freedom

By its actions, the government and its corporate partners, including Facebook, have adopted a patronizing, elitist mindset predicated on the notion that the citizenry cannot think for themselves and is so easily wounded by words and ideas that they must be shielded from that which is “offensive” or “dangerous.”

³² As pointed out previously, Icke and Ickonic Enterprises have made substantial investments, including advertising, in order to establish their online presence and develop an enormous following on social media. This all stands to be irretrievably harmed if they continue to be banned from Facebook.

A society in which people stop debating among themselves, stop thinking for themselves, and stop believing that they can fix their own problems and resolve their own differences in turn will give rise to a largely silent, passive, polarized populace incapable of working through their own problems and reliant on the government to protect them from our fears.

As U.S. Supreme Court Justice Louis Brandeis recognized, a silent, inert citizenry is the greatest menace to freedom.

In his concurring opinion in *Whitney v. California*, 274 U.S. 357 (1927), Justice Brandeis provided a well-reasoned argument against this form of “benevolent” censorship, directed by the government and its corporate allies and inflicted on the populace for its own so-called good.³³

It’s not a lengthy read, but here it is boiled down to ten basic truths:

1. The purpose of government is to make men free to develop their faculties, i.e., THINK. 2. The freedom to think as you will and to speak as you think are essential to the discovery and spread of political truth. 3. Without free speech and assembly, discussion would be futile. 4. The greatest menace to freedom is a silent people. 5. Public discussion is a political duty, and should be a fundamental principle of the American government. 6. Order cannot be secured through censorship. 7. Fear breeds repression; repression breeds hate; and hate menaces stable government. 8. The power of reason as applied through public discussion is always superior to silence coerced by law. 9. Free speech and assembly were guaranteed in order to guard against the occasional tyrannies of governing majorities. 10. To justify suppression of free speech, there must be reasonable ground (a clear and present danger) to believe that the danger apprehended is imminent, and that the evil to be prevented is a serious one.³⁴

In other words, a nation without a hearty tolerance for free speech, no matter how provocative, insensitive or dangerous, will be easy prey for a police state where only government speech is allowed. Likewise, if the government can control speech, it controls thought and, in turn, it can control the minds of the citizenry.

There has been no evidence of any evil so serious nor any clear and present danger so imminent as to justify the censorship of David Icke and Ickonic Enterprises.

³³ Justice Brandeis, Concurrence in *Whitney v. California* (1927), U.S. Supreme Court, https://www.law.cornell.edu/supremecourt/text/274/357#writing-USSC_CR_0274_0357_ZC.

³⁴ Justice Brandeis, Concurrence in *Whitney v. California* (1927), U.S. Supreme Court, https://www.law.cornell.edu/supremecourt/text/274/357#writing-USSC_CR_0274_0357_ZC.

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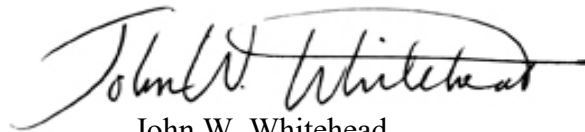
A response is requested by July 6

Therefore, in the interest of fostering a strong, vibrant, and independent press and ensuring that the people are not restricted in their ability to access a broad array of views and sources of information in order to think for themselves and draw their own conclusions about pressing issues of the day—the true mark of any free society—it is imperative that Facebook not only reverse its decision to deactivate the accounts of David Icke and Ickonic Enterprises and refrain from any other efforts to restrict the freedom of expression, but also compensate them for the economic harm resulting from Facebook’s actions.

At a minimum, Facebook should consider this letter an appeal on behalf of Icke and Ickonic to Facebook’s Oversight Board requesting a reactivation of their Facebook account and all accompanying privileges, and that the Oversight Board conduct an expedited review of Icke’s and Ickonic’s appeal.

In order that we might best advise Icke and Ickonic on how to protect their rights and interest, we require a response by July 6, 2020.

Sincerely yours,

A handwritten signature in black ink, appearing to read "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President

cc: David Icke
Ickonic Enterprises
Susan Diane Wojciki, Chief Executive Officer, YouTube
Anjali Sud, Chief Executive Officer, Vimeo
Ben Chestnut, Chief Executive Officer, MailChimp