

**PUBLIC CONSULTATION: FACEBOOK'S OVERSIGHT BOARD**  
**Response by the Center for International Business & Human Rights at**  
**The University of Oklahoma College of Law**  
**Essay 2: The decisions of the Board**  
(1,000 – 5,000 character limit)

**Background:** We appreciate the opportunity to submit preliminary reactions on the Oversight Board's "process and basis for decision-making." We are the [Center for International Business & Human Rights](#) at the University of Oklahoma College of Law. Our mission is to provide: (1) training to students as well as the greater legal community and others in international business & human rights (IBHR) standards and (2) academic think tank support on IBHR issues.

**International IBHR Standards:** In 2013, the U.S. Government provided [guidance](#) to U.S. companies, stating they should treat the [UN Guiding Principles on Business & Human Rights](#) (UNGPs) as a floor rather than a ceiling in their operations. (See <https://perma.cc/47NJ-BC4A>; <https://bit.ly/2Bva4uB>.) The U.S. Government also promotes implementation of the [OECD Guidelines for Multinational Corporations](#) (OECD). (See <https://perma.cc/V37Z-5L4T>; <https://bit.ly/1kPDOqW>.) Both frameworks provide that companies should "avoid infringing on the human rights of others" and "address adverse human rights impacts with which they are involved." (UNGPs Principle 11; OECD Chp. IV, p. 31.) Both also state the human rights standards to be applied are "international" standards, such as the [International Covenant on Civil and Political Rights](#) (ICCPR). (UNGPs Principle 12; OECD Chp. IV, p. 31.)

**International Protections for Expression:** ICCPR Article 19 provides the right to seek and receive information of all kinds, regardless of frontiers, and through any media, but permits speech limitations if a three prong test is met. To be valid, speech restrictions must be: (1) "provided by law" (i.e., properly promulgated/provide appropriate notice) and (2) "necessary" (i.e., the speech restriction must, among other things, be the least intrusive means of achieving governmental purposes) (3) to achieve an enumerated legitimate public interest goal (e.g., protection of the rights of others, national security, public order, public health or morals). Mandatory bans on speech in Art. 20, e.g., for incitement to violence, are also subject to Article 19's tripartite test. (See *UN Human Rights Committee General Comment 34*, ¶ 50, <https://bit.ly/2Qe9G9A>, hereinafter GC 34.)

Given corporate content moderation necessarily impacts the right to freedom of expression, Facebook should take proactive measures to avoid infringing on this right in order to live up to contemporary IBHR standards. This means Facebook's Community Standards as well as the Board's basis for decision-making should align with ICCPR Article 19. The UN's human rights machinery has provided substantial guidance on the scope of Article 19. (See, e.g., GC 34; reports of the UN Special Rapporteur on Freedom of Expression: <https://bit.ly/2T791vq>.)

**International – Not Regional – Human Rights Standards:** It is important to note that the UN's international human rights standards on speech differ from various regional human rights norms. For example, the UN Human Rights Committee, which recommends interpretations of the ICCPR, has spoken out against blasphemy bans and laws that prohibit the denial of historic atrocities. (See GC 34, ¶¶ 48, 49.) In contrast, the European Court of Human Rights, a regional court that provides binding interpretations of the European Convention on Human Rights, has upheld blasphemy bans and prohibitions on the denial of historic atrocities. In implementing the contemporary IBHR expectations set forth in the UNGPs and OECD Guidelines, it is essential that Facebook and its Oversight Board align with international standards (i.e., the ICCPR) on freedom

of expression rather than various regional standards, which may depart from the international protections.

**Implications:** Grounding corporate speech codes and the Oversight Board’s adjudicative approach in contemporary IBHR standards is a foundational matter that has implications for the more detailed questions in your questionnaire. For example, it is essential that Board members have expertise in international human rights law. Also, Board decisions should be published and a procedure for “amicus briefs” should be provided.

**Benefits:** Potential benefits of aligning the Community Standards and the Board’s approach with ICCPR Art. 19 include providing Facebook with a principled global standard in its content moderation and strengthening the company’s ability to resist governmental pressure to remove speech in ways that depart from ICCPR Art. 19.

**Further Information:** More details about the information provided above can be found in our Director’s recent article: E. Aswad, *The Future of Freedom of Expression Online*, 17 Duke L. & Tech. Review 26 (2018) ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3250950](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3250950)), which is incorporated by reference into this submission, and calls for further multi-stakeholder deliberations to deal with some tricky issues relating to how to apply ICCPR Art. 19’s tripartite test in the corporate context.