Oversight Board

Public Comment Appendix for

Case 2023-22-IG-UA

Case number

Case description

In September 2020, an Instagram user with around 9,000 followers posted an image of Squidward–a cartoon character from the television series, SpongeBob SquarePants—which included a speech bubble entitled "Fun Facts About The Holocaust." The speech bubble contains claims about the Holocaust that are not true. The caption below the image includes several tags relating to memes, some of which may target specific geographical audiences. In comments on their own post, the user reiterates the claims are "real history." The post was viewed around 1,000 times and had fewer than 1,000 likes.

On October 12, 2020, several weeks after the content was originally posted, Meta [announced](#) revisions to its content policies to prohibit Holocaust denial. "Denying or distorting information about the Holocaust" was added to a list of "designated dehumanizing comparisons, generalizations, or behavioral statements" within the [Hate Speech](#) Community Standard (Tier 1). On November 23, 2022, Meta reorganized the Hate Speech Community Standard, and now "Holocaust denial" is listed under Tier 1 as an example of prohibited "harmful stereotypes historically linked to intimidation, exclusion, or violence on the basis of a protected characteristic."

Since the content was posted in September 2020, users reported it six times for hate speech. Four of these reports were made before Meta's policy change, and two came after. Some reports were assessed automatically as not violating Meta's policies, whereas others were auto-closed as a result of what Meta described as its "COVID-19-related automation policies." This policy, introduced at the beginning of the pandemic in 2020, auto-closed review jobs based on a variety of criteria to reduce the volume of reports for human reviewers, while keeping open potentially "high-risk" reports. As some reports were auto-closed, the content was left on Instagram.

Two reports led to human reviewers assessing the content as non-violating, one prior to the policy change and one after it. In May 2023, another user reporting

the content appealed that decision, but that appeal was auto-closed due to Meta's COVID-19-related automation policies. The same user then appealed to the Board, expressing deep concern at Meta's failure to remove content about Holocaust denial.

The Oversight Board has selected this case because of its relevance to the Board's strategic priorities, and the volume of user appeals questioning the way Meta enforced its prohibition on Holocaust denial.

This case falls within the Board's priority on Hate speech against marginalized groups. As a result of the Board selecting this case, Meta determined that its original decision to leave the content on Instagram were wrong, and the company ultimately removed the post.

The Board would appreciate public comments that address:

- Research into online trends about content denying the factual basis of the Holocaust, and the associated online and offline harms.
- Meta's human rights responsibilities in relation to content denying the factual basis of the Holocaust, including relating to dignity, security and freedom of expression.
- Challenges to and best practices on using automation to accurately detect and take enforcement action against hate speech that promotes false narratives about protected characteristic groups, as well as hate speech in the form of memes or other images/video with text overlay (i.e., how to reduce false negative enforcement).
- Challenges to and best practices in preventing the mistaken removal (false positives) of content countering hate speech, including in the form of satire or any other form of speech.
- Meta's reliance on automation in content moderation since the start of the COVID-19 pandemic, and the implications for users' abilities to appeal and rectify mistakes.
- The usefulness of Meta's transparency reporting on the extent and accuracy of its enforcement against hate speech, particularly for people studying and/or working to counter hate speech online.

As part of its decisions, the Board can issue policy recommendations to Meta. While recommendations are not binding, Meta must respond to them within 60 days. As such, the Board welcomes public comments proposing recommendations that are relevant to this case.

Oversight Board

Public Comment Appendix for

Case 2023-22-IG-UA

Case number

The Oversight Board is committed to bringing diverse perspectives from third parties into the case review process. To that end, the Oversight Board has established a public comment process.

Public comments respond to case descriptions based on the information provided to the Board by users and Facebook as part of the appeals process. These case descriptions are posted before panels begin deliberation to provide time for public comment. As such, case descriptions reflect neither the Board's assessment of the case, nor the full array of policy issues that a panel might consider to be implicated by each case.

To protect the privacy and security of commenters, comments are only viewed by the Oversight Board and as detailed in the Operational Privacy Notice. All commenters included in this appendix gave consent to the Oversight Board to publish their comments. For commenters who did not consent to attribute their comments publicly, names have been redacted. To withdraw your comment, please email contact@osbadmin.com.

To reflect the wide range of views on cases, the Oversight Board has included all comments received except those clearly irrelevant, abusive or disrespectful of the human and fundamental rights of any person or group of persons and therefore violating the Terms for Public Comment. Inclusion of a comment in this appendix is not an endorsement by the Oversight Board of the views expressed in the comment. The Oversight Board is committed to transparency and this appendix is meant to accurately reflect the input we received.

Oversight Board

Public Comment Appendix for

Case 2023-22-IG-UA

Case number

35
Number of Comments

Regional Breakdown

7	3	4	1
Asia Pacific & Oceania	Central & South Asia	Europe	Latin America & Caribbean

5	15	0
Middle East & North Africa	United States & Canada	Sub-Saharan Africa

CASE 2023-22-IG-UA

PC-15002

United States & Canada

Case number

Public comment number

Region

Phillip

Weissburg

English

Commenter's first name

Commenter's last name

Commenter's preferred language

teachers at my school

Yes

Organization

Response on behalf of organization

Full Comment

Its amazing that this is an issue that had to be reported by FB users and NOT picked up by the A.I. you used to suspend me for a negative cartoon that showed Sean Hannity kissing the butt of the twice impeached Donald Trump, the same man facing 109 Felony charges....your A.I. suspended me for over a month....yet daily pics of nude women, escapes the A.I. monitor. Perhaps the board needs to log on to youtube and view the Third Reich's death camps where two of my relatives were worked to death..

Link to Attachment

The Oversight Board has refrained from publishing the picture because of its graphic content.

CASE 2023-22-IG-UA

Case number

PC-15004

Public comment number

United States & Canada

Region

nan

Commenter's first name

nan

Commenter's last name

English

Commenter's preferred language

ADL (the Anti-Defamation League)

Organization

Yes

Response on behalf of organization

Full Comment

Link to ADL comment: https://www.adl.org/resources/letter/comment-meta-oversight-board-regarding-holocaust-denial-and-distortion-content

Link to Attachment

[PC-15004](#)

CASE 2023-22-IG-UA

Case number

PC-15005

Public comment number

Asia Pacific & Oceania

Region

arturo

Commenter's first name

alagao jr

Commenter's last name

English

Commenter's preferred language

DID NOT PROVIDE

Organization

No

Response on behalf of organization

Full Comment

ì agree the decision for the oversight board

Link to Attachment

No Attachment

CASE 2023-22-IG-UA

Case number

PC-15007

Public comment number

Middle East & North Africa

Region

Victor

Commenter's first name

Akpabio

Commenter's last name

English

Commenter's preferred language

DID NOT PROVIDE

Organization

No

Response on behalf of organization

Full Comment

This Holocaust denial case, didn't started today,many Creators and Facebook user uses it and not knowing it will later affect them, now. Facebook community standard and policy violation has stand up for this, bringing in restrictions to the account,page and group,who apply the content related to Holocaust denial, the best way is for Facebook community standard to drop down or delete the content, picture or post from any page , account and group that has anything related to Holocaust Denial case.thank you.

Link to Attachment

No Attachment

CASE 2023-22-IG-UA	PC-15009	Europe
Case number	Public comment number	Region
Piotr	Kobielski	English
Commenter's first name	Commenter's last name	Commenter's preferred language
DID NOT PROVIDE		No
Organization		Response on behalf of organization

Full Comment

Firstly, if you request the public to comment on certain specific case you have to show / reveal the actual content of the case (picture showing how the original content looked like). It is impossible to comment on something without seeing it. Sole language description is insufficient to fairly judge the case. Secondly, having above in mind, any combination of Holocaust and cartoon is already dehumanizing and should constitute a sole ground for removal. In Poland associating any specific cartoon with Auschwitz or any other memorial place of similar nature would most certainly trigger legal (criminal) action by public prosecutors. I do personally value freedom of speech as the core principle of social media but ridiculing war / Holocaust victims through the lenses of a cartoon is a red line that shouldn't be crossed. Such behavior (ridiculing the victims) does not bring any added value to the public, does not increase our knowledge or empathy, does not make us aware of something valuable. It is actually the opposite - its just wrong, in certain jurisdictions even criminal. Holocaust should be associated with facts, rather than opinions. The facts alone

should judge the relevant content. Certain types of cartoons are not the most accurate methods to tell the story of Holocaust. Cartoons artificial and trivial nature makes dissemination of war / Holocaust facts awkward or even entirely impossible. In this sense cartoons cannot transmit facts or at least this is not what we expect cartoons to do.

Link to Attachment

No Attachment

CASE 2023-22-IG-UA

Case number

PC-15014

Public comment number

United States & Canada

Region

Joe

Commenter's first name

nan

Commenter's last name

English

Commenter's preferred language

DID NOT PROVIDE

Organization

No

Response on behalf of organization

Full Comment

Not a violation

Link to Attachment

No Attachment

CASE 2023-22-IG-UA

PC-15016

United States & Canada

Case number

Public comment number

Region

Dr Brett

Prince

English

Commenter's first name

Commenter's last name

Commenter's preferred language

Private Practice

Yes

Organization

Response on behalf of organization

Full Comment

"Hate Speech" labels on Meta no longer carry any respected weight or impact because of Meta's own highly inappropriate actions over the past 5 years. Meta has lost all integrity in this area given Meta's serious level of hyper-partisan, Orwellian-level censorship and related Zuckerberg-Chan divisive and one-sided political and election involvement. Relatedly, overreliance on a controversial, non-representative Democrat-Leftist organization such as the ADL on Hate and Holocaust issues has been a non-productive disaster

Link to Attachment

No Attachment

CASE 2023-22-IG-UA	PC-15017	Europe
Case number	Public comment number	Region

Paul	Treanor	English
Commenter's first name	Commenter's last name	Commenter's preferred language

DID NOT PROVIDE		No
Organization		Response on behalf of organization

Full Comment

In case 2023-022-IG-UA (Holocaust Denial), the Oversight Board has invited comment, but only on a limited set of topics, which exclude many relevant issues. In particular, the Board asks for comments on ...

"Meta's human rights responsibilities in relation to content denying the factual basis of the Holocaust, including relating to dignity, security and freedom of expression."

The case summary describes the disputed content as "claims about the Holocaust that are not true", but gives no further details. That makes an ethical assessment of the specific case difficult, if not impossible. That in turn, makes it difficult to comment on Meta's responsibilities.

Although the case summary implies that Holocaust denial is motivated by antisemitism, that is not always true, especially in Germany. The assumption of

collective national guilt for the wrongs of Nazi Germany is a significant factor in German political culture, and a section of the population is resentful of this, without necessarily being antisemitic.

The geographical location of the original posters, and subsequent reposts, is therefore relevant in this case. The location is also relevant for the issue of legality, since Holocaust denial is a crime in some EU states. The political background of the original poster, and the ecology of the account, are also relevant for determining the motive.

The case summary indicates that Meta approaches the case in terms of conflicting fundamental rights, but that framework may not be appropriate. In particular, Holocaust denial is primarily an issue of truth and historical accuracy, rather than a rights issue. It is closely related to other forms of denialism, such as climate change denialism, germ denialism, and indeed flat earth theories. Even when denials can be clearly refuted, social media companies dislike being adjudicators of truth and falsehood. (Among other things, they would then have to judge the accuracy of religious doctrine and scripture). And by definition, any prohibition of falsehood is censorship, which is hugely controversial, especially in the United States.

While it is important to address all these issues, the lack of transparency in this specific case frustrates analysis. Without the details of content, location, and associated online activity, I cannot form the requested judgement on what Meta's responsibilities are.

Link to Attachment

[PC-15017](#)

CASE 2023-22-IG-UA

Case number

PC-15018

Public comment number

Middle East & North Africa

Region

Yuval

Commenter's first name

Shany

Commenter's last name

English

Commenter's preferred language

DID NOT PROVIDE

Organization

No

Response on behalf of organization

Full Comment

DID NOT PROVIDE

Link to Attachment

[PC-15018](PC-15018)

CASE 2023-22-IG-UA

Case number

PC-15020

Public comment number

Asia Pacific & Oceania

Region

Peter

Commenter's first name

Wertheim

Commenter's last name

English

Commenter's preferred language

Executive Council of Australian Jewry

Organization

Yes

Response on behalf of organization

Full Comment

The question of Holocaust denial online was considered by the Federal Court of Australia in the case of Jones v Toben. The court's judgment was delivered in September 2002 and can be accessed via https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/FCA/2002/1150.html

Link to Attachment

No Attachment

CASE 2023-22-IG-
UA

PC-15021

Europe

Case number

Public comment number

Region

Monika

Hübscher

English

Commenter's first name

Commenter's last name

Commenter's preferred language

DID NOT
PROVIDE

No

Organization

Response on behalf of
organization

Full Comment

The number of views and likes of the Holocaust distorting Insta posts that the
Oversight Board is mentioning, is irrelevant. Not this singular post is the issue,
but the normalization of antisemitic and Holocaust distorting content through a
vast amount of different types and forms of material on a global scale, that
dehumanize Jews and subject them to symbolic violence that keeps on
escalating into actual attacks offline.

Individuals impacted by antisemitic hate speech on social media describe the
attacks in a language that equals the depictions of physical acts. Exposure to
hate on social networks can lead to feelings of fear, insecurity, heightened
anxiety, and even sleep disturbances. This exposure can significantly influence
a user's daily life and their interactions within their social circles. Jewish users,
in particular, report that social media is the primary arena where they
encounter antisemitism. Thus, Holocaust distortion as a form of antisemitism
on social media is violence through verbal and visual discrimination and

aggression. Anti-Jewish violence on social media has cultural weight and must be understood as part of a tradition of hatred that has led to genocide. Expressions of antisemitism on social media reinforce historical violence and can imply an acute threat (Hübscher 2023, p. 364).

In a study by a German scholar, three Jewish social media users shared their experiences of encountering a substantial amount of antisemitic hate on these platforms. These experiences led to profound feelings of isolation and a sense that their main source of support and solidarity came from the Jewish community. Consequently, all three of these Jewish social media users developed coping strategies to deal with antisemitic hate online. They resorted to concealing their Jewish identity to minimize being targeted and implemented various security measures, including maintaining anonymity while online. Additionally, they began connecting primarily with other Jewish social media users, effectively creating a protective Jewish online community to shield themselves from antisemitic targeting. Thus, they are limited in or excluded from democratic participation on social media (Hübscher 2023, p.368).

Also, most adolescent non-Jewish users (12 to 19 year-olds) in Germany experience hate in social networks (MpFS 2022). For example, the current JIM study shows that the majority of young people surveyed perceive hateful content on social media as a form of violence (ibid.). Hate on the platforms also influences young people's everyday offline lives. Many of the young people surveyed feel helpless and angry when confronted with hate speech (Hübscher/Pfaff, in print).

What experiences young people have with antisemitism and Holocaust distortion on social media and how they deal with it is a topic of the "Antisemitism and Youth" project, which has been running since 2020 and is financed by the Federal Agency for Civic Education and at the University of Duisburg-Essen in cooperation with at the Wannsee Conference House Memorial and Educational Center. In the project, biographically oriented and guideline-based interviews were carried out with non-Jewish young people in Germany. Against the background of the analysis of the interviews, different ways young people deal with antisemitism on social media can now be

identified, which we describe with the terms withdrawal, reporting and countering.

In the interviews, some young people state that they follow the call to report hate speech but are also aware of the limited effectiveness of this form of hate speech. Other young people report that they withdraw from certain platforms or delete them altogether because of the negative feelings triggered by hateful content. Some of the young people interviewed referred to the option of countering antisemitic or hateful posts on social media. Many people find that countering hate on the platforms leads to confrontations and aggression. Several reports that they are active against Holocaust distortion and antisemitism on social media but are not achieving the desired results. (The paper the above paragraph refers to has not yet been published. For more insights and also interview quotes that underline the findings, please get in touch).

The fact that hatred on social media has become an increasingly larger problem in recent years, despite educational programs promoting counter-speech, suggests that the effects of algorithms and features such as (dis)likes, comments, and shares should be included in educational efforts, which has so far been less the case (Hübscher 2023, in print).

Understanding the technology and identifying and deconstructing hateful content is essential to help effectively reduce hate on social media at the user level. For example, to work against antisemitism on social media, skills for deconstructing antisemitic content and social media literacy must go hand in hand. The workshop "Social Media Literacy against Antisemitism" from our project "Antisemitism and Youth" project at the University of Duisburg-Essen not only helps users to recognize antisemitism but also to understand the technology of social media and thus reduce hatred on the platforms.

In the "Anti-Semitism and Youth" project team, we understand social media literacy (SML) to be users' ability to critically evaluate social media content from a technical, cognitive and emotional perspective. From a technical perspective, SML includes topics such as the role of personal data, algorithms and targeted

advertising in the spread of antsemitism and its impact on society. At the cognitive level, SML involves distinguishing credible sources in a social media environment despite social validation through likes, comments, and many followers. This includes detecting hate speech and disinformation related to the Holocaust. On an emotional level, SML involves responding and interacting appropriately to antisemitic content on social media.

To integrate deconstruction of antisemitism into SML, users learn to recognize common narrative patterns and stereotypes used in antisemitic content and identify the sources and motivations behind such content. This also includes recognizing how anti-Semitism and other forms of discrimination, such as racism, misogyny and hatred against the LGBTQI+ community, intersect.

SML should discuss responsible social media use, such as avoiding sharing and commenting on hateful content. Users who can better identify and understand hate on social media contribute to a safer and more inclusive social media experience.

There are also good forms of counter-speech, such as allyship, solidarity and deconstruction.

Instead of commenting on a hateful post, users can write their own posts to express solidarity and solidarity with those affected by hate. The post could then be linked to the official profile of the Jewish community. This not only sends a clear message against hate but can also help the message of solidarity spread widely through comments under the post. In this way, hate is not spread, but a positive message is sent against hate.

Jewish individuals and institutions, or institutions that educate about the Holocaust, are particularly affected by hate on social media. Connecting to their social media profiles and liking and sharing their posts is also a form of counter-speech that also creates a connection.

Educational programs should use social media literacy against antisemitism, including deconstructing the reconstruction of antisemitic content. The

educational platforms could mark anonymized hate posts as such (with a red prohibition sign), deconstruct them and publish them safely and in a controlled manner. This would not only create an educational effect for social media users directly on the platforms, but at the same time, it would counteract hate postings and show solidarity with affected groups.

References:

Hübscher, M. Algorithmic Antisemitism on Social Media. In The Routledge History of Antisemitism (pp. 364-372). Routledge. DOI.10.4324/9780429428616-40.

Hübscher, M., & Von Mering, S. (Eds.). (2022). Antisemitism on social media. Routledge.

DOI. 10.4324/9781003200499.

Hübscher, Monika & Pfaff, Nicolle. (in print). „Weil je mehr Klicks die haben, desto mehr wird es dann natürlich auch" – Umgangsformen junger Menschen mit Antisemitismus und Hass in den Sozialen Medien. Institut für Demokratie und Zivilgesellschaft [Eds.]: Wissen schafft Demokratie.

Link to Attachment

No Attachment

CASE 2023-22-IG-UA	PC-15022	United States & Canada
Case number	Public comment number	Region

The Future of Free Speech	nan	English
Commenter's first name	Commenter's last name	Commenter's preferred language

The Future of Free Speech		Yes
Organization		Response on behalf of organization

Full Comment

Case 2023-022-IG-UA – Holocaust Denial / Comments from The Future of Free Speech

1. Background

The Future of Free Speech (FFS) is a collaboration between the think tank Justitia and Vanderbilt University. FFS comments focus on the following issues identified by the Oversight Board:

•	"Meta's human rights responsibilities in relation to content denying the factual basis of the Holocaust, including relating to dignity, security, and freedom of expression." (Section 3.1. Meta's Human Rights Responsibilities).

•	"Challenges to and best practices in preventing the mistaken removal

(false positives) of content countering hate speech, including in the form of satire or any other form of speech." (3.2. Challenges to and Best Practices Concerning Content Removal and Its Automation).

• "Meta's reliance on automation in content moderation since the start of the COVID-19 pandemic, and the implications for users' abilities to appeal and rectify mistakes." (3.2. Challenges to and Best Practices Concerning Content Removal and Its Automation).

2. Key Takeaways

• A blanket ban on Holocaust denial, such as Meta's, is incompatible with the ICCPR. General Comment No. 34, in paragraph 49, points out that "[l]aws that penalize the expression of opinions about historical facts are incompatible with […] the respect for freedom of opinion and expression."

• Holocaust denial should only be banned when it infringes ICCPR's provision 20(2) and in accordance with the Rabat Plan of Action. The same treatment should be granted to any other historical event.

• Blanket bans on Holocaust denial lead to an inconsistent approach (the Holocaust vs. other genocides) and a scope creep where an increasing number of acts are protected from scrutiny. Meta's policies, the ECtHR case law, and several national laws show these risks are real and significant.

• Instagram and Facebook have separate content-moderation policy documents, and their scopes differ. This generates uncertainty that contravenes the legality requirement of ICCPR.

• Hate-speech policies and automated content moderation systems, while necessary, can significantly limit expression. There are several instances where Meta unduly removed content, including from marginalized voices. Decentralized content moderation can be a useful complement.

3. Analysis

3.1. Meta's Human Rights Responsibilities

3.1.1. Meta Should Not Impose a Blanket Ban on Holocaust Denial

Meta's content policies prohibit posting "[c]ontent targeting a person or group of people [...] with: Harmful stereotypes historically linked to intimidation, exclusion, or violence on the basis of a protected characteristic, such as [...] Holocaust denial."

Holocaust denial and the publication of false claims, as in case 2023-022-IG-UA, is undoubtedly morally reprehensible. However, such content should not be subject to a blanket ban – that can seriously threaten freedom of expression and empower actors who want to impose their historical truths and dogmas.

The International Covenant on Civil and Political Rights (ICCPR), on which the Oversight Board often relies, can provide useful guidance for online platforms and consistency on how to moderate content. It can also enable companies to more accurately reflect the values of their diverse and global user bases and grants "forceful normative responses against undue State restrictions." This protection is crucial in a field as politically sensitive as history.

Since 2011, the UN's Human Rights Committee (HRC) has been clear regarding 'memory laws.' In its General Comment No. 34 concerning Article 19 of the ICCPR, the HRC points out that "[l]aws that penalize the expression of opinions about historical facts are incompatible with [...] the respect for freedom of opinion and expression." This calls "into question laws that criminalize the denial of the Holocaust and other atrocities and similar laws;" in this regard, "the denial of the historical accuracy of atrocities should not be subject to criminal penalty or other restrictions without further evaluation [including] the six factors noted in the Rabat Plan of Action."

General comment No. 34 clarified the approach previously adopted by the HRC in Faurisson v. France in relation to the 'Gayssot Act.' In that case, the HRC considered that the conviction of a French professor for having denied the use of gas chambers for extermination purposes was compatible with Article 19 of

the ICCPR. At the same time, in the same case, the HRC stated that "it [did] not contest that the application of the terms of the Gayssot Act [...] may lead, under different conditions than the facts of the instant case, to decisions or measures incompatible" with the ICCPR, expressing its doubts regarding this law.

O'Flaherty, HRC's rapporteur for the draft General Comment no. 34, indicated that this comment "adjusted the provision on 'memory' laws, or 'laws that penalise the expression of opinions about historical facts', to the effect that they are never compatible with the ICCPR (thus overruling Faurisson)."

FFS agrees with O'Flaherty's view. It considers that 'memory laws' – and, hence, blanket bans on Holocaust denial – excessively restrict freedom of expression and contravene Article 19 of the ICCPR, which is fundamental to finding accurate historical accounts. Given its commitment to the ICCPR, it is disappointing that Meta has adopted such a rule.

Holocaust denial and the denial of all other historical events should only be prohibited in the specific circumstances established in ICCPR's provision 20(2). Following the Rabat Plan of Action (RPA), any restrictions should be "the least intrusive measure available" and not be "overly broad, so that they do not restrict speech in a wide or untargeted way." RPA's six-part threshold test, although envisaged for criminal offenses, could be adapted and used for guidance to establish an ICCPR-compliant rule. In the words of the Special Rapporteur, the RPA "factors should have weight in the context of company actions against speech," as "they offer a valuable framework for examining when the specifically defined content – the posts or the words or images that comprise the post – merits a restriction."

As explained in case 2020-003-FB-UA "Armenians in Azerbaijan," in 2018, the Special Rapporteur stated that "[t]he scale and complexity of addressing hateful expression [...] may lead companies to restrict such expression even if it is not clearly linked to adverse outcomes (as hateful advocacy is connected to incitement in Article 20(2) of the ICCPR)." Still, the Rapporteur clarified that "[c]ompanies should articulate the bases for such restrictions [...] and demonstrate the necessity and proportionality of any content actions."

Importantly, in 2019, the Special Rapporteur added that "[w]hen company rules differ from international standards, the companies should give a reasoned explanation of the policy difference in advance, in a way that articulates the variation." FFS considers that Meta's post announcing the removal of Holocaust denial content does not sufficiently justify the departure from international standards – in fact, it does not even mention Human Rights Law once. In addition, for fairness, in our view, any justification should also explicitly address why such a ban should only apply to the Holocaust and not to other genocides, as FFS understands is currently the case.

The expansive approach adopted by Meta seems more aligned with the case law of the ECtHR, which often justifies restrictions on freedom of expression in cases involving negationism or revisionism of the Holocaust. That said, it is worth mentioning that there are several national jurisdictions in Europe where a court or the legislature have opted not to ban Holocaust denial. Meta's adoption of ECtHR's approach is bad news for free speech and the study of history and gives undue weight to regional human rights standards at the expense of international ones.

A blanket ban on Holocaust denial has, in FFS' view, two crucial limitations: consistency and containment.

i. Consistency

A content policy banning Holocaust denial in general will almost certainly be inconsistent. If the Holocaust cannot be denied, one would naturally expect other genocides cannot either. However, case 2021-005-FB-UA "Two buttons" meme suggests the contrary – in that case, Meta pointed out that the ban on the Holocaust "does not apply to the Armenian genocide or other genocides." This was justified by the rise in antisemitism and the "alarming level of ignorance about the Holocaust." The ECtHR has also struggled with consistency – in Perinçek v. Switzerland, it considered that the denial of the Armenian genocide was protected under the freedom of expression, contrary to its approach to the Holocaust.

Antisemitism is a serious and concerning issue. However, it is difficult to understand why the Rohingya or Rwandan genocides – both horrible crimes targeting other specific groups of people – should be protected by a different standard. The same is true for all other genocides. The special duty that Europe bears regarding the Holocaust has been argued as a reason to justify this differential treatment in the ECtHR. However, this reasoning should certainly not apply to the global policies of a platform like Meta. The ICCPR – and its "safety check" included in Article 19 – is the most appropriate standard.

ii. Containment

General Holocaust denial bans are also difficult to contain. As just discussed, it seems reasonable that if the Holocaust cannot be denied, other genocides are protected, too. Rwanda, for instance, has its own genocide denial law, which can result in imprisonment. According to Human Rights Watch, "Rwandan laws on genocide ideology, which may have been intended to prevent and punish hate speech […], have restricted free speech and imposed strict limits on how people can talk about the genocide and other events of 1994." The case Ingabire Victoire Umuhoza v. Rwanda – in which the African Court on Human and Peoples' Rights (AfCHRPR) found on necessity and proportionality grounds that a politician was unduly convicted for genocide minimization – illustrates the risks of these laws. At the same time, FFS wants to make clear that it strongly disagrees with AfCHRPR's analysis in this case concerning the general compatibility of Rwanda's laws on genocide ideology with freedom of expression – as Aswad and Kaye explain, the court ignored HRC's approach to genocide denial.

One can also expect that the protection relates not only to the crime itself (e.g., the Holocaust), but also to related facts (e.g., Hitler had the intention of murdering Jews), as the ECtHR considered in Witzsch v. Germany. The protection may extend even more to ensure that those that did not participate are not wrongly accused, avoiding 'conspiracy theories.' In Russia, a law against 'Nazi rehabilitation' prohibits the "public denial of the Nuremberg trials and circulation of false information about the activities of the USSR during the years

of World War II." This law has been criticized for being "vague" and resulting in a "potential negative impact on journalists, archivists, museum curators, and historians." It was used, for instance, to convict a person for "reposting an article saying that the Soviet Union shares responsibility for starting World War II and that the Soviet Union and Germany attacked Poland simultaneously."

Some will also argue that not only genocides but also other historical facts should be protected from denial – for example, those that have caused great suffering, like wars, terrorist attacks, or atrocious regimes. Indeed, the Czech Republic, Poland, Hungary, and Lithuania have adopted "national legislation on the denial of crimes committed by totalitarian regimes which explicitly includes the crimes committed by totalitarian communist regimes."

Further, some may argue that a prohibition should apply not only where the denial has taken place publicly but also in private interactions, like private messages, or as the ECtHR held in Witzsch v. Germany, in private letters. It may even be found to apply to performances or other artistic forms of expression, like in M'Bala M'Bala v France.

This scope creep is not merely a theoretical possibility, as the real cases above illustrate. A general Holocaust denial ban can lead to a significant number of historical facts not being subject to scrutiny and significantly stifle discussion. Not in vain, several countries, including Russia and Rwanda, have referred to the European 'memory laws' and the ECtHR case law when justifying their own bans.

A blanket ban on Holocaust denial exposes Meta to significant pressure from what the Special Rapporteur called "government demands for excessive content removals," and from other stakeholders. This comes with substantial risks for freedom of speech and the finding of historical truths.

3.1.2. It Is Unclear Which Rules Apply to Instagram

In a recent report, FFS showed that since July 2020 Instagram has hyperlinks in Instagram Community Guidelines – including in the phrase "hate speech" – that

direct to the Facebook Community Standards.

FFS understands that, by adding these hyperlinks in Instagram's Community Guidelines, the company implied that Facebook's Community Standards apply to content on Instagram. Meta's Transparency Center seems to confirm this: "Facebook and Instagram share content policies. Content that is considered violating on Facebook is also considered violating on Instagram." As a result, it is unclear why Facebook and Instagram have two separate sets of policies.

This overlap is problematic because the scope of the hate speech provision in Instagram's Community Guidelines differs from the hate speech policy in the Facebook Community Standards. Instagram's policy included ten protected characteristics, compared to the 16 that Facebook's policy covers. This inconsistency goes against the legality requirement in Article 19 (3) of the ICCPR, as users cannot know which exact rules apply to Instagram.

3.2. Challenges to and Best Practices Concerning Content Removal and Its Automation

Online hate speech can pose pain and, in some cases, real-life harm to the vulnerable communities it targets. At the same time, hate speech policies and automated content removal are not without collateral damage to freedom of expression, including for minority voices.

3.2.1 Hate-Speech Policies Can Lead to an Excessive Removal of Content

Justitia has shown that hate speech policies can significantly limit expression. In a 2022 report, Justitia analyzed 2,400 Facebook comments labeled as "hateful attacks" –a representative sample of over 900,000 hateful attacks identified by reviewing 63 million comments on Facebook pages belonging to Danish politicians and media outlets. Justitia found that only 11 comments (0.066% of the total) could be considered illegal under Danish prohibitions on incitement and hate speech. These findings suggest that expansive definitions of hate speech may lead to the mass removal of legal content.

Hate-speech restrictions can also silence marginalized voices. A recent FFS

report includes several examples of where this happened, including the undue removal of a post that aimed to raise awareness about Instagram's struggles to combat antisemitism. More generally, in May 2021, Meta acknowledged their hate speech detection algorithms had led to the inadvertent removal of millions of pro-Palestinian posts. The Oversight Board's case 2022-008-FB-UA "Russian poem" is another example of unduly removed content. Interestingly, the Oversight Board's decision may have been different if it had applied ECtHR's, rather than international UN, human rights standards. In 2018, the ECtHR found that a journalist who had called Russian security forces operating in Chechnya "'maniacs," "murderers," and otherwise criminally minded persons' had overstepped the limits of freedom of expression.

3.2.2. Automated-Content Removal Presents Significant Challenges

Automated moderation systems can negatively affect minority and dissenting voices with special intensity. Natural language processing algorithms often amplify biases in training data, their accuracy varies depending on the language, and they are not able to recognize contextual or local speech nuances.

Business for Social Responsibility (BSR) published the results of a human rights due diligence on Meta's impact during the May 2021 Israeli-Palestinian conflict. BSR noted that Meta adopted "an approach […] consistent with the ICCPR's Article 19." At the same time, BSR indicated that Meta over-enforced its policies on Arabic content more than on Hebrew content and that proactive detection rates for potentially violating Arabic content were much higher than for Hebrew content. According to BSR, this discrepancy may be attributed to Meta having an Arabic classifier for hostile speech but not a Hebrew classifier.

In addition, a recent analysis found that automated content moderation technology developed by Jigsaw identified a significant number of drag queen Twitter accounts to have higher toxicity levels than White nationalists. The technology was unable to distinguish when LGBTQ people were using words that might conventionally be offensive to reclaim their power or in a self-referential way.

3.2.3 Decentralized Content Moderation as a Complement

In FFS' view, a potential way of limiting excessive content removal, while protecting those impacted by hate speech, is relying on decentralized content moderation. Platforms could adopt a minimum set of rules applying to all the content they host. These rules could mirror ICCPR's approach or the more speech-protective U.S. Constitution First Amendment, limiting content policies' scope compared to the current situation. Then, possibly through third-party systems, users would be able to filter out additional content to avoid speech they find problematic based on their preferences. FFS has briefly explored this possibility in a recent report and is conducting more work in this field that will be published in the coming months. *****

Link to Attachment

[PC-15022](PC-15022)

CASE 2023-22-IG-UA	PC-15023	United States & Canada
Case number	Public comment number	Region

Christen	Broecker	English
Commenter's first name	Commenter's last name	Commenter's preferred language

American Jewish Committee and its Jacob Blaustein Institute for the Advancement of Human Rights		Yes
Organization		Response on behalf of organization

Full Comment

AJC Submission to the Oversight Board on the Holocaust Denial Case, September 13, 2023

I.   Introduction and Summary

American Jewish Committee (AJC) and its Jacob Blaustein Institute for the Advancement of Human Rights (JBI) write to address two points on which the Oversight Board has invited public comment: (1) Research into online trends about content denying the factual basis of the Holocaust, and the associated

online and offline harms; and (2) Meta's human rights responsibilities in relation to content denying the factual basis of the Holocaust, including relating to dignity, security, and freedom of expression.

Holocaust denial content amounts to a discriminatory attack against Jews and promotes antisemitic stereotypes to observers, irrespective of whether it is shared with obvious malicious intent or hatred towards Jews. Meta's prohibition of Holocaust denial is consistent with its responsibilities under international human rights law to address negative human rights impacts arising from its operations. If Meta were to narrow or eliminate its existing prohibition on Holocaust denial content, our expectation is that both Jews and non-Jews will experience harm, online and offline.

II.   Online content denying the factual basis of the Holocaust creates harm.

Facebook implemented its policy prohibiting Holocaust denial under the Community Standard on Hate Speech in 2020. In doing so, it cited the "the well-documented rise in antisemitism globally and the alarming level of ignorance about the Holocaust, especially among young people." Its decision followed meetings with representative Jewish organizations around the world, including a series of conversations between AJC and Facebook representatives in both the United States and Europe, which Facebook said was intended "to help us understand how hatred, including antisemitism, is expressed online." Facebook's prohibition followed the publication of a study finding that at least 36 groups on Facebook with over 360,000 followers in total were specifically dedicated to Holocaust denial or reproduced Holocaust denial and that Facebook's algorithm was recommending similar Holocaust denial content to users who followed public pages containing it. Several Jewish organizations, including the Conference on Jewish Material Claims Against Germany, whose #NoDenyingIt campaign featured video testimonies from Holocaust survivors directly appealing to Facebook, called publicly on the company to remove Holocaust denial content from the platform.

Holocaust denial conveys antisemitic stereotypes and conspiracies. The International Holocaust Remembrance Alliance Working Definition of

Holocaust Denial and Distortion notes: "Holocaust denial in its various forms is an expression of antisemitism. The attempt to deny the genocide of the Jews is an effort to exonerate National Socialism and antisemitism from guilt or responsibility in the genocide of the Jewish people. Forms of Holocaust denial also include blaming the Jews for either exaggerating or creating the Shoah for political or financial gain as if the Shoah itself was the result of a conspiracy plotted by the Jews. In this, the goal is to make the Jews culpable and antisemitism once again legitimate. The goals of Holocaust denial often are the rehabilitation of an explicit antisemitism and the promotion of political ideologies and conditions suitable for the advent of the very type of event it denies."

Regrettably, the same trends that led Facebook to adopt its prohibition on Holocaust denial content persist today. Online platforms have been used to promote content denying the Holocaust, sometimes to millions of followers simultaneously, on numerous widely reported occasions (see 1, 2, and 3).

Evidence suggests that content of this nature is directly contributing to online harm experienced by Jews. For example, as noted in AJC's State of Antisemitism in America Report 2022, Jews continue to regularly experience antisemitism online or on social media, with 69% of U.S. Jews reporting having experienced antisemitism online, either as a target or by seeing antisemitic content, in the past 12 months. Younger Jews were more likely to have experienced antisemitism this way: 85% of those 18-29 years old compared with 64% of those aged 30 or older, and one in four (26%) said these online incidents made them feel physically threatened (compared to 14% of those over age 30). Experiencing antisemitism, including Holocaust denial, is creating an environment that is harassing and intimidating to Jews and that impacts Jews' ability to enjoy their rights. AJC's State of Antisemitism in America Report 2022 also found that 38% of all Jewish respondents reported they had altered their behavior at least once in the past year due to fears of antisemitism: 27% avoided posting content online that would enable others to identify them as Jewish or reveal their views on Jewish issues; 23% avoided wearing or displaying things that might enable others to identify them as Jewish; and 16% avoided certain places, events, or

situations due to concerns about their safety or comfort as Jews.

Evidence detailed below also suggests that exposure to Holocaust denial content may lead users of online platforms to ascribe to antisemitic stereotypes and conspiracies. One recent survey of young adults in the U.S. found that 11 percent believed Jews caused the Holocaust. This is particularly troubling as more than half (49 percent) reported that they had seen Holocaust denial or distortion posts on social media or elsewhere online.

More broadly, surveys and monitoring efforts by governments and civil society organizations suggest that antisemitic acts are being committed at a high volume in many countries around the world. Surveys of Jewish communities in several countries appear to confirm these trends: for example, AJC's State of Antisemitism in America Report 2022 revealed that one in four (26%) American Jews reported being personally targeted by antisemitism in 2022 alone.

Holocaust denial and distortion have been an element of some of these attacks. Examples include:

•   The perpetrator of the October 2019 Halle synagogue attack – in which a gunman killed two people outside when he was prevented from shooting Jewish worshippers – denied the factual basis of the Holocaust at the beginning of his livestream of the attack on the gaming platform Twitch.

•   Following a series of widely antisemitic outbursts including Holocaust denial by popular cultural figure Ye (formerly Kanye West) in 2022 that were widely publicized online and in traditional media, alt-right figures organized a series of events on college campuses in the U.S. lauding his remarks at which they espoused Holocaust denial and other antisemitic conspiracies and urged observers to express their agreement with Ye. These events were promoted on social media, and dozens of incidents of antisemitic harassment and vandalism with a clear link to the campaign have reportedly been committed, including a December 2022 incident in which a Jewish student was targeted with antisemitic bullying including with Holocaust jokes.

•   In the U.S., in the last three years, Holocaust museums and memorials have been attacked in places including Florida, Oregon, and Washington; and an Anne Frank memorial in Idaho and statues dedicated to child victims of the Holocaust in Oklahoma were vandalized.

•   Similar attacks have occurred elsewhere around the world in recent years: for example, prisoners' barracks were vandalized with graffiti including Holocaust denial at the Auschwitz-Birkenau Memorial site in Poland in October 2021, and in February 2023, a Holocaust denial message was projected onto the Anne Frank House in Amsterdam in the Netherlands.

•   Holocaust memorials also have been attacked elsewhere in Poland, and in countries including Armenia, France, Greece (1, 2, 3), Lithuania, Ukraine, and Russia.

•   Several people who violently entered the U.S. Capitol building on January 6, 2021, were wearing clothing bearing antisemitic inscriptions, including one wearing a "Camp Auschwitz" sweatshirt.

The view that online Holocaust denial is harmful has been widely affirmed by international authorities:

•   The UN Office on Genocide Prevention, in a 2022 Policy Paper, affirmed that ongoing and increasingly visible Holocaust denial and distortion "can cause revictimization, repeat historical patterns of discrimination and negative stereotypes, and incite hostility and violence," "creating risks for Jewish individuals and communities and undermining collective historical memory, but also weakening the resilience and cohesion of democratic societies," and that online content trivializing the Holocaust "has significant potential to cause harm and to have significant influence on popular culture, public opinion, and politics, and can lead to transnational impacts in ways that other manifestations of denial do not."

•   The European Commission against Racism and Intolerance (ECRI) said in a 2021 recommendation that Holocaust denial incidents "prolong the trauma

suffered by the victims and their families, deny their identity as victims and promote ideologies that invite genocide and crimes against humanity."

•	The EU Strategy on combating antisemitism states: "Holocaust denial, distortion and trivialisation are often used to feed hatred against Jewish people and in an attempt to rewrite European and Jewish history. Their corrosive effects for collective historic memory and for the resilience and cohesion of our democratic societies should not be underestimated and need to be specifically addressed."

•	The U.S. National Strategy to Counter Antisemitism states: "In recent months, celebrities, athletes, and politicians have used their influential platforms to deny the Holocaust, elevate bigots, and spread antisemitic conspiracy theories. These viewpoints are not just reprehensible, they are dangerous."

•	A 2022 UN General Assembly resolution, adopted without a vote, "[notes] with concern the growing prevalence of Holocaust denial or distortion through the use of information and communications technologies," and urges "social media companies to take active measures to combat antisemitism and Holocaust denial or distortion by means of information and communications technologies and to facilitate reporting of such content."

III.	Meta has a human rights responsibility to take steps to limit the presence and visibility of content denying the factual basis of the Holocaust on its platforms, and its current policy is in line with this responsibility.

Meta's prohibition of Holocaust denial content under the Community Standard on Hate Speech is consistent with its responsibility under the UN Guiding Principles on Business and Human Rights (UNGPs). A product of engagement with representative Jewish organizations and communities, it is in line with the Guiding Principles' call for companies to engage in ongoing human rights due diligence to evolve their operations and policies (UNGPs 17(c) and 18(b)) and to address negative human rights impacts arising from their operations (UNGPs 11

and 13). Jews enjoy the right to equality and non-discrimination, including on the basis of religion and race (Art. 2(1), ICCPR; Art. 2, ICERD; Art. 2(2), Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief). The UNGPs indicate that companies like Meta should take measures to prevent discrimination against Jews in access to their platforms for expression (Art. 19 ICCPR), and to protect against discrimination against Jews in other areas, including the right to life and physical integrity, the right to freedom of religion or belief, the right to participate in public life, and the right to participate in cultural life, as well as the right to health (Art. 12 ICESCR), particularly for children (Arts. 2, 6, CRC).

Meta's prohibition on Holocaust denial content is also consistent with its responsibility to respect the right to freedom of expression (Art.19 ICCPR) and to prohibit content amounting to advocacy of hatred that constitutes incitement to religious or racial discrimination, hostility, or violence (Art. 20 ICCPR). While the right to freedom of expression is fundamental, States may restrict the right to freedom of expression in limited circumstances that adhere to the requirements of legality, legitimate aim, and necessity and proportionality as set out in ICCPR Article 19(3). Moreover, as a company, Meta is not bound by the same high thresholds for restrictions on expression to which States must adhere. As affirmed by the UN Special Rapporteur on Freedom of expression, and as noted by the Oversight Board in Depiction of Zwarte Piet (2021-002-FB-UA) and Armenians in Azerbaijan (2020-003-FB-UA), companies should remove content from their platforms that constitutes incitement to discrimination or violence, but they may also remove hate speech that falls below this threshold, particularly where it raises concerns in terms of tolerance, civility, and respect for others (Rabat Plan of Action, para. 12, 20).

Meta's Holocaust denial prohibition is in line with its human rights responsibility to respect freedom of expression while limiting hate speech on its platforms. It is clear and easily accessible, and Facebook clearly indicated why it has prohibited such content. The policy is legitimate as its purpose is to protect the rights of others and prevent harm and discrimination; it is also necessary as to prevent harm and proportionate because the policy applies to a narrow

category of particularly harmful expression.

Legitimate

As the policy paper by the UN Office on Genocide Prevention notes, throughout Europe, and in several countries outside Europe, "publicly condoning, denying or grossly trivializing" the Holocaust is prohibited by law when carried out in a manner likely to incite violence or hatred. The European Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law urges all EU Member States to make such conduct punishable. In repeatedly affirming the use of such laws, the European Court of Human Rights has noted that their purposes include protecting Holocaust survivors and Jewish communities from incitement to antisemitic hatred, discrimination, and violence and strengthening democratic societies by reinforcing a culture of victim-centered memory and compassion; a decision of the UN Human Rights Committee also recognizes these as legitimate objectives.

Necessary and proportionate

As described in the previous section, representative surveys and numerous international authorities have found Holocaust denial to be harmful, connecting it to substantial and increasing antisemitism worldwide, with severe harms at a societal and individual level, and called on social media and technology companies to take steps to curtail its presence on their platforms. Repeated exposure to negative antisemitic conspiracies and stereotypes, including in the form of content shared on social media, has a psychological impact on individuals with societal consequences. For Jews, the cumulative effect of repeated exposure to Holocaust denial content, and experiencing antisemitic violence and discrimination, is also affecting their psychological health, and is particularly traumatizing for and revictimizes survivors of the Holocaust and their descendants. An accumulation of Holocaust denial content is contributing to an environment in many countries where acts of antisemitic violence, discrimination, and hostility are more likely to be committed and tolerated.

Repeated exposure to Holocaust denial content may have a particularly negative impact on children, who may not recognize it as such, and even if they do, may be generally unwilling or unable to challenge it effectively.

Less severe interventions than removal of Holocaust denial content, such as labels, warning screens, or other measures to reduce dissemination, may be useful but would not provide the same protection. Requiring complex assessments of intent prior to enforcing the prohibition of Holocaust denial content at scale would raise significant enforcement challenges and give rise to significant uncertainty, weighing in favor of a general rule that can more easily be enforced (Oversight Board, Depiction of Zwarte Piet, 2021-002-FB-UA). Moreover, the prohibition is not a blanket one: a general exception under the Hate Speech Community Standard permits content that is intended to condemn or raise awareness about Holocaust denial; exceptions also exist for newsworthy and very limited types of satirical content.

Notably, in a 2022 statement, eight UN Special Procedures mandate holders affirmed that the negative human rights impacts resulting from online Holocaust denial and distortion are significantly severe to justify removal of such content by social media platforms and called for such prohibitions to be systematically enforced. The experts – on freedom of religion or belief; racial discrimination; freedom of expression; freedom of peaceful assembly and association; protection of human rights while countering terrorism; minority issues; cultural rights; and extrajudicial executions – said:

"The antisemitic rhetoric and incidents seen over the past year have included notable examples of Holocaust denial, including in some cases by government officials and state-sponsored media, with particular effect on young people in many countries, as well as distortions of the Holocaust's scope and intentionality during public demonstrations in the context of the COVID-19 public health crisis.

It is clear that when left unchecked, distortion and denial of the Holocaust – in which six million Jews, alongside members of other targeted groups were murdered in a uniquely brutal, systematic and state-sanctioned campaign of

antisemitic extermination, dehumanisation and persecution – can undermine States' ability to protect and promote human rights. Not only can these and other forms of antisemitic expression create a climate of fear in which Jews are unable to manifest their religion and identity, but they can also threaten the rights to liberty and security and to take part in cultural life and equality and non-discrimination of all by encouraging the spread of conspiracy theories, stereotyping and harmful prejudices.

... We commend recent efforts by some social media platforms to tackle cyberhate targeting Jews and other minorities, by prohibiting content that denies or distorts the Holocaust and by directing users to credible information about it. These measures must be consistently and systematically adopted, implemented, and enforced, including through concrete regulatory policies and terms of service, while respecting the freedoms of expression and of the press."

Similarly, in a 2022 Follow-up Action Plan to his 2019 report on antisemitism to the General Assembly, the UN Special Rapporteur on Freedom of Religion or Belief advised: "Social media companies should ensure that their community guidelines clearly convey that all forms of antisemitic content and Holocaust denial and distortion are not permitted, and that these guidelines are transparent and easily accessible to users, and more broadly that they are taking effective action necessary to uphold human rights and protect targeted individuals and groups from physical or mental harm, in accordance with international standards. They should consult with representatives of Jewish communities regarding the contents of their guidelines in order to understand what content is harmful in different contexts."

The UN policy paper by the UN Office on Genocide Prevention also notes that social media companies' "capacity to moderate harmful online content, including by reducing the visibility of content containing Holocaust and genocide denial and distortion, along with disinformation, conspiracy theories, and violent content, is greater than that which States are permitted to limit through the use of criminal or civil laws." It recommends that social media companies "adopt definitions of hate speech and adapt community standards to more comprehensively recognize that denial and distortion of the Holocaust and

genocide can cause revictimization, repeat historical patterns of discrimination and negative stereotypes, and incite hostility and violence," and "take affirmative efforts to mitigate the impact of Holocaust and genocide denial and distortion through varying forms of content moderation, including but not limited to content removal." The UN policy paper calls for companies to "ensure that their algorithms do not promote or direct users to content that constitutes denial or distortion of the Holocaust or genocide or glorification of perpetrators," a policy that Meta should be encouraged to adopt should it ever narrow its prohibition on Holocaust denial in the future.

IV.   Conclusion

Particularly in a context of rising global antisemitism, Meta has a human rights responsibility to maintain, strengthen, and consistently and rigorously enforce rules like the prohibition on Holocaust denial content that promote equality and non-discrimination, and to refine them in ongoing dialogue with affected communities.

Link to Attachment

[PC-15023](PC-15023)

CASE 2023-22-IG-UA

Case number

PC-15024

Public comment number

United States & Canada

Region

Arthur

Commenter's first name

Traldi

Commenter's last name

English

Commenter's preferred language

Louis D. Brandeis Center for Human Rights Under Law

Organization

Yes

Response on behalf of organization

Full Comment

DID NOT PROVIDE

Link to Attachment

[PC-15024](PC-15024)

CASE 2023-22-IG-UA	PC-15026	Middle East & North Africa
Case number	Public comment number	Region

Tal-Or	Cohen Montemayor	English
Commenter's first name	Commenter's last name	Commenter's preferred language

CyberWell Ltd. (CC)		Yes
Organization		Response on behalf of organization

Full Comment

Meta's Moderation Policy for Holocaust Denial Case 2023-022-IG-UA

Policy Advisory Opinion Submitted September 14, 2023, by CyberWell Ltd. (CC)

Executive Summary

In this Policy Advisory Opinion, CyberWell submits data collected on the topic of Holocaust Denial and Distortion from Meta platforms (Facebook and Instagram) and offers recommendations for further improvement for the consideration of Meta's Oversight Board. It is incumbent upon social media platforms to ensure the safety of their users, and to adequately enforce policies meant to provide protection.

In this dataset, CyberWell detected 134 posts denying and distorting the events of the Holocaust. After reporting to Meta platforms, only 20% of this data set was removed.

CyberWell further provides a case study of one example of grotesque Holocaust denial found on Facebook – blaming Jews for inflating the number of victims to gain sympathy. One such post garnered over 200,000 views.

CyberWell urges the Oversight Board to uphold Meta's decision to remove the post in question for case 2023-022-IG-UA and to consider the additional recommendations to ensure that Meta's policy against Holocaust hate speech is enforced more effectively.

Introduction to CyberWell

CyberWell is a nonprofit organization dedicated to eradicating online antisemitism through driving the enforcement and improvement of community standards and hate speech policies across social media platforms. Through data, we aim to identify where policies are not being enforced and where they fail to protect Jewish users from harassment and hate. We have a vested interest in providing guidance on Case 2023-022-IG-UA, as Holocaust denial, distortion, and misinformation is one of the most prominent expressions of antisemitism.

Holocaust Denial and Distortion

A significant contributing factor to this alarming trend is the power of social media, through which geographic boundaries blur and misinformation spreads rapidly. As more people rely on social media for information on everyday topics, from politics and current events to cultural trends and celebrity news, it has become easier than ever to spread hatred and misinformation in general, and specifically against the Jewish community. Far too often "fake news" gains traction fast, leading consumers to believe false information with serious consequences. Unfortunately, misinformation regarding the Holocaust is no

different.

Holocaust denial and distortion can be found on every social media platform in numerous languages. The more content that is published denying and distorting the Holocaust, the greater the ignorance and misunderstanding on the subject. As the last generation of Holocaust victims dies out, studies show that young people are shockingly uninformed about the horrors of WWII while, in parallel, hate crimes against Jews around the world are on the rise. As a society, we cannot remain indifferent as one of the most horrific genocides in human history continues to be trivialized, minimized, and thrown in the faces of the victims and their descendants. This leads directly to Jew-hatred and threatens the safety of Jews both in the virtual space and the real world. Due to these dangers, it is critical to monitor social media content for Holocaust denial and distortion and remove it with haste.

Meta Policy on Holocaust Distortion

Meta's Commitment to Community Standards

Meta set an important content moderation standard for addressing antisemitism online by publicly stating their commitment to combating Holocaust denial and distortion. On October 12, 2020, Meta updated its hate speech policy to state: "we are updating our hate speech policy to prohibit any content that denies or distorts the Holocaust".

Community Standards

Hate Speech, Tier 1: "Harmful stereotypes historically linked to intimidation, exclusion, or violence on the basis of a protected characteristic, such as Blackface; Holocaust denial; claims that Jewish people control financial, political, or media institutions[...]"

Bullying and Harassment,* Tier 1: "Everyone is protected from [...] Claims that individuals are lying about being a victim of a violent tragedy or terrorist attack,

including claims that they: Acting or pretending to be a victim of a specific event"

*Though this community standard refers to personal bullying, the right to be protected from claims that they are lying about the Holocaust, including the scope of the "Final Solution", also refers to Holocaust victims and survivors personally and collectively.

CyberWell's Methodology

CyberWell's methodology is as follows: use of keywords to identify antisemitic content--> applying specialized dictionary based in the International Holocaust Remembrance Alliance's working definition of antisemitism (IHRA) --> two rounds of human review. Our professional analysts are trained in the fields of antisemitism, linguistics, and digital policy.

Regarding Case 2023-022-IG-UA, CyberWell's technology identified 134 posts in English and Arabic, published on Meta's social media platforms (Facebook and Instagram), which were categorized as antisemitic according to the IHRA working definition examples focusing on Holocaust denial and distortion:

Example 4: Denying the fact, scope, mechanisms (e.g., gas chambers) or intentionality of the genocide of the Jewish people at the hands of National Socialist Germany and its supporters and accomplices during World War II (the Holocaust)

Example 5: Accusing the Jews as a people, or Israel as a state, of inventing or exaggerating the Holocaust

Rate of Removal

As of September 10, 2023 | Only 20% of the total analyzed dataset was removed

The entire dataset was reported by CyberWell directly to Facebook and Instagram.

Holocaust Distortion & Misinformation

Similar to the post discussed in this case, CyberWell identified a disgusting trend calling into question the scope of the Holocaust, specifically by rejecting the assertion that 6 million Jews were killed, through disputing the logistics of cremating 6 million people in five years. Users subscribing to this belief use the terms "pizzas" or "cookies" to refer to the dead bodies of Jews burned in cremation ovens after being killed and removed from gas chambers.

Trend Example

[Image - screenshot of the post described below]

Link: https://www.facebook.com/100087848326497/videos/574958031487286/

Views: 200,000

Video: This animated video shows two people making pizzas and discussing an order for 6 million. The video's goal is to present the number 6 million as fictitious and impossible and to assert that Jews are in a conspiracy to exaggerate the events of the Holocaust.

Voice & Text: "Listen up, that guy wants 6 million pizzas. 6 million pizzas? We only have four ovens, boss. How are we going to pull that off? I don't know, but we got to try. Maybe we could just tell him that we made the pizzas, ok? We wouldn't lie about making the pizzas, right? We will say we made the pizzas, but we'll need to make the organizations to enforce the fact that we made the pizzas. Good idea, boss. And we should also make a crime to even question if we made the pizzas and we'll need some TV channels and constant Hollywood films to remind everyone that we made the pizzas. Yeah, good idea. We'll also need some pictures of a few pizzas. Take some pictures of these ones. We'll also need a few filmstrips of pizzas. Let's pile them on top of each other and bury them. Film a bit, but not too much, just enough so that the fact that we made the pizzas becomes engrained in the culture".

Image comment on the right: A screenshot of an interview from the Jordanian TV channel Yarmouk with the caption: "There were 600,000 at the most. They added a zero".

Policy Enforcement During COVID-19

It was alarming to learn of the use of automatic closure policies during COVID-19. CyberWell welcomes and recognizes the need for effective AI-based tools for review of hate content to address reported hate speech at scale, especially during an emergent situation. However, for the Jewish population, which is experiencing historically high levels of disproportionate hate crimes against its communities, automatic and wrongful closure of hate speech reports leaves users feeling unsafe at the very least, and can pose a real risk to the community when that hate speech is violent or threatening at the worst. This risk is not hypothetical, as antisemitism, including violent conspiracy theories around Jewish power or cabals, tend to spike during tumultuous times of economic instability or pandemics.

COVID-19 was no exception. As the world went remote via video conferencing, online antisemitic harassment escalated, including a new tactic known as Zoombombing. Furthermore, there was a slew of online antisemitic content blaming Jews for the manufacturing or deliberate spreading of the coronavirus. Unfortunately, hate crimes against Jews have only increased since pandemic enforcement measures ended. We must consider the possibility that the automatic closure of hate speech reports on Meta's platforms enabled the perpetuation of anti-Jewish conspiracy theories - leading to lasting real-world harm.

CyberWell's research shows that Meta's day-to-day content moderation infrastructure removes an average of 25% of reported antisemitic content (Facebook – 15%; Instagram 34%, in the 12 months prior to this submission). This average removal rate is also reflected in the average removal rate yielded for this Advisory Opinion's Holocaust Hate Speech dataset – only 20%. Begging

the question - is automatic closure an appropriate solution for addressing hate speech when the reports made by users flagging antisemitism are ignored or wrongfully unactioned 75% of the time? If automatic closures are necessary, the dataset of automatically closed hate speech reports must be studied to maximize enforcement of community standards in the future and to further understand the nature and spread of hate speech behavior in times of crisis. Additional options could include:

•	Partnering directly with Trusted Partner nonprofits of minority communities and interest groups to handle the influx of hate speech reports during emergent situations.

•	Providing access to the dataset of automatically closed reports for hate researchers and nonprofit organizations to vet and study in order to make recommendations to the content review and policy teams for future use.

In the spirit of partnership and transparency, CyberWell asks the Oversight Board to encourage Meta to share openly with stakeholders and partners:

•	How many reports were automatically closed during the COVID-19 pandemic?

•	How many of the automatically closed reports perpetuated the idea that Jews were responsible for COVID-19?

•	Have similar automation closures been used since the COVID-19 pandemic?

•	Has a policy been set to determine when automatic closures should be activated?

Policy Recommendations

1. Approve and support Meta's decision to remove the post in question.

2. Enforce Meta's current Community Standards in general and the tiers related

to Holocaust denial and distortion in particular.

3. Reduce the gaps in rates of removal for Holocaust denial and distortion in English and Arabic.

4. Monitor Holocaust denial, distortion, and misinformation in all the available content dimensions - text, image, video, voiceover - in the posts and the comment section.

5. Flag the combination of terms "six/6 million" AND food metaphors referred to Jews or to the Final Solution; "six/6 million never happened" as a high probability of hate speech.

6. Reduce the time between receiving a report of hateful content and the final removal of the content.

7. During emergent situations, partnering with Trusted Partner nonprofits of minority communities and interest groups to handle the influx of hate speech reports rather than introducing blanket automatic closures.

8. Provide access to the dataset of automatically closed reports for hate researchers and nonprofit organizations to vet, study, and make subsequent recommendations.

9. Introduce an indication of when a report is reviewed by automation. We believe the experience of having a report rejected by automated technology will be less hurtful for users than being wrongfully rejected by a human.

Appendix of Examples: "6 Million" as Holocaust Denial & Distortion

1.   https://www.facebook.com/100087848326497/videos/574958031487286/

2.
       https://www.facebook.com/aaron.tubbs.355/posts/pfbid021xu7Z868CZ8w
K9rF9fsJDDLrF7Ef2H7hBBrxke53EHGRyj7yDLGitVUwu926TEo8l

3.   https://www.facebook.com/100078081847870/videos/316291300558654/

4.

https://www.facebook.com/jacob.lynch.739978/posts/pfbid0k36EQknZ7z
NViNMTC4oxJN9rHxCX1oGNoGQSFRRcX3nN2gLQtvA75KieAMupqGfNl

5.

https://www.facebook.com/TheDukeOfMemes2/posts/pfbid0n1DTSYV3G
TgWNytKM9Zj1ZWkW87rRziGb6oUx1vdrEUGfdThkhDqsGTWD64ipJoKl

Link to Attachment

PC-15026

CASE 2023-22-IG-UA

Case number

PC-15027

Public comment number

Europe

Region

Danny

Commenter's first name

Morris

Commenter's last name

English

Commenter's preferred language

Community Security Trust

Organization

Yes

Response on behalf of organization

Full Comment

About CST:

CST is a UK charity that protects British Jews from terrorism and antisemitism. CST is recognised by police and government as a unique model of best practice as a community security organisation. CST has over 100 full and part-time staff at offices in London, Manchester, and Leeds and over 2,000 volunteers nationwide. CST became a charity in 1994, but its origins lie in many decades of Jewish self-defence activities, both before and after World War Two.

CST is a trusted partner of both police and government and works closely with police forces across the UK in matters of hate crime and counter-terrorism. CST manages a £15 million government grant that pays for security guards, from independent commercial companies, at hundreds of Jewish schools and other community buildings.

CST's annual Antisemitic Incidents Report is the most authoritative annual study of antisemitic hate crimes and hate incidents in the UK and CST is recognised by the Jewish community, government, police and media as Britain's leading expert on the composition, cause and impact of contemporary antisemitism. For many years CST has worked closely with a range of social media platforms as a trusted partner, advising on issues relating to antisemitism, extremism, and other related harms. Meta's 2020 change to its Holocaust Denial Content policy directly cited CST as a partner who helped the organisation understand how antisemitism manifests online.

Holocaust Denial Content:

CST has long highlighted the dangerous impact of Holocaust Denial content on social media. CST does not simply view Holocaust Denial as a form of mis- or disinformation, but rather a pernicious strand of antisemitic conspiracy theory that seeks to establish the claim that Jews have carried out a large-scale hoax on the rest of the world. With Holocaust Denial we are not dealing 'merely' with bad history, a wrong opinion of offensive speech, but with a libel that incites hatred against Jews. In that regard, it speaks to a wider range of antisemitic ideas and conspiracies, namely Jewish power, and control, as well as the idea that Jews are uniquely evil and motivated by money. Taken in combination, these ideas provide the basis for two core aspects of Holocaust Denial – 1. How Jews were able to hoax the rest of the world (Jewish power/control) and 2. Why Jews hoaxed the rest of the world (Jews are uniquely evil, callous and/or for financial gain). The concept of Holocaust Denial cannot be removed from these core antisemitic tenets.

It is also worth noting that Holocaust Denial takes many forms and is also closely related to wider themes of Holocaust distortion and/or minimisation. Some examples of the differing types of Holocaust Denial that CST have previously noted online, include:

☒ The Holocaust did happen, but the numbers are grossly exaggerated.

☒ The Holocaust did happen, but the Jews and/or Zionists were behind it

(this theory is often posted within the context of wider narratives in relation to the establishment of the state of Israel. That Zionists carried out the Holocaust to hasten the establishment of Israel.)

☒   The Holocaust didn't happen – Jews were persecuted by the Nazis, however there was no mass extermination programme.

☒   The Holocaust didn't happen – there was no persecution and no mass extermination programme, the whole narrative of the Holocaust is totally made up by Jews in order to further their own agenda and/or for financial gain.

☒   The Holocaust didn't happen, but it should have.

These are just some of the narratives that CST has observed online. In addition, Holocaust Denial can often be deployed in tandem with a wider range of conspiracy theories that may target Jews or so-called 'Globalists', 'the New World Order' and/or 'Illuminati'. Holocaust Denial is not a one-dimensional theory that simply seeks to deny that the Holocaust ever happened. Holocaust Denial can be complex, multi-layered and take on multiple formats. Fundamentally however, all forms of Holocaust Denial are predicated on antisemitic ideas and also seek to shift blame from the perpetrators (the Nazis) to the victims (Jewish people).

Traditionally Holocaust Denial has been the focus of wider bodies of work, often within more so-called 'academic' contexts. For example, David Irving, the disgraced historian and Holocaust Denier, delivered lectures and wrote books on the issue, as did German Holocaust Denier Ernst Zundel. Today, contemporary Holocaust Denial mainly takes place online and may take the form of videos, memes, images and/or gifs. This is a wider reflection of behaviours online today, and as such it is important that Holocaust Denial is viewed within this context.

Attached (Image Group 1) are just some examples of images that CST has seen posted online that promote Holocaust Denial (these images were not taken from Meta platforms)

CST notes that in the space of Holocaust Denial, there can often be use of the

same multimedia (images, videos, gifs etc.) by multiple users. In the context of content moderation, this provides social media platforms with better opportunities to identify and remove repeat offending material.

Holocaust Denial also appeals to communities online who seek to engage in taboo behaviour. As one of the most horrific crimes of the 20th century, denying its impact and/or occurrence appeals to those who engage with what is considered to be socially unacceptable content. Many users who do this may not be ardent Holocaust deniers or even understand what the Holocaust is; however, its status as a sensitive, and officially sanctioned, public point of commemoration makes it an attractive target for abuse and can be the main motivator for engaging in denial online. This can be true of other deeply sensitive topics such as slavery and 9/11. That said, Holocaust Denial is never pure denial and, as explained above, sits within, or reinforces wider antisemitic narratives.

CST notes that Facebook continues to host Holocaust Denial material. Attached (Image Group 2) are just some examples captured by CST that show Holocaust Denial material on Facebook.

Impact:

Because Holocaust Denial is often part of a wider ideological extremism, and is especially common amongst extreme right wing beliefs, it can be part of a package of extremism that supports and encourages offline harms including, in its most extreme form, violence against Jews. Whilst Holocaust Denial is rarely the sole reason why an individual may perpetrate real-life violence against Jews, it can form a part of the picture. For example, in October 2019, Stephan Balliet attempted to perpetrate a far-right motivated terrorist attack against Jews in a synagogue in the German city of Halle on the Jewish festival of Yom Kippur. Balliet was unsuccessful in attempting to enter the synagogue and livestreamed his actions online. Directly prior to the attack, Balliet spoke to the camera and recorded an antisemitic diatribe. The first thing Balliet stated was 'I think the Holocaust never happened'. We know that Balliet was active online prior to his

attack and CST believes that it is highly likely that Balliet would have viewed Holocaust Denial material online. Whilst this specific material was probably not the sole cause of his actions, it is likely to have formed part of the antisemitic ecosystem that Balliet inhabited online. This is the context in which Holocaust Denial material ought to be understood, with its radicalising potential to draw users into conspiracy rabbit holes that may be filled with antisemitism.

CST records antisemitic incidents in the UK and has been doing so for several decades, and this data suggests that contemporary real-world incidents of Holocaust Denial may in-part be fuelled by content online. The attached images (Image Group 3) are just some examples of offline anti-Jewish hate incidents involving Holocaust denial that CST has recorded in the UK.

Beyond the most extreme real-life consequences, Holocaust Denial represents one of the most hurtful forms of antisemitism for Jewish communities. The Holocaust represents a contemporary and deeply painful memory for Jews globally. Most Jewish people have been either directly or indirectly impacted by the consequences of the Holocaust, either in their immediate family, their wider family, or in their community. For all intents and purposes, it represents a serious collective trauma that informs modern Jewish identity. Therefore, material that seeks to deny, minimise, or distort the memory of the Holocaust is indescribably hurtful. It is this pain which is often knowingly capitalised on by individuals who seek to deny the Holocaust. It is deliberate, malicious, and intended to cause suffering to the victim.

Link to Attachment

[PC-15027](#)

CASE 2023-22-IG-UA

Case number

PC-15028

Public comment number

Middle East & North Africa

Region

Sacha

Commenter's first name

Roytman Dratwa

Commenter's last name

English

Commenter's preferred language

Combat Antisemitism Movement (CAM)

Organization

Yes

Response on behalf of organization

Full Comment

DID NOT PROVIDE

Link to Attachment

PC-15028

CASE 2023-22-IG-UA	PC-15030	United States & Canada
Case number	Public comment number	Region

Gideon	Taylor	English
Commenter's first name	Commenter's last name	Commenter's preferred language

The Conference on Jewish Material Claims Against Germany		Yes
Organization		Response on behalf of organization

Full Comment

Please see attached PDF letter, which has "live links" to the citations and data points.

Dear Members of the Meta Oversight Board,

It is imperative that the current Holocaust Denial Case being reviewed by Meta's Oversight Board serve as an example of all Holocaust denial and distortion on their platforms. As the United Nations (and so many others) have recognized, social media plays a critical, perhaps singular, role in promoting and exacerbating Holocaust denial and distortion – which, as Meta's own policy clearly states, is nothing less than antisemitic hate speech, with dangerous real-world consequences.[1] The post in question is clearly a Tier 1 violation of

Meta's online community hate speech policy, updated in October 2020 specifically to address Holocaust denial and distortion.

We at the Conference on Jewish Material Claims Against Germany (Claims Conference)[2] know a great deal about the Holocaust: our organization was created for the very purpose of seeking some measure of justice for Holocaust survivors. To that end, the Claims Conference, since 1952, has negotiated with Germany on behalf of survivors, securing more than $90 billion in indemnification. We are also one of the largest funders of Holocaust education globally. Our work includes daily contact with Holocaust survivors around the world, allowing us to hear first-hand the suffering and re-traumatization survivors experience from online Holocaust denial and distortion.

To investigate current levels of Holocaust knowledge - and the denial/distortion, including on social media platforms - we have conducted Holocaust Knowledge and Awareness surveys across six countries. The status of Holocaust denial and distortion in communities and online across all demographics is startling.

The U.S. Millennial Holocaust Knowledge and Awareness Survey – which revealed a disturbing lack of knowledge about many basic Holocaust facts – found that nationally, 48% of U.S. Millennial and "Gen Z" (ages 18-39) could not name a single one of the more than 40,000 concentration camps or ghettos established during World War II, and nearly two-thirds did not know that six million Jews were killed in the Holocaust. Sadly, the same is true for more than half of adults in Canada, Austria, France, the United Kingdom and the Netherlands.

Facebook acknowledged that its decision to take action in 2020 was motivated in part by the findings of the Claims Conference Holocaust Knowledge and Awareness surveys. Specifically, Facebook cited the fact that nearly one-quarter (23%) of young adults in the U.S. believe the Holocaust is a myth and did not happen, has been greatly exaggerated or were unsure. The situation is little better elsewhere: in France and the Netherlands, 23% of young adults likewise believe the Holocaust is a myth, has been exaggerated, or were unsure, while 15-16% of those in Austria, Canada and the UK share the same misguided beliefs.

In the U.S., we learned that nearly half (49%) of young adults have seen Holocaust denial or distortion posts on social media or elsewhere online. It is especially disturbing that even after Facebook's 2020 Community Standards update, Holocaust denial and distortion continue to proliferate across social media. Meta's own platforms, Facebook and Instagram, and their algorithms, still fall far short of the goal of catching, and taking down, Holocaust denial and distortion. Our January 2023 survey of the Netherlands revealed that 38% of adults - and 47% of those aged 18-39 – had seen online denial and distortion. Our 2021 survey of the UK revealed that 29% had seen online denial and distortion. And in those two nations, approximately one-third had seen it on Facebook (Netherlands: 29%; UK: 33%), while 12% had seen it on Instagram.

When Facebook announced on October 12, 2020, that it would remove Holocaust denial and distortion from its platform and label it as hate speech, this was the right response. Now is the time to uphold these standards. There should be no hesitation.

The update of Facebook's Community Standards was an important first step, and Meta has provided significant support to Holocaust education programs, including partnerships on campaigns conducted by the Claims Conference. But all of Meta's platforms need to do more to comply with their own Community Standards, as Holocaust education can only go so far to counter the wave of Holocaust denial and distortion that social media users experience every day.[3] Facebook and Instagram (and, indeed, all social media companies) must devote sufficient artificial intelligence, machine learning, moderators and other financial, technological and human resources to ensure that they successfully implement their standards, now and going forward.

We have lost too much time in this battle already – now is the time for action. We would be pleased to help Meta's Oversight Board connect with Holocaust survivors, who can speak more directly to the urgency of addressing and eliminating this hate speech.

Sincerely,

Gideon Taylor
President, Conference on Jewish Material Claims Against Germany

Greg Schneider
Executive Vice President, Conference on Jewish Material Claims Against Germany

Note 1:
See, e.g., Yad Vashem (the world's foremost Holocaust remembrance and research institution), https://www.yadvashem.org/holocaust/holocaust-antisemitism/rozett-denying-history.html ("Holocaust denial is a form of antisemitism, and antisemitism in our time still frequently incites to violence against individual Jews and against Jews in general …. It is a matter of society making an effort to prevent acts of violence, and even genocide"). See also the 35-nation International Holocaust Remembrance Alliance (IHRA), https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-holocaust-denial-and-distortion (Holocaust denial and distortion are expressions of antisemitism; "[f]orms of Holocaust denial also include blaming the Jews for either exaggerating or creating the Shoah for political or financial gain as if the Shoah itself was the result of a conspiracy plotted by the Jews. In this, the goal is to make the Jews culpable and antisemitism once again legitimate"); the United Nations and UNESCO, "History Under Attack – Holocaust Denial and Distortion on Social Media," foreword by UN Secretary General António Guterres (Holocaust denial and distortion "runs rampant once again amidst growing antisemitism, ignorance and bigotry …. We must never forget how easily hate speech can turn to hate crime"); United States Holocaust Memorial Museum ("Holocaust denial and distortion are forms of antisemitism, prejudice against or hatred of Jews. Holocaust denial and distortion generally claim that the Holocaust was invented or exaggerated by Jews as part of a plot to advance Jewish interests. These views perpetuate long-standing antisemitic stereotypes, hateful beliefs that helped lay the groundwork for the Holocaust").

Note 2:

The 22 member organizations for the Claims Conference Board of Directors are as follows:

Agudath Israel World Organization

Alliance Israelite Universelle

American Gathering of Jewish Holocaust Survivors and Their Descendants

American Jewish Committee

American Jewish Congress

American Jewish Joint Distribution Committee

American Zionist Movement

Anglo-Jewish Association

Association of Israelis of Central European Origin

B'nai B'rith International

Board of Deputies of British Jews

Central Council of Jews in Germany

Centre for Israel and Jewish Affairs (Canada)

Centre of Organizations of Holocaust Survivors in Israel

Conseil Representatif des Institutions Juives de France

Delegacion de Asociaciones Israelitas Argentinas

Euro-Asian Jewish Congress/International Union of Public Associations of Jews-Former Prisoners of Fascism

European Council of Jewish Communities

European Jewish Congress

Executive Council of Australian Jewry

Jewish Agency for Israel

Jewish Labor Committee

Note 3:

Research conducted in 2021 sponsored by, among others, the United Nations, discovered that "nearly 10 per cent of posts on Facebook .... that discussed the Holocaust hosted denial or distortion content."

Data Addendum: The following links provide specific data from each of the
Holocaust Knowledge & Awareness Surveys conducted globally.

Austria Survey

Canada Survey

France Survey

The Netherlands

United Kingdom

United States National Survey

United States Millennial Survey by State:

Alabama	Louisiana	Ohio
Alaska	Maine	Oklahoma
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Missouri	Tennessee
Florida	Montana	Texas
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Jersey	Washington
Indiana	New Mexico	West Virginia
Iowa	New York	Wisconsin
Kansas	North Carolina	Wyoming
Kentucky	North Dakota	

Link to Attachment

PC-15030

CASE 2023-22-IG-UA	PC-15031	United States & Canada
Case number	Public comment number	Region

Shari	Reig	English
Commenter's first name	Commenter's last name	Commenter's preferred language

The Conference on Jewish Material Claims Against Germany		Yes
Organization		Response on behalf of organization

Full Comment

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To investigate current levels of Holocaust knowledge - and the denial/distortion, including on social media platforms - we have conducted Holocaust Knowledge and Awareness surveys across six countries. The status of Holocaust denial and distortion in communities and online across all demographics is startling.

The U.S. Millennial Holocaust Knowledge and Awareness Survey – which revealed a disturbing lack of knowledge about many basic Holocaust facts – found that nationally, 48% of U.S. Millennial and "Gen Z" (ages 18-39) could not name a single one of the more than 40,000 concentration camps or ghettos established during World War II, and nearly two-thirds did not know that six million Jews were killed in the Holocaust. Sadly, the same is true for more than half of adults in Canada, Austria, France, the United Kingdom and the Netherlands.

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President, Conference on Jewish Material Claims Against Germany

Greg Schneider

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Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Missouri	Tennessee
Florida	Montana	Texas
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Jersey	Washington
Indiana	New Mexico	West Virginia
Iowa	New York	Wisconsin
Kansas	North Carolina	Wyoming
Kentucky	North Dakota	

Link to Attachment

PC-15031

CASE 2023-22-IG-UA	PC-15032	United States & Canada
Case number	Public comment number	Region

Greg	Schneider	English
Commenter's first name	Commenter's last name	Commenter's preferred language

The Conference on Jewish Material Claims Against Germany		Yes
Organization		Response on behalf of organization

Full Comment

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Executive Vice President, Conference on Jewish Material Claims Against Germany

Note 1:
See, e.g., Yad Vashem (the world's foremost Holocaust remembrance and research institution), https://www.yadvashem.org/holocaust/holocaust-antisemitism/rozett-denying-history.html ("Holocaust denial is a form of antisemitism, and antisemitism in our time still frequently incites to violence against individual Jews and against Jews in general .... It is a matter of society making an effort to prevent acts of violence, and even genocide"). See also the 35-nation International Holocaust Remembrance Alliance (IHRA), https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-holocaust-denial-and-distortion (Holocaust denial and distortion are expressions of antisemitism; "[f]orms of Holocaust denial also include blaming the Jews for either exaggerating or creating the Shoah for political or financial gain as if the Shoah itself was the result of a conspiracy plotted by the Jews. In this, the goal is to make the Jews culpable and antisemitism once again legitimate"); the United Nations and UNESCO, "History Under Attack – Holocaust Denial and Distortion on Social Media," foreword by UN Secretary General António Guterres (Holocaust denial and distortion "runs rampant once again amidst growing antisemitism, ignorance and bigotry .... We must never forget how easily hate speech can turn to hate crime"); United States Holocaust Memorial Museum ("Holocaust denial and distortion are forms of antisemitism, prejudice against or hatred of Jews. Holocaust denial and distortion generally claim that the Holocaust was invented or exaggerated by Jews as part of a plot to advance Jewish interests. These views perpetuate long-standing antisemitic stereotypes, hateful beliefs that helped lay the groundwork for the Holocaust").

Note 2:

The 22 member organizations for the Claims Conference Board of Directors are as follows:

Agudath Israel World Organization

Alliance Israelite Universelle

American Gathering of Jewish Holocaust Survivors and Their Descendants

American Jewish Committee

American Jewish Congress

American Jewish Joint Distribution Committee

American Zionist Movement

Anglo-Jewish Association

Association of Israelis of Central European Origin

B'nai B'rith International

Board of Deputies of British Jews

Central Council of Jews in Germany

Centre for Israel and Jewish Affairs (Canada)

Centre of Organizations of Holocaust Survivors in Israel

Conseil Representatif des Institutions Juives de France

Delegacion de Asociaciones Israelitas Argentinas

Euro-Asian Jewish Congress/International Union of Public Associations of Jews-Former Prisoners of Fascism

European Council of Jewish Communities

European Jewish Congress

Executive Council of Australian Jewry

Jewish Agency for Israel

Jewish Labor Committee

Note 3:

Research conducted in 2021 sponsored by, among others, the United Nations, discovered that "nearly 10 per cent of posts on Facebook …. that discussed the Holocaust hosted denial or distortion content."

Data Addendum: The following links provide specific data from each of the Holocaust Knowledge & Awareness Surveys conducted globally.

Austria Survey

Canada Survey

France Survey

The Netherlands

United Kingdom

United States National Survey

United States Millennial Survey by State:

Alabama	Louisiana	Ohio
Alaska	Maine	Oklahoma
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Mississippi	South Dakota
Delaware	Missouri	Tennessee
Florida	Montana	Texas
Georgia	Nebraska	Utah
Hawaii	Nevada	Vermont
Idaho	New Hampshire	Virginia
Illinois	New Jersey	Washington
Indiana	New Mexico	West Virginia
Iowa	New York	Wisconsin
Kansas	North Carolina	Wyoming
Kentucky	North Dakota	

Link to Attachment

[PC-15032](PC-15032)

CASE 2023-22-IG-UA	PC-15033	United States & Canada
Case number	Public comment number	Region

Yfat	Barak-Cheney	English
Commenter's first name	Commenter's last name	Commenter's preferred language

World Jewish Congress		Yes
Organization		Response on behalf of organization

Full Comment

World Jewish Congress

Submission to the Oversight Board - Holocaust Denial

2023-022-IG-UA

User appeal to remove content from Instagram

Background

In October 2020, the World Jewish Congress (WJC) welcomed the announcement by Facebook (now Meta) that it will remove Holocaust denial content from its online platforms as part of an expansion of its policies covering harmful stereotypes, under the hate speech policies. This move, that followed years of policy discussions with major Jewish groups such as the WJC as well as internal discussions in the company, was a recognition that Holocaust denial and

distortion is a form of antisemitism and therefore, hate speech. It acknowledged that denying the Holocaust, distorting it, trivializing it, minimizing it, is a tool used to spread hatred and false conspiracies about Jews and other minorities, using deliberate misinformation and malicious activity to spread lies about the Jewish people.

A degree of antisemitism must be at play in any discussion denying or distorting the Holocaust, however it is dressed up. These lies rely upon and recirculate age-old antisemitic myths that Jews are deceitful and untrustworthy, manipulating the world through plots and conspiracies. As historian Deborah Lipstadt, now ambassador and US special envoy on combating antisemitism has pointed out, the first question anyone would ask is "Why would Jews make this up?" and then it is not possible to be seduced by the arguments of Holocaust deniers without at some level believing basic antisemitic tropes that Jews are devious, powerful and scheming, and capable of creating a worldwide "fake Holocaust".

The strategy of Holocaust deniers is to hide behind a veil of supposed science and falsified erudition to give an appearance of credibility to their ideology. They publish pseudo-scientific reports in an attempt to prove, for example, that the perpetrators of the death camps could not have used Zyklon B as a means of mass execution. By using pseudo-scientific terms and claiming to have conducted in-depth research, they seek to blur the boundaries between historical truth and misinformation. This strategy is meant to deceive the public into thinking that such arguments are based on solid foundations, when in reality, the facts have been manipulated to promote a distorted view of history and spread hate speech and misinformation.

As the representative body of over 100 Jewish communities worldwide, the WJC and our affiliated communities experience the negative consequences of the spread of Holocaust denial and distortion daily. The offline violence stemming from such hateful discourse was made evident when on October 9, 2019, on Yom Kippur, an extremist terrorist attempted to forcibly enter the Jewish synagogue in the city of Halle in eastern Germany before carrying out a mass shooting livestreamed on the internet. "Hello, my name is [X], and I believe the Holocaust

never happened," he declared in front of a camera before killing two people. He then continued: "Feminism is the cause of the decline in birth rates in the West, and it serves as justification for mass immigration; the root of all problems are the Jews.".

These actions led the United Nations, in January 2022, to adopt a resolution condemning Holocaust denial and distortion. This resolution builds on the International Holocaust Remembrance Alliance (IHRA) working definition of Holocaust Denial and Distortion.

Internet platforms enable the information to spread widely, quickly, without many of the safeguards that we once knew of education and fact-checking. What the companies are essentially trying to do today is put in some of these safeguards – by using educational tools, by moderating some of the discussions, and by reducing the spread of Holocaust denial and distortion on their platforms. There is however still widespread Holocaust denial and distortion content on social media platforms, including Facebook and Instagram.

Research into online trends about content denying the factual basis of the Holocaust, and the associated online and offline harms

In July of 2022, UNESCO and the UN Holocaust Program, supported by the WJC, published a report "History under Attack: Holocaust Denial and Distortion on Social Media". This report reviewed content related to the Holocaust on Facebook and Instagram (as well as other online platforms, TikTok and Telegram). The report wished not only to review the quantity and extent of Holocaust denial and distortion material on the platforms, but to analyze the form and nature of these phenomena on social media and online platforms. The report aimed to shed light on the new, contemporary forms of Holocaust denial and especially distortion which is often repackaging millennia-old lies and hatred and taking advantage of new technologies to infect online spaces.

In order to add structure to the empirical work in the report, a typology of potential distortion was developed, based upon the IHRA Working Definition of Holocaust Denial and Distortion, which categorized the expressions of

Holocaust distortion as following:

-       Celebrating: Statements that cast the Holocaust as a positive historical event.

-       Blaming: Attempts to deflect responsibility and guilt for the Holocaust onto the Jews, by accusing them of causing their own genocide, arguing that they were actively complicit in the Holocaust (in order to use it to gain a national State), or that they somehow 'deserved' or provoked their fate.

-       Delegitimizing: Distortion through depicting Israel as a Nazi State, equating Israeli policy towards the Palestinians with the gas chambers, death camps and mass murder used in the Holocaust.

-       Smearing: Distortion through claims that accuse Jews of exploiting or seeking to benefit from the Holocaust.

-       Equating: Distortion by appropriating the emotional and rhetorical force of the Holocaust in the service of a political, social or moral agenda by equating the Holocaust to another event, without regard for the integrity of the historical past or the suffering of the Nazis' victims.

-       Omitting: Intentional efforts to excuse or minimize the impact of the Holocaust or its principal elements, including collaborators and allies of Nazi Germany.

The study found that 8% of Holocaust-related content on Facebook and 3% on Instagram denied or distorted the Holocaust. These results should be viewed however with some caution, as access for research into this data is limited. For example, the Crowdtangle service that allows access to Facebook and Instagram data focuses on large-scale, public areas of the site, while access to private groups and messages is severely limited. Furthermore, the proportion of Holocaust denial and distortion may be underestimated on image-reliant platforms such as Instagram when the research is done using CrowdTangle for hashtags and keywords.

On Instagram, the content found fell exclusively under the "equating" category, while on Facebook there were also instances of delegitimization, blaming, and outright denial of the Holocaust.

Another part of the research explored the modes of communication of Holocaust denial and distortion. On moderated platforms such as Facebook and Instagram, the use of coded language, memes, dog whistles and signposting for Holocaust denial and distortion was widespread.

Meta's human rights responsibilities in relation to content denying the factual basis of the Holocaust, including relating to dignity, security, and freedom of expression.

As UN Secretary General said in his opening text for the report, "Understanding the history of the Holocaust is crucial to safeguarding our future... If we fail to identify and confront the lies and inhumanity that fueled past atrocities, we are ill-prepared to prevent them in the future...

We must never forget how easily hate speech can turn to hate crime; how ignorance or indifference can lead to intolerance; or how silence in the face of bigotry is complicity. Too many times since, the international community failed to live up to its promise of 'Never Again'".

Hardcore Holocaust deniers are often driven by far right, extremist ideology, and deeply antisemitic in their worldview. It's part of their anti-liberal, ultra-nationalist position, and it seeks to rehabilitate fascism and Nazism while promoting neo-Nazi political movements. They tend to be racist and antisemitic at their core, with an ideology that goes beyond religious intolerance and sees Jews as a biological and existential enemy seeking to destroy the "white race". In their view, the Holocaust is another tool of the "Jewish conspiracy" to achieve global dominance.

While widely associated with far right, neo-Nazi movements, Holocaust denial is also found in other extremist movements, such as among radical Islamists. It is also increasingly becoming part of an anti-globalist, anti-capitalist and anti-

colonialist discourse with antisemitic undercurrents that link Jews with global capitalism, and buy into myths of Jewish conspiracies.

Further, the report showed how intimately linked Holocaust denial is to other forms of online violence, including those rooted in racism, misogyny, or xenophobia.

Scholar David N. Gibbs noted, "Genocide denial is often an ideological weapon employed by political movements that seek to perpetuate a system of inequality or oppression".

The proliferation of Holocaust denial and distortion material online enables discourse that is in violation of the basic and fundamental human rights not only of the Jewish community, but of society as a whole.

Allowing Holocaust denial and distortion to circulate on social media also directly harms the dignity of the victims, survivors, and their families. As Holocaust survivor and Nobel Peace Prizer Laureate Elie Wiesel said "Denying genocide is like killing the victims all over again".

Genocide denial often seeks to undermine victims' suffering and portray them as unworthy of empathy, compassion, or justice. By denying the reality of genocide, deniers seek to erase the humanity of the victims and perpetuate their oppression.

Challenges to and best practices on using automation to accurately detect and take enforcement action against hate speech that promotes false narratives about protected characteristic groups, as well as hate speech in the form of memes or other images/video with text overlay (i.e., how to reduce negative false enforcement)

As noted in the report, "Perhaps the most important fact about communication of Holocaust denial and distortion online is its coded nature. Like most internet subcultures, communication of denial or distortion content makes use of a library of oblique references that are hard to understand or may appear completely innocuous to those without specialist knowledge."

To accurately remove Holocaust denial and distortion from the platforms, ongoing, in-depth knowledge of the topic and trends is needed. Knowledge of the historical, "classic" forms of Holocaust denial and the deniers who promote these ideologies is key, along with continuous updating of terminology, images, and proxies.

The usefulness of Meta's transparency reporting on the extent and accuracy of its enforcement against hate speech, particularly for people studying and/or working to counter hate speech online

Meta's current transparency reporting system concerning hate speech offers limited utility for the effective study or enforcement of its policies. In numerous discussions between the WJC and Meta, as well as in public forums, it's been consistently highlighted that without detailed categorization of hate speech data by type and targeted groups, the reports lack depth for research, particularly in areas like antisemitism and Holocaust denial or distortion. While the company has often cited the impracticality of refining the reporting to such granular levels, we suspect that financial considerations, rather than technological constraints, are the primary hindrance to this essential development.

Recommendations:

-       Holocaust Denial and Distortion Content: Meta should persistently act against content that denies or distorts the Holocaust. This includes not only the removal of violating content but also the deactivation of accounts that produce or amplify such content. Further, Meta should employ a variety of content moderation tools to ensure the platform remains free from this hate speech.

-       Community Standards Reinforcement: Meta should enhance community standards against Holocaust denial and distortion. The policies should align comprehensively with the UN General Assembly resolution on Holocaust Denial to address all nuances of this issue.

-       User Reporting Enhancements – Meta should simplify the process for users to report Holocaust denial and distortion, perhaps introducing a specific

category for such reports.

-        Content Moderator Training: Meta should allocate resources to train content moderators specifically on Holocaust denial and distortion. This includes developing an understanding of its varied manifestations on the platform, and sensitivity towards local events or narratives that glorify Nazi ideologies or parties.

-        AI and Machine Learning Integration: It's imperative for Meta to ensure that their AI systems are trained on Holocaust-related materials, with a goal to continuously improve the ability to detect content that purposefully tries to bypass moderation.

-        Third-party Fact-checking Collaboration: Meta should evaluate the frequency with which Holocaust-related content is assessed by external fact-checkers. It's essential to ensure these entities are equipped with the appropriate tools to identify and flag misinformation or disinformation related to the Holocaust especially as this constitutes hate speech.

-        Linked Content Review: Content moderation processes should include rigorous scrutiny of linked content in posts. Any content directing users to external sources promoting Holocaust denial and distortion should be considered a violation of community standards.

-        Educational Redirects: As a continuation of the 2021 initiative where Holocaust-related searches on Facebook are redirected to UNESCO and the World Jewish Congress's AboutHolocaust.Org website, this collaboration should be expanded. This includes incorporating more languages, widening the keyword range for redirection, embedding further into the product. In addition, Meta should continue to invest in educational projects and support campaigns aimed at Holocaust education such as the WJC annual "We Remember" campaign on International Holocaust Remembrance Day.

-        Transparency Initiatives: Meta should increase transparency regarding hate speech on the platform, with increased granularity on topics such as

Holocaust denial and distortion.

-         Researcher Access to Data: It's vital to provide researchers, think tanks, academia, and civil society organizations better access to platform data. This will facilitate more in-depth analysis on hate speech patterns and trends. Meta should take an active role in supporting such research.

-         Holocaust Denial Content Database: For effective moderation against Holocaust denial content, Meta should be equipped with comprehensive knowledge about its proponents. This includes understanding the authors, their publications, associated publishing houses, online platforms that endorse them, and associations focused on Holocaust denial. Compiling a keyword list pertaining to Holocaust denial, its history, and historians is also crucial.

Link to Attachment

[PC-15033](PC-15033)

CASE 2023-22-IG-UA	PC-15034	United States & Canada
Case number	Public comment number	Region

Kyung Sin	Park	English
Commenter's first name	Commenter's last name	Commenter's preferred language

UCI International Justice Clinic		Yes
Organization		Response on behalf of organization

Full Comment

[Please see attached for the fully annotated comment]

Hinako Sugiyama, Ashley Duke, and Madison Larsen

International Justice Clinic

401 E. Peltason Drive

Irvine, California 92697-8000

September 14, 2023

RE: Facebook Oversight Board Case #2023-022-IG-UA

Dear Members of the Oversight Board,

This letter responds to the Oversight Board's call for public comments as it evaluates Meta's enforced prohibition on Holocaust denial content. We have been gratified by the Oversight Board's evaluation of human rights standards in the context of its review of Meta's practices. In keeping with this approach, we urge the Oversight Board to evaluate how Meta may meet its express commitment to protecting human rights by addressing gaps from Articles 19 and 20 of the International Covenant on Civil and Political Rights ("ICCPR") in its Hate Speech Community Standards as well as its policy implementations.

I. Under UNGP, Meta Is Required to Respect International Human Rights

Under its Corporate Human Rights Policy, Meta has committed to "respecting human rights as set out in the United Nations Guiding Principles on Business and Human Rights (UNGPs)," which encompasses international human rights standards found in, inter alia, the Universal Declaration of Human Rights and the ICCPR. UNGP "recognise[s] that companies have a responsibility to respect human rights, independent of state obligations or the implementation of those obligations."

II. Applicable rules of ICCPR to Holocaust Denial

1.   The nature of Holocaust denial

Holocaust denial is generally understood as expressions that include negation or doubt of the existence or scale of the Holocaust verified by the Nuremberg trials. Given the historical significance of the Holocaust, regardless of whether it is intended so or not, such expressions can often incite or promote anti-Semitism when combined with existing racism or hatred against Jewish people in a society where the expression is disseminated. Restrictions on speech based on vague reasons carry a significant risk of abuse by those in power and the majority to oppress protected expressions, particularly those of minority groups in oppressive nations. To minimize such risks, efforts have been made to ensure clarity in the rules governing hate speech such as Holocaust denial in international human rights law forums, as we summarize below.

2. The scope of protected speech

Article 19(2) of ICCPR protects expression, including intentional negation of facts which is protected by international human rights law. False information is protected because of the logistical challenge in distinguishing what is 'fact' from what is 'opinion.' Furthermore, the Court contends that sometimes exaggerated or untruthful expressions might hold significance for, or at the very least, not be detrimental to a democratic society. Simply "[p]rohibiting false statements fails to take into account the fact that language is used in a variety of complex and subtle ways and that it is simply not possible to divide statements clearly into categories of fact and opinion."

3. Speech which should be prohibited under Article 20(2).

Article 20(2) of ICCPR prohibits "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence." Interpretation of "advocacy of . . . religious hatred that constitutes incitement to discrimination."

The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is prepared by UN OHCHR for the purpose of better domestic implementation of Article 19 and 20(2). The Rabat Plan requests a case-by-case analysis for whether certain expressions amount to hate speech prohibited under Art. 20(2) and introduces six elements which are aimed at helping such analysis , namely, the social and political context, intent, status of the speaker, reach of the speech, and the likelihood or imminence of harm. Notably, truthfulness of expressions are not included in these factors.

4. Speech which can be prohibited (19(3))

As a result of the centrality of freedom of expression to the ICCPR and its promise of public participation and robust democratic debate, any restriction of freedom of expression must meet a stringent test, referred to as the three-part test under Article 19(3), (1) being prescribed by law which is publicly accessible and specific enough to enable individuals self-regulate their conduct and

prevent unfettered discretion of authority , (2) in pursuit of a legitimate aim "[f]or respect of the rights or reputations of others; or "[f]or the protection of national security or of public order (ordre public), or of public health or morals" , and (3) necessary and proportionate. A restriction must not be overbroad , and it should be the "least possible restriction on the right to freedom of expression."

Notably, the Human Rights Committee, when applying the three-part test to Holocaust denial, developed a case-by-case analysis based on the elements included in the Rabat Plan, especially the likelihood of the creation or promotion of anti-Semitism resulting from the Holocaust denial. The Committee has not allowed the restriction of Holocaust denial categorically or focused on the expressions' untruthfulness, strictly following the rule under Article 19.

In its landmark case Faurisson v. France, the Human Rights Committee applied the three-part test to the French government's criminal conviction on Holocaust denial. Applicant Robert Faurisson, a university professor who identified himself as revisionist, made a statement during an interview by a French Magazine, "no one will have me admit that two plus two makes five, that the earth is flat, or that the Nuremberg Tribunal was infallible. I have excellent reasons not to believe in this policy of extermination of Jews or in the magic gas chamber." Faurisson was later convicted and fined for the statement by the French government. Faurisson eventually brought the case to the Human Rights Committee, claiming that the conviction violated his freedom of expression.

In applying the three-part test, the Committee took into account a statement made by the French Minister of Justice that Holocaust denial was the principal vehicle of anti-Semitism in France at that time of the publication and found that "necessary consequence of [Faurisson's statement] was fuelling of anti-Semitic sentiment by the clearest suggestion that the myth of the gas chamber was a dishonest fabrication by the Jews." Therefore, the conviction was necessary and proportionate for the respect of the rights and reputation of others, namely, the respect of the Jewish community to live free from fear of an atmosphere of anti-Semitism.

In Ross v. Canada, the appellant was a teacher who was transferred to a non-teaching position because of his anti-Semitic views and publications, including a Holocaust denial. The Committee concluded that the transfer was necessary and proportionate for the purpose of protecting the rights and reputations of Jewish people, including the right to have an education in the public school system "free from bias, prejudice and intolerance," meeting the three-part test. To conclude so, the Committee relied on the fact found by the domestic court that "it was reasonable to anticipate that there was a causal link between the publication of the author, and the «poisoned school environment» experienced by Jewish children in the School."

III. Meta's policy applicable to Holocaust denial international human rights law. We see some gaps between these rules and under international human rights law and Meta's Hate Speech Community Standard.

Lack of Specificity in Rules Required Under Legality Test
Under its Hate Speech Community Standard, Meta's "do not post" tier includes posts about "[h]armful stereotypes historically linked to intimidation, exclusion, or violence on the basis of a protected characteristic, such as... Holocaust denial." As mentioned above, without a clear definition of 'Holocaust denial' both users and administrative members cannot effectively know what content does or does not follow under the broad term 'Holocaust denial.' Any restrictive policy "must be formulated with sufficient precision to enable individuals to regulate their conduct accordingly. Overbroad restrictions are not allowed."

Necessity - Lack of Consideration for Context, Users' Profile, Intent, or Harms Caused
A broad prohibition of 'denial of fact' affects the proper application of articles 20(2) and 19(3). To prevent abuse of the 'Holocaust denial' policy, we urge Meta to change the current rhetoric in the Hate Speech Community Standards by replacing the overarching term 'Holocaust denial' with a practice that evaluates Holocaust denial under Article 19 and 20 of the ICCPR and the Rabat Plan of Action.

While it is highly probable that a large majority of content denying the Holocaust will be deemed anti-Semitic during proper algorithmic or human review, prohibiting 'Holocaust denial' categorically, instead of 'racism' or 'anti-Semitism' casts an over-broad net that does not evaluate content case-by-case, which the international human rights law requests. We thus urge Meta to update the Hate Speech Community Standards by adding "amounts to" after "Holocaust denial." Given that practically almost all Holocaust denial reasonably is motivated by or creates anti-semitism, we believe that a situation where the updated rule would allow Holocaust denial, which is banned by the current wording, is unlikely to occur. Regarding the categorical prohibition of Holocaust denial on Meta's policy, we are further concerned with the risk that it might lead to the idea that Holocaust denial is prohibited because of its lack of truthfulness, which would curtail the scope of protected speech. As above, Article 19(2) protects expressions regardless of whether they are true or not to comply with the international human rights law. If Holocaust denial posts are taken down, the decision should be because it is likely to incite or promote anti-Semitism when combined with the existing hatred against Jewish people, not because it is untrue. For this reason as well, we recommend Meta to add the above wordings to the Hate Speech Community Standard.

IV. Possible ways for Meta to more accurately implement its policy
Assuming Meta updates its hate speech policy to better adhere to international human rights law, Meta can more accurately implement that policy by, at least, (1) allowing users who have content removed to be properly notified and have the opportunity to appeal, (2) providing more extensive training for human reviewers, and (3) having more robust public disclosure of policy implementation.

Removal Notification to Users and Allowing Users' Appeal
Meta should notify users when their posts are removed under Tier 1. The EU Digital Services Act requires that users be notified and provided a statement of reasons in case of restrictions of the visibility of their content. Meta should also give notice of an appeals process. The Santa Clara Principles state that companies should "equitably provi[de] notice and appeals mechanisms." This is

in accordance with Article 2 of ICCPR which recommends that each State undertakes "to ensure that any person whose rights or freedoms are herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by person acting in an official capacity." Meta can take this as an example to replicate in its own policies.

More Effective Training for Human Reviewers is Needed

The training for human reviewers must extend beyond teaching on the tiers of what is considered hate speech under the Oversight Guidelines. Article 19 states that "the shortcomings of automated content moderation systems make it indispensable that social media companies employ sufficient human reviewers and invest resources to better understand the context of particular forms of expression." Human reviewers should be educated on Article 19 and 20 of ICCPR, including the three-part test, the six Rabat factors, and relevant jurisprudence about Holocaust denial. Human review is important to read into certain nuances and context that an AI system would not be able to perform to the same capacity.

More Robust Public Disclosure

To better adhere to the "legality" test, which requires publicly accessible and specific enough to enable individuals self-regulate their conduct, Meta can also be more transparent to the public in general by releasing more specific data on what posts are reported/taken down. Further, rather than Meta's practice of breaking down aggregate data into broad categories such as "hate speech," smaller categories can be included within this larger category to give a clearer picture of what constitutes hate speech.

Link to Attachment

PC-15034