



June 24, 2020

Rep. Janice D. Schakowsky
Chairwoman
Subcommittee on Consumer Protection &
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Washington, DC 20515

Rep. Cathy McMorris Rodgers
Ranking Member
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Rep. Michael Doyle
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Rep. Frank Pallone
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Dear Chairwoman Schakowsky, Chairman Doyle, Ranking Member McMorris Rodgers, and Ranking Member Latta:

Public Knowledge commends both the Communications and Technology and Consumer Protection and Commerce Subcommittees of the Energy and Commerce Committee for holding a joint remote hearing on disinformation.¹ As you point out, the flow of misinformation and disinformation over social media platforms has reached a crisis point. This is an extraordinary opportunity to hear from experts and use their insights to forge solutions to minimize the spread of dangerous disinformation online.

Public Knowledge may be uniquely qualified to provide perspective on disinformation since beginning in early March, we tracked and reported on the efforts of 13 digital platforms to counter misinformation about COVID-19, and assessed literally hundreds of articles, reports, and abstracts from journalists, experts, and academics to understand where, how, and by whom

¹ Many frameworks distinguish between misinformation (the inadvertent sharing of false information) and disinformation (the deliberate creation and sharing of information known to be false). Because of its greater potential for harm, we agree with the Joint Subcommittee's focus on disinformation. However, given the initial difficulty of assessing the intent of information sharing for CV-19, we follow the Reuters Institute practice and use the term misinformation in our reporting and this correspondence to refer broadly to any type of false information - except when other terms are used in direct quotes or footnotes.

disinformation spreads.² In this letter, you'll find insights from our reporting, proven strategies to counter disinformation, examples of where we have seen disinformation hurt people the most, and details placing disinformation within the context of ongoing Section 230 conversations. We primarily focused on the major non-encrypted information distribution platforms (Facebook, Google, YouTube and Twitter) with a goal of informing policy decisions on disinformation and online content moderation, both during and after the crisis.

The World Health Organization referred to COVID-19 when its Director-General famously warned, “We are fighting an ‘infodemic’ that is as dangerous as the pandemic itself.”³ But by the end of our tracking period, one thing had become painfully clear: The “infodemic” of disinformation affected not only our collective response to COVID-19, but also the flow of news and information about the protests and organized expressions of constitutionally protected speech in the aftermath of George Floyd’s murder. That flow of disinformation introduced significant challenges to public health and safety, demonstrating troubling dynamics -- with disinformation surrounding the COVID-19 response and the protests coming from even some of the same sources. Without intervention, the infodemic will next infect one of our most vital democratic processes: the election. Disinformation, as we have seen from its impact on COVID-19 to the response by some to national protests, is virulent and highly dangerous, especially for marginalized communities and Black people.⁴

Here are some of the key insights from our reporting:

- From the outset, information about the pandemic became highly politicized, subject to the same partisan and conspiratorial themes as other political topics. That is why we believe COVID-19 is an appropriate model for how platforms can and should manage other types of misinformation.
- This politicization means misinformation about COVID-19 can cause real and significant harms beyond the individual life or death consequences of misunderstandings about the epidemiology of the disease. In fact, it can and is creating many of the same harms as political misinformation, including:
 - Fearmongering and increasing panic and angst;
 - Threatening the physical safety of individuals;

² Lisa Macpherson, *How are Platforms Responding to This Pandemic?: What Platforms Are Doing to Tackle Rampant Misinformation During Our 'Infodemic'*, Public Knowledge (2020) <https://misinfotrackingreport.com/>.

³ *Novel Coronavirus (2019-nCov) Situation Report-13*, World Health Organization (February 2, 2020) <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200202-sitrep-13-ncov-v3.pdf>.

⁴ Lisa Macpherson, *The Pandemic Proves We Need A “Superfund” to Clean Up Misinformation on the Internet*, Public Knowledge (May 11, 2020) <https://www.publicknowledge.org/blog/the-pandemic-proves-we-need-a-superfund-to-clean-up-misinformation-on-the-internet/>.

- Limiting the effectiveness of official and institutional efforts;
 - Sowing mistrust, division, and polarization; and
 - Fostering racism and discrimination.
- The importance of this last point cannot be overstated. In fact, one of the most significant harms to come from disinformation - whether it's about COVID-19, the current protests, voting, or any of a number of related themes - is the continued racialization of America and the disparate negative impact on Black people and other people of color, from both an economic and health perspective. To be sure, the pandemic has “shined a bright light” on systemic racism and structural inequities that have existed for generations.⁵ But there was also early and ongoing misinformation about whether Black individuals were immune to the disease, and about the government's response. Data from state after state now shows Black Americans are seeing higher infection and mortality rates from COVID-19 than other communities, as well as greater economic impacts. These findings also coincide with the rise in anti-Asian violence since the beginning of the pandemic, due in part to misinformation about the role of Chinese citizens in spreading the virus to and throughout the U.S.
 - Public statements from President Trump are consistent with findings from the bipartisan Senate report on the 2016 election.⁶ Disinformation related to who, in fact, engaged in looting or property destruction has been highly racialized, as are reports of who has initiated violent encounters with police officers.⁷ And we have already begun to see disinformation about the voting process, such as exaggerations from President Trump about the potential for fraud from mail-in voting, in multiple venues.⁸ All of these themes originate from the same intentions - to marginalize particular groups of voters, sow division, and exert political and social control - including by foreign actors.⁹ The disparate and inadequate efforts by the digital platforms to remove or counter these themes makes the work of this Joint Subcommittee even more important.

⁵ Jason Breslow, *Why Misinformation And Distrust Are Making COVID-19 More Dangerous For Black America*, NPR (April 10, 2020) <https://www.npr.org/sections/coronavirus-live-updates/2020/04/10/832039813/why-misinformation-and-distrust-is-making-covid-19-more-dangerous-for-black-amer>.

⁶ Senate Select Committee on Intelligence, *Russian Active Measures Campaigns and Interference in the 2016 Election Volume 2: Russia's Use of Social Media with Additional Views*, 116th First Session https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf.

⁷ Jay Kolls, *Head of private security company: Anarchists, extremists used 'sophisticated' tactics to escalate unrest in Twin Cities*, KSTP EyeWitness News (June 14, 2020) <https://kstp.com/news/anarchists-neo-nazis-used-sophisticated-tactics-to-escalate-unrest-in-twin-cities/5759706/>.

⁸ Donald Trump, Twitter, <https://twitter.com/realDonaldTrump/status/1275024974579982336> (“RIGGED 2020 ELECTION: MILLIONS OF MAIL-IN BALLOTS WILL BE PRINTED BY FOREIGN COUNTRIES, AND OTHERS. IT WILL BE THE SCANDAL OF OUR TIMES!”)

⁹ Senate Select Committee on Intelligence, *Russian Active Measures Campaigns and Interference in the 2016 Election Volume 2: Russia's Use of Social Media with Additional Views*, 116th First Session https://www.intelligence.senate.gov/sites/default/files/documents/Report_Volume2.pdf.

- Platforms have treated misinformation regarding the pandemic differently than other kinds of misinformation, in part because they expected information about it to be more clear-cut.¹⁰ While that effort has clearly not done enough to curb the clear and present dangers of misinformation, it has shown us that the platforms are capable of much more than they have claimed in the past. Some of their actions have undermined their past claims to Congress as well as civil rights and tech policy organizations, that such content moderation is “too hard,” “not our job,” or is incompatible with legal frameworks like civil rights and free speech. Their efforts have included:
 - Removing or downranking misinformation that doesn’t pass fact-checking by independent organizations;
 - Upranking and featuring authoritative content from recognized health authorities;
 - Creating and showing content panels using data from global and local health organizations;
 - Pausing or deleting accounts that repeatedly defy their standards (even when they belong to prominent people);
 - Banning exploitative ads to prevent price gouging and sales of fake or counterfeit protective supplies;
 - A full range of changes to user experience design, including nudging strategies and adding friction to sharing of content; and
 - Unusual transparency about the required move to greater use of machine learning as human moderators were sent home, and the risks of doing so.
- To be clear, we don’t believe these efforts are perfect, or even close to sufficient. At best, they represent a new baseline for the efforts platforms may be compelled to make going forward. Clearly social media platforms, even when understaffed, have the capability of doing a better job of parsing disinformation and moderating content than they have previously claimed. Even so, these measures are not enough as there is still rampant disinformation across social media platforms. Moreover, there are questions on how content moderation AI treats African American Vernacular as Public Knowledge has highlighted.¹¹
- Any solutions to address the spread of dangerous information must reflect an increasingly complex and connected news and information ecosystem in which quality information and misinformation flow across both legacy and digital media. Often, conspiracy theories and disinformation originate on niche sites, get amplified in partisan or mainstream media or by prominent political or entertainment personalities, and then get spun back out online. In some cases, this content is from the same sources: In May, NewsGuard

¹⁰ Ben Smith, *When Facebook is More Trustworthy Than the President*, New York Times (March 15, 2020) <https://www.nytimes.com/2020/03/15/business/media/coronavirus-facebook-twitter-social-media.html>.

¹¹ Bertram Lee Jr., *Moderating Race on Platforms*, Public Knowledge (January 29, 2020) <https://www.publicknowledge.org/blog/moderating-race-on-platforms/>.

reported that over 80% of the 197 sites publishing false claims about the coronavirus had already been identified as “unreliable” (the number of sites is now up to 237).¹² That’s because many of these sites use different themes of disinformation to achieve the same goals: sow division and discord in the U.S., create distrust in our institutions, and undermine democracy. That is why solutions are so essential.

Based on our reporting, we also want to assure both the Communications and Technology and Consumer Protection and Commerce Subcommittees that if action is required, there are multiple paths to take. It’s tempting to think of content moderation as a simple question of "taking down" or "leaving up" content. But there are other solutions to minimize, and ultimately end, the spread of dangerous disinformation and misinformation online that have been proven in research settings - and in some cases in the platforms’ own experiments. Congress could compel the platforms to use some of these approaches we found in our research, including:

- Countering with accurate information: Research consistently shows that most effective strategies are as much about amplifying accurate information as they are about managing misinformation.
- Evaluating the source: As above, many of the sites publishing misinformation about the coronavirus were already notorious for publishing false health content, including political sites whose embrace of conspiracy theories extends well beyond politics.
- Avoiding binary solutions: In both academic research settings and platform experiments, trying to label or block information based on being “true” or “false” has had unintended consequences. These include the backfire effect (people click on false content out of curiosity); false positives (people assume anything not labeled as false is true); and defiance (people share false information that supports their beliefs out of tribalism).
- Prioritizing misinformation: Even if just for resource management, misinformation should be prioritized for remedial action, such as labeling, downranking, or removal by platforms, based on its potential for harm and its degree of visibility or engagement.
- Increasing the salience of accuracy: When users are encouraged to think about accuracy before encountering misinformation, they are less likely to engage with or share it.
- Upgrading human content moderation: Stop marginalizing content moderation through outsourcing; bring it in-house and increase staffing, training, and working conditions. This will also help offset the loss of context, language, and cultural cues and the clear bias and discrimination that can occur with machine learning systems for identifying and removing information.

¹² Gabby Deutch, *132 Websites Are Pushing Coronavirus Conspiracy Theories, Says NewsGuard Misinformation Monitor*, Newsweek (March 27, 2020) <https://www.newsweek.com/132-websites-are-pushing-coronavirus-conspiracy-theories-says-newsguard-misinformation-monitor-1494557>.

At Public Knowledge, we have also proposed our own solution: a “superfund for the internet,” which would compel the platforms to partner with sources of authoritative information to counter misinformation while providing a new revenue source for local journalism.¹³

Make no mistake: The public also wants the platforms to take a more active approach to content moderation. Just this week, new research from Gallup and the Knight Foundation, “Free Expression, Harmful Speech and Censorship in a Digital World,” shows:¹⁴

- Americans, regardless of party, prefer that social media sites be places of open expression - but also agree that certain types of information have no place on the internet.
- The vast majority of Americans - more than 8 in 10 - say they currently do not have much or any trust at all in social media companies to make the right decisions about what people can post on their sites. And Americans are more critical of social media companies for *not going far enough* to police harmful content than for going too far.
- That said, Americans would strongly prefer to see the social media companies making the right decisions about what people can post on their sites, rather than have the government set policies to regulate social media content.

Although some have threatened to eliminate Section 230, which currently immunizes platforms from being held liable as a publisher or speaker of content they host, doing so would not necessarily make platforms liable for all disagreeable content -- as most disagreeable content, even misinformation, is constitutionally protected speech. Eliminating a legal shield does not create liability. Additionally, carving out exemptions to 230 based on the content of user posts could end up just creating a cottage industry of unproductive litigation as to whether particular user posts fit within an exception. But there are other avenues for reform that could increase platform accountability.

Section 230 is important in a number of ways. It allows social media and user-generated content sites to exist without accepting liability for every user post. While this can lead to the spread of misinformation, hate speech, and harassment, it is also what enables social media sites to serve as organizing platforms for the Black Lives Matter and Me Too movements, and to widely spread instances of police misconduct. Section 230 also allows platforms to remove user posts

¹³ Lisa Macpherson, *The Pandemic Proves We Need A “Superfund” to Clean Up Misinformation on the Internet*, Public Knowledge (May 11, 2020) <https://www.publicknowledge.org/blog/the-pandemic-proves-we-need-a-superfund-to-clean-up-misinformation-on-the-internet/>.

¹⁴ Gallup, *Free Expression, Harmful Speech and Censorship in a Digital World*, Knight Foundation (2020) https://knightfoundation.org/wp-content/uploads/2020/06/KnightFoundation_Panel6-Techlash2_rprt_061220-v2_es-1.pdf.

from their services without fear of that content moderation incurring liability, which is clearly important when it comes to stopping the spread of hate speech, obscenity, propaganda, and misinformation. Policy proposals that would increase platforms' liability for engaging in content moderation, or that expect platforms to spell out in fine detail in advance every kind of harmful posts that they will remove, risk incentivizing platforms into taking a more "hands-off" approach to content moderation issues, which would work against the widely shared goal that platforms should be doing more to prevent the abuse of their services.

At the same time, the basic policy justification for Section 230--that it allows for social media and user-generated content services to exist--does not apply to all the activities Section 230 applies to, or has been said to. For instance, platforms should be responsible for user content that they pay for via monetization systems, even if they had no part in its initial creation, and for ads they accept money to run. In both of those cases, it is reasonable to limit a platform's immunity, because entering into a business transaction relating to specific content should carry with it a standard duty of care. While most disinformation spread via advertising or monetized content might not be actionable, the increased diligence that platforms might exercise in response to the potential of liability for some content might be enough to limit the spread of misinformation that, while lawful, violates the platform's existing policies. Additionally, Section 230 does not, and was never intended to, shield platforms from the standard kinds of business and consumer regulation that other companies are subject to, such as prohibitions on engaging in illegal transactions or protecting user privacy.

Thoughtful approaches to content moderation issues are needed now more than ever, since in the absence of clear guidance, platforms like Facebook and Twitter can face unconstitutional regulatory scrutiny for enforcing their own user guidelines.¹⁵ Public Knowledge again applauds the Subcommittees on Communications and Technology and Consumer Protection and Commerce for holding this important hearing. We look forward to working with Members to help find solutions to these problems that can help both limit harmful disinformation and give consumers more choice.

Sincerely,

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Public Knowledge

¹⁵ Executive Order on Preventing Online Censorship (May 28, 2020)
<https://www.whitehouse.gov/presidential-actions/executive-order-preventing-online-censorship/>.