

Portland State University

PDXScholar

---

Engineering and Technology Management  
Student Projects

Engineering and Technology Management

---

Fall 2020

# Policing Politics: Facebook and a Politician's Right to Free Speech

Adewunmi Adedji

*Portland State University*

Nisha Hemantha Raju

*Portland State University*

Jennifer Wagner

*Portland State University*

Alfonso Herrero

*Portland State University*

Matthew Johnson

*Portland State University*

Follow this and additional works at: [https://pdxscholar.library.pdx.edu/etm\\_studentprojects](https://pdxscholar.library.pdx.edu/etm_studentprojects)



Part of the [Communication Technology and New Media Commons](#), and the [Technology and Innovation Commons](#)

Let us know how access to this document benefits you.

---

## Citation Details

Adedji, Adewunmi; Raju, Nisha Hemantha; Wagner, Jennifer; Herrero, Alfonso; and Johnson, Matthew, "Policing Politics: Facebook and a Politician's Right to Free Speech" (2020). *Engineering and Technology Management Student Projects*. 2300.

[https://pdxscholar.library.pdx.edu/etm\\_studentprojects/2300](https://pdxscholar.library.pdx.edu/etm_studentprojects/2300)

This Project is brought to you for free and open access. It has been accepted for inclusion in Engineering and Technology Management Student Projects by an authorized administrator of PDXScholar. Please contact us if we can make this document more accessible: [pdxscholar@pdx.edu](mailto:pdxscholar@pdx.edu).



# ***Title: Policing Politics: Facebook and a Politician's Right to Free Speech***

Course Title: Engineering and Technology Management

Course Number: ETM520

Instructor: Dr. Tugrul Daim

Term: Fall

Year: 2020

Author(s): Adewunmi Adedji, Nisha Hemantha Raju, Jennifer Wagner, Alfonso Herrero, Matthew Johnson

ETM OFFICE USE ONLY

Report No.:

Type: Student Project

Note:

## Table of Contents

<b>Executive Summary</b>	<b>2</b>
<b>Introduction</b>	<b>2</b>
<b>The Case, Our Dilemma, and Our Options</b>	<b>5</b>
<b>What led to this dilemma?</b>	<b>5</b>
<b>The Legal Perspective of Social Media Platforms</b>	<b>8</b>
<b>Evaluating Each Option</b>	<b>13</b>
<b>Facebook's Competitors</b>	<b>16</b>
<b>Our Decision</b>	<b>17</b>
<b>Conclusion</b>	<b>17</b>
<b>Recent Developments in the Legal Perspective of Social Media Platforms</b>	<b>19</b>
<b>Bibliography</b>	<b>21</b>

# Executive Summary

Advancements in technology are not without their own ethical concerns. Social media technology provides for platforms which allow users to interact and exchange ideas in virtual communities. Of these Facebook is among the leaders of the pack with an estimated 2.7 billion monthly active users globally as of the second quarter of 2020 and estimated 190 million users in the United States as of October 2020.

This wide reach, in combination with low cost for advertisement makes it one of the platforms of choice for Organization to promote their products, services or agenda. This accounts for why 98% of the Facebook total revenue was from advertisements. With this though presents an ethical concern, the spread of misinformation. Following the 2016 elections, investigations uncovered the Russian operative embarked on a mass campaign of spreading misinformation on Facebook to influence the American election, and this went unnoticed by Facebook. This poses a security threat America's nationhood and clear actions need to be taken to mitigate this ethical concern.

This study assesses the case study in (Hoffman 2020) and provides recommendations for Facebook to ban all political advertisement from its platform in a bid to mitigate this ethical concern on the spread of misinformation as politics is concerned.

## Introduction

### Technology and Ethics

Technology with its advantages for the advancement of human Life does pose its own ethical concerns. Understanding that technology is a means to an end, the ethical considerations of technology are assessed in the end-product of technological offerings. As (Betz, 2011) describes, "*Many of the ethical concerns about technology are about the ends to which technological systems are the means*". With this thought we clearly identify technology as some sort of a morally independent entity, with its morality defined by the outcome of its application. A number of schools of thoughts identify with this notion, being in part consistent with the Value-Neutrality Thesis (VNT), which identifies technology as morally and politically neutral, neither good or bad. This concept remains one of debate. On the other end of the spectrum is the concept of intrinsically evil technologies; technologies for which no possible good outcomes can be derived from it.

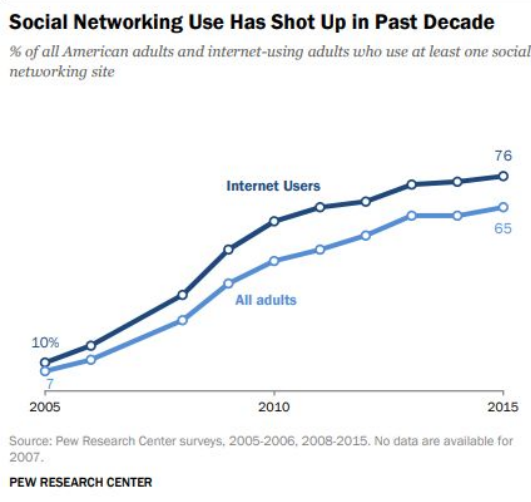
The Ethical concerns about technology border around safety and security; "is the technology safe and secure? Safe to whom? To the immediate user? To neighbors? To the environment?" (Betz, 2011). As society continues to increase in its knowledge of the laws that govern the world around us, the amount of technology built on that knowledge is also on the

increase and so is the reliance on them. The ethical concerns of safety and security are rooted in this reliance. While governments are grappling to catch up with the times and created regulations and laws to govern technology use, several studies are emerging showing consensus that technology companies need to factor in ethical concerns of the use of their products when they are being designed (Thomke 2003). Technology Organizations need to be proactive about the ethical implications of their technology and should preplan ethical technology policy.

## Social Media Technology

Social media refers to the means of interactions among people in which they create, share, and/or exchange information and ideas in virtual communities and networks (*Social Media Overview*). The technology leverages on the social nature of humanity, as Aristotle posits, “Man is by Nature a social animal . . .” and the need to socialize in any form is fundamental to the development of humanity. It is estimated that globally, there were over 3.4 billions social media users as at February 2019 and that number is growing by 9% , annually. In the United States, nearly two-thirds of American adults (65%) use social networking sites (Perrin, 2020). YouTube and Facebook are the most-widely used online platforms, and its user base is most broadly representative of the population as a whole. Smaller shares of Americans use sites such as Twitter, Pinterest, Instagram, and LinkedIn. (*Demographics of Social Media Users and Adoption in the United States 2020*). The technology is ethically neutral, however in application it can pose serious ethical concerns in lieu of its far-reaching ability and usually broad user base. These platforms are potent tools for engagement on issues and public opinion on matters can be influenced and even elicited. The advent of social media has affected the way people source for and share information.

Figure 1. Social Media Users in United States



Note. (Perrin, 2020)

## Facebook

Facebook Inc, founded in 2004, continues to be among the most widely used social media platforms among U.S. adults. Around seven-in-ten U.S. adults (69%) use Facebook. Around four-in-ten U.S. adults (43%) get news from Facebook, according to a survey conducted in July and August 2018. The share of U.S. adults who get news through Facebook is much higher than the shares who get news through YouTube (21%), Twitter (12%), Instagram (8%), LinkedIn (6%) and other platforms. The company founded by Mark Zuckerberg, initially began as Facemash in 2003 in his Harvard college dormitory. The site allows users to post status updates, pictures and other media contents and tag their *friends* they are connected to on the platform. By 2012, the platform became the largest social media network site surpassing one billion total users.

As of December 2019. Over 75% of Americans were participating in social networking sites and Facebook has a leading share of that, accounting for 50.68% of all social media site visits in the United States. The fast adoption has influenced how people organize for political change as evidenced with the Arab Springs and more recently the #EndSars movement Nigeria. Political actors have also identified the potency of the platform to spread their agenda and canvass for support. Political engagement on the platform takes the form of promoted contents (advertisements), regular contests by political actors and interest groups and pages. Advertisements continue to be the top source of revenue for Facebook, with ad revenue representing 98% of its global revenue in 2019. At least \$264 million was spent in the third quarter of 2020 on political ad for presidential, gubernatorial, and congressional races, of that amount, about \$94.1 million dollars was solely for the presidential race, despite, Facebook third quarter earning indicates that that amount comes to only about 3% of its revenue.

The ethical concerns on the platform border on a wide range of issues, with privacy and the spread of misinformation being top of that list. The company began dealing with privacy issues earlier in its history and began to provide users more ability to control who can view or access their content. With the increasing use of the platform for political engagement, the company faces criticisms from lawmakers, regulators for enabling the spread of false information and for letting political groups take advantage of the same types of targeting tools used by corporate advertisers. As observed in the 2016 elections, Russian operatives from the Internet Research Agency embarked on large-scaled misinformation campaigns that went unnoticed by Facebook for a while. The agency setup Facebook pages and posted untrue or mis-leading information that got shared more than 340 million times by Users on the platform. A clear ethical concern and Facing pressure from the electorate and lawmakers, it becomes imperative for Facebook to make strategic moves to address this issue.

## The Case, Our Dilemma, and Our Options

Our case places us in the shoes of Shane Ferris, vice-president of advertisements and platform operations in Facebook, a person who stood behind the company's stance of promoting free speech. Shane sat in his office staring at a Facebook advertisement. Elizabeth Warren, a Democratic presidential candidate, had recently purchased the ad that highlighted how politicians can spread misinformation through Facebook's platforms, permissible under a decision made by company CEO Mark Zuckerberg. The advertisement declared "Breaking news: Mark Zuckerberg and Facebook just endorsed Donald Trump for re-election." The ad's false claim aimed at testing the limits of the social media platform's policies. Given the use of the platform by foreign actors to influence the 2016 US presidential elections, Shane was wondering if Facebook should reconsider its stance in light of the backlash from politicians, pundits, and, most importantly, the public.

Given the situation, Shane Ferris and Facebook were presented with three options going forward:

1. Ban all political advertisements from the platform
2. Allow ads and subject them to third-party or internal fact-checking
3. Allow political ads directly from campaigns without fact-checking

## What led to this dilemma?

On February 16, 2018 Special Counsel Robert S. Mueller III indicted 13 Russian individuals and three Russian organizations for engaging in operations to interfere with U.S. political and electoral processes, including the 2016 presidential election. Throughout the indictment, Mueller lays out important facts about the activities of the Internet Research Agency (IRA)—the notorious Russian "troll" farm—and its operatives:

Defendants, posing as U.S. persons and creating false U.S. personas, operated social media pages and groups designed to attract U.S. audiences. These groups and pages, which addressed divisive U.S. political and social issues, falsely claimed to be controlled by U.S. activists when, in fact, they were controlled by Defendants. Defendants also used the stolen identities of real U.S. persons to post on ORGANIZATION-controlled social media accounts. Over time, these social media accounts became Defendants' means to reach significant numbers of Americans for purposes of interfering with the U.S. political system, including the presidential election of 2016.  
(<https://intelligence.house.gov/social-media-content>)

The indictment also notes that the IRA:

[H]ad a strategic goal to sow discord in the U.S. political system, including the 2016 U.S. presidential election. Defendants posted derogatory information about several candidates, and by early to mid-2016, Defendants' operations included supporting the presidential campaign of then-candidate Donald J. Trump ("Trump Campaign") and disparaging Hillary Clinton. Defendants made various expenditures to carry out those activities, including buying political advertisements on social media in the names of U.S. persons and entities. Defendants also staged political rallies inside the United States, and while posing as U.S. grassroots entities and U.S. persons, and without revealing their Russian identities and ORGANIZATION affiliation, solicited and compensated real U.S. persons to promote or disparage candidates. Some Defendants, posing as U.S. persons and without revealing their Russian association, communicated with unwitting individuals associated with the Trump Campaign and with other political activists to seek to coordinate political activities. (<https://intelligence.house.gov/social-media-content>)

Additionally, the Department of Homeland Security and the Office of the Director of National Intelligence laid out the Intelligence Community's assessment that senior Russian government officials had directed a hacking-and-dumping campaign to interfere in the November 2016 U.S. election. The House Intelligence Committee Minority affirmed the ICA's findings following a review of extensive classified and unclassified evidence during the investigation, including significant information discovered since the release of the ICA in January 2017. The House Intelligence Committee Minority has worked to expose the Kremlin's exploitation of social media networks since the ICA was first published, highlighting this issue for the American public during an open hearing with social media companies in November 2017. The Committee Minority also released a list of Twitter accounts associated with the Internet Research Agency and a representative sampling of Facebook ads paid for by the group. As Ranking Member Adam Schiff stated during the Committee's November 2017 open hearing with senior officials from Facebook, Twitter, and Google:

[The Russian] social media campaign was designed to further a broader Kremlin objective: sowing discord in the U.S. by inflaming passions on a range of divisive issues. The Russians did so by weaving together fake accounts, pages, and communities to push politicized content and videos, and to mobilize real Americans to sign online petitions and join rallies and protests. Russia exploited real vulnerabilities that exist across online platforms and we must identify, expose, and defend ourselves against similar covert influence operations in the future. The companies here today must play a central role as we seek to better protect legitimate political expression, while preventing cyberspace from being misused by our adversaries. (<https://intelligence.house.gov/social-media-content>)



## Facebook data

As part of the Committee's open hearing with social media companies in November 2017, the Minority used several advertisements as exhibits, and made others available as part of a small representative sampling. During the hearing, Committee Members noted the breadth of activity by the IRA on Facebook:

- 3,393 advertisements purchased (a total 3,519 advertisements total were released after more were identified by the company)
- More than 11.4 million American users exposed to those advertisements
- 470 IRA-created Facebook pages
- 80,000 pieces of organic content created by those pages
- Exposure of organic content to more than 126 million Americans

Further, the Senate Select Committee on Intelligence undertook a study, consistent with its congressional mandate to oversee and conduct oversight of the intelligence activities and programs of the United States Government, to include the effectiveness of the Intelligence Community's counterintelligence function. In addition to the work of the professional staff of the Committee, the Committee's findings drew from the input of cybersecurity professionals, social media companies, U.S. law enforcement and intelligence agencies, and researchers and experts in social network analysis, political content, disinformation, hate speech, algorithms, and automation, working under the auspices of the Committee's Technical Advisory Group (TAG).

The Committee found that no single group of Americans was targeted by IRA information operatives more than African Americans. By far, race and related issues were the preferred target of the information warfare campaign designed to divide the country in 2016. Evidence of the IRA's overwhelming operational emphasis on race is evident in the IRA's Facebook advertisement content (over 66 percent contained a term related to race) and targeting (locational targeting was principally aimed at African Americans in key metropolitan areas with), its Facebook pages (one of the IRA's top performing pages, "Blacktivist," generated 11.2 million engagements with Facebook users), its Instagram content (five of the top 10 Instagram accounts were focused on African-American issues and audiences), its Twitter content (heavily focused on hot button issues with racial undertones, such as the NFL kneeling protests), and its YouTube activity (96 percent of the IRA's YouTube content was targeted at racial issues and police brutality).

## The Legal Perspective of Social Media Platforms

One of the great ironies of the modern history of the United States is that perhaps the most significant protection for online freedom and innovation was included in a bill aimed at restricting free speech on the internet. The stated purpose of the Communications Decency Act (CDA) of 1996 was to prevent minors from gaining access to sexually explicit material on the internet (Zeigler, n.d.). The CDA was enacted as Title V of the Telecommunications Act of 1996. Though not included in the original drafts—whose purpose was to promote new technologies and reduce regulation to promote competition among internet service providers—it was later offered as an amendment. The CDA prohibited any person from knowingly transmitting sexually explicit material to another person under the age of 18. Additionally, it outlawed the “knowing” display of “patently offensive” materials in a way that was “available” to someone under 18 (Zeigler, n.d.). This part of the provision had the potential to include any individual who was providing content without a way of verifying the age of the viewer. This created the possibility that commercial and noncommercial content providers could be required to institute screening of all content in order. In *Reno v. American Civil Liberties Union* (1997), the Supreme Court ruled the CDA to be unconstitutional on the grounds that it was overbroad—suppressing a significant volume of protected adult speech in order to protect minors from potential harm (Zeigler, n.d.). The internet community wholly objected to the CDA while it was in place and the combined community activism was largely responsible for the anti-free speech provisions being taken before the Court (EFF, n.d.). The most significant remaining part of the original CDA is Section 230. Section 230 states that “[n]o 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” (47 U.S.C. § 230).

The effect of Section 230 is that online intermediaries that host or publish third party content or speech are not considered legally responsible for the material (EFF, n.d.). Protections under Section 230 extended to traditional Internet Service Providers (ISPs) as well as a broad category called “interactive computer service providers.” This group includes essentially any online service that hosts or republished third-party content. Notable exceptions include criminal and intellectual property-based claims, however CDA 230 is widely regarded as the foundation that has allowed for innovation and free speech online in the United States (EFF, n.d.). The legal framework is what allows platforms such as Youtube and Vimeo to allow users to upload their own videos, Yelp and Amazon to show user reviews, Craigslist to host classified ads, and social media companies like Facebook and Twitter to offer social networking services. The volume of content published on these platforms and others makes it infeasible for online intermediaries to

fully prevent objectionable content—a requirement that would be enforced under penalty of law without Section 230. Facebook currently has over 1 billion global users, while Youtube uploads over 100 hours of video every minute (EFF, n.d.). If section 230 were never enacted—or if it were to be partially or fully repealed—companies would be faced with two basic options. First, companies could stop hosting any user content at all. Second, they could engage in universal pre-screening and censorship of all third-party content in order to avoid facing potential liability (EFF, n.d.).

Section 230 and the legal protections it provides are largely unique to the United States. Countries that are often compared to the US in the context of the digital world, such as European nations, Canada, and Japan, as well as the significant majority of other countries in the world do not have similar legal statues (EFF, n.d.). Many of these countries have large levels of internet access and usage, however most of their prominent online services are based in the United States. For a website that aims to provide a platform for free speech and expression, particularly if it is controversial or political in nature, CDA 230 makes the United States a legal safe haven for operations (EFF, n.d.). The passage of Section 230 was specifically to foster innovation and development in the internet space in the United States. The United States Congress wrote in their findings for CDA 230 “the rapidly developing array of Internet and other interactive computer services available to individual Americans represent an extraordinary advance in the availability of education and informational resources to our citizens” (Legal Information Institute, n.d.). They recognized in 1996 that the internet was only going to increase in terms of its spread and impact on the daily lives of all people. With the passage of Section 230, they laid the groundwork for a social media company such as Facebook to exist and offer the services it does. Without its legal protections, the nature of the service that over a billion people have come to use regularly would be altered or lost along with the countless other US companies operating under the law.

Based on protections from CDA 230, social media companies such as Facebook are not considered owners of the content they host. However, they still actively regulate what is being published on their platforms. While the legal framework provided by Section 230 has acted as the foundation for social media companies such as Facebook, the First Amendment of the Constitution of the United States and its protections allow them to continue their current practices. The First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to to petition the Government for a redress of grievances (Constitution Annotated, n.d.).

In the specific context of the press, the First Amendment states that the press must not be subjected to the power of a licenser. The goal of the statute was to ensure that the law must still be responsible for the judgment of publications, but that will of individuals is left free. Only in situations where that free will has been abused should it become the object of legal punishment, rather than be judged preemptively (Constitution Annotated, n.d.). Sir William Blackstone, an English judge, famously wrote in his work “Commentaries on the Laws of England” regarding the First Amendment, “Neither is any restraint hereby laid upon freedom of thought or inquiry; liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive to the ends of society, is the crime which society corrects” (Constitution Annotated, n.d.). The principle thought that Blackstone was advancing is the idea that society, not the government, should be the sole adjudicator of thought and inquiry.

In the context of social media companies, there currently exists two arguments for the application of the protections of the First Amendment (Hudson Jr., n.d.). The first is that First Amendment rights should be extended to the users of social media platforms. As it currently stands, the First Amendment only limits government actors, including at the federal, state, and local levels. However, the argument states that powerful private entities, such as Facebook, Twitter, and Google, have the ability to limit, control, and censor speech as much or more than any government entity (Hudson Jr., n.d.). Furthermore, in the modern, digital world, it posits that a society that cares about the protection of free expression must recognize that the First Amendment should be extended to cover these private entities. At the core of this argument is the belief that two ideas are fundamental to free expression in a society: the marketplace of ideas, and the opportunity for individual self-fulfillment (Hudson Jr., n.d.). Since these justifications are in no way dependent on governmental presence, their protection must also include non-government actors. The current issue with that argument centers on a piece of legal precedent called the state-action doctrine, which is applied to the Fourteenth Amendment. The Fourteenth Amendment reads:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (Legal Information Institute, n.d.).

In the Civil Rights Cases of 1883, the Supreme Court was presented with the question: does the civil rights act of 1875 violate the 10th Amendment of the Constitution which reserves all powers not granted to the national government to the states or to the people (Oyez, n.d.)? The Civil Rights Act of 1875 affirmed the equality of all persons of facilities such as transportation, hotels and inns, theaters, and in places of public amusement. Though these businesses were

privately owned, they acted like public utilities by exercising publication functions for the benefit of the public and as a result should be subject to public regulation (Oyez, n.d.). In five separate cases, a black person was denied the same accommodations as a white person, violating the 1875 act. Viewed by some as an abdication of responsibility and an implicit allowance for racism that was rampant in the country, the court decided that the Fourteenth Amendment did not permit the federal government to prohibit discriminatory behavior by private parties (Oyez, n.d.). This decision rested on the court's distinction between state and private action, ruling that unlike acts of the state, private acts of racial discrimination are private wrongs that the national government is powerless to correct by means of civil rights legislation (Oyez, n.d.). The decision rendered Sections 1 and 2 of the Civil Rights Act of 1875 unconstitutional because they exceeded Congress's authority under the Fourteenth Amendment. While laws regarding racial discrimination have changed dramatically since the 19th century, the decision in the Civil Rights Cases of 1883 established the state-action doctrine, which states:

[U]ntil some State law has been passed, or some State action through its officers or agents has been taken,...no legislation of the United States under [the Fourteenth A]mendment, nor any proceeding under such legislation, can be called into activity: for the prohibitions of the amendment are against State laws and acts done under State authority (Harvard Law Review, 2010).

It was not until 1946 in *Marsh v. Alabama* that the First Amendment would be brought before the Supreme Court regarding its protections as applied to private spaces. (Harvard Law Review, 2010). This case was based on an additional section of the state-action doctrine, which provides that a private actor may be subject to First Amendment violations under the doctrine if the private actor can be considered a public one when it exercises a function traditionally exclusively reserved to the State (Harvard Law Review, 2010). The court in *Marsh* held that a company town could not legally restrict the freedom of speech of its inhabitants because it was functionally equivalent to a public municipality. However, the exception to the state-action doctrine must have a narrow and limited application, as affirmed by the court in *United States v. Morrison* in 2000 (Harvard Law Review, 2010). Fundamentally, the state-action doctrine is entrenched in the conflict between personal autonomy and property rights against the freedom of speech. U.S. legal precedent leans heavily towards the former (Harvard Law Review, 2010). Historically, this tension has been minimally controversial. This is primarily attributed to the fact that through the country's history the spaces which have traditionally been understood to be public have been publicly owned (Harvard Law Review, 2010). However, in the modern digital age, this reality is changing. A significant percentage of public and particularly political discourse occurs today on virtual forums. While these forums are largely open to public access, they are nevertheless privately owned.

The second argument regarding the First Amendment in the context of social media

companies argues for the preservation of the rights of the platforms themselves. This argument is based on the idea that these companies are acting as the press, and the First Amendment expressly protects “freedom of speech [and] of the press” (Constitution Annotated, n.d.). In the 1997 case *Zeran v. American Online*, the court ruled that “a publisher’s traditional editorial functions” include “deciding whether to publish, withdraw, postpone or alter content” (Goldman, 2019). With this definition in mind, it is clear that Facebook and other companies such as Google engage in both speech and press activities when they re-publish or host third-party content. For example, Facebook’s newsfeed decides what third-party content to publish, as does Google’s search engine (Goldman, 2019). Automated screens implement publications decisions when they are used to filter out third-party content their human editors have determined to be unsuitable. Both Facebook and Google categorize and prioritize content using a complex combination of algorithms, again reflecting the company’s human-established editorial decisions when they publish the content to their users or readers. Additionally, Facebook and Google regularly retract previously published third-party content through both automated tools and human decisions (Goldman, 2019). While some operations are automated, the publication and withdrawal editorial decisions made by both Facebook and Google all rely on humans. In the case of Google, search results are refined based on the input from teams of search quality evaluators who are applying over 160 pages of editorial guidelines created by the company (Goldman, 2019). Employees at Google also use manual bans or prioritization downgrades to withdraw content from its search database. At Facebook, over 10,000 human editors in charge of safety and security are tasked with the application of the company’s editorial guidelines to decide whether third-party content should be published or withdrawn (Goldman, 2019). This argument acknowledges that suspicion and fear of the power held by internet giants like Google and Facebook has become widespread. However, the position states that instead of these being reasons to restrict the First Amendment from its protections for these companies, that the First Amendment should be part of the solution. The rights to freedom of speech and press are sacred and fundamental to our country’s success, and the courts have recognized that fundamental point (Goldman, 2019).

The most recent case regarding the First Amendment and its application to social media platforms is *Tulsi Now, Inc. v. Google, LLC*. The lawsuit was filed by Tulsi Gabbard’s presidential election campaign in early 2020 after Google suspended the campaign’s Google Ads account (Sabaghian, 2020). The campaign’s complaint argued that Google should be considered a state actor under the exception provided in the state-action doctrine of the Fourteenth Amendment. It attempted to make the case that Google’s services constitute a public forum, or its function equivalent, and resultantly that Google’s regulation of these services constitutes the regulation of free speech within a public forum (Sabaghian, 2020). Additionally, the campaign argued that Google was controlling speech within elections—which the campaign argued is a state function—by regulating voters’ access to candidate information. On March 3rd, 2020, a California judge dismissed the lawsuit, determining that the campaign had failed to state a claim legally sufficient to implicate the First Amendment. Following precedent, the court rejected the

campaign's claim of Google's position as a state actor, writing that "[t]o the extent Google "regulates" anything, it regulates its own private speech and platform" (Sabaghian, 2020). This ruling clearly reinforced the precedent that protects the application of First Amendment rights to social media platforms, plainly concluding that these companies should be allowed to make their own decision on how to handle third-party content, including political advertisements.

## Evaluating Each Option

The 2020 election has brought up a lot of conversation about political ads, and the media company Kantar has predicted that \$6 billion will be spent on political advertising this year, with 20% of that money going to digital advertising. (Jenssen-Hegelbach, 2019). New political election spending projections for 2020 will now hit \$10.8 billion, according to an estimate from the Center for Responsive Politics - 50% higher than the 2016 presidential election period. (Friedman, 2020). In order to make our decision we have categorized all pros and cons of each option into four, Social Impact, Implementation, Cost and Revenue, Society's perception, and Legal Aspects.

### Social Impact

#### **Option 1: Ban all political advertisements from the platform.**

Banning all political ads from the platform would ensure Facebook a strong commitment against misinformation, while keeping a politically consistent and neutral approach, this means, there would be no partisan bias since all ads from both parties would be banned.

#### **Option 2: Allow ads and subject them to third-party or internal fact-checking.**

Facebook can help people make an informed decision at the time of vote, this would ensure people get facts and promotes an educated vote, By doing this, Facebook can promote itself as socially responsible with a good commitment to misinformation and by doing so attracting more people to join the platform.

#### **Option 3: Allow political ads directly from campaigns without fact-checking.**

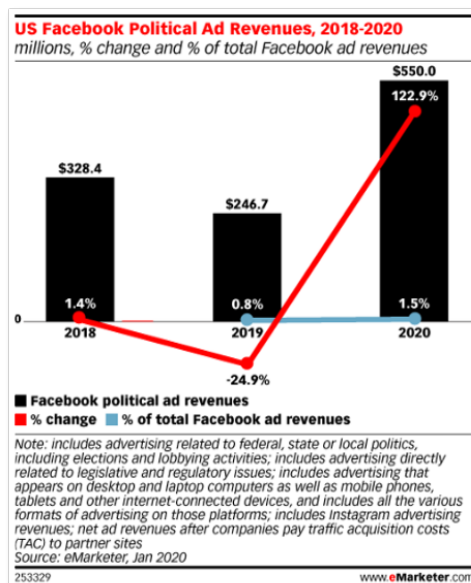
By allowing all ads, Facebook can keep its current stand on free speech. Sadly, history tells us that if given the possibility, the intentional spread of misinformation is almost ensured. From foreign interference to internal political strategies like the one presented in the case. This option, more than likely, will create more division and social unrest amongst the population.

### Implementation, Cost and Revenue to the company

#### **Option 1: Ban all political advertisements from the platform.**

The cost and complexity associated with banning every political ad can be somewhat easy to obtain via automated scripts, Artificial Intelligence and minimal human supervision. There would be some upfront hurdles that would need to be addressed, from creating a definition of what constitutes a political ad and who the ban would affect. Even if all the infrastructure is created in order to ban all political advertisement and postings, Facebook would need to continuously monitor and adapt to people trying to find loopholes in order to get their message across, thus, a team would need to be created to weed out the postings and ads that the scripts don't catch. Finally, it is estimated that over two billion dollars will be spent on social media political advertisement this year, a good portion of this would be on Facebook, this could be impactful to the company's revenue even though it is estimated to be only about 1.5% of the company's total revenue. (Enberg, 2020)

Figure 2. Facebook's Political Ad Revenues, 2018-2020



Note. (Enberg, 2020)

### Option 2: Allow ads and subject them to third-party or internal fact-checking.

Ensuring that all ads are factual is a huge undertaking. Some Artificial intelligence can be used to remove the easy to spot fake ads and postings, but the more complicated ads would require a big team of people to review making it very difficult to achieve without a huge expense that more than likely will not create a return on investment by the income generated by the ads. Additionally, ensuring that the team reviewing is neutral can be a challenge of its own.

### Option 3: Allow political ads directly from campaigns without fact-checking.

Allowing everything in the platform will likely allow for revenue growth, as stated above, in 2020 an estimated \$550 million dollars will be spent on Facebook in political ads. This stance is easy to enforce since with nearly zero oversight, running the advertisement would not



increase the current costs.

## Society's Perception

### **Option 1: Ban all political advertisements from the platform.**

There is a good possibility that choosing to ban all political ads will be seen and even pushed as an attempt to block freedom of speech but this approach would align Facebook with other social media companies like Twitter and Tik Tok that are already taking this approach

### **Option 2: Allow ads and subject them to third-party or internal fact-checking.**

In the Long term, Facebook could be seen as a good source of information and this could help the business grow to compete against other sources of information such as newspapers or television. Even though this approach would be non-partisan, there is a good chance society will still perceive Facebook to be aiding one party over another thus creating some backlash against the company.

### **Option 3: Allow political ads directly from campaigns without fact-checking.**

One advantage of this option is that Facebook stays completely neutral, but Facebook is likely to be seen as an agent of misinformation, thus, there is a good possibility that given this stance, people will stop trusting any advertising coming from the platform and migrate to other sites.

## Legal Aspects

Based on Freedom of Speech Laws in the US and Section 230 of the Communications Decency Act, Facebook is allowed to choose either of the 3 options without legal implications.

### **Option 1: Ban all political advertisements from the platform.**

There is a clear legal precedence to banning all political ads since both Twitter and Tik Tok have already banned them from their platforms. This won't stop some backlash from politicians that are already trying to change section 230 to have more control over social media content.

### **Option 2: Allow ads and subject them to third-party or internal fact-checking.**

Since there is already a push to update Section 230, the repercussions of being arbiter of the truth can, and very likely would, lead to new restrictions and control over social media and the internet.

### **Option 3: Allow political ads directly from campaigns without fact-checking.**

Allowing all political ads, even though not illegal it is unethical given what history has

shown.

## Facebook's Competitors

### Twitter

Twitter globally prohibits the promotion of political content. This decision was based on the company's belief that political message reach should be earned, not bought. Twitter defines political content as content that references a candidate, political party, elected or appointed government official, election, referendum, ballot measure, legislation, regulation, directive, or judicial outcome. Ads that contain references to political content, including appeals for votes, solicitations of financial support, and advocacy for or against any of the above-listed types of political content, are prohibited under this policy. The social media platform also does not allow ads of any type by candidates, political parties, or elected or appointed government officials.

### Tiktok

Tiktok does not allow political ads. The company affirms that the nature of paid political ads does not fit into the Tiktok platform experience. To that end, the company does not allow paid ads that promote or oppose a candidate, current leader, political party or group, or issue at the federal, state, or local level – including election-related ads, advocacy ads, or issue ads.

### LinkedIn

LinkedIn prohibits political ads, including ads advocating for or against a particular candidate, party, or ballot proposition or otherwise intended to influence an election outcome; ads fundraising for or by political candidates, parties, political action committees or similar organizations, or ballot propositions; and ads exploiting a sensitive political issue even if the advertiser has no explicit political agenda.

### Google (YouTube)

Google & YouTube allow election ads with restrictions in certain countries. However, there are certain restrictions. Only the following criteria may be used to target election ads:

- Geographic location (except radius around a location)
- Age, gender
- Contextual targeting: ad placements, topics, keywords against sites, apps, pages & videos

All other types of targeting are not allowed for use in election ads. Political advertisers can no longer target ads using data such as public voter records and general political affiliations such as

right-leaning, left-leaning, or independent. Google also restricts advertisers' ability to micro-target political ads on Google Search & YouTube and has removed the customer match feature, which enabled campaigns to match profiles with voter data.

## Reddit

Reddit's advertising policy forbids deceptive, untrue, or misleading advertising (political advertisers included). Further, each political ad is manually reviewed for messaging and creative content. Reddit does not accept political ads from advertisers and candidates based outside the United States, and only allow political ads at the federal level. In tandem, there is a subreddit dedicated to political ads transparency, which lists all political ad campaigns running on Reddit dating back to January 1, 2019. In this community, users can find information on the individual advertiser, their targeting, impressions, and spend on a per-campaign basis.

## Our Decision

After reviewing all Pros and Cons in each category and for each option, we realized that all three options have some pros and some cons and there is no "perfect" choice, but given the current situation, we came to the conclusion that while the most ethical approach would be to fact-check all advertisement and posts, the return on investment would not make it viable; Allowing everything would not only be unethical but overall bad for business as Facebook might be cataloged as junk information that might spread to other types of advertisement; Banning everything promotes fairness while reducing misinformation. Therefore, even though this option reduces the profits for Facebook and even increases some of the costs to ensure a stop to all political ads, in the long run it would be the best option socially and economically for the company.

## Conclusion

In the November hearing "Breaking the News: Censorship, Suppression and the 2020 Election." The Senate Committee addressed Facebook and Twitter regarding managing content and distribution of information. The concerns included censorship of legitimate content, the duration of time to reverse censorship, and the text labels applied to elected officials' postings. Zuckerberg's response to these concerns was that their fact checking program was "given the latitude to determine if the information and content is accurate." An overreaching consensus among Senators was the fact that Facebook and Twitter were flagging opinion posts and, in some cases, blocking content that was not directly tied to misinformation.

Some Senate members are suggesting government intervention to create a specialized

department controlling censorship. Other members support free and fair democracy opposing censorship, questioning the abuse of social media power and Government intervention to silence voices. The Senate also seemed skeptical about the contract moderation policies that currently exist as the standards are not very transparent and the execution is not consistent. Concerns also addressed the “employees who have known political affiliation and the implications over biased execution of content in moderation of policies and shepherding of the organizations and if implemented regulatory standards would make the issue better or worse?”(Hatmaker, 2020)

Zuckerberg explained to the Senate that monitoring internet integrity is a full-time process, and that Facebook has been using “AI systems to identify harmful content up front. The company has hired tens of thousands of people to do content review and they also partner with the intelligence community, law enforcement, politicians and utilize the local civil society to help flag issues” (Hatmaker, 2020) bringing awareness identifying harmful content. Facebook was praised for bringing awareness to a potential kidnapping. It was also scrutinized for not removing a militia group posting that organized a gathering on Facebook that led to violence, the page had been flagged over 450 times. After review, the page was found to have violated company policy and has since been removed. As a result, the company created a "Strengthened Policy around militia and similar groups, that was rolled out right before the election. Facebook had been placed on "high alert, due to civil unrest and tension." (Hatmaker, 2020) Hate speech and hate crimes were another topic of concern and that not all groups are being held to the same standards in the process of elimination from the platform. Zuckerberg stated, "this is incredibly important and takes hate speech and violence very seriously. Facebook has ramped up capacity to identify hate speech and violence around the world using AI and human review teams that can be tracked on the transparency reports that are issued." (Hatmaker, 2020) Zuckerberg claims “Facebook is now able to remove 94% of hate speech before it is reported to the company which is a dramatic amount of progress from just a few years ago where it was only at 20%. Facebook is invested to improve this process. Zuckerberg gave his commitment to the Senate that "Facebook views this as an issue of the highest severity and one that they are very focused on."(Hatmaker, 2020)

The Senate asked what should be done moving forward? Zuckerberg agreed that “some sort of regulatory framework is needed but also needs to be built and designed unique to the industry.”(Hatmaker, 2020) Twitter felt it was important to “protect and expand on 230. Social media needs to earn people's trust through encouraging more transparency around content moderation and process of it. There is a need for more straight forward appeals and the biggest focus should be on the algorithms and how they are managing and creating user experiences. Users need to have choices when using those algorithms on different platforms” (Hatmaker, 2020).

We have learned pros and cons of Technology and Ethics that influence and challenge social media platforms in developing corporate policies regulating the monitoring of

advertisements and postings. Legally, social media platforms lack regulations and are left to design their own policies that could potentially have a negative impact socially and erode business integrity through the spread of misinformation. Facebook has been using action research methods “quarterly reviewing enforcement reports detailing categories of harmful content and how effective they are at catching content before human reporting is required.” (Hatmaker, 2020). Social media platforms can police themselves by creating policies that provide consistency, transparency and make clear in their mission statement where they stand, protecting its users. Ethical responsibility, choice and decision is then shared between the individual(user) and an independent (social media). Zuckerberg also indicated that "Facebook would utilize academic studies to perform the postmortem analysis of the elections so that the results of that report are non-bias" (Hatmaker, 2020).

## Recent Developments in the Legal Perspective of Social Media Platforms

Often called “the twenty-six words that created the internet,” Section 230 of the 1997 Communications Decency Act is a landmark law in the United States that protects social media companies such as Twitter and Facebook from liability for user content that they host (Siripurapu, 2020). The tech industry maintains that this law is the bedrock of their platforms and allows the internet to flourish. However, criticism is mounting against companies who many claim are not doing enough to reduce harmful content or are overstepping with their censorship. Recently, President Donald J. Trump has repeatedly called for the repeal of the law and signed an executive order—that is currently being challenged in court—to attempt to reduce or eliminate some of its protections (Siripurapu, 2020). Additionally, he has threatened to veto the annual defense funding bill, the National Defense Authorization Act (NDAA), if it does not include the revocation of Section 230. The potential for impact on online expression and the operating models of social media platforms and other content re-publishers is profound.

Opposition to CDA 230 exists beyond President Trump and can be found coming from across the political spectrum. President-Elect Joe Biden has also called for the repeal of Section 230, and House Speaker Nancy Pelosi (D-CA) has previously called the law a “gift” to the tech industry that should not be taken for granted—and could be taken away (Siripurapu, 2020). Ron Wyden, now a democratic senator from Oregon and one of the original authors of Section 230, has remarked that tech companies have not done enough to combat and remove harmful or dangerous content online. On the left side of the political spectrum, Democrats argue that CDA 230 allows tech companies the ability to avoid increasing their work to fight hate speech and disinformation. On the right, Trump and other Republicans believe that the law removes consequences for the censorship of conservative voices (Siripurapu, 2020).

Issued in May 2020, President Trump's executive order attempted to reduce protections offered by Section 230. The action immediately followed Twitter placing fact checks on a number of his tweets regarding voting by mail (Siripurapu, 2020). Throughout 2020, Trump has battled with big tech companies, claiming that they are attempting to "rig the election" in his opponents favor and are pretending to be neutral platforms while actually suppressing content that is counter to their agenda. The order specifically calls out Twitter for what it terms "selective censorship" (Siripurapu, 2020). It orders his administration to review regulations to narrow the scope of CDA 230 and conduct investigations of companies that are engaging in what it describes as "unfair or deceptive" practices (Siripurapu, 2020). The move has received widespread criticism from tech companies as a threat to the freedom of speech online. Within days, challenges to the order were filed on First Amendment grounds (Siripurapu, 2020). Even as the court challenge plays out, many legal experts believe the order will have a chilling effect on the ongoing fight against disinformation online by tech companies. Looking forward, it is not clear what is likely to happen next. Congress could repeal Section 230 entirely, moving the digital landscape of the United States into an unknown and highly uncertain legal environment. If that were to happen, tech companies could take action to eliminate or significantly restrict user content in order to shield themselves from liability. Alternatively, they could stop engaging in any moderation whatsoever to avoid claims of bias. Jeff Kasseff, the author *The Twenty-Six Words That Created the Internet*, writes that the situation regarding the application of the First Amendment in the absence of Section 230 is new legal territory (Siripurapu, 2020).

## Bibliography

- Constitution Annotated. (n.d.). *Constitution of the United States: First Amendment*. Constitution Annotated. <https://constitution.congress.gov/constitution/amendment-1/>
- EFF. (n.d.). *CDA 230*. Electronic Frontier Foundation. <https://www.eff.org/issues/cda230>
- Enberg, J. (2020, March 18). Political Content on Social Media 2020. Retrieved from eMarketer: <https://www.emarketer.com/content/political-content-on-social-media-2020>
- Betz, F. (2011). *Managing technological innovation: Competitive advantage from change* (3rd ed.). Hoboken, NJ: Wiley.
- Demographics of Social Media Users and Adoption in the United States. (2020, June 05). Retrieved November 1, 2020, from <https://www.pewresearch.org/internet/fact-sheet/social-media/>
- Friedman, W. (2020, October 1). 2020 Political Ad Spend Estimate Rises To Near \$11B, Presidential Campaigns Ad Spend \$5.2B. Retrieved from Media Post: <https://www.mediapost.com/publications/article/356455/2020-political-ad-spend-estimate-rises-to-near-11.html>
- Goldman, E. (2019, July 2). *Of Course the First Amendment Protects Google and Facebook (and It's Not a Close Question)*. Markkula Center for Applied Ethics at Santa Clara University. <https://www.scu.edu/ethics/all-about-ethics/of-course-the-first-amendment-protects-google-and-facebook/>
- Harvard Law Review. (2010, March 10). Developments in the Law: State Action and the Public/Private Distinction. *Harvard Law Review*, 123(5).

[https://harvardlawreview.org/wp-content/uploads/pdfs/DEVO\\_10.pdf](https://harvardlawreview.org/wp-content/uploads/pdfs/DEVO_10.pdf)

Hatmaker, T. (2020, November 16). Facebook and Twitter CEOs testify about election efforts.

Retrieved December 07, 2020, from

<https://techcrunch.com/2020/11/16/dorsey-zuckerberg-hearing-senate-judiciary-election>

Hoffman, A. (2020, May 22). Policing Politics: Facebook and a Politician's Right to Free Speech. University of Michigan - WDI Publishing.

Hudson Jr., D. L. (n.d.). *In the Age of Social Media, Expand the Reach of the First Amendment*.

American Bar Association.

[https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/the-ongoing-challenge-to-define-free-speech/in-the-age-of-social-media-first-amendment/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/in-the-age-of-social-media-first-amendment/)

Jenssen-Hegelbach, J. (2019, December 10). "It Takes Away Our Freedom of Speech" - Political

Ads on Social Media. Retrieved from

<https://fhsroyalbanner.com/2312/showcase/it-takes-away-our-freedom-of-speech-political-ads-on-social-media/>

Legal Information Institute. (n.d.). *47 U.S. Code § 230 - Protection for private blocking and screening of offensive material*. Cornell Law School.

<https://www.law.cornell.edu/uscode/text/47/230#>

Legal Information Institute. (n.d.). *14th Amendment*. Legal Information Institute.

<https://www.law.cornell.edu/constitution/amendmentxiv>

Oyez. (n.d.). *The Civil Rights Cases*. Oyez. <https://www.oyez.org/cases/1850-1900/109us3>

Perrin, A. (2020, May 30). Social Media Usage: 2005-2015. Retrieved November 6, 2020, from

<https://www.pewresearch.org/internet/2015/10/08/social-networking-usage-2005-2015/>

Sabaghian, A. (2020, April 1). *Tulsi Now, Inc. v. Google, LLC: Online First Amendment Rights*



*and the State-Action Doctrine*. Jolt Digest.

<https://jolt.law.harvard.edu/digest/tulsi-now-inc-v-google-llc-online-first-amendment-rights-and-the-state-action-doctrine#:~:text=However%2C%20a%20private%20actor%20may,exclusively%20reserved%20to%20the%20State>

Siripurapu, A. (2020, December 2). *Trump and Section 230: What to Know*. Council on Foreign Relations. <https://www.cfr.org/in-brief/trump-and-section-230-what-know>

T. (n.d.). Social Media Overview. Retrieved December 01, 2020, from

<https://communications.tufts.edu/marketing-and-branding/social-media-overview/>

Thomke, S. (2003). *Experimentation matters: Unlocking the potential of new technologies for innovation*. Boston: Harvard Business School Press.

Zeigler, S. L. (n.d.). *Communications Decency Act of 1996 (1996)*. THE FIRST AMENDMENT ENCYCLOPEDIA

<https://www.mtsu.edu/first-amendment/article/1070/communications-decency-act-of-1996>

116th Congress, 1st Session, Senate Report, Report of the Select Committee on Russian Active Measures Campaigns & Interference in the 2016 US Election Volume 2: Russia's Use of Social Media with Additional Views

<https://intelligence.house.gov/social-media-content/>