

Free Expression, Harmful Speech and Censorship in a Digital World



The John S. and James L. Knight Foundation's Trust, Media and Democracy initiative aims to address the decline in trust for journalism and other democratic institutions by examining the causes and supporting solutions.

As part of the multidisciplinary initiative launched in 2017, Knight Foundation partnered with Gallup on a research series to better understand Americans' evolving relationship with the media and to inform solutions to the information challenges of our day.

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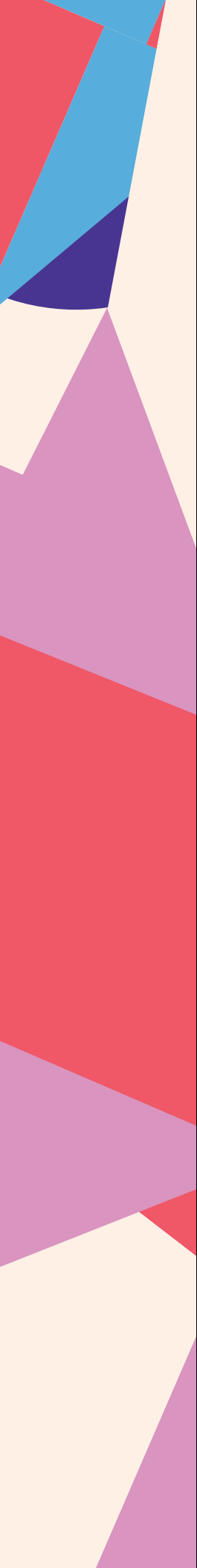


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Introduction

The internet has brought with it seemingly unbridled opportunities for personal expression to mass audiences, thanks to social media apps like Facebook and Twitter and blog sites like Medium. However, with freedom of expression come opportunities for people to share false, offensive, harmful and even injurious content on digital platforms. As more aspects of our lives increasingly move online, we must contend with operating in a digital public square owned by private entities — one where freedom of expression falls not under the purview of the First Amendment, but under emergent standards being shaped by technology companies. Such challenges have taken on an increased urgency during the COVID-19 pandemic, with Americans turning to social media for interaction and information and finding the platforms awash in false claims and conspiracy theories that threaten health.

As freedom of speech is considered sacrosanct in the U.S., where do we draw the line on free expression in online communities? Is there a consensus among Americans on what is considered harmful, and what should be restricted? And who decides when and whether to restrict potentially harmful content — social media companies, the government or some other entity? At the same time, a national debate has focused on who should be held liable for such content — the person who posts it or the internet company that hosts it?

These questions come at a time of deep skepticism toward major internet and technology companies. A Gallup/Knight report published earlier this year found widespread and bipartisan concerns among Americans, with many believing that major internet companies wield too much power and have done more harm than good in society.¹ Amid public distrust of social media companies and the government, viable solutions to these issues have proven elusive.

Gallup and Knight conducted a study to gauge Americans' opinions on these matters, delving specifically into two potential paths forward — amending Section 230 of the Communications Decency Act, which largely shields internet companies from legal liability for content shared on their sites, and the relatively new notion of content oversight boards.² Notably, a majority of these data were collected in late March 2020, just as the coronavirus developed into a full-blown pandemic, and many Americans turned to social media for news updates and health and risk information.³ The remainder of the data were collected earlier, in December 2019.

1 Knight Foundation & Gallup, Inc. (2020). *Techlash? America's growing concern with major technology companies*. <https://knightfoundation.org/reports/techlash-americas-growing-concern-with-major-technology-companies/>

2 Botero-Marino, C., Greene, J., McConnell, M. W., & Thorning-Schmidt, H. (2020, May 6). We are a new board overseeing Facebook. Here's what we'll decide [Opinion]. *The New York Times*. <https://www.nytimes.com/2020/05/06/opinion/facebook-oversight-board.html>

3 Ritter, Z. (2020, May 21). *Americans Use Social Media for COVID-19 Info, Connection*. Gallup.com. <https://news.gallup.com/poll/311360/americans-social-media-covid-information-connection.aspx>

The following report reveals areas of consensus, division and weakly held opinions among Americans and their concerns and preferences for how to address these challenges. The findings help point the way for social media companies and policymakers to move forward.

Additionally, Knight and Gallup have invited commentary from a panel of independent experts who provide their personal perspectives as context for the findings and implications. Each of these experts offer their views in a personal capacity and not on behalf of their organizational affiliations:

EVELYN MARY ASWAD

Professor of law and the Herman G. Kaiser Chair in International Law, University of Oklahoma College of Law; Member, Oversight Board

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OLIVIER SYLVAIN

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Executive Summary

1

Attitudes About the Digital Public Square: Americans' Views on Free Expression and Potentially Harmful Online Content

Americans' attitudes weighing free expression and harmful online content provide invaluable context for policymakers and social media companies to consider in brokering solutions that the public will support.

- Americans prefer social media apps and sites to be places of open expression.
 - Nearly two-thirds of Americans (65%) favor allowing people to express their views on social media, including views that are offensive, over restricting what people can say on social media based on societal norms or standards of what is fair or appropriate (35%).
- Even as Americans voice a preference for open expression, there are several forms of online content that many say should be restricted or never allowed.
 - Nearly all Americans (98%) say child pornography should never be allowed on social media, and particularly relevant today, 85% say misleading health information also should be prohibited.
- Many Americans have personally been targeted by harmful online behavior.
 - Of the types of harms people experience online, Americans most frequently cite being called offensive names (44%). More than 1 in 3 (35%) say someone has tried to purposefully embarrass them online, 18% have been physically threatened, and 15% have been sexually harassed.
 - Fully 3 in 10 Americans (31%) have requested a social media or internet company remove a post made by someone else they considered harmful, and 21% have had a post they made removed by a social media or internet company.

2

Americans' Appetite for Regulation: Views on Intermediary Liability and Section 230 of the Communications Decency Act

Among the potential solutions discussed to address harmful online content is the potential for social media companies to bear greater liability for such content, which could pave the way for greater moderation on their part.

- Americans are somewhat divided on Section 230 of the Communications Decency Act, which largely shields major internet companies from liability for content posted on their websites and apps by third parties.
 - Fifty-four percent say the law has done more harm than good because it has not made the companies accountable for illegal content on their sites and apps, while 44% say it has done more good than harm because it has allowed the internet to grow as a place people can communicate and say what they think.
 - That said, almost two-thirds (66%) of Americans say they support keeping the existing law that shields major internet companies from liability, while 3 in 10 (31%) say they favor changing the law so people can sue the companies for content posted by individuals that causes them harm.
 - Attitudes toward keeping or changing the law are weakly held and subject to how the question is framed. When Gallup and Knight asked a similar question in December 2019, findings showed more Americans in favor (54%) than opposed to (45%) allowing people to sue major internet companies for harmful content that appears on their platforms.

- A majority of Americans do not trust social media companies to make the right decisions about what content appears on their sites or apps.
 - Levels of trust in social media companies to make the right decisions about what people can say or post on their websites and apps are low, with more than 8 in 10 Americans saying they trust the companies “not much” (44%) or “not at all” (40%).
 - A slim majority of Americans (54%) say that social media companies are “not tough enough” in policing content on their sites, and 25% say they get it right. Men, whites and less educated Americans are all more likely to say content oversight is “too tough.”
- Despite misgivings about major internet companies making the right decisions related to harmful online content, Americans are more likely to favor the companies, rather than government, setting policies to regulate such content.
 - Americans marginally favor major internet companies setting policies about what people can post on their websites and apps without government involvement (55%) rather than government setting limits or guidelines about such content (44%).

3

Americans' Views on Private Sector Self-Regulation: Content Oversight Boards

In an effort to address concerns of harmful content, Facebook recently announced its appointment of a content oversight board, an independent group of experts who will determine the boundaries of free expression that Facebook says it will be obliged to enforce.

- Americans' opinions of content oversight boards are largely favorable, tending to prefer them to social media companies or the government to make decisions about what can and cannot appear on social media websites and apps.
 - More than 8 in 10 Americans say they think a content oversight board is a “good idea” (54%) or “very good idea” (27%), while 12% say it is a “bad idea,” and 7% say it’s a “very bad idea.”
 - Americans' favorability toward content oversight boards increases when they know more about them. Sixty-five percent prefer such entities to decide what can and cannot appear on social media websites and apps after learning more about them, compared with 46% when respondents were asked the same question before considering some of the issues content oversight boards face.

4

Content Oversight Boards: Americans' Views on What Matters Most

- The most important content oversight board attributes for Americans are transparency and diversity, followed closely by independence — i.e., who appoints board members. Less valuable is the board's ability to compel social media companies to enact its decisions or guidelines.
- Americans' trust in a social media company will not automatically increase solely because the company adopts a content oversight board. Rather, trust can be gained based on the board's features relating to its independence, transparency, diversity and ability to enforce decisions.

Detailed Findings

1 Attitudes About the Digital Public Square: Americans' Views on Free Expression and Potentially Harmful Online Content

Americans prefer that social media apps and sites be places of open expression. Nearly two-thirds of Americans favor allowing people to express their views on social media, including those that are offensive, over restricting what people can say on social media based on societal norms or standards of what is fair or appropriate. Support for free expression online diverges by party affiliation, with Republicans and independents significantly more likely than Democrats to favor it. Women (58%) are less likely than men (72%), and nonwhites (57%) are less likely than whites (68%) to favor free expression over norms-based restrictions on online speech.

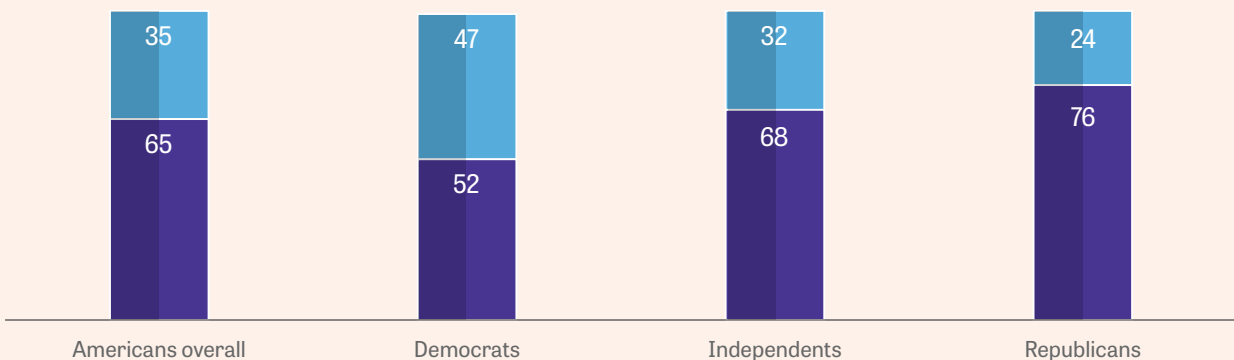
FIGURE 1

Views on Free Expression on Social Media, by Political Party

Which statement comes closer to your view about social media?

■ % People should be able to freely express their views on social media, including views that are offensive

■ % People should be restricted in what they can say on social media by societal norms or standards of what is fair or appropriate



Note: "No answer" percentages not shown.
Knight Foundation/Gallup Dec. 3-15, 2019

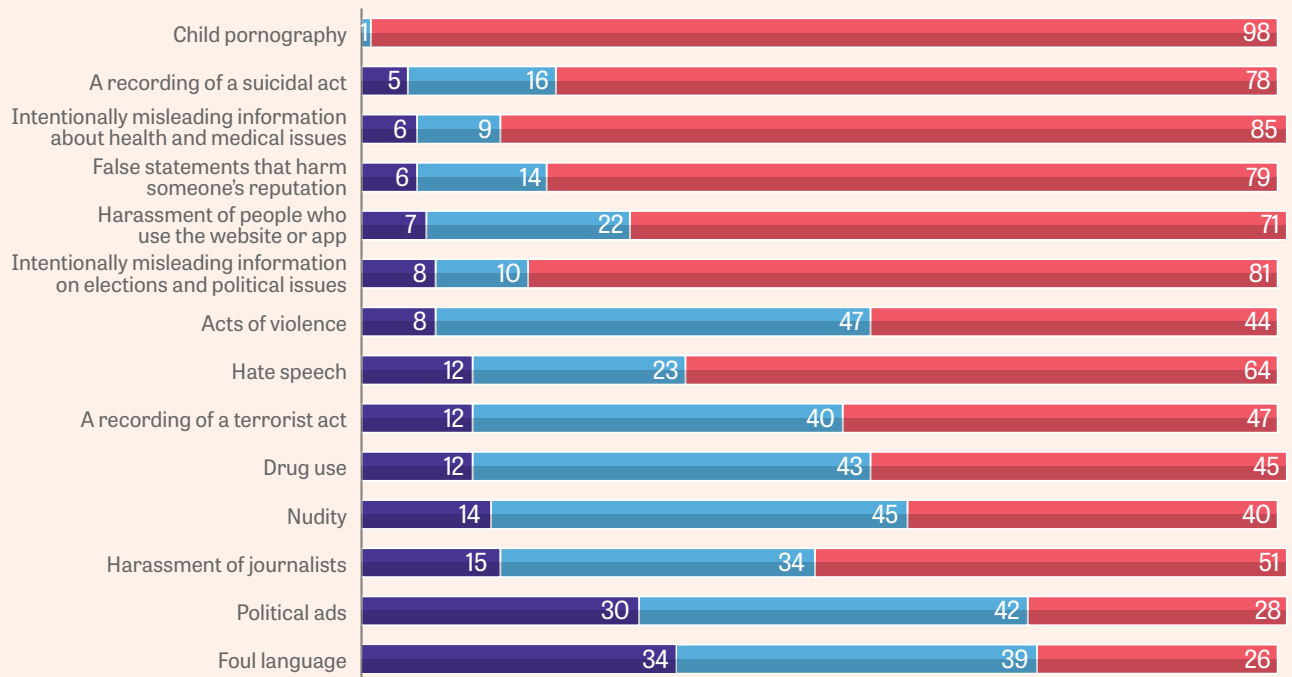
However, Americans do not support unlimited free expression online. Specifically, when asked how social media companies should handle various types of controversial content posted on their sites, the vast majority of Americans say child pornography should never be allowed on social media. More than 8 in 10 Americans (85%) say intentionally misleading information about health and medical issues should never be allowed. Other forms of content with majority consensus that should be prohibited include intentionally misleading information relating to elections, suicide recordings and hate speech. Americans are more likely to say that foul language, political ads and nudity should be allowed.

FIGURE 2

Opinions on Allowing Specific Types of Harmful Online Content

How should social media companies handle each of the following types of content? Should they always allow this type of original content to be posted on their websites and apps, allow it to be posted in certain cases depending on how severe it is, or should they never allow it on their websites and apps?

■ % Always allow ■ % Allow in certain cases ■ % Never allow



Note: "No answer" percentages not shown.
Knight Foundation/Gallup March 17-30, 2020

Variations in attitudes related to social media posts that should never be allowed fall along lines of party, age and, to a lesser extent, gender and education. Democrats are more likely than Republicans to say harassment of journalists, hate speech and intentionally misleading election and political content should never be allowed, while Republicans are more likely to say nudity, foul language and drug use should be banned. Americans aged 55 and older are more likely than those aged 18-34 to say various forms of social media posts should never be allowed, including foul language, nudity, violence and harassment. Compared to men, women are more likely to say all forms of content in social media posts should never be allowed, including harassment of journalists, nudity, hate speech and violence. Americans with a high school education or less are generally more likely than college-educated Americans to say foul language, nudity and drug use should never be allowed.

Additionally, those who have had a post of theirs removed are overwhelmingly more likely to say social media companies should always allow various forms of offensive content. However, this may be partly a function of their age. Younger Americans aged 18-34 are much more likely (28%) to have had a post removed by a social media company than Americans aged 55 or older (12%).

Americans' Personal Experience With Harmful Online Content

Between 1 and 4 in 10 Americans have personally been targeted by harmful online content. The most common occurrence is being called offensive names, with 44% of Americans saying this has happened to them. More than 1 in 3 say someone has tried to purposefully embarrass them online, and about 1 in 4 say someone has posted something about them online that was not true. Less frequently, Americans have been victimized by more severe and harmful online behaviors.

EXPERT PERSPECTIVE

"Courts and legislatures can't restrict this constitutionally-protected, but potentially harmful, speech. But platforms can, using the privatized speech rules codified in their Terms of Service. Up to a point, survey respondents want platforms to do that."

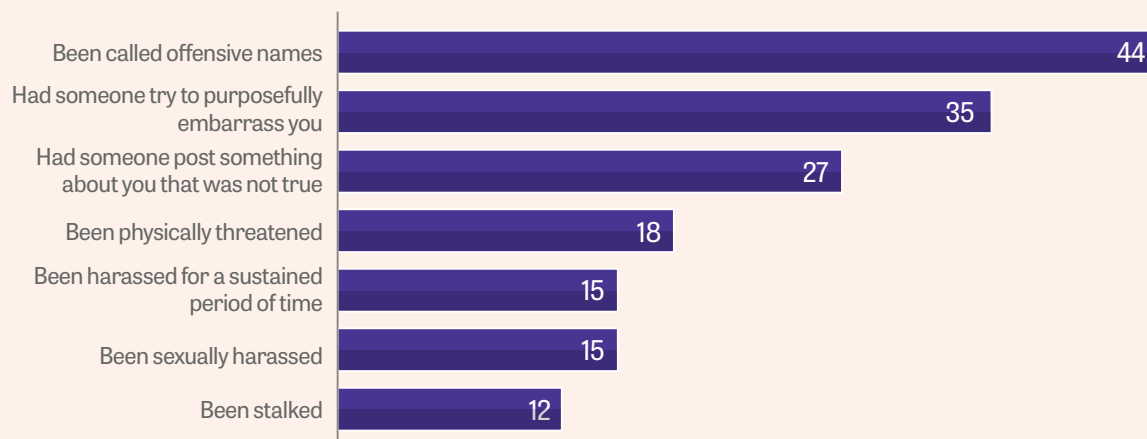
— Daphne Keller

FIGURE 3

Prevalence of Online Harms Among Americans

Has someone ever posted something about you online that was not true?

Which, if any, of the following has happened to you personally online? (Percentage who answered "Yes")



Knight Foundation/Gallup March 17-30, 2020

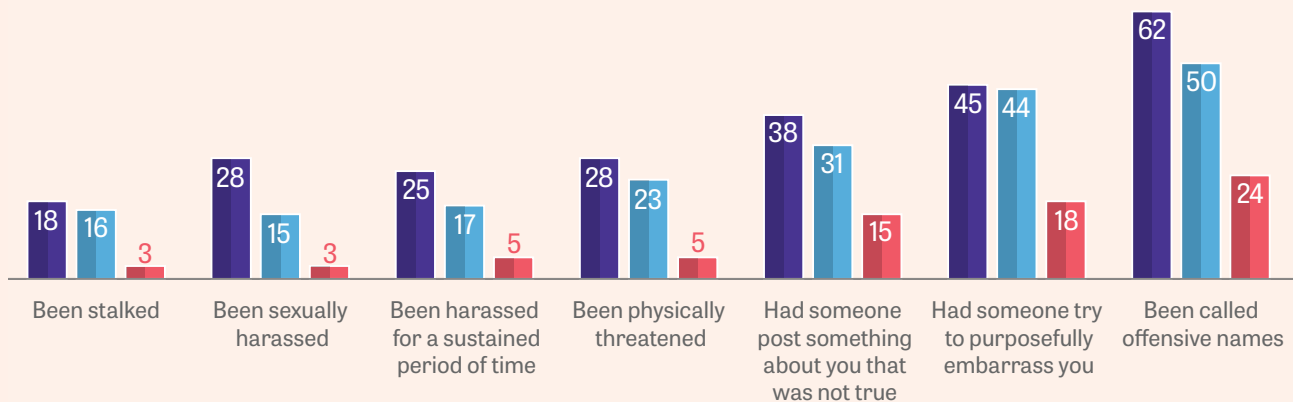
Americans who use social media more frequently are more likely to have been targeted by harmful online behavior than those who use it less frequently. Younger Americans aged 18-34 and those aged 35-54 are much more likely than those aged 55 and older to have been personally targeted by harmful online behavior.

FIGURE 4

Prevalence of Online Harms Among Americans, by Age

Percentage who have been targeted by harmful online behavior

■ 18-34 years ■ 35-54 years ■ 55+ years



Knight Foundation/Gallup March 17-30, 2020

Two in 10 Americans (21%) have had a post they made removed by a social media or internet company and 3 in 10 (31%) have requested a social media or internet company remove a post made by someone else they considered harmful. As with patterns of victimization by online behavior, younger Americans are more likely to have had their own posts removed and to have requested that others' be removed, as are Americans who are more frequent users of social media. There are also gender differences — women (18%) are less likely than men (24%) to have had their posts removed, and they are more likely to have requested that others' posts be removed (35% vs. 27%).

Forty-four percent of Americans state they have been called offensive names online, including 62% of those aged 18-34.

2 Americans' Appetite for Regulation: Views of Intermediary Liability and Section 230 of the Communications Decency Act

The Communications Decency Act is a part of the Telecommunications Act of 1996, a federal law that, among other issues, attempts to govern legal liability for content individuals or groups post on internet platforms made available to them by major internet companies.⁴ Section 230 of the act largely shields major internet companies from being sued for content posted on their websites and apps by individuals. The law also gives internet companies wide discretion to remove content on their platforms, even if the content is legally protected speech.⁵

Americans are somewhat divided on the impact of this law. Fifty-four percent say the law has done more harm than good because it has not made the companies accountable for illegal content on their sites and apps, while 44% say it has done more good than harm because it has allowed the internet to grow as a place people can communicate and say what they think.

Views on the value of the act are relatively similar by party affiliation, education, income and race. However, there are differences by age, with younger Americans aged 18-34 more likely to say the law has done more good than harm compared to Americans aged 55 and older. Men are also more likely to say the law has done more good than harm compared to women. And daily social media users are more likely than those who use social media a few times a month or less to say the law has done more good than harm in allowing the internet to grow as a place people can express themselves freely.

SECTION 230 OF THE COMMUNICATIONS DECENCY ACT STATES:

"No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider."

EXPERT PERSPECTIVE

"Due to their lack of background knowledge, surveying consumers about Section 230 is tricky. To obtain informed feedback, the survey questions need to educate consumers about the law, which introduces potential bias."

— Eric Goldman

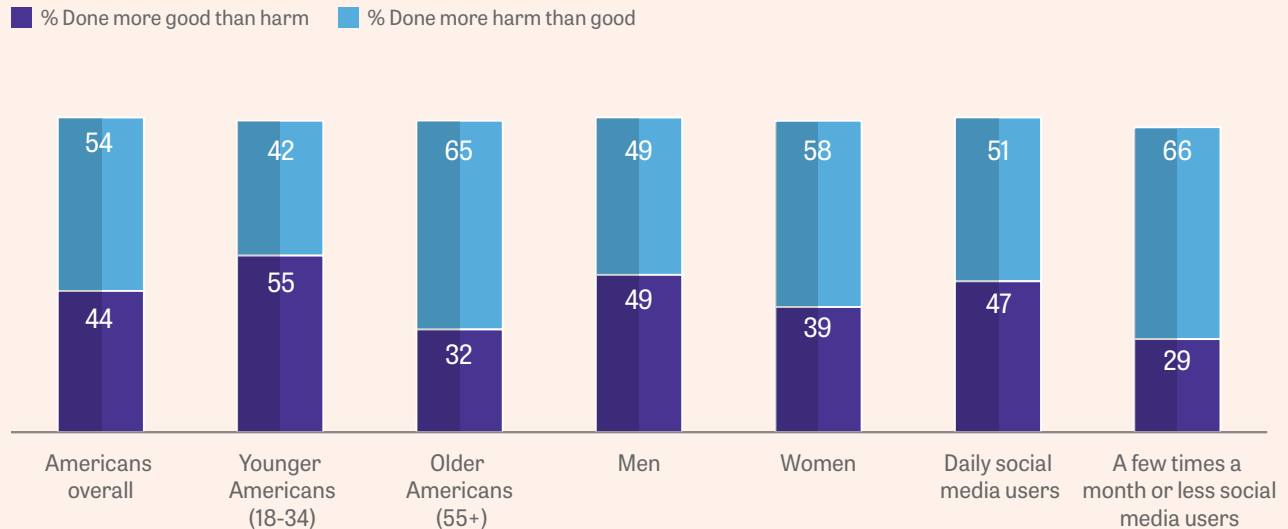
⁴ Telecommunications Act of 1996. (2013, June 20). Federal Communications Commission. <https://www.fcc.gov/general/telecommunications-act-1996>

⁵ Newton, C. (2020, March 3). *Everything you need to know about Section 230*. The Verge. <https://www.theverge.com/2020/3/3/21144678/section-230-explained-internet-speech-law-definition-guide-free-moderation>

FIGURE 5

Views on the Impact of Section 230 of the Communications Decency Act

Do you believe the current law has — done more harm than good because it has not made the companies accountable for the illegal content that appears on their websites and apps, or done more good than harm because it has allowed the internet to grow as a place people can communicate and say what they think?



Note: "No answer" percentages not shown.
Knight Foundation/Gallup March 17-30, 2020

Some legislators have pushed to revise Section 230 of the Communications Decency Act so that social media platforms no longer have protection against legal liability for the content posted on their sites.⁶ About two-thirds of Americans (66%) say they favor keeping the law so that people cannot sue internet companies for content posted by others on their sites, while 31% prefer to change the law so that internet companies can be held liable for such content.

EXPERT PERSPECTIVE

"Policymakers could require intermediaries to internalize some of the harms and social costs of their content moderation systems by narrowing the protection under Section 230. After all, we allow consumers to sue practically all other kinds of companies for secondary liability to promote fairness and regulatory efficiency."

— Olivier Sylvain

⁶ Section 230 is the internet's First Amendment. Now both Republicans and Democrats want to take it away. (2019, July 29). Reason.Com. <https://reason.com/2019/07/29/section-230-is-the-internets-first-amendment-now-both-republicans-and-democrats-want-to-take-it-away/>

However, it is likely that Americans' attitudes on legal liability for internet companies are not strongly held. The Gallup/Knight December 2019 survey asked a similar question and found more Americans in favor (54%) than opposed (45%) to "allowing people to sue major internet companies like Google and Facebook if they believe they are harmed by a post that appears on the company's website or app." Differences in these results could be related to survey context and question format. The more recent survey provided more information about the current law and what it does than the earlier survey, and that information could make a difference in how people answer. Also, the more recent question indicated that legal protections for internet companies are the status quo, and thus, the law would need to be changed to allow internet companies to be sued, while the earlier question did not mention the current law. These results suggest that people may be reluctant to change the status quo.

Respondents who said they favor changing Section 230 of the Communications Decency Act were asked who should be held legally liable if a variety of types of content are posted — the person posting the content, the internet company hosting the site or app, both or neither.

In all but two instances, a majority of Americans favor holding internet companies and the people who post harmful content on their sites liable for such content.

- Americans are most likely to think both parties should be liable for child pornography, intentionally misleading information about health and medical issues and intentionally misleading information on elections and political issues.⁷
- About 7 in 10 Americans believe both parties should be held liable for hate speech, recordings of suicidal acts, acts of violence and harassment of other users on the site or app.
- Cases where a minority believes both parties should be liable include nudity and foul language.

When Americans think only one entity should be liable, in all instances, they believe it should be the individual or group who makes the post rather than the internet company.

EXPERT PERSPECTIVE

"This is the paradox that Section 230 doctrine has given us. It sits in the breach, as it aims to encourage expressive conduct online while also incentivizing intermediaries (not policymakers) to regulate that content. Courts or policymakers should reform the law to compel intermediaries to do more."

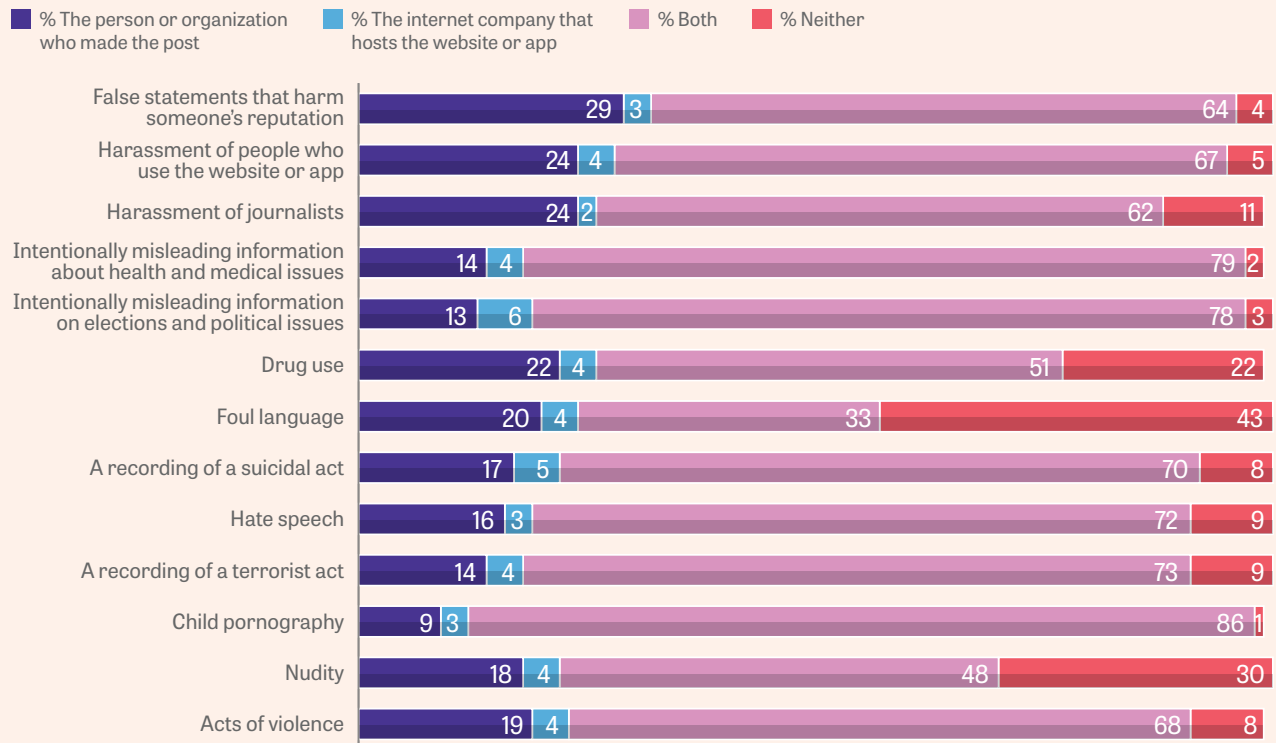
— Olivier Sylvain

⁷ This data was collected in late March 2020, in the early days of the coronavirus crisis, which may have increased Americans' concerns related to online health and medical misinformation.

FIGURE 6

Views on Who Should Be Held Liable for Harmful Content

Who should be held legally liable if each of the following types of content were posted on an internet company's website or app?



Note: "No answer" percentages not shown.
Knight Foundation/Gallup March 17-30, 2020

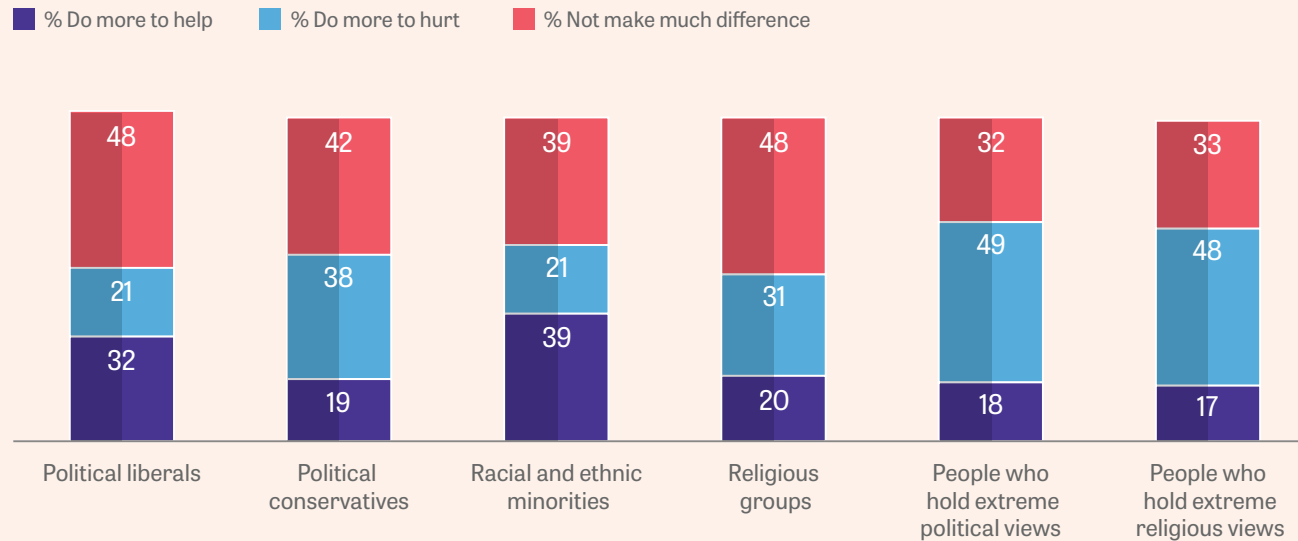
When asked whether major internet companies apply the same standards in the same way to all people who use their websites and apps, more than three-quarters (78%) of Americans say they do not. This finding includes 89% of Republicans, 76% of independents and 73% of Democrats.

Americans weighed in on whether further regulation of speech by social media companies would hurt, harm or make little difference for a variety of groups. Americans are most inclined to think further regulation by social media companies will do more to hurt people who hold extreme political views or extreme religious views. They are least likely to think further regulation will do more to hurt political liberals and racial and ethnic minorities, with 21% of Americans holding this view in both cases.

FIGURE 7

Whom Would Increased Regulation Impact Most?

If social media companies did more to regulate speech on their websites and apps, would this do more to help, hurt, or not make much difference for each of the following groups?



Note: "No answer" percentages not shown.
Knight Foundation/Gallup March 17-30, 2020

Americans' views diverge predominantly along partisan lines around how such increased regulation would impact some groups.

- Democrats (14%) are less likely than Republicans (27%) to say increased regulation of speech would hurt liberals.
- Democrats (28%) are also less likely than Republicans (49%) to say increased regulation of speech would hurt conservatives.
- Democrats (16%) are less likely than Republicans (28%) to say increased regulation by social media companies would do more to hurt racial and ethnic minorities.
- Republicans (45%) are more likely than Democrats (18%) to say that increased speech regulation would do more to hurt religious groups.

Low Levels of Trust in Social Media Companies to Regulate Content

Even though Americans have widespread concerns about certain kinds of content appearing on social media, the vast majority have little or no trust in social media companies making the right decisions about what content appears on their sites or apps. More than 8 in 10 Americans (84%) say they do not have much or any trust at all in social media companies to make the right decisions about what people can post on their sites.

EXPERT PERSPECTIVE

"For some time now, I have voiced my concerns about the concentration of power in corporate actors over the human discourse of billions online, especially when such private sector decision-making is untethered to First Amendment or international human rights law principles."

— Evelyn Mary Aswad

FIGURE 8

Levels of Trust in Social Media Companies' Content Decisions

How much do you trust social media companies to make the right decisions about what people can say or post on their websites and apps?

■ % A great deal ■ % A fair amount ■ % Not much ■ % Not at all



Note: Due to rounding, percentages may total 100% +/-1%.
Knight Foundation/Gallup Dec. 3-15, 2019

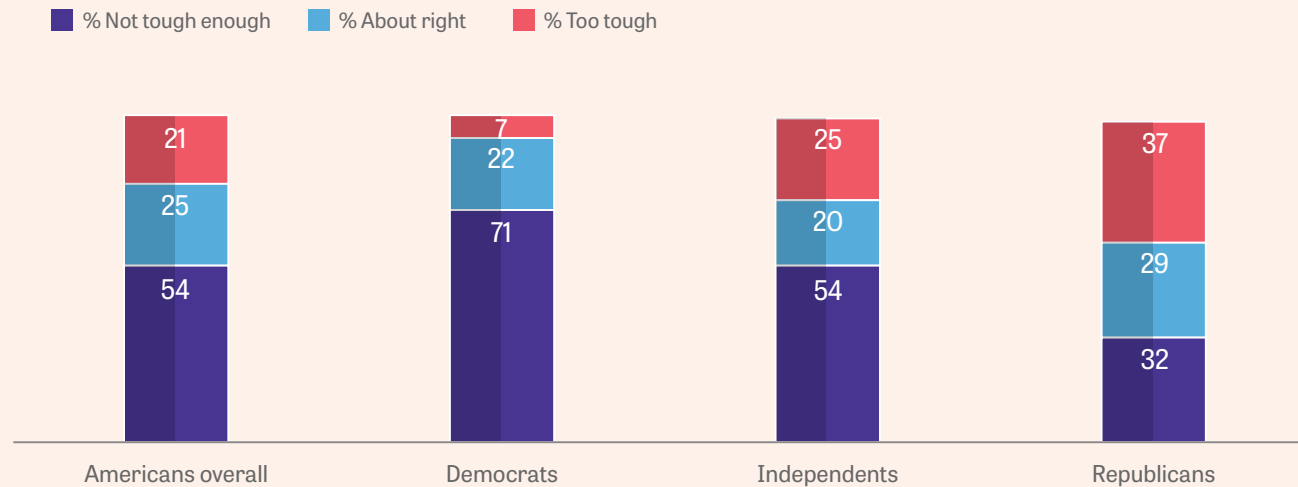
Americans are more critical of social media companies for not going far enough to police harmful content than for going too far. A slim majority of Americans (54%) say social media companies are “not tough enough” when it comes to removing content from their website and apps that some people consider harmful. In comparison, a quarter say they are “about right,” and about 1 in 5 Americans say they are “too tough.”

Sentiments diverge along party lines. Majorities of Democrats (71%) and independents (54%) believe social media companies are not tough enough. In contrast, Republicans are largely divided — 32% say they are not tough enough, 29% say they are about right, and 37% say the companies are too tough.

FIGURE 9

Views on Social Media Companies' Policing Efforts

When it comes to removing content from their website and apps that some people consider harmful, do you think social media companies are ...?



Note: Due to rounding, percentages may total 100% +/-1%.
Knight Foundation/Gallup March 17-30, 2020

Education, race and gender indicate the most salient distinctions in attitudes on this issue. For instance, those with less than a high school education are twice as likely as college-educated Americans to say companies are too tough, as are men compared to women. Whites are more likely than nonwhites to say the same, as are people who have had a post removed by a social media company.

Despite Americans' lack of trust in social media companies making the right decisions about what people can post on their sites, they are more likely to favor the companies, rather than the government, set policies to regulate social media content. Whereas 64% of Republicans and 59% of independents prefer for major internet companies to set content policies, a slim majority of Democrats would prefer for government to set content policies and guidance.

EXPERT PERSPECTIVE

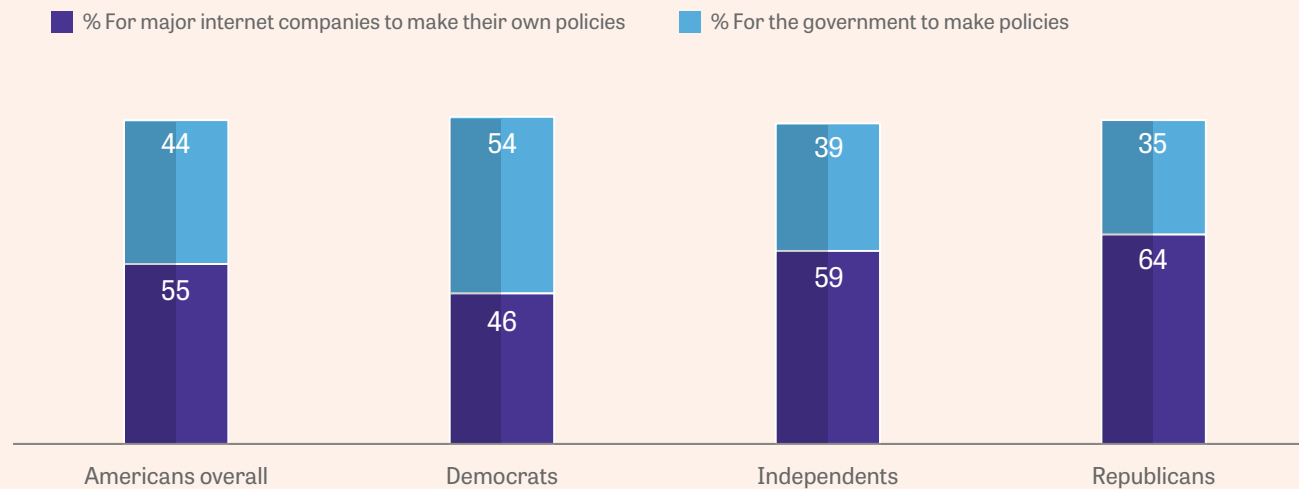
"Skepticism about government control over speech is a deeply rooted American tradition. A bedrock principle underlying the First Amendment is that government cannot censor the expression of an idea because society finds the idea itself offensive or distasteful. We distrust government to pick winners and losers in the realm of ideas because it might silence those threatening its power."

— Danielle Citron

FIGURE 10

Who Should Regulate Online Content?

In your opinion, which is the better approach — for the government to make policies that set limits or establish some guidance about what major internet companies can and cannot display on their websites and apps, or for major internet companies to make their own policies about what people can and cannot post on their websites and apps, without any government involvement?



Note: "No answer" percentages not shown.
Knight Foundation/Gallup Dec. 3-15, 2019

3 Americans' Views on Private Sector Self-Regulation: Content Oversight Boards

One solution to the problem of who moderates online content has been proposed by Facebook. They recently announced they are establishing an Oversight Board that proposes to be an independent arbiter of what content is permitted or removed from their site. The Board, which operates outside of Facebook's control, could ultimately overrule Facebook's own policies on content management.⁸ Facebook is pledging \$130 million to support this effort.⁹

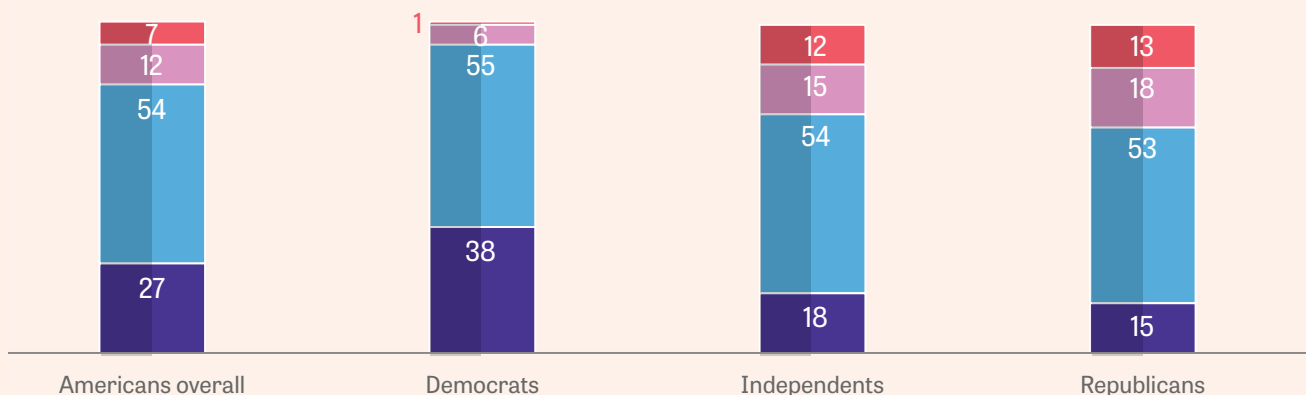
More than 8 in 10 Americans say they think a content oversight board is a "good idea" or "very good idea," while 12% say it is a "bad idea," and 7% say it's a "very bad idea." Attitudes toward such boards differ most markedly by political party affiliation and gender. Democrats (93%) are more inclined to say they are a good or very good idea than Republicans (68%) or independents (72%). And women (88%) are more likely than men (72%) to say the same.

FIGURE 11

Opinions of Content Oversight Boards

Do you think a content oversight board is a ...?

■ % Very good idea ■ % Good idea ■ % Bad idea ■ % Very bad idea



Note: Due to rounding, percentages may total 100% +/-1%.
Knight Foundation/Gallup March 17-30, 2020

⁸ Why Mark Zuckerberg's oversight board may kill his political ad policy. (n.d.). *Wired*. <https://www.wired.com/story/facebook-oversight-board-bylaws/>

⁹ Facebook pledges \$130 million to content oversight board, delays naming members. (2019, December 12). *Reuters*. <https://www.reuters.com/article/us-facebook-oversight-idUSKBN1YG1ZG>

Americans are optimistic in their expectations of the effectiveness of content oversight boards, with 3 in 4 (75%) saying it is “somewhat likely” or “very likely” content oversight boards may reduce the amount of potentially offensive or harmful content, such as hate speech, violent imagery and sexually explicit material. Two-thirds of Americans say it is very or somewhat likely that they may improve the quality of information in terms of truthfulness and accuracy. However, they are slightly less hopeful that such boards may improve the quality of discussion in terms of people being respectful to one another, with just one-half (49%) of Americans saying this is likely.

EXPERT PERSPECTIVE

“The Oversight Board, which will review certain content decisions on Facebook, has the power to render binding decisions with respect to specific pieces of content that it accepts to review as well as the ability to make broader recommendations that Facebook must react to publicly.”

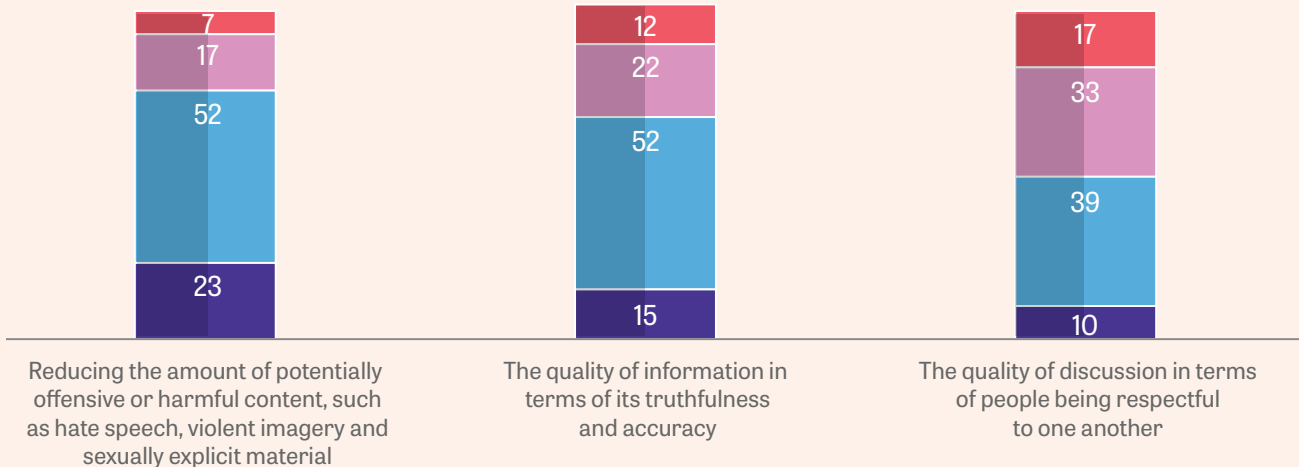
— Evelyn Mary Aswad

FIGURE 12

Views on the Potential Effectiveness of Content Oversight Boards

How likely do you think it is that content oversight boards such as the one created by Facebook could improve each of the following on social media websites and apps?

■ % Very likely ■ % Somewhat likely ■ % Not very likely ■ % Not likely at all



Note: Due to rounding, percentages may total 100% +/-1%.
Knight Foundation/Gallup March 17-30, 2020

Content oversight boards, and social media companies more generally, ideally would strike a balance between allowing people to express themselves on social media and prohibiting speech that is harmful and injurious. About one-half (46%) of Americans say they are more concerned with content oversight board decisions leading to social media companies taking down too much content and restricting speech, while 26% say they are more concerned with them not taking down enough harmful content, and 28% say they are not concerned with either.

Differences in attitudes track similarly to Americans' concerns about what kinds of content should be allowed and how social media companies are currently handling potentially harmful content, with Republicans and independents less concerned about companies not taking down enough harmful content than Democrats. Younger Americans and those with a high school education or less are more likely to be concerned that companies will take down too much content, as are people who have had their posts removed and daily social media users.

EXPERT PERSPECTIVE

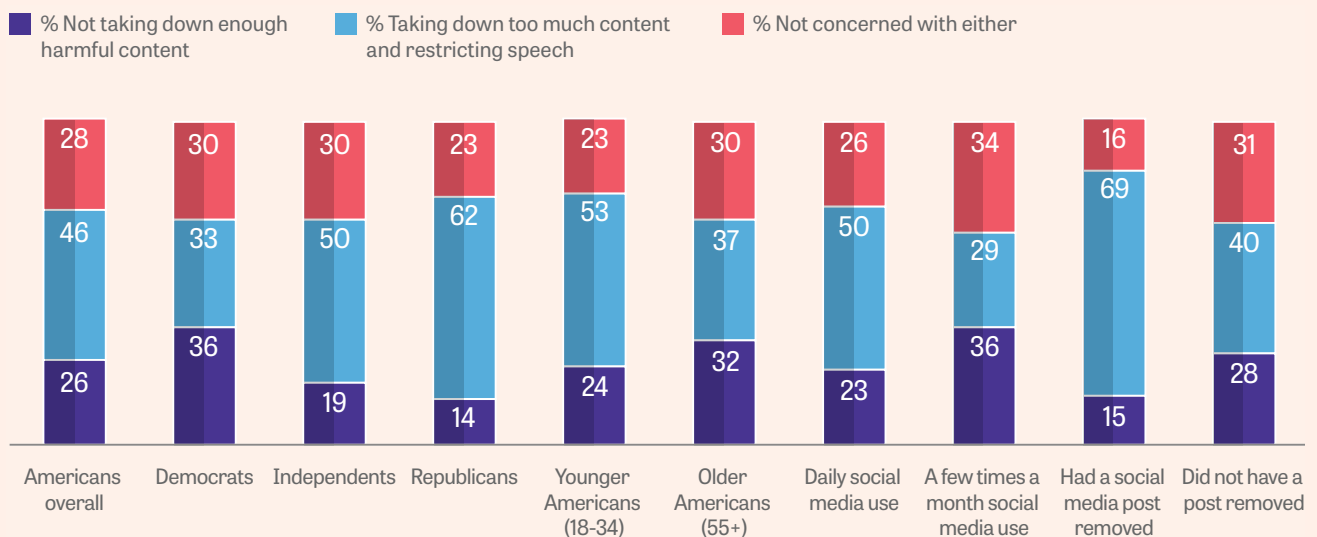
"Respondents' optimism may highlight the public's unrealistic assumptions about how much difference a board, handling just a few cases at a time, can really make. Facebook may face real disappointment down the road if people are expecting its board to replace the company in making most takedown decisions."

— Daphne Keller

FIGURE 13

Concerns Regarding Content Oversight Board Decisions

Are you more concerned that content oversight boards will lead to social media companies ...?



Note: "No answer" percentages not shown.
Knight Foundation/Gallup March 17-30, 2020

4 Content Oversight Boards: Americans' Views on What Matters Most

If social media companies decide to create a content oversight board, what features would Americans value most, and how would the board's institutional design affect Americans' trust in social media companies?

Results from a conjoint survey experiment — a technique that gauges people's preferences across a variety of attributes — reveal Americans value board transparency and diversity most and the ability to enforce board decisions least. And while the adoption of any content oversight board does not necessarily increase Americans' trust in social media companies, a board with a preferable composition and role could do so.

As shown in Figure 14 below, respondents saw two potential content oversight board profiles with four attributes: independence (who appoints board members); enforcement (board role); diversity (board composition); and transparency (explanation of decisions to the public). Each attribute included three options or features which were randomly selected to appear in each profile. The Appendix on page 34 lists the four attributes included in the conjoint task and the content oversight board features that were randomly generated across those four attributes in each profile.

FIGURE 14

Example Choice Between Two Content Oversight Boards

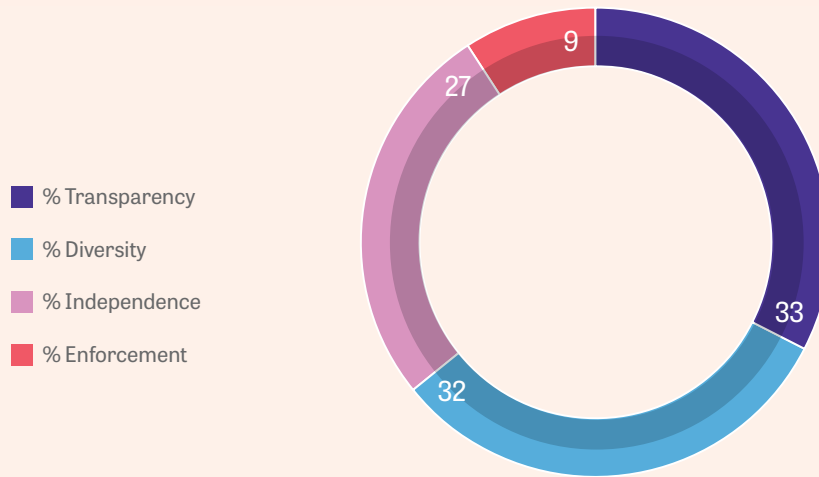
Attribute	Content Oversight Board A	Content Oversight Board B
Independence: Who appoints board members	An independent group of experts	The social media company
Enforcement: Board role	Makes decisions the social media company must obey	Provides advice that the social media company can accept, reject or modify
Diversity: Board composition	No effort to create a diverse board	Effort to balance board by gender, age and race
Transparency: Explanation of decisions to the public	No explanation given	Detailed reports including areas where members disagreed

After reviewing both profiles, respondents selected which content oversight board they preferred, repeating this choice task four more times. While many respondents may desire a content oversight board with high levels of independence, diversity, transparency and enforcement power, the forced choice between two different content oversight boards reveals what attributes and features respondents value most.

The most important attributes for Americans (i.e., the ones people base their choice on most frequently) are transparency and diversity, followed closely by independence. Americans place less value on the board's ability to compel social media companies to enact its decisions or guidelines.

FIGURE 15

Relative Importance of Content Oversight Board Attributes

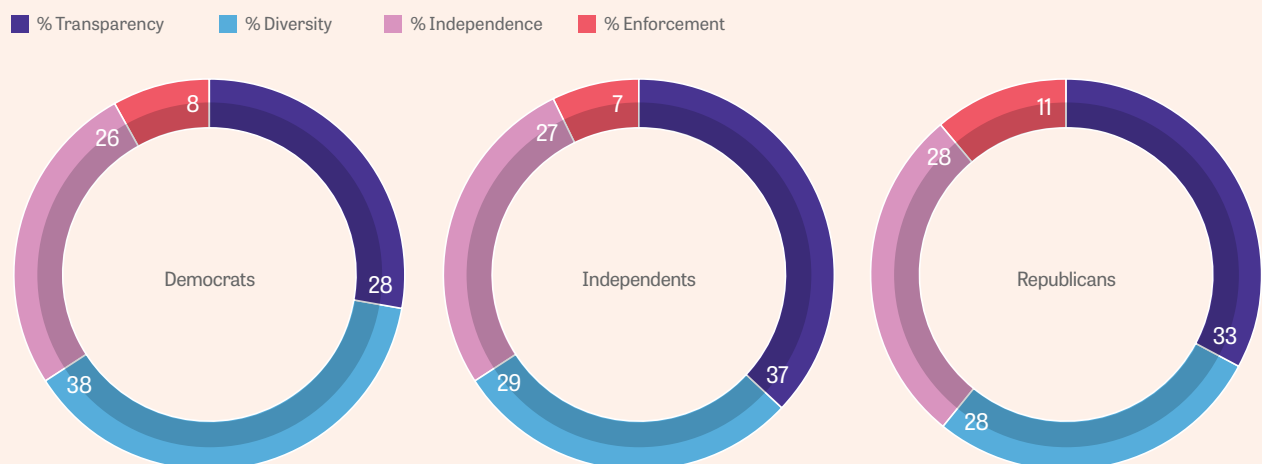


Note: Due to rounding, percentages may total 100% +/-1%.
Knight Foundation/Gallup March 17-30, 2020

The relative importance Americans place on each attribute differs slightly along partisan lines. When choosing between the two board profiles, Republicans and independents place the most emphasis on transparency, while Democrats place the most emphasis on diversity.

FIGURE 16

Relative Importance of Content Oversight Board Attributes, by Political Party



Knight Foundation/Gallup March 17-30, 2020

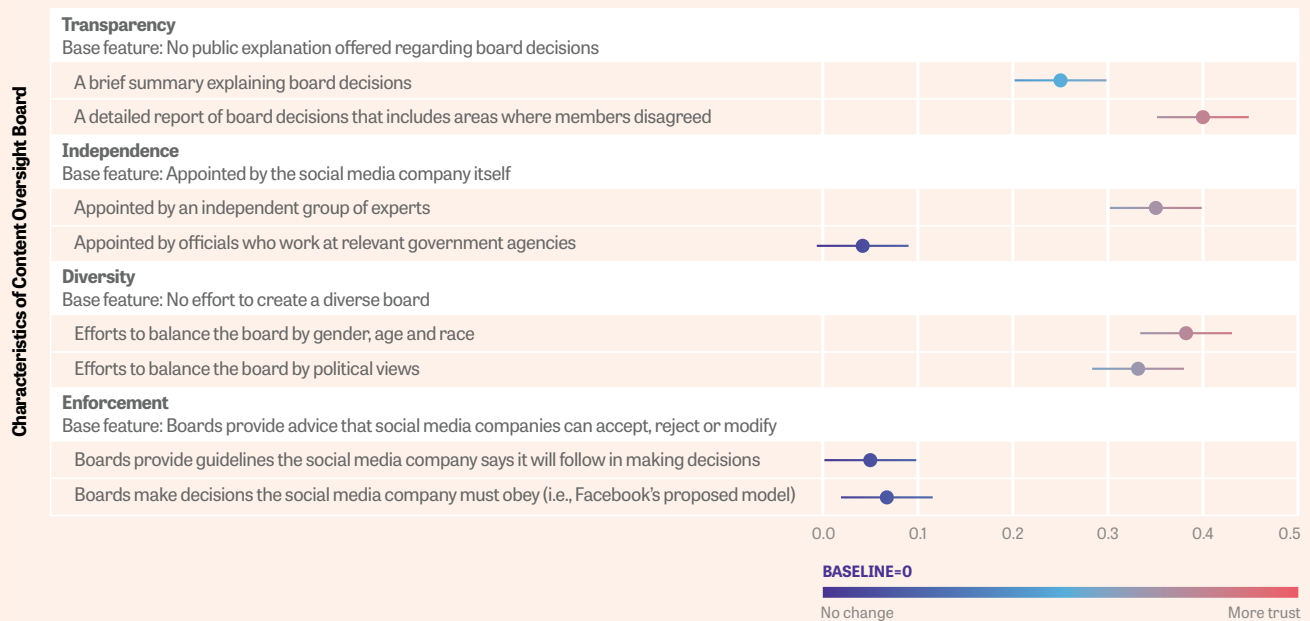
In addition to the choice tasks, respondents indicated whether their trust in a social media company would increase or decrease if it adopted the type of content oversight board described in each profile.

Figure 17 shows how much trust in a social media company would increase if a company adopted a content oversight board with specific features. Items closer to zero indicate that a content oversight board with that characteristic or feature would not do much to increase people's trust in a social media company beyond the base feature for that attribute.

For instance, the base feature for transparency is “no public explanation offered regarding board decisions.” Items further to the right would significantly boost trust in social media companies if incorporated into content oversight boards, compared with the base feature. Therefore, if two content oversight boards were the same, except one produced a brief summary of its decisions and another did not provide any information on its decisions, people's trust in the social media company providing the summary would increase 0.25 points (on a 5-point scale) over the other.

FIGURE 17

Trust in Social Media Companies Relative to Each Content Oversight Board Attribute Feature



Knight Foundation/Gallup March 17-30, 2020

Features that would not increase trust in the social media company much beyond the base feature include the ability of the board to enforce its decisions and the appointment of board members by officials who work at relevant government agencies.

Notably, Americans' trust in a social media company will not automatically increase if the company adopts just any content oversight board. A board that included only base features for each attribute would, on average, lower trust in social media companies to 2.46 (on a 5-point scale, where 1 is "decrease trust a lot" and 5 is "increase trust a lot"). However, if a social media company were to adopt a content oversight board with the optimal set of features for each attribute — including appointment of board members by an independent group of experts; diversity by age, race and gender; and release of a detailed report of board decisions — Americans' trust in that company would increase, on average, to 3.65.

While Americans tend to hold similar views about what features constitute an optimal content oversight board, some differences exist. For instance, a board that releases a detailed report would increase trust in social media companies more for daily social media users (0.43 points) than non-daily users (0.32 points), whereas appointment of board members by an independent group of experts would increase trust more for non-daily users (0.43 points) than daily users (0.31 points).

Similarly, efforts to create a diverse board would considerably increase trust in a social media company for all Americans, with diversity by gender, age and race increasing trust more for Democrats than Republicans.

Support for Content Oversight Boards Increases When People Learn More About Them

Respondents were asked twice about their preference for who should decide what content is allowed online — once before they answered a series of more specific questions about what content oversight boards would do and again after answering those questions. The repeat question allowed a test of whether people's opinions about content oversight boards change once they learn more about them.

Study findings indicate that support for content oversight boards increases with additional context and information. When respondents were first asked who should decide what can and cannot appear on social media websites, almost one-half (46%) indicated their preference for "independent boards that review decisions made by social media companies," while 18% said "social media companies themselves," and 4% preferred the federal government. About one-third (32%) said "none of these."

Once respondents had the opportunity to consider the work of content oversight boards more deeply — i.e., what kinds of content they would arbitrate, how they might be composed and how effective they might be — support for content oversight boards jumped by 19 percentage points, to 65%. Meanwhile, support for social media companies themselves and the federal government remained fairly stable; the percentage of respondents answering "none of these" dropped from 1 in 3 to 1 in 5.

EXPERT PERSPECTIVE

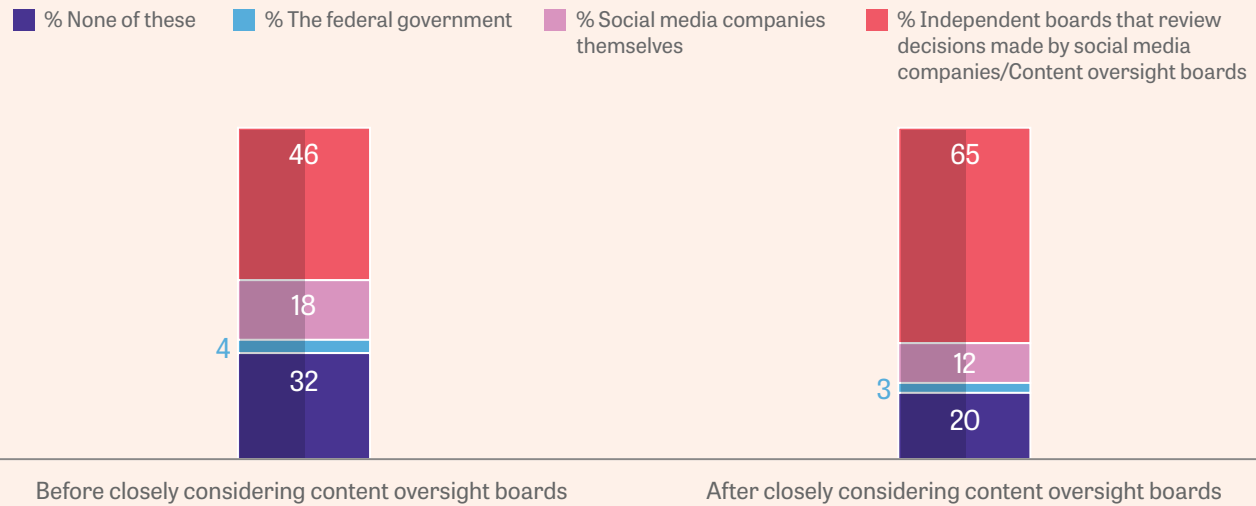
"When forced to choose between a board that is independent, diverse, transparent or able to enforce its decisions, respondents overwhelmingly indicated that enforcement power was the least important consideration. Board transparency, including publishing reports that explain decisions and areas where board members disagreed, was the top consideration. That tells us a lot about both current frustration with platforms (people are sick of opaque content policy and takedown decisions that don't seem to make sense) and about what it will take to give Facebook's new board much-needed legitimacy in the eyes of the public."

— Daphne Keller

FIGURE 18

Who Should Decide What Is Allowed on Social Media?

Who would you prefer to decide what can and cannot appear on social media websites and apps?



Note: "No answer" percentages not shown.
Knight Foundation/Gallup March 17-30, 2020

More than a quarter (27%) of Republicans shifted their preferences for having content oversight boards rather than other institutions set guidelines for handling harmful content, compared to 21% of Democrats and 23% of independents.

Perspectives

As Americans increasingly move online to seek information and express themselves, the challenges of offensive, harmful and even misleading content become an ever more pressing issue for social media companies and policymakers to address. While Americans favor free expression on the internet, there are many forms of content they believe should be restricted. And despite a general distrust of social media companies to make the right calls, they favor the companies deciding what to restrict over government stepping in. On more newly proposed solutions like content oversight boards and revisions to Section 230 of the Communications Decency Act, their attitudes appear unfixed, suggesting that education and greater discussion of each may help coalesce and galvanize public support for such approaches.

Gallup and Knight invited several experts to weigh in on these findings and to place them within the broader context of public debates about online media and free expression. Their views are offered in a personal capacity and do not reflect the views of Gallup, Inc., the John S. and James L. Knight Foundation or the organizations with which they are affiliated.

Oversight Boards Are a “Bold New Approach” to Tackling Today’s Problems

EVELYN MARY ASWAD

The *Free Expression, Harmful Speech and Censorship in a Digital World* report could not be timelier, particularly given recent steps to stand up the Oversight Board (OversightBoard.com), which will review certain content decisions on Facebook and Instagram and of which I am a member.

Many findings in the report resonated with me personally. For example, the polling shows that the “vast majority [of Americans] have little or no trust in social media companies making the right decisions about what content appears on their sites or apps.” For some time now, I have voiced my concerns about the concentration of power in corporate actors over the human discourse of billions online, especially when such private sector decision-making is untethered to First Amendment or international human rights law principles.¹⁰

The report highlights that Americans are very wary of governments making content decisions. Given the worldwide trend of problematic governmental restrictions on speech, such concerns are well-founded.¹¹ The report also highlights that most Americans think oversight boards, which would review content moderation by companies, are a “good” or “very good” idea. In particular, Americans value transparency and diversity with respect to such boards, closely followed by independence and then a board’s ability to make binding decisions.

10 Aswad, E. (2018). The future of freedom of expression online. *Duke Law & Technology Review*, 17(1), 26-70. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3250950; Aswad, E. (2019). To protect freedom of expression, why not steal victory from the jaws of defeat? *Washington & Lee Law Review*, 605-659. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3478888>

11 See, e.g., p. 5, *Freedom in the world 2019: Democracy in retreat* | Freedom House. (n.d.). Retrieved May 27, 2020, from <https://perma.cc/PRA3-JVRE> highlighting that “data show freedom of expression declining [throughout the world] each year over the past [thirteen] years, with sharper drops since 2012.”)

These types of factors played a role in my decision to serve on the Oversight Board. The Board's decisions on disputed content will be posted on our website, and the Board will write an annual report summarizing its findings as well as the platforms' reactions to its work, which will provide an opportunity for public scrutiny. Facebook must also respond to all Board decisions and recommendations publicly.

The Board has members from all over the world with different professions, areas of expertise and cultural backgrounds. While the Board can never approximate a level of diversity that encompasses the experience of billions, it does have the ability to solicit outside expertise in reaching its decisions, which will be helpful in, among other things, understanding the local context relating to content decisions.

In terms of independence, it was important to me that Board members not be employees of the platforms they oversee and that their tenure on the Board could not be revoked because of their decisions. While the initial four Board chairs were selected by Facebook, the rest of us were selected by both the chairs and Facebook. Once we reach forty members on the Board, future members will be selected solely by the Board.

I put more weight on the Board's ability to render binding decisions than what is reflected in the polling results. The Board has the power to render binding decisions with respect to specific pieces of content that it accepts to review as well as the ability to make broader recommendations that Facebook must react to publicly. To me, it is important that the Board have certain binding powers for its mission to be impactful.

Although not part of the polling questions, it was also important to me that international human rights law principles play a role in the Board's work. For some time now, I have argued in my scholarship that social media companies should respect international human rights standards in running their platforms.¹² With regard to freedom of expression, that would mean, among other things, that companies refrain from imposing vague speech codes or banning speech when less intrusive means of achieving public interest objectives exist. I am pleased that the Board is committed to "upholding freedom of expression within the framework of international norms of human rights."¹³

All that said, the Board is a bold new approach to content moderation on a global scale. We will be both building a new institution and resolving matters involving disputed content. There no doubt will be important lessons that we will learn along the way. The Board will not solve all the problems of social media nor displace appropriate governmental regulation.

The work and responsibilities facing the Board are humbling, if not daunting, but important and worthy of our utmost commitment to protect the future of human rights online, including freedom of expression.

Evelyn Mary Aswad is professor of law and the Herman G. Kaiser Chair in International Law at the University of Oklahoma College of Law, where she is the director of the Center for International Business and Human Rights. She is a member of the Oversight Board and the former director of the Office of Human Rights and Refugees at the U.S. Department of State Legal Bureau.

¹² Aswad, E. (2016). The role of U.S. technology companies as enforcers of Europe's new internet hate speech ban. *Columbia Human Rights Law Review Online*, 1(1-14). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2829175; Aswad, E. (2018). The future of freedom of expression online. *Duke Law & Technology Review*, 17(1), 26-70. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3250950; Aswad, E. (2019). To protect freedom of expression, why not steal victory from the jaws of defeat? *Washington & Lee Law Review*, 609-659. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.3478888>

¹³ *Announcing the first members of the Oversight Board*. (May 6, 2020). <https://oversightboard.com/news/announcing-the-first-members-of-the-oversight-board/>

Solve the Underlying Problem: Treat Social Media as Ad-Driven Companies, Not Speech Platforms

OLIVIER SYLVAIN

Most Americans did not need the White House's recent Executive Order, a deeply flawed stunt, to learn that users have grown conflicted about social media. The Gallup/Knight survey results indicate that, while users believe that online platforms are important "places of open expression," they also are warier than ever about the ways those companies distribute misleading health policy information, disinformation about elections, bigoted trolling and other harmful content.

Social media companies have been responsive to these concerns. Twitter and Facebook, for example, recently announced new user tools to control the ways in which trolls and bigots slide into online "conversations" and user-generated groups. And they have used their constitutionally protected editorial prerogative to flag lawful user content that it finds hateful or dangerously misleading, including the posts of a politically craven President. The most far-reaching reform, however, is Facebook's recent launch of its highly anticipated Oversight Board, which the company created to help guide content moderation decision-making on controversial issues. The board's decisions about the company's takedown efforts will be final, apparently.

These reforms are important, but users evidently remain conflicted. On the one hand, users want social media to be "places of open expression," free from direct government regulation. This is presumably why a majority would retain the exceptional legal immunity that social media enjoy under Section 230. They would rather internet companies regulate themselves than allow policymakers to do it. On the other hand, users also do not want intermediaries to facilitate pedophiles, fraudsters, bigots and trolls. In this regard, a majority believe Section 230 has done more harm than good to the extent it shields companies from liability for distributing illicit content.

This is the paradox that Section 230 doctrine has given us. It sits in the breach, as it aims to encourage expressive conduct online while also incentivizing intermediaries (not policymakers) to regulate that content. Courts or policymakers should reform the law to compel intermediaries to do more.

We get there by recognizing that social media are not merely platforms through which users make genuine connections. Rather, most popular intermediaries design and administer their services above all to sustain deep user engagement. They do this by, among other things, amplifying provocative content that friends and other in-network users post and like or dislike. The Wall Street Journal recently reported, for example, that an internal assessment at Facebook in 2018 concluded that its social media service's algorithms feed users "more and more divisive content in an effort to gain user attention & increase time on the platform" if left unchecked.¹⁴ This is to say nothing of the other unknown "black box" variables on which their automated decision-making systems rely.¹⁵

¹⁴ Horwitz, J., & Seetharaman, D., (2020, May 26). Facebook executives shut down efforts to make the site less divisive. *The Wall Street Journal*. https://www.wsj.com/articles/facebook-knows-it-encourages-division-top-executives-nixed-solutions-11590507499?mod=hp_lead_pos5

¹⁵ Pasquale, F. (2015). *The black box society: The secret algorithms that control money and information*. Harvard University Press.

Consider the way, last month, a flawed “preprint” Stanford research paper circulated broadly on social media before scientists could vet its findings. The paper purported to show a fatality rate for COVID-19 that is far lower than the prevailing research shows. Within a week after it first appeared on Twitter, knowledgeable medical researchers blasted the paper’s methodology and findings. However, that was only after a phalanx of conservative activists and media personalities cited the paper’s findings to mobilize #ReopenAmerica and #BackToWork, which took off like wildfire.¹⁶ This spread occurred even after Twitter and Facebook initiated efforts to label or remove misleading posts about COVID-19¹⁷ and enlisted fact-checkers from across the world under a new \$1 million grant program.¹⁸

There is much to credit in these specific efforts since disinformation on COVID-19 is a life-and-death concern. But, as with similar recent reforms, they do not remedy the real problem. Pseudoscience about medicine and vaccines¹⁹ and disinformation about politics and elections continue to spread virally. Facebook’s distribution and targeting techniques continue to post unlawfully discriminatory ads²⁰ in housing and job markets, even after the company promised to stop over a year ago. To say that social media are mere “places for open expression” in light of all of this substantially obscures the underlying political economy at work.²¹ This fact is as plain as day in the context of Facebook, which has denied the Oversight Board the authority to make any binding decisions about advertising policy.

Policymakers would have an array of lawful regulatory tools available to them if they recognized social media for what they are: ad-driven companies. They might, as in Europe, for example, impose restrictions on how intermediaries may market or leverage user data with advertisers. Or they might empower users themselves to limit certain commercial uses of their personal data. These noncontent-based reforms would create healthy friction in the ad-based business model, which would also have the salutary effect of de-emphasizing provocative content.

More pertinently, policymakers could require intermediaries to internalize some of the harms and social costs of their content moderation systems by narrowing the protection under Section 230. After all, we allow consumers to sue practically all other kinds of companies for secondary liability to promote fairness and regulatory efficiency.

I have argued elsewhere that, when evaluating whether an online intermediary materially contributes to illicit or illegal content, for example, courts should attend to the ways in which it designs its services and targets certain audiences.²²

The mood for reform is palpable, but I would not start with the plan set out in the Executive Order. Never mind that it was animated by the President’s aim to bully Twitter into letting his outrageous posts circulate freely. It is flawed because it orders the Commerce Department to petition the Federal Communications Commission, an independent agency, to promulgate a narrow interpretation of a specific provision under Section 230 through which most legal experts doubt the FCC may issue binding legal rules.

16 Bajak, A., & Howe, J. (2020, May 14). Opinion | A study said COVID wasn’t that deadly. The right seized it. *The New York Times*. <https://www.nytimes.com/2020/05/14/opinion/coronavirus-research-misinformation.html>

17 *Coronavirus: Staying safe and informed on Twitter*. (n.d.). Retrieved May 27, 2020, from https://blog.twitter.com/en_us/topics/company/2020/covid-19.html

18 *An update on our work to keep people informed and limit misinformation about COVID-19*. (2020, April 16). About Facebook. <https://about.fb.com/news/2020/04/covid-19-misinfo-update/>

19 Fingas, J. (2020, January 8). Facebook is still running anti-vaccination ads, despite ban. *Engadget*. <https://www.engadget.com/2020-01-08-facebook-still-running-anti-vaccination-ads.html>

20 Kofman, A., & Tobin, A. (n.d.). Facebook ads can still discriminate against women and older workers, despite a civil rights settlement. *ProPublica*. Retrieved May 26, 2020, from <https://www.propublica.org/article/facebook-ads-can-still-discriminate-against-women-and-older-workers-despite-a-civil-rights-settlement>

21 Sylvain, O. (2019). Recovering tech’s humanity. *Columbia Law Review Forum*, 119. https://papers.ssrn.com/abstract_id=3499821

22 Sylvain, O. (2018). *Discriminatory designs on user data* [Emerging Threats Series]. Knight First Amendment Institute at Columbia University. <https://knightcolumbia.org/content/discriminatory-designs-user-data>

No, policymakers' most serious reforms to Section 230 sit in Congress. The most prominent among them, however, is likely unconstitutional²³ or may undermine end-to-end encryption²⁴ for user messaging. Legislators could avoid these pitfalls if, as Danielle Citron has proposed,²⁵ they simply condition Section 230 immunity on intermediaries' reasonable efforts to block illicit content.

It is good to see that policymakers are beginning to see past the romantic idea that social media are mere "places of open expression." The Gallup/Knight survey results suggest that users are not there yet, but at least one step closer.

Olivier Sylvain is professor of law and director of the McGannon Center for Communications Research at Fordham University.

Americans Would Probably Love Section 230 — If They Understood It

ERIC GOLDMAN

Section 230 says that websites are not liable for third-party content, subject to some key limits. It has been the law of the (U.S.) internet for a quarter-century, but most consumers have never heard of it. As a result, consumers do not appreciate how Section 230 facilitates the services they value the most: free email services; free access to the largest and most powerful searchable database ever created; free videoconferencing services; free access to a comprehensive and constantly updated encyclopedia; millions of hours of free video content on services like YouTube; and free publishing tools that can reach billions of people. Consumers have no awareness of how these services depend critically on Section 230.

Due to their lack of background knowledge, surveying consumers about Section 230 is tricky. To obtain informed feedback, the survey questions need to educate consumers about the law, which introduces potential bias. As the Gallup/Knight survey acknowledges, the information it provided respondents about Section 230 "could make a difference in how people answer."

Let's consider how that may have happened. One survey question asked respondents if Section 230 has done more harm than good. To educate survey respondents, the question characterized Section 230's harm as: Section 230 "has not made the companies accountable for illegal content on their sites and apps." The question characterized Section 230's benefit as: Section 230 "has allowed the internet to grow as a place people can communicate and say what they think."

In my opinion, this framing distorts the characterization of Section 230's harms and benefits. Regarding the harms:

23 Cope, S., Mackey, A., & Crocker, A. (2020, March 31). *The earn it act violates the constitution*. Electronic Frontier Foundation. <https://www.eff.org/deeplinks/2020/03/earn-it-act-violates-constitution>

24 The earn it act is a sneak attack on encryption. (n.d.). *Wired*. Retrieved May 26, 2020, from <https://www.wired.com/story/earn-it-act-sneak-attack-on-encryption/>

25 Citron, D. (2019, October 16). Tech companies get a free pass on moderating content. It's time to change that. *Slate Magazine*. <https://slate.com/technology/2019/10/section-230-cda-moderation-update.html>

- The question implies that Section 230 creates a lack of accountability, which prompts respondents to prefer more accountability. Furthermore, “accountability” can come from a range of sources: civil lawsuits, government regulation, criminal prosecutions, marketplace discipline, public opprobrium, and more. Which, if any, of these options were on respondents’ minds?
- The question does not distinguish between first-party and third-party “content.” (The introductory paragraph referenced this distinction, but the question itself did not). Thus, it implies that Section 230 reduces companies’ accountability for their own content.
- It’s confusing to characterize content as “illegal.” Few categories of content are always “illegal” (child pornography is the leading, and perhaps only, example). Other content categories are not inherently illegal; the legality can depend on the speaker’s identity or the factual context surrounding its publication. Also, respondents may conflate illegal content with “lawful but awful” content, i.e., content that grossly violates social norms but is nevertheless legal. How did respondents interpret the term “illegal content”?
- The question incorrectly implies that Section 230 enables all “illegal content.” Section 230 has statutory exclusions — for intellectual property, federal criminal and other violations — that permit “accountability” for illegal third-party content. Thus, the question mischaracterizes Section 230’s effects.

While the question overstates Section 230’s harms, I believe it also understates Section 230’s benefits:

- Growth of the internet is not inherently a benefit. Instead, because the question’s harm statement prompted respondents to consider Section 230’s facilitation of “illegal” content, respondents may have considered “growth” of such content unfavorably.
- The question focuses on free speech in the abstract, not as a personal benefit. Respondents may not worry if Section 230 protects their free speech because they optimistically assume it is not in jeopardy — even though, without Section 230, it probably is.
- The question highlights Section 230’s free speech benefit, but Section 230 has equally important benefits for the economy, employment, innovation, competition, the country’s global position, and more. Featuring those other benefits might have been more impactful on respondents.

Because of the question’s strong statement of harms and weak statement of benefits, it’s perhaps not surprising that a small majority (54%) recognized the harms over the benefits. Nevertheless, in a separate question, respondents decisively endorsed the principle underlying Section 230. Sixty-six percent of respondents favored keeping Section 230 so that people cannot sue internet companies for content posted by others on their sites, while 31% preferred to change Section 230 so that internet companies can be held liable for such content.

How to reconcile these two survey results? The question framing surely played a role. The first question provided imprecise summaries of harms and benefits, while the second question succinctly presents the key underlying policy principle — who should bear responsibility for harmful content online? Because the second question provides cleaner insights into consumers’ priorities, it might better gauge true consumer support for Section 230.

Even so, any binary survey questions about Section 230 are likely to produce unsatisfying results. Like many legal policies, Section 230 involves difficult trade-offs between important social values. It would be enlightening to understand how consumers prioritize those trade-offs. A future study using conjoint analysis of various trade-off considerations might better expose those insights.

Eric Goldman is professor of law and co-director of the High Tech Law Institute at Santa Clara University School of Law.

Digital Platforms' Power Over Speech Should Not Go Unchecked

DANIELLE CITRON

Trust in major institutions is at a low point. Americans have little faith that corporate executives and politicians will prioritize their interests. The “New Governors” (as Kate Klonick calls them²⁶) of online speech are no exception. As the Gallup/Knight poll finds, a majority of Americans do not trust social media companies to make the right decisions about users’ harmful activities. However, most Americans also want government far away from decisions about whose speech is prominently displayed, blocked, removed or muted.

Skepticism about government control over speech is a deeply rooted American tradition. A bedrock principle underlying the First Amendment is that government cannot censor the expression of an idea because society finds the idea itself offensive or distasteful. We distrust government to pick winners and losers in the realm of ideas because it might silence those threatening its power.

But our distrust is not always warranted. Concerns about government censorship are misplaced for online activity that amounts to conduct rather than expression. As Mary Anne Franks and I have argued, the internet is not a “speech conversion machine.”²⁷ Many online activities have little to do with speech, and their offline analogues would not be viewed as “speech” for First Amendment purposes. Even if online activity has First Amendment salience, it may warrant little or no protection, as is the case for true threats, speech integral to criminal conduct, defamation of private people, fraud, obscenity, and the imminent and likely incitement of violence.

Distrust of tech companies is having a moment on Capitol Hill. Social media companies have been criticized for removing too little and too much user-generated content. For instance, Ted Cruz (R-TX) and other conservative lawmakers rail against major technology companies that include Twitter, Facebook and Google, contending they are censoring conservative voices.²⁸ Some lawmakers favor treating online platforms as quasi-governmental actors with a commitment to viewpoint neutrality.

Legally mandated platform neutrality would jeopardize — not reinforce — free speech values. Social media companies could not ban spam, doxing, threats, harassment, nonconsensual pornography or deep fakes. They could not combat cyber mob attacks that chase people offline. They could not mitigate the damage wrought by sexual-privacy invasions by filtering or blocking them. It is desirable for online platforms to combat online abuse that imperils people’s ability to enjoy life’s crucial opportunities, including the ability to engage with others online. Empirical evidence shows that cyber harassment has chilled the intimate, artistic and professional expression of women and people from marginalized communities.²⁹ Over the past ten years, I have worked with tech companies

26 Klonick, K. (2018). The new governors: The people, rules and processes governing online speech. *Harvard Law Review*, 131(6), 1598. https://harvardlawreview.org/wp-content/uploads/2018/04/1598-1670_Online.pdf

27 Citron, D., & Franks, M. A., (February 1, 2020). The internet as a speech machine and other myths confounding Section 230 speech reform. *Boston University School of Law* [Public Law Research Paper No. 20-8]. <https://ssrn.com/abstract=3532691> or <http://dx.doi.org/10.2139/ssrn.3532691>

28 Romm, T. (2019, April 10). Senate Republicans renew their claims that Facebook, Google and Twitter censor conservatives. *The Washington Post*. <https://www.washingtonpost.com/technology/2019/04/10/facebook-google-twitter-under-fire-senate-republicans-censoring-conservatives-online/>

29 Citron, D., & Penney, J. W. (2019). When law frees us to speak. *Fordham Law Review*, 87(6), 2317. <https://ir.lawnet.fordham.edu/flr/vol87/iss6/2>

(without compensation) to help them address online abuse, which they are free to do as non-state actors. Those efforts have been important to victims of cyberstalking and invasions of sexual privacy.³⁰

At the same time, there is good reason to worry about tech companies' influence over the ability of people to express themselves. The power online platforms have over digital expression should not proceed unchecked, as it does in crucial respects today. Federal law has ensured little risk of liability for user-generated content and it has no requirement of responsible content moderation.³¹ Under Section 230 of the Communications Decency Act, providers or users of interactive computer services enjoy a shield from legal liability for under- or over-filtering user-generated content with a few narrow exceptions. Section 230's legal shield has been broadly interpreted in the courts. It has immunized sites that have encouraged users to engage in illegality or that have designed their sites to enhance the visibility of content that would obviously involve harmful and illegal activity. In short, Section 230's immunity has allowed platforms to monetize destructive online activity without having to bear the costs wrought by their operations. It has also removed any leverage that victims might have had to get harmful content taken down.

Section 230, as currently interpreted, is not a clear win for free speech. As Benjamin Wittes and I have argued “[it] gives an irrational degree of free speech benefit to harassers and scofflaws but ignores important free speech costs to victims.”³² A robust culture of free speech online can be achieved without shielding from liability sites whose business model is abuse.

Federal lawmakers have expressed interest in a statutory fix Wittes and I have proposed to condition Section 230's legal shield on reasonable content moderation practices. Under that proposal, platforms would enjoy immunity from liability if they could show that their content moderation practices writ large are reasonable. The revision (in bold italics) to Section 230(c)(1) would read as follows:

“No provider or user of an interactive computer service ***that takes reasonable steps to address unlawful uses of its service that clearly create serious harm to others*** shall be treated as the publisher or speaker of any information provided by another information content provider ***in any action arising out of the publication of content provided by that information content provider.***”

It is time to reform Section 230 to ensure that tech companies' power over user-generated content is wielded responsibly. Section 230 should be amended to condition the immunity on reasonable moderation practices rather than the free pass that exists today. That would help solve at least some of the trust gap that Americans have with tech companies today.

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³⁰ Citron, D. (2019). Sexual privacy, *Yale Law Journal*, 128(7). 1870, 1955.

³¹ Citron, D. (2014). *Hate crimes in cyberspace*. Harvard University Press.

³² Citron, D. and Wittes, B. (2017). The internet will not break: Denying bad Samaritans Section 230 immunity. *Fordham Law Review*, 86(2). 401. <https://ir.lawnet.fordham.edu/flr/vol86/iss2/3/>

Methodology

Results for the survey items are based on two separate, self-administered web surveys with random samples of U.S. adults, aged 18 and older, who are members of the Gallup Panel™. Gallup uses probability-based, random sampling methods to recruit its Panel members.

Interviewing for the first survey took place between Dec. 3 and 15, 2019, and included 1,628 Gallup Panel members.

Interviewing took place between March 17 and 30, 2020, and included 1,449 Gallup Panel members.

Gallup weighted the obtained samples to correct for nonresponse. Nonresponse adjustments were made by adjusting the sample to match the national demographics of gender, age, race, Hispanic ethnicity, education and region. Demographic weighting targets were based on the 2015 Current Population Survey figures for the aged-18-and-older U.S. population. For results based on any individual sample, the margin of sampling error is ± 3 percentage points at the 95% confidence level. Margins of error for subgroups are higher.

In addition to sampling error, question wording and practical difficulties in conducting surveys can introduce error or bias into the findings of public opinion polls.

The full questionnaire, topline results, detailed cross tabulations and raw data may be obtained upon request. For questions about how the survey was conducted, please contact galluphelp@gallup.com.

Conjoint Analysis Methodology

Conjoint analysis allows researchers to estimate the causal effect of several factors simultaneously. By having respondents select their preference between two hypothetical profiles — often used in testing the relative importance of various product features — researchers can estimate the relative influence of each attribute on the resulting choice or rating.

In the current study, respondents chose between two hypothetical content oversight boards whose attributes and features were randomly generated. Presented with information on four attributes for two hypothetical boards, respondents indicated their preference among the two profiles.

After completing each choice task, respondents rated how much their trust in a social media company would change if it adopted a content oversight board with the features described in the profile.

Attributes and Features Used in the Conjoint Analysis

Board independence — who appoints members to the board. Options included board members being appointed by:

- officials who work at relevant government agencies
- an independent group of experts
- the social media company itself

Diversity/representativeness of board members. Options included:

- effort to balance the board composition by gender, age and race
- effort to balance the board by political views
- no effort to create a diverse board

Transparency of board decisions. Options included:

- no public explanation offered regarding board decisions
- a brief summary explaining board decisions
- a detailed report of board decisions that includes areas where members disagreed

Enforcement power — how board decisions will be enacted by social media companies.

Options included:

- boards provide advice that social media companies can accept, reject or modify
- boards provide guidelines the social media company says it will follow in making decisions
- boards make decisions the social media company must obey (i.e., Facebook's proposed model)

Example Conjoint Analysis Task

[For First Conjoint Task] Suppose that a social media company is about to institute a content oversight board. We would like you to evaluate five different pairs of profiles of possible content oversight boards and select which one you would prefer.

Please carefully review the two content board oversight profiles detailed below. After reviewing, please answer the questions below the profile.

[For Second Through Fifth Conjoint Task] Please carefully review the two content board oversight profiles detailed below. After reviewing, please answer the questions below the profile.

	Content Oversight Board A	Content Oversight Board B
Who appoints board members	An independent group of experts	The social media company
Board composition	Effort to balance the board by political views	No effort to create a diverse board
Explanation of decisions to public	No explanation given	Detailed report including areas where members disagreed
Board role	Provides advice that the social media company can accept, reject or modify	Provides guidelines the social media company says it will follow in making decisions

Would you prefer a content oversight board that looks like Content Oversight Board A or Content Oversight Board B?

- 1) Content Oversight Board A
- 2) Content Oversight Board B

If a major social media company adopted a content oversight board like the one shown for **Content Oversight Board A** above, how would it affect your trust in that social media company?

- 1) Increase trust a lot
- 2) Increase trust some
- 3) No change
- 4) Decrease trust some
- 5) Decrease trust a lot

If a major social media company adopted a content oversight board like the one shown for **Content Oversight Board B** above, how would it affect your trust in that social media company?

- 1) Increase trust a lot
- 2) Increase trust some
- 3) No change
- 4) Decrease trust some
- 5) Decrease trust a lot



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