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Washington, D.C. 20005

October 25, 2020

The Honorable Brett Guthrie
c/o House Subcommittee on Consumer Protection
& Technology
U.S. House of Representatives
Washington, D.C.

RE: Questions for the Record Response

Dear Cong. Guthrie:

Thank you for attending the House Subcommittee on Consumer Protection hearing on Social Media's Role in Radicalizing America and for submitting a question to me for submission to the hearing record.

With respect to your extraordinarily well crafted legislation – Countering Online Harms Act – you asked me to respond to the following questions:

1. DO YOU BELIEVE THAT SOCIAL MEDIA PLATFORMS ARE DOING ENOUGH TO ENFORCE THEIR TERMS OF SERVICE?

The unharmonized terms of service and other customer agreements which social media companies assert are their contracts with their customers can best be described as dysfunctional, unverifiable, and independently unenforceable by consumer protection federal and state authorities.

CSW staff has monitored these ever evolving “statements of service” (we refuse to designate them as bilateral contracts) which are randomly amended by their issuers without the input of its customers – primarily for the one-sided benefit of the platform and not the consumer. They are more akin to statements of purpose and intent rather than agreements to fulfill.

Worse, these statements of service are repeatedly violated by the platforms' management. So, in a current example, Facebook pledged to remove videos of the New Zealand Christchurch massacre livestreamed on its platform. Weeks and

months later CSW located these videos on Facebook, and to this day, we continue to locate these videos, often on Facebook's other language service platforms. We have concluded that Facebook's vaunted artificial intelligence has not been programmed to engage on adequate content moderation in other languages served by Facebook.

The same holds true regarding the sale of illegal substances. In a [Washington Post](#) article dated September 16, 2019, our joint research with the Digital Citizens Alliance disclosed over 100 examples of illegal drugs, steroids, and other banned substances marketed on both Facebook and YouTube. We continue to locate on Facebook offers from pop-up pharmacies the illegal sale of Covid remedies and substandard PPE.

I would like to finally draw your attention to a major violation of the terms of service by YouTube's management. Under its Community Terms of Service:

"YouTube doesn't allow content that encourages dangerous or illegal activities that risk serious physical harm or death."

We have repeatedly pleaded with YouTube to remove videos professionally produced which provide step-by-step instructions to would be terrorists how to construct weapons, including pipe-bombs, chemical weapons, guns, ammunition, etc. YouTube's management has refused to respond to our requests. Several of these videos were, according to our FBI sources, been accessed by several domestic terrorists. These videos serve NO public purpose. They are categorically in violation of the referenced quote, cited above.

CSW deems YouTube's management as the most untransparent among all major social media platforms as it continues to avoid accountability as it all too conveniently hides behind its Alphabet parent management.

In summary, CSW is of the view that so long as social media platforms merely have assumed a moral obligation, rather than a legal obligation, to abide by their own terms of service, they will continue to subjectively determine how and whether to enforce their one sided pledges to the public. Therefore, CSW supports the elimination of Section 230 and recommends formation of an independent private watchdog organization – a Social Media Standards Board (SMSB).

Attached is a copy of the SMSB blueprint and explanation.

2. WHAT DO YOU THINK OF THE ROLE OF EMERGING TECHNOLOGIES, LIKE AI, IN HELPING TO IDENTIFY AND REMOVE ILLEGAL CONTENT?

By way of illustration, CSW has recommended to the senior executives of Facebook two new software technologies which would enable Facebook to capture more adverse and illegal content.

The first technology, known as EGlyph, is a photo forensic software was developed by Dr. Hany Farid, one of the nation's leading experts on video forensic technologies. Dr. Farid is Chairman of the Computer Science Department at UC Berkeley. He has testified often before Congress on the subject deep fake videos, and other related digital content moderation technologies.

The second technology, known as GIPEC, is a patented machine learning software developed by CSW's Senior Vice President for Content Moderation (Eric Feinberg) which has the capability to teach social media AI how to identify illegal content in foreign languages and to train AI how to identify content which may reappear after it was pledged to be removed.

In both instances Facebook's management refused to accept a free license of both technologies even under the most stringent NDA. Why?

1. Both technologies would compel Facebook to enable these software developers to access its API (Applied Programming Interface) – the core software technology which controls algorithm management. Facebook refuses to enable such access.
2. Facebook's counsel has warned its management that accepting third party software not primarily developed internally by Facebook could undermine its Section 230 immunities in pending litigation.

We are unaware what other third party technologies have been licensed or purchased by any of the social media platforms. Nevertheless, so long as major social media platforms can unilaterally determine – without any independent accountability – what and when to adopt in the way of new technologies – we are left with opaque boasts about their new and improving AI each day. It is for this reason CSW has proposed to create a SMSB, and to convene in Washington a conference of major technology developers to exchange information regarding the very new technologies we are certain exist which would greatly accelerate content moderation capacities.

I look forward to providing you and your staff any further information you may request. Our staff is at your disposal, and we are grateful for your interest in our work.

Sincerely,

Amb. Marc Ginsberg
President
Coalition for a Safer Web

Attachment: CSW Social Media Standards Board Proposal



August, 2020

[For Further Information](#)

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SOCIAL MEDIA STANDARDS BOARD

PROPOSAL BY

THE COALITION FOR A SAFER WEB

Introduction

The Coalition for a Safer Web (www.coalitionsw.org) (CSW) was established in 2019 to develop innovative policy and technological solutions to accelerate the permanent de-platforming of hate and extremist content – as well as divisive disinformation and misinformation especially during the pandemic and leading up to the 2020 elections from social media platforms. CSW is a non-partisan, not-for-profit 501(c)(3) organization whose advisory board is chaired by Gov. Tom Ridge, first U.S. Secretary for Homeland Security. CSW’s founding President is former U.S. Ambassador Marc Ginsberg.

Since its inception CSW has many undertaken ground-breaking initiatives, including:

- **TELEGRAM App:** Commenced a global policy initiative to curtail the role of the mobile app “TELEGRAM” as the principal conveyor of terrorist, anti-Semitic, and racist incitement instigated by transnational extremist groups.
- **RUSSIA & “THE BASE”:** Uncovered the role which the Russian Government is playing to support the operations from St. Petersburg of Rinaldo Navarro – the purported leader of the most violent neo-Nazi terrorist group known as “The Base.”
- **“THE VIRUS OF ANTI-SEMITISM FEEDS OFF THE “JEW FLU””:** CSW’s “Special Report” details how the Covid-19 pandemic has been leveraged by Russian-backed neo-Nazi groups by fabricating anti-Semitic conspiracies and tropes implying Jews are responsible for spreading the corona virus.
- **“NATIONAL STRATEGY TO COMBAT HATE & EXTREMISM”:** CSW issued a report proposing specific recommendations for Congress and presidential candidates to consider, in order to expedite the de-platforming of extremist incitement from social media sites.



- “AN ‘AD-DEMIC’ OF CORONAVIRUS CURES”: CSW reported that Internet scammers looking to capitalize on the panic brought on by COVID-19, unleashed an onslaught of ads selling sham vaccines and fraudulent remedies on social media platforms.
- HOLDING TECH INFRASTRUCTURE COMPANIES ACCOUNTABLE: In conjunction with the LawFare Project, CSW developed an international strategy to hold accountable the tech support companies vital to enabling fringe extremist groups to operate on the web.
- SALE OF ILLEGAL DRUGS ON THE INTERNET: CSW published a report detailing the sale of illegal drugs on social media platforms in conjunction with the non-profit Digital Citizens Alliance (DCI) and the Taylor Hooton Foundation. The Report was disseminated to the media and generated a major front page article in the Washington Post.

Executive Summary: Social Media Standards Board

CSW proposes a ground-breaking private/public sector voluntary Social Media Standards Board (SMSB) which would serve as: 1) a transparent content moderation auditing organization to monitor compliance by social media companies of a new social media industry "code of conduct"; and 2) a forum to incubate and promote new technologies to assist social media companies to fulfill their own customer and vendor obligations to better manage and de-platform illicit content.

The SMSB model intends to forge a solutions-oriented voluntary monitoring organization with the support of social media corporations, the digital advertising industry, social media watchdogs, and Congress to finally establish an independent monitoring organization to ensure compliance by social media companies with a new harmonized industry-wide code of conduct.

The SMSB is loosely modeled after the successful banking industry’s Financial Accounting Standards Board (FASB). The SMSB would represent a transparent initiative among social media companies, the digital advertising industry, concerned citizens groups, and Congress to harmonize industry content moderation standards the violation of which would result in financial penalties and the possible loss of content immunity under Section 230 of the Communications Decency Act of 1996 (Section 230).



Section 1: Why Create a Social Media Standards Board?

Americans are increasingly victimized by the unaccountability of social media companies due to extremist incitement, disinformation and dangerous misinformation uploaded daily on their platforms. According to a new Gallup and Knight Foundation Report issued this week, “Americans’ concern around the spread of misinformation eclipses their concerns related to various forms of media bias, inaccuracies, or sensationalism.”

Although Section 230 grants blanket legal immunity from content liability, major social media platforms are increasingly censoring the very content they profess they are under no legal duty to monitor. Their decisions to leave up or take down content are haphazard and subjective, without any industry-wide policy guard rails or consistent, accountable third -party monitoring. An entire industry of non-profit organizations has materialized in recent years to shine a light on social media deficiencies.

Despite deploying new technologies and recruiting thousands of content moderators, the terrain of social media content moderation resembles the Wild West. Each company has their own terms of service and subjective views governing what content to edit, de-platform, or maintain. While Silicon Valley is determined to preserve its immunity under Section 230, social media companies acknowledge they are overwhelmed by adverse content and by an avalanche of demands to make their platforms safer and their content monitoring decisions more transparent. Meanwhile, what comes down often finds its way back up, and the criticism of bias by social media executive in their de-platforming decisions has impaired regulators and Congress to arrive at a united approach

Facebook recently unveiled a new quasi-independent global “Oversight Board” to adjudicate de-platforming decisions. Whatever may be its merits, Facebook executives reserve to themselves final decisions over content. Meanwhile, no other mainstream social media platform has created such an “oversight board.” The interpretation of each company’s terms of service and customer agreement is undertaken by nameless, faceless, private sector bureaucrats. The lack of transparency and accountability expected by average Americans who rely on social media is frustratingly hard to come by.

Meanwhile, in Europe, Australia and New Zealand, a new regime of laws has been enacted compelling social media companies to submit to government accountability or face major fines for their failures to cleanse their platforms of illicit content. In some new legal regimes social media executives may be subjected to criminal prosecution for failing to comply with these new laws.

The trans-Atlantic divide over social media accountability could not be wider.



As Congress considers many legislative proposals to impose more social media accountability -- in the areas of data privacy, political censorship, illicit sale of products, or incitement to violence -- the public's safety is increasingly at risk.

There are no easy answers to the nation's social media challenges.

On July 10, 2020, The Hill newspaper published a [CSW op ed](#) entitled "Facebook Ad Boycott is unlikely to solve the problem -- a social media standards board would." Public demand for reform and regulation of social media platforms has dramatically escalated, but there is little consensus in Congress or in the Executive Branch regarding what form reform and regulation should take. Meanwhile, the #StopHateForProfit coalition ad boycott's recommendations to Facebook were rebuffed by Mark Zuckerberg, leaving the digital ad industry uncertain what their ad boycott will achieve.

Facebook's refusal to accept the coalition's reasonable recommendations coupled with Congress' inability to reach consensus in how to hold social media companies accountable compelled CSW to undertake a review of existing private sector organizations which have succeeded in promoting voluntary, private sector solutions in industries where arbitrary and dysfunctional compliance with desirable harmonized standards was deficient.

Sometimes, government intervention compelled industries to bring order out of chaos; other times industries recognized the urgent need to voluntarily self-regulate because of public pressure and corporate interest.

Highly respected Silicon Valley entrepreneur turned social media critic Roger McNamee correctly observed that hate speech, conspiracy theories, misinformation, rabid political discourse, and illegal product sales have all served as "...the lubricant for their business" because it drives up customer usage, and thus, digital ad sales. No wonder when it comes to reducing dangerous content social media executives wind up taking down the bare minimum to keep their critics at bay.

Section 2: The Financial Accounting Standards Board as a SMSB Model

Established in 1973, the Financial Accounting Standards Board (FASB) is the independent, private-sector, not-for-profit organization based in Norwalk, Connecticut, which establishes financial accounting and reporting standards for public and private companies and not-for-profit organizations that follow Generally Accepted Accounting Principles (GAAP). The FASB is funded via annual grants from its banking industry stakeholders.

The FASB is recognized by the Securities and Exchange Commission as the designated accounting standard setter for public financial companies. FASB standards are recognized as authoritative by many other organizations, including state Boards of Accountancy and the American Institute of CPAs (AICPA). The FASB develops and issues financial



Accounting standards through a transparent and inclusive process intended to promote financial reporting that provides useful information to investors and others who use financial reports.

The FASB created a new collaborative initiative between the financial and banking industry and a non-governmental oversight organization which harmonized disparate industry accounting and reporting standards into a coherent, transparent system of standards.

The following is lifted from the FASB Website:

FASB MISSION

The collective mission of the FASB, the Governmental Accounting Standards Board (GASB) and the Financial Accounting Foundation (FAF) is to establish and improve financial accounting and reporting standards to provide useful information to investors and other users of financial reports and educate stakeholders on how to most effectively understand and implement those standards.

The FASB, the GASB, the FAF Trustees, and the FAF management contribute to the collective mission according to each one's specific role:

- The FASB and the GASB are charged with setting the highest-quality standards through a process that is robust, comprehensive, and inclusive.
- The FAF management is responsible for providing strategic counsel and services that support the work of the standard-setting Boards.
- The FAF Trustees are responsible for providing oversight and promoting an independent and effective standard-setting process. Transforming the FASB Model to Promote Private Sector Social Media Customer Standards Harmonization

Section 3: The Digital Advertising's Global Alliance for Responsible Media (GARM)

CSW proposes forming a SMSB working group to develop a plan of action to kickstart the launch of the SMSB among social media companies, and representatives of the Global Alliance for Responsible Media (GARM) — an initiative of digital corporate advertisers, major U.S. corporations, and public advocacy organizations.

GARM is a new digital advertising concept to voluntarily compel social media companies to better protect corporate brands from migrating onto illicit and extremist content. The symbiotic relationship between social media companies and digital advertisers results in billions of dollars of ad revenue generated for social media companies. In recent years, many digital consumer



advertisers, notably AT&T, Nestle, and others have withheld digital advertising purchases due to the proliferation of purchased advertising appearing on illicit and extremist content. The 2020 Facebook ad boycott is the latest iteration of public pressure being exerted on digital advertisers to withhold ad buys from major social media platforms.

GARM is a welcome corporate ad industry initiative, but it would greatly benefit from a durable structure to adequately fulfill its mission. GARM's creators envision a new code of conduct to establish new "rules of the road" by which social media companies would prevent corporate brand contamination from appearing on extremist and illegal content.

Most importantly, GARM's concept behind a new code is to establish industry-wide standards governing technological goals to accelerate extremist content de-platforming and compel more transparency in the metrics social media companies could and should adopt to assuage consumers, impacted private companies, and the U.S. government of the progress (or lack thereof) they are achieving to meet their own extremist content de-platforming customer terms of service and public pledges.

Section 4: The SMSB Represents a Private Sector Remedy to a Public Safety Challenge

CSW is fully cognizant that social media companies have no legal or regulatory obligation to cooperate to create a SMSB. Indeed, their track record to date is to avoid any third-party, independent oversight of their content and zig-zagging moderation policies. Convincing them to test pilot a SMSB for an initial 2-3 years will require leveraging the threat of potential loss of Section 230 immunity, Congressional and state regulation, the digital advertising ecosystem's financial influence over social media companies, and concerned stakeholders, including corporate shareholders.

Digital corporate advertisers either directly via the GARM or independently — have not endorsed a SMSB. However, the GARM's advertising liaisons have requested CSW to submit the SMSB proposal to it for its consideration.

Moreover, the proposed SMSB is NOT a Congressionally mandated public regulatory institution. However, Congress' role as a recipient of SMSB recommendations and reports is vital. Without the leverage of Congressional support and impetus social media companies may refuse to expose themselves to oversight, even to a watchdog organization they themselves must help create.



Section 5: The Role of Section 230 in a SMSB Sanctions Regime

Congress' leverage to bring social media companies to the SMSB table exists via Section 230 enforcement and the SMSB's effectiveness depends, in part, on Congress' review of SMSB audit reports.

The SMSB proposal envisions passage by Congress of an amendment to Section 230 delegating to the SMSB the power to suspend Section 230 immunity until a violating social media company restores its compliance with new industry code of conduct. The loss of Section 230 immunity would represent the ultimate penalty imposed on code violators for sustained violations. Lesser sanctions against social media companies imposed by the SMSB code could conceivably include: 1) de-certification from code compliance; 2) forfeiture of digital ad revenue; and 3) a referral by the SMSB for administrative action to the Federal Trade Commission.

CSW acknowledges that Section 230's role in a SMSB enforcement regime requires further consultation with Congress. We are working with legislative counsel. Our goal is to develop consensus among key stakeholders to arrive at a legally transparent and enforceable mechanism which only selectively resorts to a temporary revocation of Section 230 immunity as a last resort. CSW requested Congressional staff and its counsel to arrive at alternative Section 230-type solutions, including a possible referral to Congress by the SMSB of consistent code violations by social media companies.

Section 6: Overview of Proposed SMSB Mission & Administrative Structure

The SMSB is to serve as a "mission control" to undertake the following public policy goals and objectives:

1. Establish a third party, independent content moderation board to oversee social media company compliance with a new industry-wide code of conduct to be drafted by SMSB.
2. stakeholders (social media companies, the digital advertising industry, and concerned citizens groups).
3. Provide the SMSB content moderation board the authority to propose harmonizing the respective terms of service and customer agreements of social media companies with the new industry-wide code of conduct.
4. Determine whether social media companies are maintaining compliance with a code of conduct (i.e., via a certification of compliance issued by the SMSB).



5. Develop a SMSB management architecture, to include:

- Executive management and content moderation staff oversight structure
- Schedule for submitting to the public and Congress regular reports detailing code compliance and code violations committed by social media companies and actions taken by the SMSB against violations.
- Initial annual budget
- SMSB mission statement
- Code of conduct sanctions and remedies to provide enforcement authority for the code of conduct (including revoking Section 230 immunity).

The following activities should surround the bi-annual certification process in order to ensure adequate compliance and enforcement."

Participating social media companies would enjoy a presumption of compliance if they are "certified" by the SMSB, but presumption would be overcome by showing of willful and knowing or grossly negligent compliance of a code of conduct.

Section 7: Model SMSB Structure

SMSB Compliance Board Qualifications

- No board member shall have any financial interest in a regulated entity, nor has served as an employee, consultant, agent, or adviser for two years prior to service.
- The Board may consist of nine (9) members:
 - 2 content moderation/logarithm amplification technology experts.
 - 2 technology innovation experts.
 - 2 representatives from regulated entities to be designated by a social media advisory committee made up of social media companies and web infrastructure management companies.
 - 2 representatives from the digital corporate advertising ecosystem (to be designated by the GARM (Global Alliance for Responsible Media) industry group.
 - 1 representative from a citizen advocacy organization.

SMSB Staff

- The Compliance Board shall appoint such staff as may be required to undertake the auditing and prepare compliance reports under the direction of a SMSB Executive



- Director (ED) who shall report to the Compliance Board. The qualifications and requirements of the ED shall be approved by a Compliance Board.

Web Content Voluntarily Subject to Independent Analysis

- A SMSB Compliance Board shall establish web content parameters to be subject to a code regulation and an audit focused exclusively on content deemed to promote medical misinformation, extremism, incitement, hate and instruction content in support thereof.

SMSB Budget

- An annual budget shall be derived from contributions from social media corporate members and the GARM pursuant to a budget proposed by the Board. Failure to timely meet required donations in a timely manner shall result in loss of certification.

Compliance Operational Parameters

A bi-annual certification process of major social media companies would be undertaken by SMSB staff and approved by a compliance board. This bi-annual audit of compliance with the code of conduct would be shared with the public and Congress.

- Certification/Compliance/Monitoring/Enforcement

Certifications:

- + Annual compliance reviews/audits
- + Interim special code compliance reviews triggered by majority vote of Compliance Board.
- + Annual audit reports
- + Determination and issuance of fines and revocation of "certification."
- + Code standard compliance monitored regularly by staff reporting to Compliance Board.
- + Certification (suspension or revocation) to be published by the SMSB AND prominently displayed by regulated entities on their respective websites.