

Facebook Oversight Board Comment re: President Trump’s Account Suspension

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NetChoice

Twenty-five years ago, Congress sought to make the internet both family-friendly and a forum for free speech.¹ Lawmakers understood that the best way to do this was by empowering private businesses to develop their own moderation policies for user-created content. That way, different websites could use different approaches to meet different user bases’ expectations.

Different approaches are exactly what happened. Today, websites like Parler and Gab largely shun moderation in favor of a hands-off approach. By contrast, websites like TikTok and Twitter take a broader view of content moderation. Not only do these websites have different moderation policies, they also use different tools to enforce those policies. Whereas Twitter uses a mixture of artificial intelligence (AI) and human reviewers to moderate content, Parler relies only on the latter.

Facebook has experimented with moderation even further. For the most part, it follows industry conventions: enforce policies through a mixture of human review, user flagging, and AI. But unlike any other business, it also empowers an independent Oversight Board to review—and reverse—its content-moderation decisions.

This independent board reviews Facebook’s decisions, ensures they align with the business’s policies, and overturns them when they don’t. In this sense, the Oversight Board is like a private Supreme Court: it analyzes a lower body’s application of policies to individual cases, and has final say on whether that lower body’s application was correct. And like the real Supreme Court, the Oversight Board explains its logic in written decisions available to the public. These decisions provide transparency and clarity—helping Facebook, users, and other interested parties understand what Facebook’s policies mean in practice.

Facebook’s Oversight Board is an entirely new model of content moderation. Although it’s too soon to tell whether it’ll be successful, early evidence suggests it supports Facebook’s goal to be more transparent and accountable. With billions of pieces of user-generated content, the website must constantly adapt to new problems and grapple with thorny issues. In many cases, it must respond immediately, leaving little time for philosophical debates or empirical studies.

The Oversight Board, however, doesn’t operate under the same constraints. In reviewing Facebook’s decisions, it can consult internal and external experts, commission studies, and consult a broad range of opinions. Indeed, it is part tribunal and part think tank.

But what works for Facebook may not work for others. For starters, Facebook operates all over the world and has nearly 3 billion users, including many world leaders. Facebook’s enforcement procedures must therefore be tailored to its policies and those policies must therefore be tailored to its unique circumstances. The Oversight Board is an innovative way for Facebook to do just that.

And therein lies the beauty and wisdom of Congress’s decision 25 years ago when it passed Section 230 of the

[1] See, e.g., Hon. Chris Cox, Policing the Internet: A Bad Idea in 1996 – And Today, REAL CLEAR POLITICS (June 25, 2020), https://www.realclearpolitics.com/articles/2020/06/25/policing_the_internet_a_bad_idea_in_1996_--_and_today.html.

Communications Decency Act into law: Like Facebook, other websites can tailor their policies and procedures to meet their needs. Without a one-size-fits-all approach to moderation, businesses large and small can experiment and adapt. In the end, the internet benefits from this innovation and Americans are left with more choices to choose from.

Experimentation in moderation also strengthens competition. Parler's rise, for example, came in no small part because some Americans, especially on the political right, wanted less content moderation. And because websites can have different policies, the United States has one of the most competitive digital markets in the world.

Thanks to Congress's foresight, businesses like Parler and Facebook can give Americans exactly what they want. And popular websites like Facebook can continue to innovate, benefitting their users in the process. At bottom, regardless of the Oversight Board's final decision in the pending matter, this experimentation and differentiation is good for the market and good for Americans.

As for the question of whether Facebook acted in accord with its community standards by suspending Donald Trump's ability to post on his Facebook page, the answer is yes—because of the context in which the removal decision was made.

During the afternoon of January 6, all Americans could see on their screens that the US Capitol was under attack. With that actual—not potential—violence underway, Donald Trump's afternoon video message repeated his claim that the election was stolen, which clearly had the potential to expand and extend the violence, since that claim was the sole reason Trump had exhorted his followers to march on the Capitol earlier that day. This potential for inciting further violence was a real danger, despite Trump suggesting that his followers leave the Capitol peacefully at the end of his video message.

On balance, given the actual violence occurring, its origins, and the content of Trump's video message, Facebook acted in accord with its community standards by suspending Donald Trump's privileges to post content to his 35 million Facebook followers.