

September 6, 2022

Senate Committee on the Judiciary
Subcommittee on Competition Policy, Antitrust, and Consumer Rights
Re: Hearing entitled “Breaking the News – Journalism, Competition, and the Effects of Market Power on a Free Press”

Senators:

Just as it was my pleasure to testify in front of your committee earlier this year, it is again my pleasure to follow up and respond to your inquiries and give you feedback on this legislation. First one point of clarification, when I first testified I was a vice president for the Media Research Center. I have since left that job and now respond to these questions as an independent media expert with 40+ years experience. I will respond to this specific inquiries and then I will include some feedback on the changed legislation:

1. I’m particularly concerned with the censorship happening to conservatives on online platforms. One major story that I’ve been vocal about is the censoring of the Hunter Biden story back during the 2020 election. Twitter took it upon themselves to say that reporting being done by a respected publication was fake news and stopped them from sharing the story, even banning them from posting to their account. This was a gross example of Big Tech stepping in to help shield then presidential candidate Joe Biden from a bad news story that was actually true. In your view, what does Congress need to do to address the continuing censoring that we see?

Gainor: You are correct to be concerned. The Hunter Biden story was silenced by social media companies apparently at the behest of the federal government. That's not my opinion, that's the stated commentary of Facebook CEO Mark Zuckerberg.

When the federal government contacts social media companies and tells them the content that they think should be taken down, then the First Amendment ceases to exist. That's the situation we are under right now. Sadly, that doesn't appear to be an isolated incident.

Like it or not, social media has become the new town square. While it was initially envisioned as a way for people to communicate with family and to discuss hobbies and such, social media now dominates our political discourse. We cannot continue to have free elections and free speech if the most dominant form of communication is restricted the way it is now.

Many academics and foreign NGOs are campaigning aggressively to have an internet where free speech, freedom of religion and more don't exist. They want international organizations and foreign governments to limit American free speech online. Effectively, that's already happening. Today. These organizations have deployed vague terms like “hate speech” to limit what can be discussed. By doing so, they actively interfere in American elections in concert with Big Tech.

Twitter, which is by far the most pro-censorship of all the major social media sites, has banned the previous president of the United States and perceived 2024 Republican presidential

candidate. But it allows foreign dictators like Iran's Ayatollah Khamenei who leads a nation that is the No. 1 exporter of terrorism.

Both Russia and China are well-represented on social media, despite Russia's criminal invasion of Ukraine and China's genocide of Uyghur Muslims. According to one study by the Media Research Center, [“Forty accounts on Facebook, amassing over 751 million followers, are managed by Chinese state-controlled media outlets.”](#) Yet numerous American accounts are banned or restricted.

Put simply, social media companies cannot be trusted with our freedoms. Just as Congress needs to tackle privacy legislation online, it needs to pass legislation that guarantees our constitutional freedoms don't stop at the internet.

Most American government organizations are located on social media, but social media companies determine who can interact with them. Social media companies regularly ban conservatives or restrict who can see their content. This even includes political candidates and local governmental boards and organizations. Further, they employ biased so-called fact-checkers and give them massive power over who can interact on social media.

If this is allowed to continue, no nation that has free elections will be able to choose candidates the social media companies oppose. That is not an idle threat. Simply look at how social media companies have banned former President Donald Trump. Then imagine they choose to do so against the candidate who wants to break them up, tax them or give them other mandates. They could ban or shadow ban that candidate. Google could prioritize his/her opponent's content ensuring a lopsided result.

Many in D.C. politics talk about election security, but never discuss this danger. Republicans, especially, should be concerned about it. Just look at how skewed toward one political party – Democrats – donations from Big Tech tend to be. Their donations are not exclusively monetary.

2. It seems like the definition of “misinformation” is just what opponents label something they don't like. How is Big Tech using the pretext of “misinformation” to silence conservative voices?

Gainor: The entire infrastructure of social media companies is designed to restrict conservative speech. It wasn't always that way, but he has evolved into that in the last several years. The system is rigged at every level. This is the danger with the bill that expects these companies to treat content in a neutral way. They don't ever do that.

Here are the key ways that social media companies restrict speech:

- **So-called fact-checkers:** The fact-checking movement was created by journalists to reclaim the narrative from bloggers. These organizations are overwhelmingly liberal and biased against conservatives. They rarely fact-check major media outlets even when those outlets get things wrong. And small organizations spend

countless hours dealing with the most obscure minutiae fending off aggressive fact-checks from often inexperienced, college-age fact-checkers.

- **Flagging:** All of the major social media sites operate on user flagging or reporting of so-called bad content. The problem with this is that the left has gamed the system and does mass reporting of content it doesn't like. Conservatives, who at this point are more pro-free speech, have no such organized efforts, nor should they.
- **Artificial intelligence:** This is a misnomer. Artificial intelligence is simply computer programs written by people. Those computer programs are used to target words, phrases, concepts and people that the liberal employees of these organizations want to block. Companies then blame biased actions on the algorithm. But that means they did it.
- **NGOs:** Big Tech pays great attention to what globalist non-governmental organizations say about content. For example, the U.K.-based Center for Countering Digital Hate periodically releases reports attacking American organizations and pushing to have them removed from social media sites. The CCDH issued a report in 2021 called the "[Disinformation Dozen](#)" calling for people who dared question mainstream narratives on COVID-19 to be banned for pushing what it determined to be "digital misinformation about Covid vaccines." The White House promoted that report and Facebook took action against those mentioned in the report.
- **The news media:** Several news outlets have social media reporters or what are called disinformation reporters who specifically target conservative accounts on social media. Social media companies then restrict or ban the accounts. The companies pay little attention when conservatives write about excesses of the left. Libs of TikTok, a prominent Twitter account that reposts TikTok video from leftists, is one such regular target. Activist liberal journalists then bully social media firms to ban content they don't like.
- **Government entities:** This includes agencies like the FBI that had been in contact with Big Tech, as well as the White House, the CDC and international government organizations like the World Health Organization (WHO). Throughout the pandemic, Big Tech relied on the government to set rules about what we could and could not say online. However, it has been clearly established that Dr. Anthony Fauci lied on at least one occasion – [herd immunity](#). WHO was allegedly another reliable source, but even the [New York Times admitted](#) that WHO's rules about open borders in a pandemic obeyed neither medicine nor science. They were based on an agenda.
- **The appeals:** It is important to understand that when conservatives appeal takedowns of content, restrictions, bans, etc., they then appeal to the overwhelmingly liberal staff of these Big Tech companies. Facebook created an oversight board, then stocked it with internationalists and liberals guaranteeing that the American view of free speech would not be upheld. And they're the final level of complaint.
- **Foreign governments:** Big Tech is made up of global companies. That means regulations in other countries or the EU influence what happens to Americans. Several tech companies have signed on to the Christchurch Call, which further

restricts what we can say and do online. If American politicians and regulators don't take action to protect our rights online, then foreign regulators and governments will determine them.

3. I strongly believe in the First Amendment and believe that more speech, not censorship, is the solution to bad speech. In your opinion, how can we encourage quality news and reporting?

Gainor: Quality journalism requires an entire infrastructure to produce. That means we should start in colleges and universities. Right now there is a limited number of mostly very liberal schools that offer journalism. Journalism has gone from a trade to a profession that requires college or even postgraduate education. The result is that journalists are elite. Many graduate with large student loans. Unsurprisingly, they then tend to support government bailouts of those loans.

At the same time, the common tools of journalism have become widely available. It is easy for ordinary Americans to produce video or to blog and post their comments online. The First Amendment freedom of the press was designed for all of us, not just for an elite few. That means we should be encouraging ordinary people to learn the basics of good journalism. Without the built-in bias and indoctrination included in many college courses.

I would love to see more courses available from nonprofits to teach mid-career professionals and even young people the basics of good journalism. This also might solve one of the ongoing huge problems that elite liberal journalism has created – lack of diversity. While the industry is aware of the problem in one way – race, ethnicity, gender, etc. – it makes no attempt to diversify thought. Conservatives are not welcome and they know it.

This shouldn't be the role of Congress. Other than perhaps to suggest it. It is incumbent upon ordinary Americans to embrace freedom of the press and use it to get their thoughts out there.

The core problem is that, if they do so and Big Tech doesn't agree with those thoughts, it will censor them. And that takes us back to the foundational problem: that Big Tech has far too much power over our constitutional rights.

4. I support strong local news organizations and quality journalism. Local newspapers serve an important role, especially in rural communities. A recent CRS report highlighted concentration in the industry and the fact that many daily newspapers are now owned by private equity firms, hedge funds, or other investment groups. How do we make sure that we aren't just further enriching wealthy investors but actually benefitting local publications?

Gainor: In short, we can't. The reason hedge funds and investment groups purchased media properties is that no one else really wants to. Other than a few of what we would call verticals – media properties that focus on one specific topic – most news outlets are not seen as profitable in the long term. Content creation is extraordinarily expensive. It is staff-intensive and to maintain a staff of experienced, knowledgeable employees is difficult for any but the largest news organizations.

Loss of staff has put many smaller news organizations into a downward spiral. They cover less local information and people then become less interested in reading. The best verticals have skimmed off some of the diehard readership. Sports sites do a better job of covering pro teams than local outlets do. Other verticals – real estate, help wanted ads, personals, etc. – are all handled better by specific sites.

There is another factor that has been little explored by journalism professionals. When weekly newspapers grew to prominence that reflected a trend of movement from the cities to the suburbs. The trend now for most readers, especially younger ones, is to get their news and information online.

They don't live locally. They live on the internet and their information stream is global. One of the most popular social media outlets is China's TikTok. Entertainment is global as well, such as K-pop or Korean pop. Two years of COVID-19 lockdowns made this more of an issue.

We are asking why people don't read their local news source but the better question might be: Why aren't people more involved in their local communities? That involvement drives readership. Many Americans go to church far less than they used to and they belong to fewer civic organizations. If Americans are not engaged as local residents, then it is unrealistic to expect them to be engaged as local readers.

FURTHER COMMENTS

I wanted to make a few points about the proposed legislation as it is currently written. A premise of the bill seems to be that Big Tech can be easily coerced into treating conservative media in a content neutral way. That is false and any parts of the bill that are vague would be used against the right. It is great to say big Tech can't discriminate based on content type, but they do and they will. Nothing in this bill stops them. And given the ongoing struggles between so-called fact-checkers and the conservative movement, no bill should include any reliance on those biased organizations.

Some additional thoughts:

- The reliance on fact-checking is dangerous. “(D) uses an editorial process for error correction and clarification, including a transparent process for reporting errors or complaints to the station;” This seems deliberately vague. The left dominates the so-called fact-checking industry. Fact-checkers regularly demand changes on conservative content on things that are not errors but simply points of disagreement. This is a huge potential problem for conservatives and would be used to kick them out of the planned cooperatives.
- The act says that websites can't discriminate. That sounds great, but they already do. A lot. They actively suppress conservative content and employ so-called fact-checkers who use biased gauges to further restrict conservative content. This act does nothing to fix

that. So making companies like Facebook negotiate with conservatives is fruitless because they suppress conservative content and aren't likely to change.

- The 1,500-person staff limit is still indicative of a large news organization. If Congress wishes to aid small news outlets then that number should still be much smaller, perhaps 300. But whatever limit you put on it, you simply discourage companies from passing that threshold. As an example, Politico claims to have 700 employees in North America and another 200 in Europe. No one can argue that Politico is a small news organization. Yet it falls easily under the cap of 1,500. Politico sold in October for \$1 billion. Hardly a small outlet.
- I may have missed it, but if this bill goes through then all such agreements made by parties covered in this proposal should be public. How else can one group of publishers determine if they are being treated fairly when compared to another group of publishers?
- This proposal tries to make social media companies pay for something that private publishers pay them to make happen and that's linking to their content. Private publishers buy ads to promote content on all these platforms so that people click through and read it. If social media companies stopped linking to news organizations tomorrow, news organizations would suffer massively. The Electronic Frontier Foundation notes Big Tech's "control of digital advertising markets and the vast majority of data in those markets means they can squeeze publications *and* advertisers by extracting higher shares of advertising revenue." They suggested this is a good way to go after the Big Tech cartels, instead, and I agree.

Ultimately, it is still a mistake to make journalism organizations beholden to Congress. I respect the attempt to improve this bill and commend politicians on both sides of the aisle for that effort. However, a news organization that relies on politicians for funding cannot be expected to report on those same politicians in an aggressive manner. Cartels are bad. Trying to fix one set of cartels by creating another set of cartels is a bad solution.

In 2022, we live our lives online. We work, shop, order clothes and food, go to school, go to church and interact with our government. But only if Big Tech allows us to. If Congress doesn't act, Americans will only have the freedoms allowed to us by social media companies and foreign regulators. This bill fails to address those concerns.

Congress must clearly and legislatively protect the rights of all Americans to go online to express their opinions on politics, sports, religion and more and not be censored. We must declare that social media and search media companies above a certain size cannot discriminate based on beliefs. This will put us at odds with much of the world, which scoffs at American constitutional freedoms. But standing on the side of freedom means we're standing on the right side of history.

Thank you,
Dan Gainor