

August 25, 2022

VIA OVERSIGHT BOARD PUBLIC COMMENTS FORUM

Re: Request for Comment on PAO 2022-01 regarding Meta's
COVID-19 misinformation policies



LEGAL DEPARTMENT

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Dear Facebook Oversight Board,

The American Civil Liberties Union welcomes the opportunity to provide comments on Policy Advisory Opinion 2022-01 regarding Meta's COVID-19 misinformation policies. Meta has asked the Oversight Board whether it should continue removing COVID-19 misinformation, as outlined in the company's policy on harmful health misinformation, or whether it should take a less restrictive approach, such as demotion, third-party fact checking, or labeling. Meta states that it implemented a removal policy because "outside health experts told us that misinformation about COVID-19, such as false claims about cures, masking, social distancing, and the transmissibility of the virus, could contribute to the risk of imminent physical harm."

Today, we support Meta taking one of the less restrictive approaches because disputed scientific claims are an area where more speech is preferable to censorship.

In general, false assurances—such as telling the public that COVID-19 is a hoax and that there is no need to take precautions to prevent transmission—can pose as much of a threat to public safety as false alarms. But the question of what is fact and what is fiction is often impossible to determine neutrally or objectively. There will be easy, clear cases, such as a post recommending that one drink bleach to avoid COVID-19, which is not only false but also dangerous. But there will also be a thicket of hard-to-call cases, especially in the field of health. Is acupuncture effective? Are low-carb diets "fake"? Is barefoot running good for you? On these topics, the established medical experts may have once been confidently dismissive, but now the answers are up for debate.

The same has been true for COVID-19. Even when experts make every effort to confirm the accuracy of their

assertions, public health matters are often complex, contentious, and murky. For example, at first, public health authorities [told the public that masks were unnecessary](#) and could even increase risks of contracting COVID-19, if worn improperly. Then they said that masks were [essential](#). Today, there is a [continuing debate](#), including among experts, about [whether and when masks are recommended](#), given the availability of effective vaccines.

Initially, public health authorities asserted that COVID-19 could be contracted from [contaminated surfaces](#). That turned out to be false, and the World Health Organization [took the position](#) that the virus was transmitted by respiratory droplets. Now, scientific consensus is that the [disease is airborne](#), despite much early push-back.

The highly politicized debate over the effectiveness of ivermectin is another example. While many scorned those who over-promised the powers of “horse dewormer,” there were some [legitimate studies](#) with initially promising results.

These scientific debates not only highlight the difficulty of determining accuracy as public health crises unfold—but they also could not have evolved if contrarian assertions were summarily shut down.

Meta’s current policy is to remove misinformation (primarily about vaccines) when public health authorities conclude that the information is false and likely to directly contribute to imminent vaccine refusals. This may make sense in a limited way during a true emergency, where distribution of the information will and does in fact directly cause imminent and substantial public harm. *See, e.g.* the Federal Communications Commission’s broadcast hoaxes rule, 47 C.F.R. § 73.1217.

But ultimately, if the immediate danger has abated, even reliance on trusted authorities is not enough to ensure public health. True, listening to experts is a critical part of epistemology—the study of how humans “know” something. But we are in the grip of a staggeringly complex array of [cognitive biases](#) and are generally ignorant of their role in our thinking and [decision-making](#). That we test each other’s thinking and collaboratively arrive at standards of epistemic credibility lifts the art of justification beyond the limitations of individual minds, and grounds it in collective wisdom.

Moreover, the fact that someone is in a position of authority does not mean they know or tell the truth. President Reagan [ignored and trivialized](#) the AIDS crisis, claiming that it was a “gay plague” that would not affect others, and therefore there was no reason to care. President George W. Bush [told the public](#) that Iraq had weapons of mass destruction.

Even agencies charged with scientific expertise rather than politics have misrepresented research and data. For decades, government agencies [refused to admit](#) that cannabis has valuable medical uses. More recently, [NOAA lied](#) when it supported President Trump's false claim that Hurricane Dorian was likely to hit Alabama.

Unsurprisingly, as more research is done, even well-intentioned and well-informed expert consensus can evolve. Removal from Meta's platforms is a drastic response, given the central role Facebook and Instagram play in public discourse. The only way to address scientific errors while allowing knowledge to evolve is to let the conversations happen. Labeling and third-party fact checking allow this to take place, while mitigating the dangers of information generally thought, under current knowledge, to be wrong. These are the best, most carefully crafted approaches for the company to take. Instead of squelching or censoring stories, Meta would include *more* information with posts, telling people, in effect, that "this party here says this material shouldn't be trusted" and highlighting why. That does not create the censorship concerns that more heavy-handed approaches might invoke. So too, if experts, usually employed by the government, are the main source by which Meta decides what can and cannot be published; reporters and others will be less likely to discuss information that is controversial or that has not been verified by the government.

Given the complexities, Meta is not in a good position to remove -- the strongest measure -- materials making claims about health. It does not have the substantive expertise. Relying on those with expertise is fraught. Like all mass censorship, removal [inevitably leads](#) the company into a morass of inconsistent and often silly decisions and troubling [exercises of power](#). It might sound easy to get rid of "misinformation," "disinformation," or "fake news," but many cases will require a specific, individual judgment call, and often, a difficult one, even for experts.

Fact checking and flagging [should be Meta's primary approach](#), so that conversations about the disease can evolve and the public has access to information about these debates. It also removes a reason many people have to believe false information, that the truth is being suppressed by powers that be, such as profit-seeking pharmaceutical companies and repressive governments.

Meta should provide regular reports about what information it considers "health misinformation," and what interventions it uses in response—both to give users notice of the services' terms of use, and to provide needed operational transparency to the public.

Affected users also need due process and recourse for erroneous decisions. When content is moderated according to this policy, Meta should provide users with avenues to contest the application of labels, warning screens, or demotion of their content. Appeals processes should be robust and available to all users, though priority should be given to users whose content is deleted or whose accounts are shut down.

The First Amendment rights to free speech and a free press promote, rather than undermine, public safety. “The Framers of the First Amendment, fully aware of both the need to defend a new nation and the abuses of the English and Colonial Governments, sought to give this new society strength and security by providing that freedom of speech, press, religion, and assembly should not be abridged.” *N.Y. Times Co. v. United States*, 403 U.S. 713, 719 (1971) (Black, J., concurring).

Ultimately, the best approach is to contextualize potentially false claims and create tools for persuasion, rather than removing content. Because it is difficult to precisely define what constitutes misinformation across a whole range of topics, removing misinformation at scale risks unjustifiably interfering with users’ expression.

Sincerely,

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