

An Oversight Board to Review Facebook's Content Decisions: Global Partners Digital Response

GLOBAL PARTNERS DIGITAL

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About Global Partners Digital

The advent of the internet – and the wider digital environment – has enabled new forms of free expression, organisation and association, provided unprecedented access to information and ideas, and catalysed rapid economic and social development. It has also facilitated new forms of repression and violation of human rights, and intensified existing inequalities. Global Partners Digital (GPD) is a social purpose company dedicated to fostering a digital environment underpinned by human rights and democratic values. We do this by making policy spaces and processes more open, inclusive, and transparent, and by facilitating strategic, informed, and coordinated engagement in these processes by public interest actors.

Additional Issues Needing Further Consideration

We welcome the consultation on Facebook's draft charter, and respond to each of the questions asked in this submission. However, we also believe that there are a number of important aspects of the new oversight board and charter which are not addressed in the questions and wish to make some general comments on these first. We believe that there are three particular issues which need further consideration:

First, the draft charter sets out aspects of the board and its working methods, however, it is likely that there will need to be further procedural issues addressed, particularly the internal processes by which the board fulfils its functions. Examples would include how the board determines who will decide which cases to be heard, which members will sit on the panels, in what form evidence will be received, and any deadlines or procedural requirements. It is not clear from the draft charter whether all of this would be included in the draft charter or, as is more likely, in some type of procedural rules. If it is to be the latter, it is not clear whether these procedural rules would be determined by the board, or by Facebook. **We therefore recommend that the final charter make clear that the board will be able to develop and revise its own internal procedural rules, provided that these are not inconsistent with anything in the charter.**

Second, the draft charter makes reference to the support that the board will receive from a "full-time staff, which will serve the board and ensure that its decisions are implemented". However, there is also the potential for this secretariat to undertake some of the functions outlined in the draft charter to allow the board to focus on its actual decisionmaking, for example, by sifting potential cases to make sure procedural requirements are met. These functions, while supportive, are nonetheless important. **We therefore recommend that the**

final charter provide greater clarity on the functions that this secretariat will undertake, in line with our suggestions in our responses below.

Third, the draft charter makes occasional reference to the relationship between the board and Facebook when it comes to Facebook's role in setting the company's content moderation policies. The draft charter makes clear that "Facebook takes responsibility for our (...) policies" and "is ultimately responsible for making decisions related to policy, operations and enforcement". However, the draft charter also signals that Facebook may seek policy guidance from the board, that the board's decisions can be incorporated into Facebook's policy development process, and that the board's decisions "could potentially set policy moving forward". We believe that the board has a critical role to play in supporting the development of Facebook's policies relating to content moderation, and that this should be more explicitly detailed in the final charter. **We recommend, in particular, that the board be able to proactively recommend changes to Facebook's content moderation policies, both through its decisions and of its own volition if there are particular issues which the board feel should be brought to the attention of Facebook. While we do not recommend that Facebook be bound by any recommended changes, it should publicly respond to them and set out why it will or will not follow any recommendations.** This way, Facebook retains a final say over its policies, while still giving the board a clear, substantive role to provide input into them.

1. What is the right number of members to balance the ability to work as a group with the need to maximize diversity in expertise and background?

While we recognise, as noted in the considerations, that there would be benefits in ensuring the membership of the board remains focused and has a sense of camaraderie and identity, we consider that these benefits are outweighed by the need to ensure as broad and diverse a range of members as possible.

Even a board of 40 global experts, as is posited under the suggested approach, will face challenges in understanding some of the contextual and cultural considerations sufficiently to make fully-informed decisions, and there are significant benefits in there being as much expertise as possible within the board itself, so that reliance on external expertise (as is considered in question 7) is minimised.

Given the range of factors that will affect the number of members needed (such as the number of cases they review, and the length of time required), we do not make a recommendation as to a specific number of members, but we do suggest a number towards the upper end of those being considered in the first instance. A larger board will be able to bring greater expertise and diversity which is essential when making decisions about a platform used by billions of people.

We would also recommend that whatever number is chosen, it be reviewed after the first twelve months of the board's establishment to determine whether it should be increased or decreased. If that size proves too large and such a review determines that it should be decreased, then not all initial members need be replaced upon the expiry of their term.

2. How can the first members of the board be chosen in a way that is transparent and reasonable?

We recognise the reasons against establishing an independent selection committee to select the initial members of the board, but believe that for it to be legitimate from its outset, consideration should be given to ways to mitigate the perception of bias that might stem from a board entirely selected by Facebook. We propose the following approach.

First, Facebook should establish a selection committee which comprises individuals from, or representing, Facebook as well as individuals who do not ('lay members'). We do not make any recommendations on the size of this selection committee or the balance between Facebook and lay members, however, we do recommend that decisions be made on the basis of consensus. The lay members would be chosen following an invitation process and the names made public.

Second, the selection committee would choose the first cohort of members on the basis of agreed criteria, which could include certain qualifications or expertise, as well as consideration of the need for balance and diversity.

Third, as we recommend in our response to question 4, the term length for members should be eighteen months, renewable once. This will ensure that fully independent members are on the board more quickly.

3. How should future selection be made to ensure continued diversity, expertise and independence?

We agree with the suggested approach of existing members of the board selecting future members, however, we recommend that this should be done through an open call, supported by the secretariat.

We also recommend that the final charter should set out the considerations and characteristics that should be taken into account when the board is determining new members and which reflect the necessary diversity, expertise and independence that they should have.

4. What is the optimal term length for members?

Given the rapid pace of change when it comes to the type of content that is generated and shared, as well as with regard to technology and social expectations, we believe that a fixed term of three years might be too long. We would, instead, propose that members serve part-time for a fixed term of eighteen months, renewable once. We also recommend that elections be held in such a way that those serving a full three years do not all end their terms at the same point, but that terms (and elections) be staggered so that approximately half of the board would be new at each eighteen-month point. On the assumption that most board members would want to renew their terms, such a staggering would help ensure that the board would remain dynamic and able to respond to changing circumstances, while still ensuring sufficient overall institutional knowledge.

5. How should requests to the board be surfaced?

We believe that, at least initially, cases brought to the board should be fairly balanced between those raised by Facebook itself, and those raised by its users.

With regard to cases raised by Facebook, we support the suggested approach of Facebook referring cases which are especially difficult to resolve, which are recurring issues of public interest, or which reflect inconsistency with Facebook's values. While the specific criteria to determine which cases to refer are for Facebook to decide upon, we believe that these criteria should be made public to ensure transparency and to aid accountability for the referrals made.

With regard to cases raised by users, we would have concerns over the use of public petitioning as a mechanism. There is a risk that this could lead to the dominance of cases raised by well-organised stakeholders at the expense of less well-resourced individuals and

groups. Instead, we believe that for an individual user to challenge a decision, they should be required to complete a form which requires a degree of detail to be provided regarding the challenge, including the evidence of harm (with sufficient flexibility to account for the difficulties that might exist in demonstrating harm). The board would only consider cases where this information had been provided and to a sufficient degree of detail.

6. How should the board select specific cases for consideration from the requests it receives?

In the first instance, we believe that the secretariat to the board should be able to filter all challenges so that only those that met the procedural requirements were taken forward. This would assist in making the case load for the board itself more manageable. Users who have raised a case should be informed if the procedural requirements have not been met.

Further, the board should develop its own internal criteria, set out in its procedural rules, for deciding which cases it shall hear from those that have been raised so that its limited resources can be directed to those cases which will have the greatest impact.

Applying those criteria, we support the suggested approach of smaller panels deciding which cases should be considered by the board. We would, however, suggest that these smaller panels make their decisions, as far as possible, on the basis of consensus, rather than a simple majority.

7. How can the board ensure cultural sensitivity while also issuing decisions that will affect 2.3 billion people around the globe?

We support the suggested approach of supplementing the board itself with a network of experts to ensure that the necessary linguistic, cultural, and socio-political expertise is available when the board makes a decision.

We have some reservations about the suggested approach of allowing Facebook users and pertinent stakeholders to submit arguments and materials to the panel in the style of amicus briefs. Our concern rests on the fact that some stakeholders, particularly from the Global North, are more likely to be able to have the necessary capacity and resources to be able to submit arguments to panels when making their decisions. There is a real risk that voices from other stakeholders will be drowned out.

To avoid this risk, we would recommend that the panel not make open calls for arguments or materials when making their decisions, but instead focus on the specific information which is needed to make that decision and seek out experts who can provide it.

8. How can Facebook ensure the board's independent judgment?

We support all aspects of the suggested approach as well as those set out in other questions, such as the board being able to choose its future members (question 3). In addition, we would recommend, as noted above in our introduction and response to question 6 that the board – rather than Facebook – be able to determine its own procedural rules, including how it makes decisions as to which cases it will hear.

A further means by which the board's independent judgment could be ensured is for there to be regular, perhaps annual or biannual, audits or reviews of the board's work undertaken by an independent reviewer. These annual reports could include a section which assesses the independence of the board from Facebook and makes recommendations. Facebook may wish

to look at the [UK Corporate Governance Code](#) which, at section 4, sets out good practice when it comes to internal and external auditing.

9. What will ensure the board's commitment to its purpose and values?

We support the suggested approach of Facebook publishing a charter which includes a set of values and which serves as the basis for the board's governance. We would also recommend that consideration be given to the merits of publishing a draft charter for consultation. We also support the suggested approach of requiring board members to agree to the values outlined in the charter.

Further to our suggestion in response to question 8, a further means by which the board's commitment to its purpose and values would be ensured is for the annual or biannual audits or reviews to include a section which assesses the extent to which the board acts consistently with the charter, including its values, and makes recommendations.

10. What's the right level of transparency to give the public insight into the Board's thinking while still protecting the safety and privacy of users and board members?

We support the suggested approach of publishing decisions within two weeks with an explanation for that decision provided by the board rather than individual panel members. The name(s) of any user(s) concerned should not be provided unless the user(s) consent.

The suggested approach of having minority 'dissents' where there is not a unanimous opinion is one that will be familiar with those in jurisdictions whose courts can issue majority and minority opinions, but it is not an approach used universally. Many national courts will only publish a single opinion of the entire court, as do some regional courts (such as the European Court of Justice).

We consider that while having minority 'dissents' may be suitable for courts, particularly in common law countries where courts play a significant role in interpreting the law, it might be less appropriate an approach for this new board. Given that the panels will only comprise a small proportion of the total number of members of the board, there is a risk that a decision which includes a minority 'dissent' will encourage users to bring cases relating to the same content to the board again in the hope that a differently constituted panel will reach a different conclusion. We would therefore recommend that panels strive to reach a decision, wherever possible, by consensus.

11. How should the board ensure coherence, as decisions from different cases and panels could result in inconsistent conclusions?

There are various steps that can be taken to help ensure coherence of decisions.

First, the board could determine through its procedural rules not to select cases relating to content which has already been considered in a previous case. An exception could be made where there had been a material change in circumstances which warranted a review of the original decision. In such cases, a larger panel could be selected, potentially including the panellists from the original decision (but ensuring that the majority of the larger panel is not from the original decisionmaking panel).

Second, where a panel is reviewing content that had already been considered in a previous case, it could be required (or encouraged) to set out in its decisions if it has taken a different approach to previous panels and, if so, what the reasoning for that different approach is.

Third, where a panel is reviewing content that had already been considered in a previous case and is considering taking a different approach, it could be required to invite other board members to provide their views.