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Comment on Oversight Board case 2021-016-FB-FBR

Thank you for the opportunity to comment on case number 2021-016-FB-FBR, which is the first case in which the Oversight Board has considered Facebook's policy on Child Sexual Exploitation, Abuse and Nudity.

Prostasia Foundation is a child protection organization dedicated to taking an evidence-based, prevention-focused approach to protecting children, which upholds Internet freedom, sex-positivity, and human rights. Our mission is to ensure that the elimination of child sexual abuse is achieved consistently with the highest values of the society that we would like our children to grow up in.

1. Whether Meta's decision to remove the post is consistent with Facebook's Child Sexual Exploitation, Abuse and Nudity Community Standard, and Facebook's stated values and human rights responsibilities and commitments.

We do not have the full details of the case referred to in the post, in which a minor was given a non-custodial sentence for a sexual crime against another minor. However, we do in general support the use of non-custodial options such as restorative justice programs for juvenile sexual offenders. Adult recidivism among those who offended as juveniles is very low (about 3%).¹ Human Rights Watch has stated:

Subjecting children to sex offender laws originally developed for adult offenders is both unnecessary from a public safety perspective and harmful to the child.²

Nevertheless, while we may disagree with the journalist's take on these issues, we support their right to communicate their feelings about how the Swedish criminal justice system deals with sexual offending by minors, just as we expect the same freedom to post our own views on this topic. Applying Facebook's policy on Child Sexual Exploitation, Abuse and Nudity to stifle critical discussion about a reported case of child sexual exploitation is a misuse of the policy.

The conflation of commentary about child sexual abuse with child sexual exploitation itself is a

¹ Nelson, R. (2011). Predicting recidivism among juvenile sex offenders: The validity of the ERASOR. Available at <https://www.atsa.com/pdfs/Conf2015/T-27.pdf>.

² Tofte, S., & Fellner, J. (2007). *No Easy Answers: Sex Offender Laws in the US* (Vol. 19, No. 4). Human Rights Watch. Available at <https://www.hrw.org/reports/2007/us0907/7.htm>.

pervasive problem, that has even seen materials advocating child sexual abuse *prevention* razed from the web.³ Twitter made a notable attempt to separate directly exploitative material with discussion of exploitation in 2019, when it first adopted a policy that “Discussions related to child sexual exploitation as a phenomenon or attraction to minors are permitted, provided they don’t promote or glorify child sexual exploitation in any way.”⁴

Similarly, Facebook’s policy on Child Sexual Exploitation, Abuse and Nudity disallows the discussion of child sexual exploitation only to the extent that it “threatens, depicts, praises, supports, provides instructions for, makes statements of intent, admits participation in or shares links of” such exploitation.

In the context of the journalist’s post, the sharing of comments from the perpetrator referring to the minor in sexually explicit terms cannot be characterized as praising or supporting the abuse. On the contrary, it was clearly quoted in condemnation of the perpetrator’s actions. As such, describing the quotes as “show[ing] children in a sexualized context” is a stretch. It seems unlikely that Facebook’s policy was ever intended to disallow the use of such quotations in such a context.

There is no question that discussions of child sexual exploitation are emotional and polarizing. But constraining speech on this topic is not the solution. When it comes to the expression of opinions about sex offense law and policy, and the reporting of cases of abuse by journalists, Facebook’s policy on Child Sexual Exploitation, Abuse and Nudity should be interpreted and applied narrowly. Meta’s decision to remove the post is not consistent with that policy, or with Facebook’s stated values and human rights responsibilities and commitments.

2. Whether Facebook’s policies and their enforcement adequately protect the identities and rights of child victims of sexual crimes, including protecting against retraumatizing those victims, while also enabling public interest commentary about such crimes and the criminal justice system.

Given that the victims in this case were not identified by the journalist, other than by giving their ages and municipalities of residence, we consider that the journalist took appropriate steps to balance their rights and interests against those of the public. The proximate cause of any retraumatization that victims may feel from having their cases discussed in public does not lie with the journalist or with Facebook, but with the perpetrators of their abuse.

3. Whether Meta’s design choices incentivize sensationalist reporting on issues impacting children’s rights, if or how Meta should respond to such impacts, and the relevance of ethical journalism standards in this regard.

The gravity of the crime of child sexual abuse notwithstanding, sensationalist reporting on this topic can cloud the public’s understanding of how and by whom it is committed, and can hinder

³ Amicus Brief of ProStasia Foundation et al in support of Appellants in *Woodhull Freedom Foundation v United States*. February 20, 2019. Available at <https://prostasia.org/wp-content/uploads/2019/02/Freedom-Network-AmicusBrief.pdf>.

⁴ However it walked this policy back scarcely a year later, by excluding discussion of attraction towards minors “as a form of identity or sexual orientation.” See our commentary in Smith-Ferris, D. (2020). *Twitter’s pedo-populism is a setback for prevention*. Available at <https://prostasia.org/blog/twitters-pedo-populism-setback-prevention/>.

prevention efforts.

As such, Prostasia Foundation has advocated for the journalistic community to adopt more neutral, factual language when discussing child sexual exploitation and abuse. For example, in September 2021, a group of experts convened by Prostasia wrote to the U.K. News Media Association Editors' Code Committee "to suggest how the press could use more accurate terminology when discussing child sexual abuse, and in particular, not to use the word pedophilia as a synonym for child sexual abuse."⁵

Despite our criticisms of Meta's decision, we do recognize and applaud its intent to limit the viral spread of what appears to have been a sensationalist and emotive post. Viral content on child sexual exploitation is rarely helpful to the cause. Indeed, the rise of the QAnon conspiracy movement was also driven by emotive (and in that case, non-factual) online discussions of pedophilia and child sex trafficking. Numerous commentators have referred to the role of Facebook in allowing such misinformation to fester.⁶

However, we believe that there are better steps than censorship that Meta could take to raise the level of discourse about child sexual exploitation on Facebook. Facebook's help resource for users with a sexual interest in children—which is surfaced in response to searches that suggest such an interest—is excellent.⁷ Facebook's COVID-19 Information Centre provides another good example of how a factual public health resource can be given visibility when users encounter misinformation on a divisive topic.⁸

We strongly believe that child sexual abuse and exploitation is a social problem that must be tackled through a comprehensive program of public health interventions: it is not a problem to which Internet platforms hold the key. But having said that, judicious design choices can help to ensure that platforms users are able to access and share accurate information about child sexual abuse and its prevention, rather than being sucked in by outrage bait.

As the only child protection organization that explicitly supports Internet freedom and adopts an anti-censorship stance—while maintaining zero tolerance for child sexual abuse—Prostasia Foundation would be well placed to work with Meta to ensure that its product design choices support this goal. We stand ready to provide the Oversight Board, and Meta staff, with any further information that may further assist them in dealing with this important and difficult issue.

⁵ See Letter from Prostasia Foundation to News Media Association, September 1, 2021. Available at <https://prostasia.org/wp-content/uploads/2021/09/Editors-Code-of-Practice-Committee.pdf>.

⁶ Zuckerman, E. (2019). QAnon and the Emergence of the Unreal. *Journal of Design and Science*, (6). Available at <https://jods.mitpress.mit.edu/pub/tliexqdu/release/1>.

⁷ See <https://www.facebook.com/help/195478914971499/>.

⁸ See https://www.facebook.com/coronavirus_info.