

Attachment—Additional Questions for the Record

**Subcommittee on Communications and Technology
Hearing on
“Holding Big Tech Accountable: Targeted Reforms to Tech’s Legal Immunity”
December 1, 2021**

The Honorable Karen Kornbluh, Senior Fellow and Director, Senior Fellow and Director, Digital Innovation and Democracy Initiative, The German Marshall Fund of the United States

The Honorable Tony Cárdenas (D-CA)

1. Antisemitism is one of the most complicated prejudices that often falls outside of ‘protected characteristics’ categories created by platforms, and requires historical, cultural, and linguistic context for moderators who are often not trained outside their native language to recognize antisemitism in order to implement platform policies correctly and consistently. A recent article by the Wall Street Journal reported that 90 percent of Facebook users reside outside of the United States. However, in 2020, Facebook’s moderators spent only 13 percent of their time flagging and addressing content outside of the United States. While antisemitic incidents are a significant problem in America, prejudice against Jews is comparatively higher in Europe and in the Middle East. What can Congress do and what steps can platforms take to increase time spent moderating content, including antisemitic content abroad, which would include improved moderator education in their native language and AI models adjusted to comprehend linguistic nuance and more effectively flag and remove antisemitic content?

RESPONSE:

The lack of sufficient capacity in content moderation has resulted in documented abuse. The most straightforward action Congress can take is requiring platform transparency for content moderation enforcement, requiring regular content moderation reports that use standardized metrics and definitions to aid analysis and comparison, as well as allowing qualified researchers access to platform APIs in order to undertake research and conduct audits.

We have also proposed that industry adopt a domestic Digital Code of Conduct which should include a commitment to more consistent enforcement of terms of service. Congress could ask the FTC to make such a code a “safe harbor” for companies to achieve immunity or prove they were not deceiving consumers by not implementing their stated terms of service. The code would be subject to third-party monitoring, and could include global commitments. Alternatively, the companies might work through a global multistakeholder process to make the commitments global.

Platforms should – through such a code or on their own – commit to sufficient on-staff content moderators native to each country the platform operates in. They should increase regular civil society trainings by organizations based in a given region in order to educate content moderators on common forms of violative content, regional or language-specific tropes or hateful narratives, and new research into methods of transmission. And platforms should increase investment in the AI tools used to perform automated content moderation by training AI on comprehensive datasets containing languages other than English, as well as increase qualitative research into the extent of violative content on their platform in languages other than English.

2. Ms. Kornbluh in your testimony you state that “Section 230(c)(1) must be clarified so that it does not neuter other important protections.” Could you please elaborate on how failing to modernize Section 230, we leave ourselves vulnerable to attacks on our civil rights, physical or emotional injuries, and potential harms from violent actors?

RESPONSE:

Neglecting to modernize Section 230 results in an inability to enforce offline rights and protections in the online world, including civil rights or protections against international terrorism. In addition, failing to modernize the law has removed incentives for platforms to fix design flaws that enable widespread physical and emotional harm, civil rights violations, and foreign agents and terrorists to recruit, harass, and organize using these platforms.

Updating Section 230 is not a panacea – there are social harms for which no individual has standing – and it is important we not throw the baby out with the bathwater – Section 230 enables an internet that powers free expression and innovation.

Several of the bills under consideration by this subcommittee would limit immunity narrowly, when social media platform design—such as opaque algorithmic promotion or monetized content—promotes the most egregious types of illegal content that produce harms, including civil rights violations, international terrorism, physical or severe emotional injury, stalking or harassment, international human rights violations, and wrongful death.