



“The Future of Free Speech, Free Press, and Religious Freedom on Facebook, Google, Apple, etc.”

A Current Assessment

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By

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INTRODUCTION

In the three years since the National Religious Broadcasters (NRB) launched its pioneering venture – the John Milton Project for Free Speech – we have monitored and evaluated threats to citizen-generated content on web-interactive sites such as the social networking platform of Facebook, Google’s various web applications, search engines and its now-acquired video site YouTube, and Apple’s iTunes App Store for its iPhone, among others. Starting with our release of the September 2011 John Milton Project report, *True Liberty in a New Media Age* (“Milton Report”), we have documented the rise of viewpoint censorship practiced by those new media companies against consumer expression, targeting and shutting-down postings especially when they support traditional values, conservative ideas, or Christian orthodoxy. Examples are summarized below. There is a wide-spread perception that Facebook in particular is a free speech offender. A search of Google using the search term “conservative censorship on facebook” shows some 3.7 million results.¹

We have also found that the vague, free-speech inhibiting policies of those media technology companies have fostered an environment where viewpoint-based discrimination can flourish, and we also give examples of those in this document. It is our firm belief that these media technology giants must change direction in their policies and their practices regarding user-generated content, opinions and viewpoints. The time has come for these companies to embrace a robust, healthy view of free speech, freedom of the press, and religious liberty on their digital communications platforms.

¹ Dean Chambers, “Facebook selectively restricting communication by conservatives,” examiner.com, March 17, 2013.

The urgency is heightened by the Goliath-like power these companies wield in the information and communications field. Facebook is the largest social networking site, with 51 percent of all Internet users utilizing the site.² Facebook receives \$4 billion per year in advertising revenue.³ Google, with capitalization at \$296 billion “is the largest company in the Internet Software & Services sector.”⁴ Apple, “[w]ith 40% of the smartphone market ... commands a large lead over other handset makers.”⁵ In my professional field, 98% of all lawyers using tablets own iPads.⁶

In September 2012, we released our proposal – *A Free Speech Charter for the Internet* (“Charter”). In it, we urged these new media companies, and all other web-interactive media technology enterprises that capitalize on the user-generated content of citizens, to adopt a First Amendment paradigm for their policies and practices. While we recognized that the Bill of Rights may well not apply to these private companies as they likely would not constitute “state actors,” nevertheless we believe for a multitude of reasons that the First Amendment, as construed by the Supreme Court, serves as the best guide for these information technology businesses. After all, their stock-and-trade is not automobiles, kitchen appliances, or clothing, but information from, and opinions of American citizens posted on their communication platforms.

WHAT THE COMPANIES HAVE SAID

These companies seem to acknowledge their free speech obligation, at least in their public statements. According to Facebook’s NASDAQ description, “[p]eople use Facebook ... to share and express what matters to them to the people they care about.” Facebook was created, according to founder Mark Zuckerberg, “to make the world more open and connected.”⁷ Google’s CEO Eric Schmidt states that “Usually the best answer to bad speech is more speech. In other words, our position is: let’s hear from everybody ... Take the time to get your content and your point of view out there.”⁸ And in May 2008, Google-owned YouTube responded to a request from then U.S. Senator Joseph Lieberman for a take-down of terrorist postings this way: “... YouTube encourages free speech and defends everyone’s right to express unpopular points of view.” As we detail below, however, the pronouncements from these companies do not always match their practices or their policies.

THE JOHN MILTON PROJECT RESPONDS

Since 2011 the John Milton Project has conducted three Washington D.C.-based roundtable discussions among experts in media technology, journalism, government regulation (including one past Commissioner and one sitting Commissioner of the Federal Communications Commission), as well as authorities in religious liberty, public policy and law. The October 3, 2013 roundtable is the fourth such public discussion. From our perspective a general consensus

² <http://www.zdnet.com/facebook-remains-top-social-network-google-youtube-battle-for-second-7000015303>.

³ <http://www.businessinsider.com/the-30-biggest-advertisers-on-facebook-2012-9?op=1>.

⁴ New York Times.com, DealBook, 2013, “Google Inc.”

⁵ Greg Bensinger, “Apple’s New iPhone Deals a Blow to NFC,” WSJ.com, September 5, 2013.

⁶ Editor’s Note, Corporate Counsel magazine, August 2013, page 10.

⁷ Letter from Mark Zuckerberg at 67-70, Facebook’s S-1 Registration Statement to the SEC (Feb. 1, 2012),

http://www.sec.gov/Archives/edgar/data/1326801/000119312512034517/d287954ds1.htm#toc287954_10.

⁸ Interview by Vikram Chandra, NDTV, with Eric Schmidt, CEO, Google, in India (March 20, 2013), <http://www.youtube.com/watch?v=-hrhdP8rml8>.

has emerged: the best of all possible results would be a *voluntary adoption* of higher free speech standards by media technology companies rather than federal regulation or legislation.

At the same time, opinions have differed on the elements that should comprise those higher standards, as well as the seriousness of the threat level that is actually posed by the current policies – and more importantly the ongoing practices – of web-interactive media technology/communications companies as they suppress “politically incorrect” viewpoints of citizen users.

One thing seems undeniable however: this may be one of the most important and difficult free speech issues of our age, and we ignore it at our peril.

A SHORT CATALOGUE OF VIEWPOINT CENSORSHIP

Dangerously Vague and Discriminatory Policies

In the 2011 Milton Report we evaluated the various user policies of Facebook, Google and Apple. They all shared a few common failings. First, they prohibit certain content in overly vague and ambiguous terms. All of them prohibit “hate” speech, a pernicious phrase that is often used to stifle counter-cultural opinions: Apple forbids apps that “contain hate,” as well as “offensive, mean-spirited” content or information that is “inappropriate” or “unacceptable,” while Facebook will block “hateful” messages, as does Google. Milton Report, pages 20-24, and Appendix A, B, and C.

Second, these companies commit content and viewpoint discrimination by forbidding opinions based on subject matter or viewpoint expressed: Apple prohibits content that is religiously “inflammatory,” or deemed to be “offensive” to any “religious group;” Facebook will take down “inflammatory religious content” or content that expresses “politically religious agendas ...” and Google prohibits expressions of “hate” toward groups based on “religion ... or sexual orientation/gender identity” or that “advocates against” any group or organization regarding the categories of religion or sexual orientation.⁹

Policies like these are violently at odds with the free speech values articulated by the Supreme Court when it noted: “As a nation, we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate.” *Snyder v. Phelps*, 131 S.Ct. 1207 (2011).

Dangerous Acts of Censorship

At the time of the Milton Report in 2011, we documented numerous acts of viewpoint censorship by Apple (in removing the Manhattan Declaration and the app of Exodus International from its iTunes platform because of the orthodox Christian opinions they expressed regarding same sex relationships and marriage); by Facebook regarding anti-gay content; and by Google in refusing pro-life, Christian advertising, by discriminating against churches and religious groups in its Google for Non-Profits web tool, and by being complicit with China’s censorship of religious ideas. Milton Report, pages 14-18.

When we issued our *Free Speech Charter for the Internet* in September 2012, we noted that viewpoint censorship was continuing: A Christian pastor’s support of traditional marriage and

⁹ Milton Report, pages 20-24.

opposition to same-sex marriage was stripped from Google-owned YouTube as “hate speech,” according to the message posted by YouTube.¹⁰ When Gov. Mike Huckabee posted a pro-Chick-fil-A announcement on his Facebook page during a public debate over the traditional marriage statements of the restaurant chain’s CEO, Facebook took his page down for twelve hours.¹¹

In the intervening months since then, we have seen a continuation of this oppressive pattern:

- During a national election cycle, Facebook temporarily suspended the account in October 2012 of Special Operations Speaks (“SOS”) a Facebook page created by former U.S. special ops military personnel who were critical of President Obama.¹²
- In January 2013 Facebook blocked access of a conservative commentator to her “Chicks on the Right” Facebook page that had some 90,000 fans on the grounds that her criticism of the White House press secretary violated “Facebook’s Statement of Rights and Responsibilities.”¹³
- In January 2013, Facebook temporarily took down the Facebook page of Israeli journalist Khalid Abu Toameh after he posted criticisms of the Palestinian Authority. Facebook cited “security concerns,” then restored the page 24 hours later but deleted the article in question. Toameh, who has been the Arab affairs reporter for the *Jerusalem Post* since 2002, concluded that the number of complaints by pro-Palestinians to Facebook triggered the shut-down.¹⁴
- In June 2013 Apple removed an app created by a Christian ministry from its iTunes platform because it expressed the opinion that gay persons could find “freedom from homosexuality,” citing Apple guidelines that prohibit “excessively objectionable or crude content.” Google, however, allowed it on its App Developer site.¹⁵
- Fox reporter and commentator Todd Starnes had his Facebook page blocked for twelve hours at the end of June 2013 after he listed his politically incorrect string of conservative preferences regarding the “National Rifle Association, Jesus, and Paula Deen.”¹⁶
- In the summer of 2013, Mike Adams, a professor at the University of North Carolina at Wilmington, and who writes often about the scourge of speech codes on campuses, had his Facebook page account (with some 5,000 followers) suspended for 12 hours for “violating [Facebook’s] community standards” for making arguments against same-sex marriage.¹⁷
- In June and July 2013, Ruthie Blum was blocked from posting her pro-Israel column, *Israel Hayom*, on her Facebook page because Facebook said it violated its community

¹⁰ <http://www.youtube.com/watch?v=v27k5cM7N4A&fe>, accessed 5/10/2012. “YouTube yanks youth ministry’s video,” OneNewsNow, May 18, 2012.

¹¹ Jennifer Riley, “Huckabee’s Chick-fil-A Facebook Page Disappears for 12 Hours,” Christian Post, July 25, 2012.

¹² <http://www.breitbart.com/Big-Peace/2012/10/30/Facebook-Censors-Navy-SEALS-To-Protect-Obama-on-Benghazi-Gate>.

¹³ Todd Starnes, “Facebook Threatens to Shut Down Conservative Site,” radio.foxnews.com, January 22, 2013.

¹⁴ Melanie Lidman, “Facebook Temporarily Bans ‘Post’ Reporter,” Jerusalem Post.com, January 16, 2013 (republished, BBC Worldwide Monitoring).

¹⁵ <http://abcnews.go.com/Technology/apple-removes-gay-cure-app-store-google-resists/story?id=19331115>.

¹⁶ Todd Starnes, “Starnes: I Got Banned From Facebook,” radio.foxnews.com, July 1, 2013.

¹⁷ John Stonestreet, BreakPoint, “Free Speech and Facebook: We Can Defend Our Liberties,” Religion Today.com, August 2, 2013.

standards, even though she could find nothing incendiary or offensive in what she had written. Facebook did not respond to her inquiries.¹⁸

- In August 2013, Facebook banned the administrators of the Facebook page *Military With PTSD* (helping military personnel dealing with post-traumatic stress disorder) because, according to Facebook, the page violated their community standards regarding “religion.”¹⁹

OTHER SUSPICIONS OF CENSORSHIP

There have been numerous other recent content take-downs and removals by these companies that, at a minimum, raise suspicions that the acts were taken because of the viewpoints of the citizen users.

- In November 2012 it was reported that during an incident where rockets from Gaza were raining down on Israel, a pro-Israel Facebook page with some 20,000 followers had its “wall” posts blocked.²⁰
- In December 2012 Facebook suspended Facebook page accounts that questioned the official police description of the Sandy Hook elementary shooting.²¹
- In January 2013, Facebook suspended the accounts of a conservative “Patriot” group after Facebook warned them, regarding their postings weighing-in on the “fiscal cliff” debates in Washington, that they were posting too many times to too many Facebook pages and too rapidly. The implication is that the group may have been too effective in its public lobbying efforts.²²
- In March 2013 it was reported that Facebook had banned a Texas man for posting the phrase “seizing the day with baby Obama,” but did not remove both a page that declared “I hate it when I wake up and Sarah Palin is still alive” and a page that suggested the killing of Sarah Palin.²³
- In May 2013 it was reported that Facebook had banned an ad from CREDO Mobile, a liberal non-profit fundraising group, which would have criticized Facebook CEO/Founder Mark Zuckerberg on his environmental positions. Facebook alleged that the problem was that the ad contained a photo of Zuckerberg and that could have been “confusing for users” or “misleading.”²⁴
- In July 2013 one writer noted that Apple had selectively decided to program its iOS dictionary function on Apple products so that certain words - including “virginity,” “fornication,” and “abortion” - when they were misspelled, would no longer be corrected

¹⁸ Ruthie Blum, “Abusing the System: Facebook Standards and the People Who Violate Them UPDATED,” *Observer.com*, August 13, 2013.

¹⁹ Sean Edmondson, “Admins Banned from Facebook page aimed at helping vets with PTSD,” *14news.com (WFIE)*, August 24, 2013.

²⁰ Russ Jones, “Did Facebook block pro-Israel posts?” *OneNewsNow.com*, November 19, 2013.

²¹ Paul Joseph Watson, “Facebook Suspends Account for Questioning Official Narrative in Shooting,” *infowars.com*, December 18, 2012.

²² Joe Newby, “Is Facebook actively censoring conservative bloggers?” *examiner.com*, January 3, 2013.

²³ Joe Newby, “Conservative bloggers say Facebook selectively enforcing non-existent rules,” *examiner.com*, March 17, 2013.

²⁴ Jim Edwards, “Facebook Bans Ad That Criticizes Facebook By Using CEO Zuckerberg’s Face,” *businessinsider.com*, May 1, 2013.

by suggested replacement words, but rather would be messaged with “NO REPLACEMENTS FOUND.”²⁵

- Also in July 2012, Facebook temporarily blocked the movie site of “Unstoppable,” the film of Kirk Cameron, outspoken Christian actor and critic of same-sex marriage, as did Google’s YouTube. Both new media companies alleged spam as the reason. I checked with a reliable media technology source of my own who then checked into it. His diagnosis: Facebook’s explanation left him “fairly skeptical.”²⁶

HEROICS OR HYPOCRISY? THE WORLD VIEW AND VALUE PREFERENCES OF FACEBOOK, GOOGLE, APPLE, ETC.

These reports of viewpoint discrimination are even more egregious in light of the stated positions that Facebook, Google and Apple have taken on those same issues where they have banned contrary opinions from appearing on their platforms. All three of those media technology companies filed *Amicus Curiae* (“friend of the court”) briefs with the United States Supreme Court in the case of *United States v. Windsor*, 2013 WL 3196928, which successfully overturned a key provision of the Defense of Marriage Act (“DOMA”) which had declared that only one-man-one-woman would constitute marriage recognized for federal purposes. Facebook, Google and Apple had all supported the gay rights advocates who had attacked DOMA; those companies had argued that the traditional marriage DOMA position was founded on “discrimination.”

Facebook has consulted with “Muslim and LGBT communities” and has taken their “constructive feedback” into consideration regarding their policies.²⁷ We note the absence of such meetings with conservatives or evangelical Christians however, despite the public outcry against viewpoint-oriented censorship. Then, in May 2013, when a feminist coalition demanded action from Facebook in light of what they viewed as anti-woman postings and content, Facebook agreed to meet with them, acceded to their demands, and has pledged to strengthen anti-female “hate speech” prohibitions in Facebook’s guidelines.²⁸

These companies are certainly entitled to take social, political and moral positions on the issues of the day. Many corporations today are called upon by their stockholders to assume a wide variety of “socially responsible” positions in their activities and investments. Still, the social, political, and moral value judgments publicized by Facebook, Google and Apple should make them strive more – rather than less – to treat all citizen users as full-fledged free speech partners, especially when those citizens state opinions that are at odds with the positions of those companies.

²⁵ Andy Boxall, “Apple needs to evaluate its censorship, but we don’t want the walls to come down entirely,” *digialtrends.com*, July 20, 2013.

²⁶ Sara Morison, “Kirk Cameron’s Religious Film ‘Unstoppable’ Banned by YouTube and Facebook,” *Christianpost.com*, July 20, 2013. (Ed. My “source” is not connected with either Kirk Cameron or the *Christian Post*).

²⁷ “Controversial, Harmful and Hateful Speech on Facebook,” Facebook Safety (Notes), *facebook.com*, Tuesday, May 28, 2013.

²⁸ Doug Gross, “Under pressure, Facebook targets sexist hate speech,” *cnn.com*, May 30, 2013.

WHAT WOULD FREE SPEECH POLICIES LOOK LIKE?

We have publicly urged these companies to use, for their content standards, those values inherent in the First Amendment as interpreted by the Supreme Court.²⁹ We remain convinced this is the only route for them to take. Therefore, new media companies should restrict or prohibit only content that, under a good faith, view-point neutral analysis, is determined to qualify under any of *these traditional exceptions to the First Amendment*.³⁰

Obscenity;³¹

The Equivalent of Broadcast Indecency if Accessible to Minors;³²

Fraud;³³

Incitement to violence;³⁴

Or speech that is integral to criminal or unlawful conduct.³⁵

The United States Supreme Court has refused to expand the list of traditional exceptions to free speech under the First Amendment.³⁶ New media technology companies should follow suit. With great wealth, power, and success comes great responsibility. That is especially true when Facebook, Google, and Apple, as communications conduits, trade on the opinions and expression of citizens. If change does not come, it is doubtful that the American people or their elected representatives will remain passive indefinitely on the issues that are discussed here.

²⁹ “A Free Speech Charter for the Internet,” The John Milton Project for Free Speech, a Project of the National Religious Broadcasters, September 2012, NRB.org.

³⁰ See: *U.S. v. Stevens*, 559 U.S. 460, 468-69 (2010) for a listing of these exceptions.

³¹ *Roth v. U.S.*, 354 U.S. 476, 483 (1957). See: *Ashcroft v. ACLU*, 535 U.S. 564 (2002) (“community standards” element of federal statute upheld that outlawed “indecent and patently offensive communications over the Internet if they are deemed “harmful to minors.” But see also: *Ashcroft v. ACLU* (*Ashcroft II*), 542 U.S. 656 (2004) (Congress failed to consider less restrictive means to protect children online, such as blocking or filtering technology, and that was fatal to the law).

³² *FCC v. Pacifica Found.*, 438 U.S. 726 (U.S. 1978); *FCC v. Fox TV Stations, Inc.*, 556 U.S. 502 (U.S. 2009); *FCC v. Fox TV Stations, Inc.*, 132 S. Ct. 2307 (U.S. 2012); see also *Ashcroft* cases, *supra* note 31 above, as well as both *Bethel School Dist. No. 403 v. Fraser*, 478 U.S. 675, 684 (1986) and *Ginsberg v. New York*, 390 U.S. 629 (1968) (sexually explicit communications, even if falling short of “obscenity,” may, consistent with the First Amendment, be restricted where aimed at or accessible to minors).

³³ *Virginia Bd. of Pharmacy v. Citizens Council, Inc.*, 425 U.S. 748, 771 (1976).

³⁴ *Brandenburg v. Ohio*, 395 U.S. 444, 447-449 (1969) (*per curiam*). This would also include, of course, true threats of violence as well.

³⁵ *Giboney v. Empire Storage & Ice Co.*, 336 U.S. 490, 498 (1949). This would include any other use of the Internet that is deemed unlawful by, for instance, the regulations established by the Federal Trade Commission or the Federal Communications Commission or other agencies of competent jurisdiction.

³⁶ *U.S. v. Stevens*, *supra* note 31 above; and *Brown v. Entertainment Merchants Ass’n*, 131 S. Ct. 2729 (2011).