



Free Press Comments on Facebook Oversight Board

In late January, Facebook [outlined](#) its vision for an independent Oversight Board that “creates accountability and oversight of [its] content policy and enforcement decisions.” Then in April, Facebook announced a process similar to “notice and comment” to [solicit input](#) about the governance, membership and types of decisions made by the Oversight Board.

Free Press welcomes Facebook’s attempt at openness and transparency. Facebook’s initiating this public comment process on its Oversight Board for content moderation was a worthwhile step. However, this process falls short. It is not nearly iterative enough, nor transparent enough, to provide any legitimacy to whatever institution the company is seeking to create. Not only is the process problematic, the current proposal for the Oversight Board is also fundamentally flawed.

The concept of an Oversight Board is meaningless if Facebook’s internal procedures and policies are less-than-transparent and result in disparate impacts for racial, religious, and other minorities and marginalized communities all across the globe. If Facebook is still enamored with the concept of an independent Oversight Board, it should go beyond just adjudicating “tough” content decisions and instead empower the board to audit Facebook’s internal processes to recommend policy, enforcement and transparency changes that should be implemented in order to lead to meaningful change.

After careful consideration of Facebook’s current proposal for an Oversight Board and the questions Facebook posed for public comment, we strongly recommend that the company shelve this idea and return to the drawing board to propose an oversight body empowered to make real change.

The Process

We have years of experience with public comment processes. The notice-and-comment process Facebook is trying to emulate should be an iterative and open one. For example, U.S. government agencies issue proposals, seek public comment, and then further refine their proposals based on those comments. The comments themselves are posted publicly in an open and transparent manner. Facebook has provided none of these things.

We have based this comment on the [draft charter](#) but have little idea if that truly reflects the company's vision. We know generally that Facebook has had consultations with academics, interest groups, and civil-society organizations around the world. Yet we have little idea about whom exactly at Facebook these groups met with, the issues discussed in those consultations, and how the company will weigh those comments.

Facebook has also confirmed that it will not publish comments submitted in this process and instead will have a law firm summarize the submissions. However, it is unclear whether the final makeup of the Oversight Board will reflect a consensus view of the comments, whether the initial proposal was panned or praised, or whether the company will ultimately go its own way and rest on the laurels of having had a process to give a veneer of legitimacy to plans it already had in place.

The Board

The draft charter outlines a plan to create a one-size-fits-all global content moderation scheme through a quasi-judicial process — in effect creating a [“Supreme Court” for content moderation](#). This plan is unlikely to work. Judicial processes are complex and often adversarial. They are fundamentally about giving people a venue to vindicate their rights. Facebook has not yet done the work of explaining the rights of its users vis-a-vis the platform or what the rules truly are. A judiciary cannot meaningfully operate in this fog. Establishing the rule of law and even crafting social policy through judicial review is an extremely difficult task within a responsive government context and perhaps impossible inside a top-down corporate structure. We are concerned that as a quasi-judicial body, the Board's independence and power will be illusory. It may never have enough power to meaningfully constrain the actions of the company's corporate leadership, bind the company to its decisions, or, we suspect, steer the company's policies in a way that conflicts with the company's profit motives.

The Board as imagined by the draft charter seems designed to offload responsibility for its content moderation policies to part-time committee members instead of the company itself. The company should be honest about the powers and responsibilities the Oversight Board can reasonably expect to have. An independent advisory and investigative body avoids these pratfalls. Were the Board empowered to dig into the company's processes and publicly air its findings on Facebook's content-moderation policies and examine disparate impacts on

marginalized populations, we might welcome it. But we have not heard such a proposal from the company.

Facebook should adopt efforts like the model corporate policies laid out by the [Change the Terms](#) coalition, of which Free Press is a member, which would be a step in the right direction to tighten up Facebook's internal processes on content moderation. Specifically, the Change the Terms framework rightly demands that Facebook apply an intersectional racial justice lens to content moderation to ensure that those most marginalized in our societies have their speech protected, and that those engaged in hateful activities come under greater scrutiny. The hard work of creating transparent, just and effective content-moderation policies needs deep involvement from within Facebook — and accountability must come from its corporate board and its C-suite — for the public to have confidence that Facebook is taking this task seriously.

Further Questions

Nevertheless, if the project of creating this Board goes forward we raise the following issues:

The governance, independent judgment and accountability of the Oversight Board are concepts inextricably linked to the types of decisions the Board is able to make, review and deliberate.

Ensuring the Oversight Board's independence is critical — yet that independence will mean nothing if Facebook staff is so far removed from the decisions that it could easily ignore the recommendations and/or fail to enforce the outcomes, or if implementing those decisions is regularly frustrated by the actions and decisions of the company's leadership.

Permanent staff will be necessary to help administer and support the Board. They must have the knowledge, training and historical context to advise the Board members of established Facebook procedures. Their support will be critical to making the Board function, yet the logistics of a global Board makes creating these supporting structures complicated.

Examining the questions posed by Facebook's survey also leads to more questions than answers. Here are a few that Facebook needs to answer itself before this process moves forward:

- What kind of questions will go to the Board? Will they be policy issues or individual take-down requests or disputes?
- Will board opinions and bind or merely inform the policy staff of Facebook?
- Will there be written explanation of the Board's decisions? Will there be published dissenting opinions?

- How will the decisions of the Board trickle down to users?
- How will the decisions of the Board trickle down to first-line content moderators?
- Is Facebook trying to have one speech/content policy for the world? How will these decisions be mindful of local contexts, cultures, norms and laws?
- What will the tipping point be for an issue to be considered by the the Board?
- When and how will users be notified of the a decision or moments in the cycle of the appeals process?
- When and how will a decision go into effect?
- What will the scope of remedies be for users?
- Will the scope of the Board include private or community groups? Will the Board adjudicate or recommend user bans?
- Will decisions of the Board affect other Facebook products like Instagram?
- What will the civil rights and human rights training and processes of the Board be?
- How will the permanent staff of the Board be picked?
- What's the training process for the Board? Who will lead it? Who will have input on the Board's training materials?
- Will Board members be paid?
- How can a 40-person, part-time Board adjudicate content decisions for 2.3 billion people?

Facebook's current internal processes on content moderation have failed. The company must fix those first before creating this Board. Users do not know how those processes work, whether those decisions are internally consistent, or how the appeals process works. Users need real rights, reflected in the company's governance structure, to have confidence in the company, not just a promise that they might avail themselves of a new external bureaucratic process that leads to nowhere.

Facebook should stop trying to pantomime government and instead try to be a responsible corporate citizen. It should work to improve enforcement, transparency, accountability, its appeals process, and its record on civil and human rights. And it should take a principled stand on its own content-moderation policies and community standards instead of hiding behind the veneer of a supposed independent Oversight Board — especially one for which it has not yet guaranteed either independence or authority.

Respectfully Submitted,
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