

Access Now's public comment to Facebook's Oversight Board case consultation

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Access Now welcomes the opportunity to submit our contribution to Facebook Oversight Board's case 2021-001-FB-FBR. Given the circumstances, Facebook's decision to remove former President Donald Trump from its platform could be considered a necessary and proportionate response. Indeed, under the international human rights framework, incitement to violence and hatred allow for the application of last resort measures in order to guarantee public safety.

But even if we agree that in this particular instance the actions of Facebook could be justified, the focus should not revolve around Trump's account suspensions. With nearly [2.8 billion users globally](#), Facebook wields a disproportionate and dangerous amount of power in determining public discourse worldwide.

Facebook's action raises three major systemic issues that need to be addressed from a human rights perspective:

- 1) Establish and properly enforce meaningful transparency measures
- 2) Apply Terms of Service evenly globally
- 3) Create space for democratic governments to play an active role in platform governance

1. Establish and properly enforce meaningful transparency measures

The company has systematically failed to provide meaningful transparency with regard to its content governance decision-making processes. Without transparency, it is impossible for outside actors to know if Facebook is in fact applying its Terms of Services in a consistent manner, or taking any steps to address the harms associated with its business.

Facebook's decision-making processes are not subject to any public oversight. Yet their impact is global and far-reaching. In the attachment to this submission, we provide a list of recommendations on meaningful transparency in content moderation as well as on how large platforms like Facebook should apply their Terms of Service.

Importantly, meaningful transparency entails disclosure of information and data about algorithmic content curation, enforcement of platforms' Terms of Service, and automated decision-making in content moderation. For transparency to be meaningful, it has to be communicated in a way that can be used to help hold decision makers to account.

2. Apply Terms of Service evenly globally

Whereas Facebook's Terms of Service apply to all its users worldwide, they are not enforced evenly. Platforms have failed to respond evenly and with the same sense of urgency to emergencies unfolding elsewhere around the globe. Social media companies need — and, so far, have failed — to make equitable investments in effective content moderation everywhere they operate, putting the resources in place to uphold human rights in a manner that is responsive to the local context.

For example, in Sudan, over 20,000 Sudanese have [called on Facebook](#) to remove the accounts of the [Sudanese Rapid Support Forces \(RSF\)](#), implicated in human rights crimes in Darfur and Sudan. The RSF has an official Facebook page, and their leader, who is implicated in killings, mass rape, burning and looting of villages, and mass displacement of civilians, has a [verified government official page](#). To date, Facebook has maintained these accounts despite repeated calls from Sudanese activists for removal.

3. Create space for democratic governments to play an active role in platform governance

By moderating and curating content at large scales, Facebook implicates the freedom of expression of individuals and groups within its services. Because of the company's outsized level of control over online discourse, these decisions may have far-reaching consequences for society. This is especially true due to the dominant position of Facebook services in the digital market. The impact of the decision to exclude a user from the platform may seriously impair the free expression of an individual, and in the case of a public official, of the right of the community to access information to hold that official accountable for their actions and statements.

Decisions that affect freedom of expression and access to information should ultimately be the product of democratic debate where institutions play a role. It is the State's positive obligation to protect individuals' human rights. Democratic public institutions should find ways to address the impact of dominance, the lack of transparency, and the data-harvesting business incentives of platforms.

It is unacceptable that a private company acts as a quasi-judicial body in making decisions with significant implications for individuals and societies at-large. Unlike democratic governments, which are accountable to the people, Facebook is nearly exclusively accountable to its shareholders. This does not bode well for making sound policy decisions that prioritize protecting users' rights, such as their "voice" or safety.

4. Conclusion

When speaking of Facebook's preeminent position in controlling the public sphere, we would be remiss to not highlight that the company's hyper-targeted advertising business model, while responsible for its success, is also responsible for its human rights violations. Indeed, Facebook is

incentivized to amplify potentially harmful content that is inflammatory or sensationalist because it generates more attention, which in turn generates greater profit. This business model has not only benefited dangerous political figures like Trump, but is incredibly lucrative for Facebook. We reiterate the resounding call from civil society groups around the world for Facebook to, at long last, prioritize people over profit.