

Facebook's Oversight Board Public Consultation Global Partners Digital Submission

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.

Section 1: Members of the Oversight Board

In your opinion, how many members should the Board have in total? Please keep in mind that the Board should have enough members to represent a variety of backgrounds and expertise from around the world. However, it should also operate as a united group.

- Between 61 and 80

When selecting individual Board members, how important are each of the following qualifications?

	Extremely important	Quite important	Somewhat important	Not at all important
Professional background		Yes		
Educational background			Yes	
Cultural and linguistic knowledge		Yes		
Familiarity with social media		Yes		

Now think about the Board as a whole. How important is it that the Board includes members with different backgrounds in each of the following ways?

	Extremely important	Quite important	Somewhat important	Not at all important
Professional background	Yes			
Educational background	Yes			
Cultural and linguistic knowledge	Yes			
Ideological or political views	Yes			
Religious views	Yes			
Race or ethnicity	Yes			
Nationality	Yes			
Income level			Yes	
Other characteristics (e.g., gender, sexuality)	Yes			

Facebook will select the first group of Board members based on a set of qualifications that will be made public. Once the Board is established, who should nominate future members to the Board?

- Facebook
- The public
- Existing Board members
- Non-governmental organizations and academics
- Other (Please specify on the next page)

Who else should nominate future members to the Board?

While we believe that final decisions regarding selection for the board should be made by the existing Board members, there is a risk that giving the existing Board absolute discretion as to both the nomination and selection process, without any form of public input, checks or review, risks the Board being seen as a closed, exclusive or insular and runs the risk of members simply choosing others who are in the same networks, or who share the same interests.

To mitigate this risk, we propose that the starting point for the selection process should be that anyone, including Facebook, the public, non-governmental organisations, and academics should be able to nominate potential board members.

After nominations are received by the secretariat and filtered for eligibility, the Board should actively and formally consult on nominees with a broad range of stakeholders, before making a decision which incorporates the consultation feedback received, and with a public explanation of those members selected.

Who should select future Board members from the list of nominations?

- Existing Board members

The Board should remain fair and impartial when making decisions. To ensure impartiality, the Board may need to set clear criteria preventing certain people from becoming Board members. For example, current and former Facebook employees will not be allowed to serve on the Board.

In your opinion, which of the following groups of people should not be allowed to serve on the Board?

- Current government officials
- People who are financially invested in Facebook
- Lobbyists in a related industry

Out of the entire Board, smaller groups of 3-7 members will be formed to make decisions on individual pieces of content. We will refer to these smaller groups as "panels", and to these individual pieces of content as "cases".

The Board will select panel members for each case. In your opinion, which of the following considerations is most important when selecting panel members?

- Other

What other considerations are most important when selecting panel members?

The most critical consideration is an understanding of the context of the content that has been referred to the Board. However, in practice, this may mean different characteristics or areas of expertise, such as geographical location (where an understanding of the regional, national or local situation is needed), linguistic knowledge (where the content is in a particular language), cultural knowledge (where the content relates to a particular phenomenon or group, such as a historical event or a religious group or practice), or professional experience (where an understanding of international human rights law, for example, is relevant). As such, determining which panel members are best-placed to make a particular decision will be more of an art than a science, and setting out a prescriptive hierarchy of considerations, beyond an understanding of the context of the content, may not be helpful.

Section 2: Decisions of the Oversight Board

The Board's primary responsibility will be to make decisions on content cases. These cases will be relevant to Facebook's interpretation and implementation of its own rules and policies (e.g., its Community Standards). However, the Board may make decisions that differ from Facebook's rules and policies.

In your opinion, should the Board be allowed to recommend changes to Facebook's rules and policies?

- Yes

The Board may review cases that are similar to one another based on issue or context. Although these cases may be related, they will not be identical.

Should the Board be able to group related cases into a single review?

- Yes

For each case, Facebook will provide information to the Board for additional context. However, Board members may need to consult with experts from particular groups, disciplines, or backgrounds to help make decisions. After all, the Board cannot realistically include members from every country, language group, and culture.

Of the following types of experts, who should Board members be able to consult?

- Research assistants supporting the Board
- Individual subject matter experts
- Non-governmental organizations, think tanks, and universities

The Board's decision on a case may affect certain people, groups, or industries, who may wish to submit their opinions to the Board for consideration. While reviewing a case, should the Board be allowed to read written submissions of those opinions?

- Yes

Of the following, whose written opinions should the Board be able to consider? By “content”, we mean photos, videos, posts, or comments shared on Facebook.

- The people who posted or shared the content
- The people who reported the content
- The people identified or mentioned in the content
- Concerned individuals and organizations

23. Over time, the Board will be asked to make decisions on cases that are similar to cases it has reviewed in the past. When this happens, how important is it that the Board take its past decisions into consideration?

- Extremely important

Section 3: Governance of the Oversight Board

In your opinion, what is the maximum number of years a member should be able to serve on the Board?

How useful are each of the following methods for making sure the Board is acting in the public's best interests?

	Extremely useful	Quite useful	Somewhat useful	Not at all useful
Review a minimum number of user cases each year		Yes		
Publicly explain the reasoning behind each decision	Yes			
Publish regular reports about trends and findings		Yes		
Choose cases that will have the greatest public impact	Yes			
Publicly disclose Board members' potential conflicts of interest	Yes			

Each content case will be reviewed by small groups of 3-7 members, which will be called “panels”. In your opinion, should the identity of those panel members reviewing individual cases be publicly disclosed? Please keep in mind that the identity of all Board members will be publicly disclosed.

- No

Please explain why you think the identity of panel members should not be publicly disclosed.

There are arguments in favour of publishing the identity of panel members, primarily that this would increase transparency in the process and, potentially, build confidence that the decisions are made by those Board members who are best-placed to do so.

However, there are compelling arguments against public disclosure of individual panel members involved in a particular decision. It would be very easy for individuals who are unhappy with the decision of a panel to make another appeal in the same or similar circumstances on the basis that the original decision was reached due to specific individuals being part of the panel, and that a differently constituted panel would reach a different decision. This would undermine the collegiate nature of the Board and the benefits of it being viewed as a single entity.

Keeping the names of individual panel members private (as opposed to the members of the Board at large) would have the further benefit of helping ensure the safety and security of those involved. Given the sensitivity and controversy involved in some of the decisions being

made, it is important to mitigate the risks of reprisals to panels members for making a particular decision.

Each panel's decisions will be made public. Should the Board also produce broader, publicly accessible reports that summarize the Board's actions and content decisions?

- Yes

How frequently should the Board produce these reports?

- Once every year

In addition to the support Facebook will provide, who should supervise, administer, and support the Board's operations?

- The Board itself, as its own entity
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Section 4: Essay Section

Essay 1: The membership of the Board

Facebook has proposed an Oversight Board of experts with experience in content, privacy, free expression, human rights, journalism, civil rights, safety, law, and other relevant disciplines. The list of members will always be public. The Board will be supported by full-time staff, which will serve the Board and ensure that its decisions are implemented. The staff will not form part of the Board itself.

Regarding Board membership, we would welcome comments on issues such as:

- Appropriate criteria for membership
- Selection process (both initial and future)
- Conditions for termination
- Terms of agreement for Board members

Appropriate criteria for membership: We have no particular comments on the appropriate criteria for membership, beyond the need, which has already been recognised, for the Board as a whole to comprise as diverse a range of members as possible in terms of personal characteristics, experience and expertise.

Selection process (initial): While Facebook has announced that it will select the first group of Board members, we believe that to enhance the Board's legitimacy from the outset, Facebook should give consideration to ways to mitigate the perception of bias that might stem from a board entirely selected by Facebook with no external consultation. We propose a slightly different approach.

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 about the first Board members be made on the basis of consensus and on the basis of Facebook's criteria. The lay members would be chosen following an invitation process and the names made public.

Selection process (future): We believe that the Board should choose its future members, however we recommend that this should be done through an open call, supported by the Board's secretariat during which nominations can be received from anyone, including Facebook, civil society organisations, and users themselves.

Conditions for termination: We have no particular comments on the conditions for termination of Board members.

Terms of agreement for Board members: We have no particular comments on the terms of agreement for Board members.

Essay 2: The decisions of the Board

The Oversight Board will review the decisions Facebook makes when enforcing its Community Standards. Board decisions on each piece of content will be binding, subject to applicable law.

The Board's decisions could also influence Facebook's policies moving forward.

Regarding Board decisions, we would welcome comments on issues such as:

- Criteria and process for case selection
- Ability for users and/or the public to request review
- The role for precedent and influence on Facebook's rules and policies
- Implementation of Board decisions
- The Board's process and basis for decision-making
- The level of transparency in the Board's deliberation and decision-making process
- Form of case presentation and deliberation

Criteria and process for case selection: In the first instance, we believe that the secretariat to the Board should be able to filter all cases so that only those that meet certain procedural requirements (which we suggest below) are 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 criteria, set out in procedural rules, for deciding which cases it shall hear from those that have been raised. We do not make any recommendations as to what these criteria should be as this should be decided by the Board members, however we would expect that those criteria would help ensure that the Board's limited resources can be directed to those cases which will have the greatest impact.

Applying those criteria, we support the proposed 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.

Ability for users and/or the public to request review: We believe that individual users should be able to request a review of a decision, and that in order to do so, 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 and requests that did not meet the criteria would be disregarded.

The role for precedent and influence on Facebook's rules and policies: With regard to precedent, to ensure clarity and the understanding of users, we believe that the Board's decisions should be as consistent as possible, meaning that once a decision has been made by the Board with regard to a particular piece of content, the default position should be that the same decision should be made on the same or similar pieces of content. There may be circumstances where an exception could be made, although the more often this happens, the greater the risk of repeat requests being made to review the same or similar pieces of content. To minimise this, we propose the following:

First, the Board should determine through its procedural rules not to select cases relating to content which has already been considered in a previous case. An exception would be made only 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 should set out in its decision if it has taken a different approach to previous panel 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.

With regard to influencing Facebook's broader rules and policies, we believe that the Board should be able to recommend changes in two circumstances:

First, through the decisions of the Board themselves. Where a decision is made which relates to the underlying policies in such a way that those policies require amending. For example, if the Board considers that a number of decisions relating to content removal have been wrongly made, and that this stems in part from some vagueness or ambiguity in the underlying Community Guidelines, the Board should be able to make recommendations (which may be distinct outputs from its decisions) in relation to the relevant Community Guidelines, e.g. a general recommendation that they be clarified and/or with the Board suggesting specific revisions.

Second, proactively. To ensure that the Board is genuinely an "oversight" body, it should not be restricted in reviewing Facebook's content policies only when a particular case has reached it for review. Instead, it should be able to proactively monitor the policies and their enforcement, and make recommendations about any policy changes as and when it feels necessary. This ability would allow the Board to be more dynamic and responsive to new or changing situations, and would benefit Facebook by allowing the Board to raise potential issues to Facebook before problems arise (or increase in scale) when content decisions are made.

Implementation of Board decisions: Following each decision, Facebook should publish a response setting out what steps in plans to take to implement the Board's decision. Facebook should also inform the Board once those steps have been taken. The Board should have the power to review that implementation process and, if it considers that it has not addressed any problems identified in its decision, make this clear to Facebook. This process should be repeated until the Board is satisfied that its decision has been fully implemented.

Where the Board makes broader recommendations relating to Facebook's policies, these should not be binding on Facebook in the same way as its decisions about specific pieces of content, but Facebook should nonetheless be required to publish a response setting out what steps, if any, it plans to take in relation to those recommendations.

The Board's process and basis for decision-making: We have no particular comments on the process and basis for the Board's decisionmaking and would instead leave this to be determined by the Board itself through its procedural rules. We do, however, recommend that there should be a strong emphasis in the final Charter of the importance of the right to freedom of expression, and an acknowledgment of Facebook's responsibility - under the UN Guiding Principles on Business and Human Rights - to respect that right. Nothing in the Charter or the procedural rules should be inconsistent with, or undermine, that responsibility.

The level of transparency in the Board's deliberation and decision-making process: We recommend that decisions should be published within two weeks of a case being considered by a panel. The name(s) of any user(s) concerned should not be provided unless the user(s) consent. While there is no need for the actual deliberation and decisionmaking process to be fully transparent (i.e. by being recorded or by communications between Board members being published), the decisions should contain sufficient detail to make clear how the panel reached its decision. Any documents or other evidence which was considered by the panel in making its decision should be published, with redactions where necessary to protect the identity of any user(s) concerned unless they consent.

Form of case presentation and deliberation: We have no particular comments on the form of case presentation and deliberation and would instead leave this to be determined by the Board itself through its procedural rules.

Essay 3: The Board's governance, independent judgment, and accountability

The Oversight Board should be able to make decisions independently, but should also have the resources to operate and support its decision-making process. The Board's structure and operations will need to be transparent for the public to assess whether the Board is operating with sufficient independence.

Regarding the Board's governance, we would welcome comments on issues such as:

- Source of compensation for the Board and supporting staff
- Board administration, potentially by an independent body; e.g., a non-profit organization, industry association, think tank, or university
- Transparency in decision making and operation
- Periodic, public reports from the Board
- Facebook's implementation of Board decisions
- Communication between Facebook staff and the Board

Source of compensation for the Board and supporting staff: We believe that Facebook should pay the costs of compensating the Board members and its supporting staff.

Board administration: We have no particular comments on the Board administration and would instead leave this to be determined by the Board itself through its procedural rules.

Transparency in decision making and operation: We have no particular comments on the level of transparency in decisionmaking beyond those set out in our response to the second essay question. With regard to the operations of the Board, these should be as transparent as possible with, for example, any internal procedural rules made public, and a report published annually on the Board's operations over the previous year.

Periodic, public reports from the Board: We recommend that the Board publish an annual report setting out its work over the previous year. This report should include information on the decisions reached and whether they have been fully implemented. It should also include information on any broader recommendations made, and Facebook's response to them. The report could also include analysis and reflections on broader trends and issues.

Facebook's implementation of Board decisions: As we suggest in our response to the second essay question, following each decision, Facebook should publish a response setting out what steps in plans to take to implement the Board's decision. Facebook should also inform the Board once those steps have been taken. The Board should have the power to review that implementation process and, if it considers that it has not addressed any problems identified in its decision, make this clear to Facebook. This process should be repeated until the Board is satisfied that its decision has been fully implemented.

Where the Board makes broader recommendations relating to Facebook's policies, these should not be binding on Facebook in the same way as its decisions about specific pieces of content, but Facebook should nonetheless be required to publish a response setting out what steps, if any, it plans to take in relation to those recommendations.

Communication between Facebook staff and the Board: We have no particular recommendations on how Facebook staff and the Board should communicate.