

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

I. Introduction and Summary

American Jewish Committee (AJC) and its Jacob Blaustein Institute for the Advancement of Human Rights (JBI) write to address two points on which the Oversight Board has invited public comment: (1) Research into online trends about content denying the factual basis of the Holocaust, and the associated online and offline harms; and (2) Meta's human rights responsibilities in relation to content denying the factual basis of the Holocaust, including relating to dignity, security, and freedom of expression.

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

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

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

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

Regrettably, the same trends that led Facebook to adopt its prohibition on Holocaust denial content persist today. Online platforms have been used to promote content denying the Holocaust, sometimes to millions of followers simultaneously, on numerous widely reported occasions (see [1](#), [2](#), and [3](#)). Evidence suggests that content of this nature is directly contributing to online harm experienced by Jews. For example, as noted in AJC's [State of Antisemitism in America Report 2022](#), Jews continue to regularly experience antisemitism online or on social media, with 69% of U.S. Jews reporting having experienced antisemitism online, either as a target or by seeing antisemitic content, in the past 12 months. Younger Jews were more likely to have experienced antisemitism this way: 85% of those 18-29 years old compared with 64% of those aged 30 or older, and one in four (26%) said these online

incidents made them feel physically threatened (compared to 14% of those over age 30). Experiencing antisemitism, including Holocaust denial, is creating an environment that is harassing and intimidating to Jews and that impacts Jews' ability to enjoy their rights. AJC's [State of Antisemitism in America Report 2022](#) also found that 38% of all Jewish respondents reported they had altered their behavior at least once in the past year due to fears of antisemitism: 27% avoided posting content online that would enable others to identify them as Jewish or reveal their views on Jewish issues; 23% avoided wearing or displaying things that might enable others to identify them as Jewish; and 16% avoided certain places, events, or situations due to concerns about their safety or comfort as Jews.

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

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

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

- The perpetrator of the October 2019 [Halle synagogue attack](#) – in which a gunman killed two people outside when he was prevented from shooting Jewish worshippers – denied the factual basis of the Holocaust at the beginning of his livestream of the attack on the gaming platform Twitch.
- Following a series of widely antisemitic outbursts including Holocaust denial by popular cultural figure Ye (formerly Kanye West) in 2022 that were widely publicized online and in traditional media, alt-right figures organized a series of events on college campuses in the U.S. lauding his remarks at which they espoused Holocaust denial and other antisemitic conspiracies and urged observers to express their agreement with Ye. These events were promoted on social media, and dozens of [incidents of antisemitic harassment and vandalism](#) with a clear link to the campaign have reportedly been committed, including a December 2022 incident in which a Jewish student was targeted with antisemitic bullying including with Holocaust jokes.
- In the U.S., in the last three years, Holocaust museums and memorials have been attacked in places including [Florida](#), [Oregon](#), and [Washington](#); and an Anne Frank memorial in [Idaho](#) and statues dedicated to child victims of the Holocaust in [Oklahoma](#) were vandalized.
- Similar attacks have occurred elsewhere around the world in recent years: for example, prisoners' barracks were vandalized with graffiti including Holocaust denial at the [Auschwitz-Birkenau](#) Memorial site in Poland in October 2021, and in February 2023, a Holocaust denial message was projected onto the [Anne Frank House](#) in Amsterdam in the Netherlands.
- Holocaust memorials also have been attacked elsewhere in [Poland](#), and in countries including [Armenia](#), [France](#), Greece ([1](#), [2](#), [3](#)), [Lithuania](#), [Ukraine](#), and [Russia](#).
- Several people who violently entered the U.S. Capitol building on [January 6, 2021](#), were wearing clothing bearing antisemitic inscriptions, including one wearing a "Camp Auschwitz" sweatshirt.

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

- The UN Office on Genocide Prevention, in a [2022 Policy Paper](#), affirmed that ongoing and increasingly visible Holocaust denial and distortion "can cause revictimization, repeat historical patterns of discrimination and negative stereotypes, and incite hostility and violence," "creating

risks for Jewish individuals and communities and undermining collective historical memory, but also weakening the resilience and cohesion of democratic societies,” and that online content trivializing the Holocaust “has significant potential to cause harm and to have significant influence on popular culture, public opinion, and politics, and can lead to transnational impacts in ways that other manifestations of denial do not.”

- The European Commission against Racism and Intolerance (ECRI) said in a 2021 [recommendation](#) that Holocaust denial incidents “prolong the trauma suffered by the victims and their families, deny their identity as victims and promote ideologies that invite genocide and crimes against humanity.”
- The [EU Strategy on combating antisemitism](#) states: “Holocaust denial, distortion and trivialisation are often used to feed hatred against Jewish people and in an attempt to rewrite European and Jewish history. Their corrosive effects for collective historic memory and for the resilience and cohesion of our democratic societies should not be underestimated and need to be specifically addressed.”
- The [U.S. National Strategy to Counter Antisemitism](#) states: “In recent months, celebrities, athletes, and politicians have used their influential platforms to deny the Holocaust, elevate bigots, and spread antisemitic conspiracy theories. These viewpoints are not just reprehensible, they are dangerous.”
- A 2022 UN General Assembly [resolution](#), adopted without a vote, “[notes] with concern the growing prevalence of Holocaust denial or distortion through the use of information and communications technologies,” and urges “social media companies to take active measures to combat antisemitism and Holocaust denial or distortion by means of information and communications technologies and to facilitate reporting of such content.”

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

Meta’s prohibition of Holocaust denial content under the Community Standard on Hate Speech is consistent with its responsibility under the UN Guiding Principles on Business and Human Rights (UNGPs). A product of [engagement with representative Jewish organizations](#) and communities, it is in line with the Guiding Principles’ call for companies to engage in ongoing human rights due diligence to evolve their operations and policies (UNGPs 17(c) and 18(b)) and to address negative human rights impacts arising from their operations (UNGPs 11 and 13). Jews enjoy the right to equality and non-discrimination, including on the basis of religion and race (Art. 2(1), ICCPR; Art. 2, ICERD; Art. 2(2), Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief). The UNGPs indicate that companies like Meta should take measures to prevent discrimination against Jews in access to their platforms for expression (Art. 19 ICCPR), and to protect against discrimination against Jews in other areas, including the right to life and physical integrity, the right to freedom of religion or belief, the right to participate in public life, and the right to participate in cultural life, as well as the right to health (Art. 12 ICESCR), particularly for children (Arts. 2, 6, CRC).

Meta’s prohibition on Holocaust denial content is also consistent with its responsibility to respect the right to freedom of expression (Art. 19 ICCPR) and to prohibit content amounting to advocacy of hatred that constitutes incitement to religious or racial discrimination, hostility, or violence (Art. 20 ICCPR). While the right to freedom of expression is fundamental, States may restrict the right to freedom of expression in limited circumstances that adhere to the requirements of legality, legitimate aim, and necessity and proportionality as set out in ICCPR Article 19(3). Moreover, as a company, Meta is not bound by the same high thresholds for restrictions on expression to which States must adhere. As affirmed by the UN Special Rapporteur on Freedom of expression, and as noted by the

Oversight Board in *Depiction of Zwarte Piet* (2021-002-FB-UA) and *Armenians in Azerbaijan* (2020-003-FB-UA), companies should remove content from their platforms that constitutes incitement to discrimination or violence, but they may also remove hate speech that falls below this threshold, particularly where it raises concerns in terms of tolerance, civility, and respect for others (Rabat Plan of Action, para. 12, 20).

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

Legitimate

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

Necessary and proportionate

As described in the previous section, representative surveys and numerous international authorities have found Holocaust denial to be harmful, connecting it to substantial and increasing antisemitism worldwide, with severe harms at a societal and individual level, and called on social media and technology companies to take steps to curtail its presence on their platforms. Repeated exposure to negative antisemitic conspiracies and stereotypes, including in the form of content shared on social media, has a psychological impact on individuals with societal consequences. For Jews, the cumulative effect of repeated exposure to Holocaust denial content, and experiencing antisemitic violence and discrimination, is also affecting their psychological health, and is particularly traumatizing for and revictimizes survivors of the Holocaust and their descendants. An accumulation of Holocaust denial content is [contributing](#) to an environment in many countries where acts of antisemitic violence, discrimination, and hostility are more likely to be committed and tolerated. Repeated exposure to Holocaust denial content may have a particularly [negative impact](#) on children, who may not [recognize](#) it as such, and even if they do, may be generally [unwilling](#) or unable to challenge it effectively.

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

Notably, in a 2022 [statement](#), eight UN Special Procedures mandate holders affirmed that the negative human rights impacts resulting from online Holocaust denial and distortion are significantly severe to justify removal of such content by social media platforms and called for such prohibitions to be

systematically enforced. The experts – on freedom of religion or belief; racial discrimination; freedom of expression; freedom of peaceful assembly and association; protection of human rights while countering terrorism; minority issues; cultural rights; and extrajudicial executions – [said](#):

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

It is clear that when left unchecked, distortion and denial of the Holocaust – in which six million Jews, alongside members of other targeted groups were murdered in a uniquely brutal, systematic and state-sanctioned campaign of antisemitic extermination, dehumanisation and persecution – can undermine States’ ability to protect and promote human rights. Not only can these and other forms of antisemitic expression create a climate of fear in which Jews are unable to manifest their religion and identity, but they can also threaten the rights to liberty and security and to take part in cultural life and equality and non-discrimination of all by encouraging the spread of conspiracy theories, stereotyping and harmful prejudices.

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

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

The [UN policy paper](#) by the UN Office on Genocide Prevention also notes that social media companies’ “capacity to moderate harmful online content, including by reducing the visibility of content containing Holocaust and genocide denial and distortion, along with disinformation, conspiracy theories, and violent content, is greater than that which States are permitted to limit through the use of criminal or civil laws.” It recommends that social media companies “adopt definitions of hate speech and adapt community standards to more comprehensively recognize that denial and distortion of the Holocaust and genocide can cause revictimization, repeat historical patterns of discrimination and negative stereotypes, and incite hostility and violence,” and “take affirmative efforts to mitigate the impact of Holocaust and genocide denial and distortion through varying forms of content moderation, including but not limited to content removal.” The UN policy paper calls for companies to “ensure that their algorithms do not promote or direct users to content that constitutes denial or distortion of the Holocaust or genocide or glorification of perpetrators,” a policy that Meta should be encouraged to adopt should it ever narrow its prohibition on Holocaust denial in the future.

IV. Conclusion

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