

**Before the  
FEDERAL TRADE COMMISSION  
Washington, DC 20580**

**In the matter of**

Technology Platform Censorship

FTC-2025-0023

**COMMENTS OF PUBLIC KNOWLEDGE**

## CONTENTS

<b>I. Introduction.....</b>	<b>2</b>
<b>II. Platform Business Models, Protections, Incentives, and Constraints.....</b>	<b>3</b>
A. The Existing Regulatory Structure, Section 230, and the First Amendment Police Traditional Crimes but Shield Decisions About Content Moderation.....	7
B. The Mechanics of Content Moderation.....	9
<b>III. Content Moderation Cannot Be Conflated with Censorship.....</b>	<b>9</b>
A. Study After Study Finds No Empirical Evidence That Conservative Content is Over-Moderated Based on Political Viewpoint.....	13
B. Content Moderation Practices Are Lawful Exercises of Platform Discretion.....	16
C. Users, Platforms, and Advertisers All Have First Amendment Rights That Limit the Scope of FTC Action.....	19
D. Supreme Court Affirms Technology Platforms' Editorial Rights.....	25
E. A Truly Competitive Social Media Market Means Many Options With Different Content Moderation Standards.....	26
<b>IV. Support User Protections Not Based on Content and Its Moderation.....</b>	<b>28</b>
A. Promote Meaningful Algorithmic Accountability and User Choice.....	29
B. Enforce Platform Commitments to Users.....	30
<b>V. Prioritize Competition Enforcement as the Primary Solution.....</b>	<b>33</b>
A. Abuse of Market Power and Its Impact on Choice.....	34
B. Interoperability and User Autonomy as Competition Solutions.....	36
<b>VI. Conclusion.....</b>	<b>38</b>

## I. Introduction

There is some perception among users and policymakers alike that content moderation on technology platforms is unfairly targeting certain political viewpoints. Not only does the empirical evidence not support this claim,<sup>1</sup> it would be unwise for the FTC to intervene in moderation decisions protected by the First Amendment. However, the agency can and should act in its traditional role to reduce the outsized power of dominant platforms<sup>2</sup> from harming consumers — both by addressing the structural concentration of power in these companies and by prosecuting platforms engaged in unfair and deceptive practices.

The internet itself, and social media in general, have been called the “modern public square,” allowing people to “explor[e] the vast realms of human thought and knowledge.”<sup>3</sup> Yet, referring to a particular social media platform in these terms does not make for an accurate representation, because the motivations of social media platforms are inherently at odds with the principles of a public square, as these platforms are privately owned and profit-seeking.

The debate around “Technology Platform Censorship” fundamentally mischaracterizes this tension between platforms' profit motives and users' free expression. Technology platforms offer free access while monetizing user information through targeted advertising in what's known as the “attention economy” — a model that rewards engagement above all. Far from being ideological arbiters or censors, platforms simply make market-driven decisions: maximizing

---

<sup>1</sup> To the contrary, to the extent the evidence points to a disproportionate impact based on ideology or identity, it appears to fall disproportionately on traditionally marginalized communities. *See* Part III *infra*.

<sup>2</sup> When referring to dominant platforms, we mean large-scale technology companies or social media services that have achieved substantial market power, user base, and influence within the digital ecosystem. These entities—such as Facebook, YouTube, Twitter, and similar platforms—typically control significant portions of online discourse, content distribution, and digital interactions.

<sup>3</sup> *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). *See also Reno v. ACLU*, 521 U.S. 884, 2329, 2335 (1997) (observing that the content of the internet is “as diverse as human thought.”)

attention-grabbing content while setting necessary boundaries to avoid alienating both prospective users and advertisers. This commercial structure often advantages “conservative” content, which frequently employs the type of provocative rhetoric that drives higher engagement metrics. However, this same tendency toward transgressive expression makes such content more likely to run afoul of community standards. And when platforms restrict controversial speech that might repel advertisers, they are making business calculations, not ideological ones — though this nuance is frequently lost on frustrated users and policymakers, particularly conservatives who perceive these moderation decisions as targeted suppression by platforms like Facebook, TikTok, or YouTube.

In this comment, we will demonstrate that claims of systematic bias in content moderation against particular viewpoints lack empirical support, and explain why platforms' content policies reflect legitimate business decisions rather than censorship. We examine how competition, not FTC intervention in content moderation practices, best protects free expression, and propose non-content-based regulatory approaches to protect users better while respecting First Amendment principles.

## **II. Platform Business Models, Protections, Incentives, and Constraints**

To understand the current environment and develop effective consumer protection and pro-competitive remedies, the FTC must first understand existing business models shaped by the existing protections, incentives, and constraints. Social media platforms, search engines, and user-generated entertainment sites primarily generate revenue through targeted advertising.<sup>4</sup> This

---

<sup>4</sup> Illustratively, around 74% of Google’s revenue and nearly 97% of Meta’s revenue is derived from advertising. *Alphabet Announces First Quarter 2025 Results*, Alphabet Investor Relations (Apr. 24, 2025), <https://abc.xyz/assets/34/fa/ee06f3de4338b99acffc5c229d9f/2025q1-alphabet-earnings-release.pdf>; *Meta Reports Fourth Quarter and Full Year 2024 Results*, Meta Investor Relations (Jan. 29, 2025),

business model consists of collecting users' behavioral data — both on the platform itself and across the internet — and building detailed interest profiles that advertisers can target with their messages.

The core economic incentive for these platforms is profit maximization, which they achieve by capturing the “inventory” of user attention to be sold to advertisers. Consequently, in their content moderation, platforms prioritize content that generates high predicted “engagement”; posts users are likely to view, dwell on, comment on, and share extensively either because they strongly agree or strongly disagree. To accomplish this, platforms deploy sophisticated algorithms designed to identify and promote content likely to capture and retain user attention. These algorithms typically optimize for engagement metrics rather than factors like information accuracy, user well-being, or viewpoint diversity.<sup>5</sup> In effect, users’ own online behavior drives most of what they see online.

This attention-driven business model creates a fundamental tension in content moderation, as the platforms also need to create an attractive environment for advertisers and their brands. Whether a fledgling entrepreneur or a multi-billion-dollar corporation like Procter and Gamble, most advertisers would prefer their ads not be associated with user posts depicting violent imagery or promoting hateful rhetoric. As a result, unmoderated platforms may serve a specific demand among a subset of internet users, but they also lack the same commercial value.<sup>6</sup> This dynamic explains the decline of ad dollars funding X (formerly Twitter) as it relaxed its content moderation standards better than the theory of a vast “censorship cartel” based on

---

<https://investor.atmeta.com/investor-news/press-release-details/2025/Meta-Reports-Fourth-Quarter-and-Full-Year-2024-Results/default.aspx>.

<sup>5</sup> Arvind Narayanan, *Understanding Social Media Recommendation Algorithms*, (Mar. 9, 2023), <https://knightcolumbia.org/content/understanding-social-media-recommendation-algorithms>.

<sup>6</sup> Drew Harwell, *Trump’s Truth Social faces ‘substantial doubt’ following financial losses*, The Washington Post (Nov. 14, 2023), <https://www.washingtonpost.com/technology/2023/11/14/trump-truth-social-digital-world-sec/>.

political affiliation, especially when conservative speech that does not violate community standards enjoys greater popularity than other political speech.<sup>7</sup> For example, brands like Hyundai pausing advertising on the platform after one of its ads appeared next to antisemitic and pro-Nazi content makes commercial sense without recourse to speculation about a censorship cartel.<sup>8,9</sup>

Advertisers and their agencies have always considered their target consumer, brand identity, and business goals when deciding where to place ads. Advertisers make clear what kind of context they require for their ads to avoid tarnishing their brands, and expect publishers and broadcasters to uphold these standards. Publishers and broadcasters, in turn, compete for advertising revenue by demonstrating their ability to maintain these brand-suitable environments.

However, the traditional competition for ad dollars does not translate to the digital advertising ecosystem, especially the programmatic market, because of its complexity and lack of transparency. Advertisers often have no visibility into the specific websites, apps, or channels where their ads are displayed. The problem is further compounded by consolidation and monopolistic practices within the ad tech industry, which limit competition and control over ad placements.<sup>10</sup> To protect their brands online, advertisers and their agencies had to evolve their brand safety standards to help them avoid association with problematic content, such as hate

---

<sup>7</sup> See Part III. A. *infra*.

<sup>8</sup> Dan Milmo, ‘*Musk destroyed all that*’: *Twitter’s business is flailing after a year of Elon*, The Guardian (Oct. 26, 2023), <https://www.theguardian.com/technology/2023/oct/27/elon-musk-x-twitter-takeover-revenue-use-rs-advertising>.

<sup>9</sup> David Ingram, “Hyundai pauses X ads over pro-Nazi content on the platform,” NBC News (Apr. 18, 2024), <https://www.nbcnews.com/tech/tech-news/hyundai-pauses-x-ads-nazi-content-platform-rcna148414>.

<sup>10</sup> *United States v. Google LLC*, No. 1:23-cv-00108 (LMB/JFA), (E.D. Va. Apr. 17, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.vaed.533508/gov.uscourts.vaed.533508.1410.0\\_5.pdf](https://storage.courtlistener.com/recap/gov.uscourts.vaed.533508/gov.uscourts.vaed.533508.1410.0_5.pdf).

speech, foreign influence campaigns, and scams.<sup>11</sup> In this way, when advertisers decide where to place their ads, they are not censoring; they are behaving as rational free market actors seeking to maximize their profits. When platforms moderate their content to create an attractive context for advertisers, they are not censoring; they are competing for advertising dollars. Furthermore, advertisers and their business partners exercise their own constitutionally-protected expressive and associational rights when choosing where to place their advertising.

Beyond attracting advertising dollars, content moderation policies have also been shaped by public pressure, media scrutiny, and organized social campaigns aimed at improving online safety and accountability. In response, some platforms have indeed taken visible steps — such as creating dedicated teams to counter misinformation,<sup>12</sup> implementing policies to address livestreamed violence, and developing tools to detect hate speech or harassment. And in recent months, platforms have increasingly responded to political pressure by relaxing certain moderation standards, particularly those addressing misinformation and extremist content, in an apparent effort to avoid regulatory scrutiny and accusations of bias from policymakers. The frequent and inconsistent shifts in content policies reveal that platforms often react to reputational threats and public backlash, primarily when there is a risk to their brand image or advertiser relationships.

In fact, few of these campaigns have proven to drive sustained change in platform moderation practices.<sup>13</sup> Such a lack in evolution may be partly due to the monopolies that the

---

<sup>11</sup> Lisa Macpherson, *Why the DOJ's Google Ad Tech Case Matters to You*, Tech Policy Press (Nov. 21, 2024),

<https://www.techpolicy.press/why-the-doj-google-ad-tech-case-matters-to-you/>.

<sup>12</sup> *Creating the Oversight Board*, Meta Transparency Center, (updated Nov. 14, 2024), <https://transparency.meta.com/oversight/creation-of-oversight-board/>.

<sup>13</sup> Stephen Hill, *Stop hate for profit: Evaluating the mobilisation of advertisers and the advertising industry to regulate content moderation on digital platforms*, Internet Policy Review (Mar. 31, 2025),

dominant platforms hold in search, ad tech, social media, and user-generated entertainment: facing little competition, platforms are less incentivized to spend a lot of money on people or systems to improve content moderation. In other words, the cost of comprehensive content moderation systems may exceed the perceived benefit when users have few alternatives to migrate to.

***A. The Existing Regulatory Structure, Section 230, and the First Amendment Police Traditional Crimes but Shield Decisions About Content Moderation***

In theory, the threat of government regulation can temper the profit-driven incentives that shape how platforms approach content moderation. The FTC's guidelines and enforcement actions, for example, have helped to curb traditional anticonsumer conduct, such as when content creators fail to disclose their sponsorships.<sup>14</sup> Regarding platforms themselves, the FTC has exercised its authority under Section 5<sup>15</sup> to address unfair and deceptive practices (such as disclosure of sensitive personal information in violation of a platform's stated policy) or to address anticompetitive practices.<sup>16</sup>

However, First Amendment protections for individuals, advertisers, and platforms generally bar the federal government from directly regulating content moderation in the same

---

<https://policyreview.info/articles/analysis/stop-hate-profit-evaluating-mobilisation-advertisers-and-advertising-industry>.

<sup>14</sup> *Disclosures 101 for Social Media Influencers*, Federal Trade Commission, (Nov. 2019), <https://www.ftc.gov/business-guidance/resources/disclosures-101-social-media-influencers>. Importantly, these obligations fall on the content creator, not the platform itself.

<sup>15</sup> Federal Trade Commission Act, 15 U.S.C. § 45

<sup>16</sup> See *FTC v. Facebook, Inc.*, FTC File No. 1823109, Docket No. C-4365 (July 24, 2019), <https://www.ftc.gov/legal-library/browse/cases-proceedings/092-3184-182-3109-c-4365-facebook-inc-matter>. (imposing a \$5 billion penalty and implementing new privacy restrictions for violating a 2012 FTC order by deceiving users about their ability to control the privacy of their personal information); see also *In re Zoom Video Communications, Inc.*, FTC File No. 1923167, Docket No. C-4731 (Jan. 19, 2021), <https://www.ftc.gov/system/files/documents/cases/1923167zoomacco2.pdf> (settlement addressing deceptive security practices).



way that the federal government cannot regulate newspaper or book content.<sup>17</sup> Additionally, platforms enjoy greater legal immunity than traditional publishers for hosting (or moderating) third-party content due to Section 230 of the Communications Decency Act of 1996.<sup>18</sup> Section 230 generally protects platforms from liability for user-generated content, including the platform’s content moderation decisions. This liability shield is designed to encourage platforms to moderate harmful or objectionable content while simultaneously safeguarding users’ rights to free expression.<sup>19</sup>

Even absent Section 230, court cases such as *Prager Univ. v. Google*<sup>20</sup> and *Moody v. Netchoice*<sup>21</sup> have consistently confirmed that technology platforms are private entities with First Amendment rights to moderate content according to their own terms of service and community standards. Combined with users’ own expressive rights, this implies a limited role for the government, including the FTC, in bounding platform content moderation.

---

<sup>17</sup> *Miami Herald Pub. Co., Div. of Knight Newspapers, Inc. v. Tornillo*, 418 U.S. 241, 258, 94 S. Ct. 2831, 2840 (1974) (“The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment.”) ; *Moody v. NetChoice, LLC*, 603 U.S. 707, 731-32, 144 S. Ct. 2383, 2402 (2024) (“When the government interferes with such editorial choices—say, by ordering the excluded to be included—it alters the content of the compilation. (It creates a different opinion page or parade, bearing a different message.) And in so doing—in overriding a private party’s expressive choices—the government confronts the First Amendment”)

<sup>18</sup> Codified at 47 U.S.C. § 230(c)

)“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.”)

<sup>19</sup> See Brief of Public Knowledge as *Amicus Curiae* in Support of NetChoice as Respondent/Cross-Petitioner at 17, *NetChoice, LLC v. Paxton*, Nos. 22-277 & 22-555 (U.S. Dec. 7, 2023) (“Section 230 shields providers from liability for removing or limiting access to material they ‘consider[...] objectionable,’ ‘whether or not such material is constitutionally protected.’ 47 U.S.C. 230(c)(2)(A). Both the words ‘consider’ and ‘objectionable’ indicate that providers are expected to use their own, independent editorial judgment in determining both what criteria to apply, and how to apply them.”).

<sup>20</sup> *Prager Univ. v. Google*, 951 F.3d 991 (2020).

<sup>21</sup> *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024); *Prager Univ. v. Google LLC*, 951 F.3d 991 (9th Cir. 2020).

### ***B. The Mechanics of Content Moderation***

Content moderation on technology platforms is conducted through a combination of automated and human processes. Given the volume of content on technology platforms, artificial intelligence (AI) is often used to parse through billions of posts and millions of hours of video to identify content candidates for moderation, based on keywords or recognizable signals.<sup>22</sup> Human reviewers may then make the final determination of whether or how to moderate the flagged content. Although there has been a great deal of focus on the political leanings of Silicon Valley employees, these human reviewers are often contract employees based in foreign countries with low-cost labor models.<sup>23</sup> Their moderation decisions may be impacted by the speed with which they are expected to work or their lack of language and cultural understanding of the content they are expected to moderate. But it seems unlikely they are motivated by the political inclinations of the United States-based platforms that employ them.

### **III. Content Moderation Cannot Be Conflated with Censorship**

Driving the opening of the FTC docket on “Technology Platform Censorship” is a desire to document evidence of dominant technology platforms somehow unjustly “censoring” specific

---

<sup>22</sup> As tech writer Mike Masnick in his writing about ‘Masnick’s Impossibility Theorem,’ put it: “Content moderation at scale is impossible to do well.” His theorem rests on three fundamental constraints: moderation inevitably frustrates those whose content is removed; moderation decisions are unavoidably subjective and context-dependent, defying purely objective rationalization; and the immense scale of modern platforms means that even 99.9% “accuracy” would still produce hundreds of thousands of daily errors in absolute terms. This theorem does not suggest abandoning moderation efforts, but rather acknowledges the mathematical impossibility of achieving the perfection that politicians, journalists, and critics often demand. Mike Masnick, *Masnick’s Impossibility Theorem: Content Moderation at Scale Is Impossible to Do Well*, TECHDIRT, (Nov. 08, 2019), <https://www.techdirt.com/2019/11/08/masnick-impossibility-theorem-content-moderation-scale-is-impossible-to-do-well/>.

<sup>23</sup> Billy Perrigo, *OpenAI Used Kenyan Workers on Less Than \$2 Per Hour to Make ChatGPT Less Toxic*, (Jan. 18, 2023), <https://time.com/6247678/openai-chatgpt-kenya-workers/>.

speech.<sup>24</sup> As this comment establishes, technology platforms develop and enforce community guidelines and content policies primarily to foster environments that appeal to the broadest possible user base and to maintain relationships with advertisers who fund their operations. Sometimes, these policies may be perceived by frustrated users as censorship, particularly when their content is removed or demoted.

Many of the comments in the docket at the time of this writing express exactly this frustration: a March 24 comment from Myra King expresses their outrage at TikTok for “violating free speech” after King was “threatened with an account ban” for making “a statement about Biden stealing the election.”<sup>25</sup> The commenter includes a screenshot of the in-app notice that the related comment was removed, as it violated TikTok’s community guidelines (the notice also shows an option to appeal the decision). Hundreds of comments repeat similar complaints, with some users feeling they have been unfairly moderated because they are conservative, and that liberal users do not endure the same restrictions. Other commenters express the opposite; left-leaning commenters express frustration that their content is being systematically suppressed, such as posts sympathetic to Palestine in the context of the Gaza war, or as one commenter

---

<sup>24</sup> It is important to distinguish between (1) actual censorship, which occurs when the government suppresses expression based on viewpoint and thus implicates First Amendment concerns; (2) what the FTC characterizes as “censorship,” namely, private actors making content decisions that may reflect viewpoint-based preferences—though this does not constitute a constitutional violation; and (3) what we refer to as content moderation, which encompasses a range of legitimate, market-driven decisions by private platforms to curate user experiences in alignment with advertiser demands, brand identity, and community standards. When we say “content moderation is not censorship,” we mean that such moderation is either economically rational or protected expressive conduct under the First Amendment. In both cases, it falls outside the scope of FTC authority, which cannot lawfully dictate or penalize such private editorial decisions.

<sup>25</sup> Comment of Myra King to *Request for Public Comments Regarding Technology Platform Censorship* FTC-2025-0023-1639, (Mar. 24, 2025), <https://www.regulations.gov/comment/FTC-2025-0023-1639>.

states, “attempts to bring police abuse to light,” and “people simply sharing stories of their [gender] transition.”<sup>26</sup>

Users frequently misinterpret content moderation actions as First Amendment violations, fundamentally misunderstanding that constitutional speech protections apply only to government actions, not private platform decisions. This widespread constitutional misconception nevertheless signals a significant failure by platforms to meet user expectations regarding content policies, with users invoking the highest legal protection they can imagine to express their profound dissatisfaction.

Efforts to impose First Amendment obligations on private platforms under either the common carrier doctrine or the public forum doctrine have so far met with failure. The question of whether platforms must host all speech under the First Amendment was notably addressed in 2017, when Prager University (PragerU) sued Google, claiming that YouTube was selectively targeting its conservative content for demonetization and deamplification. PragerU argued that it functioned as a “public forum” and should therefore be subject to First Amendment constraints because it performs a function traditionally exclusively reserved to the State. The Ninth Circuit Court of Appeals unanimously rejected this argument, ruling that YouTube is a private platform, not a state actor, and therefore not bound by the First Amendment.<sup>27</sup>

Building on the precedent set by *PragerU*, the Supreme Court in *Moody v. NetChoice* (2024) further affirmed that private platforms cannot be compelled by the government to host or moderate speech. NetChoice challenged Florida and Texas laws that sought to prohibit viewpoint-based moderation. Writing for the majority, Justice Elena Kagan emphasized that the

---

<sup>26</sup> Comment from “M Z” to Request for Public Comments Regarding Technology Platform Censorship FTC-2025-0023-1290, (Mar. 17, 2025), <https://www.regulations.gov/comment/FTC-2025-0023-1290>.

<sup>27</sup> *Prager Univ. v. Google LLC*, 951 F.3d 991 (9th Cir. 2020).

government cannot interfere with private platforms’ expressive choices simply to promote a more “balanced” public discourse, as it restricts platforms’ First Amendment-protected right to editorial discretion. Together, *PragerU* and *Moody* establish that technology platforms retain the right to decide what speech to host or exclude, and that efforts to force neutrality or compel carriage of particular viewpoints run afoul of constitutional protections.

Despite the outcome of *PragerU v. Google*, and the Supreme Court’s extensive First Amendment guidance in *Moody v. NetChoice*, some lawmakers and social media users alike continue to argue that online platforms have an obligation to host all speech, or at the very least should be penalized if found to be systematically disfavoring certain political viewpoints. But this is easier said than done. Even platforms owned by so-called “free speech absolutists,” like Elon Musk’s X and Donald Trump’s Truth Social, do not meet the standard of “neutrality” they claim to offer. Indeed, the FTC’s decision to remove certain comments from this docket that violate its Comment Policy<sup>28</sup> shows that *some* content curation will always be necessary.

When it comes to moderating content on technology platforms, there are no true “free speech absolutists.” Even Musk, who owns the platform X, has faced accusations of censorship — this time from conservative activist Laura Loomer. Although he initially allowed previously banned accounts, including Loomer’s, back onto the platform after taking over, Musk later suspended Loomer’s account, revoked her verification badge, and demonetized her subscriptions after their dispute regarding H-1B visas.<sup>29</sup> And as indicated in a 2022 Public Citizen report, although Donald Trump launched his social media platform Truth Social as a “haven for free speech” after his ban from other platforms, the site’s implementation of shadow banning,

---

<sup>28</sup> *Comment Policy*, Federal Trade Commission, <https://www.ftc.gov/news-events/blogs/comment-policy>

<sup>29</sup> Katherine Fung, *Laura Loomer Slams Elon Musk as Free Speech ‘Hypocrite’ Over X Censorship*, Newsweek (Jan. 2, 2025), <https://www.newsweek.com/laura-loomer-elon-musk-x-twitter-h1b-censorship-2008940>.

restrictive terms of service, and censorship of both conservative and liberal viewpoints demonstrates that even self-proclaimed free speech defenders face practical moderation challenges when running their own platforms.<sup>30</sup> Truth Social's opaque content policies, which restrict content critical of Trump and broadly ban “otherwise objectionable” material, reveal how free speech absolutism quickly gives way to the realities of platform management.

In other words, as with the traditional press, true democratic discourse comes from competition between “diverse and antagonistic sources.”<sup>31</sup> Platforms are free to set their own content moderation criteria — whether facially neutral, blatantly political, or arbitrary and personal. The public, aware of these differences, may sample as many of these platform approaches as they wish. Far from being censorship, the ability of competing platforms to exercise editorial judgment in content moderation and content curation serves “the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail.”<sup>32</sup>

**A. Study After Study Finds No Empirical Evidence That Conservative Content is Over-Moderated Based on Political Viewpoint.**

Despite frequent claims of political bias, there is no clear evidence that social media platforms systematically discriminate against conservative viewpoints. In fact, numerous independent studies show that right-leaning content often performs better across major platforms. Twitter’s own internal research in 2021, for example, found that in six out of seven countries studied, mainstream political right content received higher algorithmic amplification than

---

<sup>30</sup> David Rosen, *Truth Social’s Censorship, Terms of Service Defy Free Speech Promises* (Sep./Oct. 2022), <https://www.citizen.org/wp-content/uploads/September-PC-News.pdf>.

<sup>31</sup> *Associated Press v. United States*, 326 U.S. 1, 20, 65 S. Ct. 1416, 1424-25 (1945)

<sup>32</sup> *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 390, 89 S. Ct. 1794, 1806 (1969)

As discussed below, this makes the FTC’s role in preserving and promoting competition between platforms an important part of preventing censorship by monopolization.

mainstream left content.<sup>33</sup> Similarly, studies of Facebook by Media Matters and the Institute for Strategic Dialogue found that right-leaning pages consistently earn more interactions than their left-leaning or nonpartisan counterparts.<sup>34</sup> One Facebook executive candidly acknowledged that “right-wing populism is always more engaging” because it taps into “an incredibly strong, primitive emotion.”<sup>35</sup>

This pattern extends to the news influencer ecosystem. A 2024 Pew Research Center study examining 500 high-profile news influencers found that right-leaning news influencers — defined as those identifying as Republican, conservative, or pro-Trump — were significantly more prominent than liberal or left-leaning counterparts.<sup>36</sup> The disparity was especially stark on Facebook, where conservative influencers outnumbered liberal ones three to one (39% to 13%). Even among influencers with professional news affiliations, conservative voices made up a larger share. These findings challenge the notion of systematic censorship and suggest that conservative perspectives are, in many ways, thriving online.

Still, as seen in the thousands of comments to this FTC docket, some users report their posts are flagged, removed, demonetized, or “shadowbanned” without a clear way to appeal the moderation decision. This lack of transparency can fuel the perception of viewpoint-based discrimination. To investigate such concerns, researchers have examined whether conservatives are disproportionately penalized by moderation systems. A 2024 study by MIT, Yale, Cornell,

---

<sup>33</sup> Ferenc Huszár et. al. *Algorithmic Amplification of Politics on Twitter*, (2021), [https://cdn.cms-twigitalassets.com/content/dam/blog-twitter/official/en\\_us/company/2021/rml/Algorithmic-Amplification-of-Politics-on-Twitter.pdf](https://cdn.cms-twigitalassets.com/content/dam/blog-twitter/official/en_us/company/2021/rml/Algorithmic-Amplification-of-Politics-on-Twitter.pdf).

<sup>34</sup> Mark Scott, *Despite cries of censorship, conservatives dominate social media*, (Oct. 26, 2020), <https://www.politico.com/news/2020/10/26/censorship-conservatives-social-media-432643>.

<sup>35</sup> Alex Thompson, *Why the right wing has a massive advantage on Facebook*, (Sep. 26, 2020), <https://www.politico.com/news/2020/09/26/facebook-conservatives-2020-421146>.

<sup>36</sup> Galen Stocking et. al, *America’s News Influencers, The creators and consumers in the world of news and information on social media*, (Nov. 18, 2024), <https://www.pewresearch.org/journalism/2024/11/18/americas-news-influencers/>.

and Oxford found that pro-Trump Twitter users during the 2020 election were suspended more often (19.6%) than their pro-Biden counterparts (4.5%).<sup>37</sup> At first glance, this might suggest bias. However, the same study found that conservative users were far more likely to share content from “low-quality” sources — sites known to publish false or misleading information (“fake news”) — which violated platform rules. These findings held across multiple countries and datasets. Importantly, the researchers controlled for political bias by using a range of news-rating systems, including evaluations by Republican-only panels. Regardless of the method, the result was consistent: more violations came from conservative-aligned accounts — not because of their viewpoint, but because of the nature of the content they shared.

This pattern reflects platform rules focused on content quality and accuracy, not political affiliation. Platform policies and their content moderators do not explicitly target conservative or right-leaning speech, particularly considering the substantial contribution of right-leaning content to the “attention economy.” But when users of any ideology share misinformation or engage in harassment, they are more likely to be sanctioned. This is not bias; it is a predictable consequence of rule enforcement. Indeed, left-leaning users also report being unfairly targeted for posting content supportive of Palestine, critical of police, or about gender identity. The issue, therefore, is not one of political viewpoint but of behavior that violates content standards. Though even if platforms were targeting certain viewpoints, platforms have a right to express their values (e.g., no hate speech) through their content moderation standards. The solution to this, for aggrieved users, is not government regulation of speech, but pro-competition policies that ensure they have other platforms to express themselves.

---

<sup>37</sup> Mohsen Mosleh, et al. *Differences in misinformation sharing can lead to politically asymmetric sanctions*. Nature (Oct. 2, 2024), <https://doi.org/10.1038/s41586-024-07942-8>



### ***B. Content Moderation Practices Are Lawful Exercises of Platform Discretion***

It is no secret that technology platforms wield incredible power in how online speech is governed. Simultaneously providing space for important discourse — whether social, political, or pop culture — while also attracting new users and creating suitable environments for advertisers, the role of a content moderator is a complicated but crucial job. Platforms make their community standards publicly available, and users are presented with and agree to the terms of use upon setting up a new account. Since illegal content like Child Sexual Abuse Material (CSAM) and intellectual property infringement falls outside the protections of Section 230 and the First Amendment, they are highly motivated to remove such material. Beyond these legal obligations, platforms retain broad discretion to establish and enforce their own content moderation policies.

Platforms establish community standards to ensure their service allows for respective ideals of ease of use and robust engagement. Many technology platforms, like X, place great emphasis on user behavior, such as forbidding spammy activity (“copypasta” or “duplicative content”), intolerance for hate speech, targeted harassment of an individual, or being generally misleading (especially in the context of elections and civic processes).<sup>38</sup> Some instances of standards-violating behavior or content are straightforward. When you scroll through the comment section of your favorite Instagram influencer, you may see some comments peddling the exact same too-good-to-be-true cryptocurrency investment opportunities. Such comments would be violative, and users are encouraged to flag them for removal.<sup>39</sup> Other violations may

---

<sup>38</sup> *Authenticity Policy*, X Help Center (Apr. 2025), <https://help.x.com/en/rules-and-policies/authenticity>

<sup>39</sup> Emma Fletcher, *Social media: a golden goose for scammers*, Federal Trade Commission (Oct. 6, 2023), <https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2023/10/social-media-golden-goose-scammers>

not be so cut and dried. This is particularly true regarding subjective understandings of content, like with the hateful conduct policy or even policies on misinformation. Platforms often rely on external partnerships to assess content validity against verified facts to determine whether such content should be moderated according to that platform's terms of service, or they rely on "authoritative sources" like the Centers for Disease Control, or both. Deciding whether content violates the terms of service is generally not based on the platform's perception of "truth" or "viewpoint," but rather on independent processes and organizations like these.

Nevertheless, moderation decisions are rarely seen as neutral; the same piece of content can be interpreted in vastly different ways by different audiences. Platforms like X and TikTok are constantly scrutinized for their decisions to suppress or amplify content. The same statement could be viewed as offensive by one, and innocuous by others, and often requires context for a content moderation decision to happen. One example from TikTok's "Community Guidelines" would be using a slur to disparage a marginalized group, versus using a slur that has been "reclaimed by the targeted community in a way that is not degrading."<sup>40</sup> If a post with a slur is flagged as offensive, the content moderator needs to determine whether the term was used in a hateful way. And the moderator will not always get it right. In other words, the platforms are not censoring. Instead, they make moderation choices to create an environment that promotes engagement while curbing exposure to offensive, counterproductive content that stifles debate (which risks driving away users who grow frustrated or disgusted, as well as advertisers).

TikTok's content moderation policies are, according to their Community Principles page, driven by "balancing harm prevention and expression, embracing human dignity, [and] ensuring

---

<sup>40</sup> *Safety and Civility*, TikTok (May 17, 2024), <https://www.tiktok.com/community-guidelines/en/safety-civility#2>

our actions are fair.”<sup>41</sup> It also states that “free expression is not an absolute right — it is always considered in proportion to its potential harm, and does not extend to having your content recommended in the For You feed.” Such a statement, that “free expression is not an absolute right,” may be infuriating to free speech warriors. However, as a private platform, TikTok can assert that it values and encourages expression while also recognizing that certain forms of expression can lead to negative outcomes and ultimately suppress the speech of others. Even Donald Trump’s Truth Social, established “for free thinking and the ability to share ideas freely,” has community guidelines that outline what sort of content is *not* tolerated, with community guidelines stating “even when the law may not require us to moderate something, or to ban a user, we reserve the right to do so to prevent our services from being used by someone carrying out a crime or civil tort — especially when these interfere with our goal of providing a welcoming platform.”<sup>42</sup>

The Gamergate controversy illustrates why such policies exist: it was a coordinated harassment campaign that silenced women in gaming through threats and doxxing on online platforms, which flourished in environments with lax moderation.<sup>43</sup> In doing so, it drove away users and tarnished the reputation of the platforms. This and similar incidents resulted in all the nightmares a for-profit company tries to avoid — negative press, social protests, and calls for “accountability” through legislation. Unsurprisingly, platforms responded by publicly strengthening hate speech policies, evolving toward more moderation. As tech companies tried to address complex balancing questions, they developed more sophisticated responses than simply

---

<sup>41</sup> *Community Principles*, TikTok (May 17, 2024), <https://www.tiktok.com/community-guidelines/en/community-principles>

<sup>42</sup> *Community Guidelines*, Truth Social Help Center, (Updated Feb. 4, 2022), <https://help.truthsocial.com/community-guidelines-page/>.

<sup>43</sup> Harmeet Kaur, *How Gamergate foreshadowed the toxic hellscape that the internet has now become*, (Mar. 24, 2025), <https://www.cnn.com/2025/03/23/us/gamergate-harassment-reddit-twitter-cec/index.html>.

“ban or no ban.” TikTok specifically distinguishes between prohibited hateful content and content using stereotypes or insinuations that may demean protected groups — the latter permitted but ineligible for algorithmic amplification in the For You feed, preventing the type of viral spread that made Gamergate's misogynistic harassment so damaging beyond gaming communities.

Most technology platform users would agree that platforms filled with scams, calls for violence, or racist epithets do not make for an ideal user experience. Most advertisers would agree that toxic content does not make the ideal context for brand messages. The challenge for content moderators is not necessarily how to handle unlawful content, which is strongly encouraged by its exclusion from Section 230's liability shield, but rather how to manage “lawful but awful” content — a category that causes the most significant source of disagreement among users themselves.<sup>44</sup> While content moderation decisions will likely always be a source of contention, content policies should be understood not as censorship but as efforts by platforms to create environments where meaningful expression can flourish for all users, recognizing that unchecked harmful speech often silences marginalized voices. In short, truly fostering free expression sometimes requires thoughtful limitations on content that would otherwise intimidate or exclude certain users from online discourse.

### ***C. Users, Platforms, and Advertisers All Have First Amendment Rights That Limit the Scope of FTC Action***

Excluding posts from eligibility for monetization through advertising has become an increasingly contentious form of content moderation. Hence, in the Request for Public Comment, the FTC inquires whether “platforms funded or collaborated with organizations, for-profit or

---

<sup>44</sup> Daphne Keller, *Lawful but Awful? Control over Legal Speech by Platforms, Governments, and Internet Users*, The University Of Chicago Law Review, (July 7, 2022), <https://lawreview.uchicago.edu/online-archive/lawful-awful-control-over-legal-speech-platforms-governments-and-internet-users>.

non-profit, that advocated for or enabled censorship [...] such as advertising boycotts.” This issue is central to a federal antitrust lawsuit filed by X Corp. on August 6, 2024, against the World Federation of Advertisers (WFA) and its member companies. X Corp. alleges that the defendants coordinated an economic boycott of its platform, violating U.S. antitrust laws through the formation of the Global Alliance for Responsible Media (GARM). WFA countered the complaint’s allegations, pointing to X’s inaction regarding harmful or offensive content. They also noted that GARM provided resources to assist brands in independently determining whether to maintain ad placements on the platform, in line with brand safety standards. The X Corp. lawsuit asserts this violates the Sherman Act, 15 U.S.C. § 1.<sup>45</sup>

While X Corp.’s lawsuit remains pending, the underlying First Amendment tensions are impossible to ignore. In its complaint, X Corp. contends that GARM’s corporate members acted collectively to “promote their own economic interests through commercial restraints at the expense of social media platforms and their users.”<sup>46</sup> With most dominant technology platforms relying on advertising business models, it’s no surprise that X Corp.’s complaint emphasizes the immense influence of where advertisers choose to spend. But the choice of where to spend money, as affirmed in *Citizens United*, is considered speech and protected by the First Amendment.<sup>47</sup> Moreover, even apart from the First Amendment implications, X Corp.’s antitrust theory faces serious hurdles under traditional antitrust doctrine. Courts generally require that plaintiffs alleging a boycott or restraint of trade under Section 1 of the Sherman Act demonstrate not just parallel conduct but a clear agreement to suppress competition.<sup>48</sup>

---

<sup>45</sup> Complaint of *X. Corp v. World Federation Of Advertisers*, page 3

<sup>46</sup> *Id.*

<sup>47</sup> *Citizens United v. Fed. Election Comm’n*, 558 U.S. 310 (2010)

<sup>48</sup> *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556–57 (2007) (“[A]n allegation of parallel conduct and a bare assertion of conspiracy will not suffice.”) *see also* *Clamp-All Corp. v. Cast Iron Soil Pipe Inst.*, 851 F.2d 478, 484–85 (1st Cir. 1988) (holding that dissemination of product standards and marketing information did not constitute a per se antitrust violation).

X Corp.’s owner, Elon Musk, along with Representative Jim Jordan in his role as chairman of the House Judiciary Committee, has condemned what they characterize as censorship resulting from alleged collusion among advertisers.<sup>49</sup> However, suing the World Federation of Advertisers (WFA) for coordinating information that helps members meet their own brand safety standards — and suing those corporate members for independently deciding where to advertise — risks infringing on the free speech rights of those corporations.

This argument is even more tenuous when applied to information reliability rating services such as NewsGuard and the Global Disinformation Index (GDI). Platforms may use these services to support content moderation efforts, advertisers may use them to make judgments about brand safety, and certainly individuals use them to evaluate the reliability of individual posts or platforms as a whole. But this is no different from any other voluntary assessment and ratings service. Product manufacturers may protest when they receive a bad review from Consumer Reports, chefs may rage when Michelin decides to downgrade their restaurant from two stars to one, and actors and producers may complain about the unfairness of bad reviews. But although these rating services may have a significant impact in their respective markets, these rating and publishing activities are completely protected by the First Amendment. They earn their influence not through some “cartel,” but by providing a product that the public finds a reliable and useful guide.

---

<sup>49</sup> Representative Jim Jordan, targeted not only advertisers, but also civil society groups, university-based researchers, and journalists who have worked in some capacity in disinformation research and information integrity. In effect, Jordan and his campaign to combat the so-called “censorship cartel” suppressed the First Amendment protected work of researchers, advocacy groups, and academic institutions through a series of pressure campaigns, bolstered by the baseless allegation that these groups were somehow directly responsible for “censoring” content on social media platforms. To be clear, these groups have no role in removing or degrading content on technology platforms. See Lisa Macpherson, “*Censorship*”: President Trump keeps using this word, but I do not think it means what he thinks it means (Feb. 12, 2025), <https://publicknowledge.org/censorship-president-trump-keeps-using-this-word/>.

Nevertheless, and unsurprisingly, believers in the “censorship cartel” include these private services as somehow part of the vast conspiracy to suppress conservative voices. Members of Congress have called hearings to publicly “name and shame” such services as a part of the so-called “censorship industrial complex.” Despite a lack of evidence, and in defiance of the services’ constitutional rights, these claims assert that organizations focused on identifying misinformation and assessing news trustworthiness collude with social media platforms to silence certain (often conservative-aligned) content. In June of 2024, House Republicans in the Committee on Oversight and Accountability launched an investigation into “the impact of NewsGuard on First Amendment speech and its potential to serve as a non-transparent agent of censorship campaigns.”<sup>50</sup> FCC Chairman Brendan Carr has also entered the fray, sending a letter in November 2024 to CEOs of dominant online platforms at Alphabet Inc., Microsoft, Meta, and Apple, inquiring about their relationship with “the Orwellian named NewsGuard.”<sup>51</sup>

Ironically, government officials pushing platforms to disclose relationships with NewsGuard or sever ties with the service potentially infringe on the First Amendment rights of both these services and those who wish to use them.<sup>52</sup> As Jacob Sullum put it in an article in *Reason*, “[Carr’s] claim that NewsGuard is violating 'Americans' constitutional freedoms' is legally nonsensical, since the First Amendment constrains government action, not the decisions of private businesses.” Sullum also asserts that the First Amendment protects NewsGuard’s (and similar information reliability services’) activities, which include researching and assigning a trustworthiness rating to news outlets and providing guidance to advertisers. And while

---

<sup>50</sup> Chairman James Comer, *Comer Demands NewsGuard Disclose All Government Contracts Amid Censorship Concerns*, (Oct. 25, 2024), <https://oversight.house.gov/release/comer-demands-newsguard-disclose-all-government-contracts-amid-censorship-concerns/>.

<sup>51</sup> Letter from Brendan Carr to Sundhar Pichai, Satya Nadella, Mark Zuckerberg, and Tim Cook, (Nov. 13, 2024), <https://docs.fcc.gov/public/attachments/DOC-407732A1.pdf>.

<sup>52</sup> See generally *National Rifle Association v. Vullo*, 602 U.S. 175, 144 S. Ct. 1316 (2024)

NewsGuard, as a private entity, is free to provide services aligned with certain political views,<sup>53</sup> Sullum also asserts that Carr’s “implicit charge that NewsGuard is biased against conservatives [...] does not seem to have a firm empirical basis.”<sup>54</sup>

While media outlets dissatisfied with NewsGuard's ratings maintain their right to challenge these evaluations publicly, any governmental attempt to pressure NewsGuard or its technology platform clients into altering their rating methodologies or implementation constitutes a clear infringement on constitutionally protected speech. As affirmed by the Supreme Court in *Moody v. NetChoice*,<sup>55</sup> private entities and their decisions on what speech to host, even if perceived as biased, are expressive activity and, therefore, First Amendment-protected speech.<sup>56</sup> It is not the role of the government, whether a policymaker or regulator, to impose on private actors what speech it views as fair.

Likewise, the First Amendment limits the ability of private parties to use the courts to control the speech of others.<sup>57</sup> Of relevance here, in March 2024, a judge dismissed X Corp.'s lawsuit against the Center for Countering Digital Hate (CCDH) over its research on hate speech on X’s platform. CCDH, an organization that is researching online content moderation, published

---

<sup>53</sup> NewsGuard has consistently contended that it is apolitical, and it rates the credibility of news based on transparent journalistic criteria rather than on political bent. Yet even if it were determined by a court or investigation that NewsGuard acts with political bias, being a private entity, policymakers and regulators demanding NewsGuard change its speech is in itself an affront to the First Amendment. It is also important to note that the FCC has no jurisdiction over NewsGuard.

<sup>54</sup> Jacob Sullum, *Incoming FCC Chairman Brendan Carr's Beef With NewsGuard Is Legally Dubious and Empirically Shaky*, (Nov. 21, 2024), <https://reason.com/2024/11/21/incoming-fcc-chairman-brendan-carrs-beef-with-newsguard-is-legally-dubious-and-empirically-shaky/>.

<sup>55</sup> *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024) (“[T]he First Amendment offers protection when an entity engaging in expressive activity, including compiling and curating others’ speech, is directed to accommodate messages it would prefer to exclude.”)

<sup>56</sup> See also *National Rifle Association v. Vullo*, 602 U.S. 175, 180, 144 S. Ct. 1316, 1322 (2024) (“Government officials cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors”)

<sup>57</sup> See generally *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964)



reports analyzing hate speech on the X platform. X Corp. claimed CCDH improperly accessed platform data through the unauthorized use of analytics tools, then used this data to create misleading reports that caused advertisers to abandon the platform. X claimed CCDH was “cherry-pick[ing] users’ posts” to “falsely claim” that the X Corp. platform “is overwhelmed with harmful content.” Judge Charles R. Breyer of the Northern District of California granted CCDH’s motion to dismiss X. Corp.’s lawsuit, finding CCDH’s activities of gathering data and publishing reports constituted protected speech on matters of public interest, and that the case is “about punishing the Defendants for their speech.”<sup>58</sup>

X Corp.’s litigation and government investigations into entities like NewsGuard highlight a fundamental constitutional principle: while private entities may face criticism for their content decisions, governmental interference in these decisions raises serious First Amendment concerns. As demonstrated by Judge Breyer’s dismissal of X Corp.’s lawsuit against CCDH, activities like researching and reporting on content constitute protected speech on matters of public interest. Content moderation decisions by platforms, ratings by services like NewsGuard, and company advertising choices are all forms of constitutionally protected expression. The First Amendment protects private actors’ expressive decisions about what speech to host, promote, or associate with, while simultaneously limiting government power to dictate these choices, even when motivated by concerns about perceived bias or unfairness. Regarding this comment, the case precedent clearly shows there is no role for the FTC or other regulatory entities to punish the ecosystem of service providers contracted by social media platforms to help assess content quality and trustworthiness.

---

<sup>58</sup> *X Corp. v. Ctr. for Countering Digit. Hate, Inc.*, 724 F. Supp. 3d 948, 955 (N.D. Cal. 2024).

#### ***D. Supreme Court Affirms Technology Platforms' Editorial Rights***

The question of whether the government could mandate certain requirements in platform content moderation came to a head in 2021 when Florida and Texas each enacted laws regulating social media companies' content moderation capacities — more specifically, how social media platforms prioritize, filter, and label third-party posts. Florida's SB 7072 prohibited social media platforms from deplatforming political candidates during elections and required transparent content moderation standards,<sup>59</sup> while Texas's HB 20 banned platforms from censoring users based on viewpoint and mandated disclosure of content management practices. Both laws are applied to large platforms and provide enforcement mechanisms through user lawsuits and state attorney general actions.<sup>60</sup>

NetChoice, a tech industry trade association, challenged both the Florida and Texas content moderation laws in the landmark *Moody v. NetChoice* case.<sup>61</sup> In 2024, the Supreme Court delivered a decisive ruling that, while remanding the cases for further factual development, clearly affirmed that social media platforms engage in constitutionally protected expression when they make editorial decisions about content on their platforms.

Justice Elena Kagan, who authored the majority opinion, rejected the idea that the government can interfere with private platforms' editorial choices simply because it believes the platform “unfairly” favors certain viewpoints. She specifically addressed Texas's rationale for its law, noting that Texas officials had justified their regulation as necessary to correct what they perceived as Facebook's News Feed skewing against politically conservative voices. Kagan emphasized that it is not the government's role to decide what counts as the “right balance” of private expression or to “un-bias” what it considers biased. She wrote that allowing the

---

<sup>59</sup> Stop Social Media Censorship Act, Florida. S.B. 7072 (2021).

<sup>60</sup> Texas H.B. 20, 87th Leg., 2nd Spec. Sess. (2021).

<sup>61</sup> *Moody v. NetChoice, LLC*, 603 U.S. 707 (2024).

government to alter private actors' speech to achieve what officials consider a better ideological balance would pose one of the greatest threats to free expression. As Kagan put it, “the government may not restrict the speech of some elements of society to enhance the relative voice of others,” a principle that applies even when certain actors possess particularly influential platforms for expression.<sup>62</sup> In short, the Court explicitly rejected the notion that states can compel platforms to alter their content moderation practices simply to achieve what government officials perceive as a better balance of viewpoints in public discourse. This ruling solidified the principle that government entities, including the FTC, cannot dictate how private platforms exercise their editorial discretion under the First Amendment.

Any approach that conditions platform liability protections on government certification of content practices would invariably pressure companies to engage in preemptive self-censorship to avoid regulatory scrutiny. This, in turn, would violate the First Amendment rights of both platforms and users. Instead, the FTC should focus on structural regulations that promote competition and transparency without inviting government oversight of speech. As history demonstrates, when regulators gain leverage over media content decisions, political speech inevitably suffers, regardless of which party holds power.

***E. A Truly Competitive Social Media Market Means Many Options With Different Content Moderation Standards***

In a world with healthy competition, platforms can only optimize profits if their content moderation reflects the expressive and associational preferences of their users. In recent years, the market has seen an interesting case study of how platforms differentiate not only in how content is created, shared, and presented, but also in their platform content standards. Billionaire tech mogul Elon Musk purchased popular micro-blogging site Twitter in 2022 to “fix” what he

---

<sup>62</sup> *Moody v. NetChoice, LLC*, 603 U.S. 707, 719, 144 S. Ct. 2383, 2394 (2024)

saw as “a lot of censorship going on.”<sup>63</sup> In achieving his vision of what a platform that champions free speech should look like, Musk’s Twitter (now X) reinstated suspended accounts of controversial users, such as white nationalists; stopped enforcing policies on COVID-19 misinformation; and disbanded its Trust and Safety team. Rather than taking down offensive posts, Musk’s guidance is to simply limit the reach of potentially violative posts. Many users lauded the content moderation policy changes, while others felt Musk’s decisions have worsened their user experience. For users in the latter group, alternative micro-blogging sites promised greater user control over content moderation preferences. And advertisers concerned about brand image when their ads are placed next to objectionable content have drawn down their advertising spend on the X platform.

Platforms like Mastodon, Bluesky, and Threads have emerged as notable competitors to X, offering distinct user experiences. Bluesky’s platform operates on the thesis that free expression is better fostered by decentralization, strong user controls, and more stringent standards on violative speech. Threads, a Meta-owned platform, initially differentiated itself by de-emphasizing news and political content. It also reflects Meta owner Mark Zuckerberg’s expressed desire to “meet the moment” in free speech user preferences, ultimately removing fact-checking in favor of community notes, and being more permissive of potentially offensive language.<sup>64</sup> Mastodon differentiates itself through decentralization, operating as a network of independent servers where each community sets its own content moderation rules rather than having a single authority. This federated system enables users to select instances that align with their preferences, while administrators have the authority to determine which additional servers

---

<sup>63</sup> Elon Musk Interview by Bill Maher, *Real Time with Bill Maher (HBO)*, (Apr. 19, 2023), <https://www.youtube.com/watch?v=oO8w6XcXJUs>.

<sup>64</sup> Joel Kaplan, *More Speech and Fewer Mistakes*, Meta (Jan. 7, 2025), <https://about.fb.com/news/2025/01/meta-more-speech-fewer-mistakes/>.

to link, fostering a community-specific moderation approach instead of a centralized one. Both Mastodon and Bluesky also give the option to present content chronologically instead of optimizing for engagement, giving users more control over their social media experience.

Competition naturally fosters diverse content moderation strategies without government interference in editorial decisions, allowing platforms like X, Bluesky, and Mastodon to develop distinct standards reflecting different user preferences. This market-driven differentiation accomplishes what government regulation cannot constitutionally achieve: creating varied spaces for expression while respecting private entities' First Amendment rights to determine what speech they host. Instead of mandating "neutrality" standards that invite government oversight of speech, policymakers should promote structural competition that enables even more meaningful alternatives where users can migrate to environments aligning with their values.

#### **IV. Support User Protections Not Based on Content and Its Moderation**

Rather than dictating how platforms moderate content, lawmakers and regulators should focus on two complementary approaches: empowering users through structural protections and fostering a competitive marketplace that naturally creates diverse platform options. While this comment makes the case that the likely catalyst for this Request for Comment is founded in falsities (that is, the conspiracy that platforms have colluded to censor speech), we do feel there are real harms that arise from the anticompetitive nature of the technology platform ecosystem. Instead of regulating whether or how social media companies moderate content, there are policies and regulatory mechanisms that can empower and protect users, while also reducing the dominance these platforms hold. There are promising avenues that do not center on content itself, such as enforcing procedural fairness through the FTC's Section 5 authority. The FTC has and will continue to investigate the business practices of dominant platforms, separate from regulating how platforms deal with content, by using its authority to encourage healthy

competition and user choice, and take actions against platforms that misrepresent or fail to enforce community standards.

***A. Promote Meaningful Algorithmic Accountability and User Choice***

The opaque nature of content-ranking algorithms prevents users, researchers, and regulators from understanding how platforms prioritize and present information. This lack of transparency hinders meaningful accountability and impairs consumers’ ability to make informed choices about where they consume and share content. However, the FTC should exercise caution when considering broad transparency mandates, as overly intrusive measures risk infringing on platforms’ editorial discretion and raising constitutional concerns.

Recent litigation illustrates the complexity of enforcing algorithmic transparency mandates. In the Ninth Circuit’s 2024 decision in *X Corp. v. Bonta*, the court struck down California’s disclosure law, AB 587, finding the provisions likely unconstitutional under the First Amendment because they compelled speech.<sup>65</sup> The court emphasized that the law’s “Content Category Report provisions compel non-commercial speech, and are subject to strict scrutiny because the provisions are content-based,” and concluded they “likely fail under strict scrutiny because they are not narrowly tailored” as the provisions “are more extensive than necessary to serve the State’s purported goal of ‘requiring social media companies to be transparent about their content-moderation policies and practices so that consumers can make informed decisions about where they consume and disseminate news and information.’”<sup>66</sup> During oral argument, the judge asked California if it believed it could compel “the San Francisco Chronicle’s op-ed page” to disclose “how they’re planning to address ideological balance.”<sup>67</sup>

---

<sup>65</sup> *X Corp. v. Bonta*, 116 F. 4th 888 (9th Cir. 2024)

<sup>66</sup> *Id.*

<sup>67</sup> Reporters Committee, *9th Circuit: Provisions of California’s content-moderation law violate First Amendment*, (Sep. 11, 2024), <https://www.rcfp.org/x-v-bonta-ninth-circuit-ruling/>.

While the Commission should approach mandating transparency with caution, it can play a key role in promoting algorithmic accountability. This includes taking action against unfair or deceptive practices, such as algorithmic systems that cause harm or discriminate based on traditional protected classes, such as race or gender — not based on viewpoint or political affiliation. The FTC may also issue guidance that clarifies expectations for platforms using these algorithmic systems, including standards for testing and transparency of findings. Proper accountability requires that companies benefiting from algorithmic efficiencies also bear responsibility for facilitating redress in cases of erroneous or unfair content moderation decisions.<sup>68</sup> To that end, platforms should provide understandable explanations of how their content-ranking systems work, offer users meaningful choices about how their feeds are organized, implement due process mechanisms for contesting algorithmic decisions, disclose significant algorithmic changes, and enable independent researchers to study the societal impacts of these systems by providing access to platform data.<sup>69</sup>

### ***B. Enforce Platform Commitments to Users***

The FTC should resist directly intervening in substantive content moderation controversies under its Section 5 unfair or deceptive acts or practices (UDAP) authority. While the Commission has successfully leveraged its UDAP powers to enforce privacy commitments outlined in company terms of service, content moderation differs fundamentally from privacy. Privacy commitments are typically objective and measurable — for instance, did a platform

---

<sup>68</sup> Federal Trade Commission, *Combatting Online Harms Through Innovation: Report to Congress*, (June 16, 2022), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/Combatting%20Online%20Harms%20Through%20Innovation%3B%20Federal%20Trade%20Commission%20Report%20to%20Congress.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/Combatting%20Online%20Harms%20Through%20Innovation%3B%20Federal%20Trade%20Commission%20Report%20to%20Congress.pdf) Pages 50-51

<sup>69</sup> The FTC’s power to require these changes is, at best, uncertain. But the FTC can certainly make recommendations, which carry weight with Congress.

share personal information with a third party without user consent? In contrast, moderation decisions inherently involve subjective editorial judgment, interpretation, and nuance.

Attempts to enforce “consistency” in moderation practices under a UDAP theory, especially in inherently subjective content categories such as “hate speech,” misinformation, or satire, would inevitably entangle the Commission in editorial judgments that go beyond the proper role of a consumer protection agency. For instance, most platforms prohibit “hate speech,” yet reasonable people deeply disagree on what this category includes, and extensive case precedent shows that the FTC has no role in defining hate speech. Instead, the Commission should focus on traditional criteria for determining “unfair or deceptive.” For example, a platform that assures users in its terms of service that it will respond to complaints of harassment but does not, in fact, have any mechanism to collect and respond to complaints of harassment would be a classic deceptive practice of promising a user a service that does not exist. This is different from disputing whether a platform “correctly” or “incorrectly” determined the nature of a specific post or comment, which evaluates the judgment of the platform.

Additionally, requiring specificity or consistency in advance for every conceivable moderation decision is not merely impractical; it misunderstands the editorial nature of moderation and would push platforms toward vague, noncommittal moderation standards or lead them to largely abandon moderation altogether, neither outcome serving the public interest.

However, procedural fairness and transparency in moderation decisions are different matters. Platforms that promise procedural rights, such as notice to users, explanations for content removals, or opportunities for appeal, and fail to honor these promises clearly mislead consumers. These types of procedural commitments, which do not hinge on subjective editorial judgments but instead on clear, defined actions (e.g., providing a reasoned explanation for



moderation decisions, or following a promised appeals process), could appropriately fall under the FTC’s Section 5 authority. As stated, this approach is not entirely novel, as the FTC has sued Meta, formerly known as Facebook, for violating the privacy commitments in their terms of service.<sup>70</sup>

The FTC is uniquely positioned to address these issues through both enforcement actions and rulemaking — although the scope of the Commission’s authority in this space will undoubtedly face challenges under the Major Question Doctrine. Nevertheless, by establishing baseline procedural fairness requirements through formal rulemaking to the extent allowed by law, the Commission could create industry-wide standards while preserving platforms’ flexibility to develop content policies aligned with their communities and business models. Additionally, the Commission could conduct targeted 6(b) studies examining platforms’ appeals systems, success rates, and procedural consistency to inform evidence-based policy development in this area.

The Commission should use its rulemaking authority as well as rely on case-by-case enforcement. Comprehensive regulations standardizing how platforms communicate and apply their terms of service would provide much-needed consistency and transparency in the digital ecosystem.<sup>71</sup> This method is not without risks; terms such as “hate speech” or “harmful content”

---

<sup>70</sup> *United States v. Facebook, Inc.*, No. 19-cv-2184 (D.D.C. July 24, 2019). (Consent order related to Facebook’s violations of privacy commitments.) *see also* *FTC Press Release*, Facebook to Pay \$5 Billion and Implement New Privacy Protections, (July 24, 2019), <https://www.ftc.gov/news-events/news/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions-facebook>.

<sup>71</sup> Lisa Macpherson and Morgan Wilsmann, *A Policy Primer for Free Expression and Content Moderation, Part I: Centering Public Interest Values*, Public Knowledge, (Dec. 9, 2024), <https://publicknowledge.org/centering-public-interest-values/>.

This is not to be construed as the Commission should standardize the contents of a terms of services across platforms.

can and will still be subjective to the platform.<sup>72</sup> For the Commission, regulation based on the procedural application of terms of service must not be weaponized to target disfavored speech or specific moderation outcomes on different platforms. The Commission must ensure that enforcement of this consumer protection framework is not used as a proxy for content-based regulation that violates the First Amendment.

When platforms build communities around user expectations of fairness, transparency, and accountability, they must be held to their commitments. Users rely on the community guidelines and safety features to safeguard their online experience, and Section 5 is well-suited to address a platform's broken promises stemming from failing to provide users the services as presented in terms of services (for example, if platforms state users are granted an appeal process in case content is removed or downgraded, but fail to provide it). The Commission should therefore consider a consumer protection theory of content moderation that provides a constitutionally sound path forward to ensure consumers are not misled by the platforms they use daily. Moreover, the FTC should continue its role as one that promotes platform accountability through investigatory authority, enforcement where warranted, and support for mechanisms such as algorithmic impact assessments. These tools can help ensure that companies benefiting from algorithmic efficiencies also bear the responsibility of auditing their systems and providing redress for harms caused by automated decisions.

## **V. Prioritize Competition Enforcement as the Primary Solution**

Platforms like Facebook and YouTube lawfully moderate content based on their terms of service, exercising their First Amendment rights.<sup>73</sup> Many advertisers follow industry best

---

<sup>72</sup> Evelyn Douek, *The Rise of Content Cartels*, (Knight First Amend. Inst. at Columbia Univ., Feb. 2020), <https://ssrn.com/abstract=3572309>.

<sup>73</sup> Olivier Sylvain, *Platform Realism, Informational Inequality, and Section 230 Reform*, 131 YALE L.J.F. 475, 488 (2021), [https://law.yale.edu/sites/default/files/area/center/isp/documents/sylvain\\_dps.pdf](https://law.yale.edu/sites/default/files/area/center/isp/documents/sylvain_dps.pdf) (“The positive

practices to avoid associating their brands with platforms that allow hate speech, foreign interference, and scams, not to collude against conservative voices.<sup>74</sup> In fact, advertiser discretion reinforces marketplace pluralism by allowing brands to align themselves with platforms whose content moderation standards reflect their own values and risk tolerance. Platforms that maintain stricter moderation standards may attract advertisers focused on brand safety, while platforms with looser policies may appeal to advertisers seeking to reach niche or ideologically aligned audiences. This segmentation is not only legal, but also healthy for expressive diversity. For example, conservative talk radio has long attracted a different advertising base than mainstream news or music formats, precisely because its content and audience appeal to a different set of commercial interests. The same principle applies online.

Labeling this economic interaction a “censorship cartel” not only misrepresents the legal realities but also obscures more serious policy concerns, like the outsized gatekeeping power some platforms hold due to a lack of competition. Promoting structural competition, rather than restricting advertiser or platform choices, is the best way to preserve both economic freedom and user choice.

#### ***A. Abuse of Market Power and Its Impact on Choice***

Rather than focusing on content moderation in isolation, the Commission should examine how dominant platforms may be using their control over critical infrastructure — such as app stores, search engines, and advertising networks — to disadvantage or exclude competitors with alternative approaches to moderation. Such behavior stifles innovation, reduces the diversity of available platforms, and limits consumers’ ability to choose services that align with their values.

---

case for the laissez-faire approach resonates with an emerging view that companies, especially internet companies, have a constitutional right to decide which ideas to distribute or promote and which ideas to demote or block”).

<sup>74</sup> *infra* Sec. II, Platform Business Models, Protections, Incentives and Constraints

In the late 19th and early 20th centuries, just a handful of companies had control over oil, steel and physical transportation routes, creating complete control over the market and who could deliver what goods, where, and at what price.<sup>75</sup> Similarly, digital platforms have grown into massive gatekeepers in the online ecosystem — despite the internet’s infinite size, product offerings up and down the tech stack, from information storage to applications, are controlled by just a few firms. Today, this includes platforms like Google, whose dominance over the search engine market allows it to set terms for publisher visibility online, while its hold on the ad tech stack allows it to extract profit on multiple sides of the digital advertising market.<sup>76</sup> These dominant firms have acquired and exploited vast amounts of user data to their advantage, leveraging it to keep consumers locked into their platforms and industry rivals at a disadvantage. Simultaneously, as new innovators enter the market, instead of competing on the merits, the same firms buy and absorb them into their existing business models.<sup>77</sup> These actions limit consumers even further, who may have an issue with a company’s business practices, preventing them from migrating to a market alternative (and therefore have additional avenues for expression).<sup>78</sup>

---

<sup>75</sup>*The Last Great American Dynasty*, Archives Foundation (accessed Apr. 25, 2025), <https://archivesfoundation.org/newsletter/broken-trust/>.

<sup>76</sup> Elise Phillips, *The Google Ad Tech & Search Cases: How Combined Remedies Could Reshape Digital Markets*, Public Knowledge (Dec. 19, 2024), <https://publicknowledge.org/the-google-ad-tech-search-cases/>.

<sup>77</sup> Comments to the FTC re: Request for Information for Public Comment on Corporate Consolidation Through Serial Acquisitions and Roll-Up Strategies, Public Knowledge (Sep. 24, 2020), <https://publicknowledge.org/policy/ai-and-competition-comments/>.

<sup>78</sup> *Id.* (“When a few companies dominate the market, consumers become reliant on a specific ecosystem. This reliance can make transitioning to alternatives challenging, often resulting in the loss of access to certain features or data. Additionally, consolidated platforms may not integrate easily with competing products, creating barriers for users looking to switch. The lack of competition in technology ecosystems can lead to stagnation in innovation and service improvement and presents significant hurdles for consumers seeking to explore different products.”)

The concern here is not about moderation standards per se, but about the concentration of power that enables just a small number of companies to dictate the rules across the digital economy. Platforms like Amazon or Google pick winners and losers in their search results, often preferencing themselves. App stores like Apple’s App Store and Google’s Play Store restrict access entirely or impose steep fees on developers. Consistently, gatekeeper power is at the root of Big Tech’s competition problems, as dominant social and marketplace platforms have significant control over content, including third-party businesses’ ability to reach their customers (e.g., setting the rules of engagement for visibility, access and commerce).<sup>79</sup> This concentration of power undermines competition and consumer choice.

### ***B. Interoperability and User Autonomy as Competition Solutions***

The Commission should prioritize policies that promote structural competition and user empowerment. For one, the Commission should investigate how to create industry-wide standards for interoperability and data portability, which can lower switching costs and enable new entrants to compete without requiring users to abandon their networks or digital communities. Such measures would enable users to transfer their data and networks seamlessly between platforms, reducing the lock-in effect and encouraging platforms to compete on quality and user satisfaction. As a result, dominant platforms are forced to compete with rivals on the quality of their services, content moderation practices, and responsiveness to consumer demands.<sup>80</sup>

---

<sup>79</sup> Public Knowledge, *Platform Regulation*, <https://publicknowledge.org/issue/platform-regulation/>.

<sup>80</sup> Elise Phillips, *Communities Held Captive: How to Free Virtual Communities from Digital Platform Consolidation*, Public Knowledge (Sep. 6, 2024), <https://publicknowledge.org/communities-held-captive-how-to-free-virtual-communities-from-digital-platform-consolidation/>.

Likewise, to counter concerns about platform influence over free expression through their content moderation practices, the Commission should use its authority to investigate alternatives to centralized control, specifically decentralized and federated platforms. Unlike conventional social media platforms, where a single corporate entity maintains complete control over content policies, technical infrastructure, and user data, decentralized and federated models distribute authority across multiple independent operators while maintaining interconnectivity. Emerging protocols like Holochain<sup>81</sup> and Nostr,<sup>82</sup> and efforts led by Tim Berners-Lee through the Solid project,<sup>83</sup> offer blueprints for decentralized digital spaces that do not lock in users. In a federated system like Mastodon, numerous independently operated servers (or “instances”) host their own communities with distinct moderation approaches. Users on different instances can interact with each other while remaining subject to the policies of their home server.

Decentralized and federated platforms are not influenced by the economic incentives governing content decisions as traditional online platforms. Currently, as reiterated in this comment, dominant platforms make moderation choices primarily to optimize advertiser appeal across massive user bases, inevitably leading to one-size-fits-all policies that fail to accommodate diverse speech preferences. Decentralized platforms typically operate with different financial models (often community-funded, subscription-based, or maintained by public institutions), which reduce the pressure to maximize engagement or advertiser satisfaction at the expense of certain forms of expression.

Unlike centralized platforms where a single algorithmic change can instantly alter the visibility of certain content for billions of users, affecting expression across a federated network would require cooperation among numerous independent operators. The practical effect of these

---

<sup>81</sup> <https://www.holochain.org/>.

<sup>82</sup> <https://nostr.com/>.

<sup>83</sup> <https://solidproject.org/>.

structural differences is that speech decisions become more democratic, contextual, and responsive to diverse user needs. Rather than concentrating the power to determine acceptable expression in a handful of technology companies, decentralized and federated models distribute this authority across numerous communities while maintaining the network effects that make social platforms valuable. This redistribution of governance power represents perhaps the most promising technical solution to concerns about dominant platforms' influence over online expression — addressing the root cause of speech control without requiring constitutionally problematic content regulation.

## **VI. Conclusion**

The Commission should recognize that government intervention in content moderation decisions would also fail to address the underlying market concentration issues that limit consumer choice and expression online. Thus, the FTC should refrain from intervening in content moderation practices, which are protected under the First Amendment and best understood as expressions of editorial discretion, not censorship. Instead, the Commission should focus on its core strengths — promoting structural competition and enforcing against unfair or deceptive business practices. This includes strengthening procedural protections for users, enforcing platforms' stated commitments, promoting algorithmic accountability and user choice, and advancing interoperability and decentralized alternatives that enhance user autonomy. These measures address the real harms of platform dominance without infringing on free expression or imposing unconstitutional content-based mandates. By targeting the root causes of market concentration and supporting a competitive, transparent technology platform marketplace, the FTC can uphold both consumer protection and free expression.