

Written Testimony of

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Energy & Commerce Committee
Subcommittee on Consumer Protection &
Commerce

Hearing on **Holding Big Tech Accountable:**
Legislation to Build a Safer Internet

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Good morning and thank you for inviting me to testify. I am Nathalie Maréchal, Senior Policy & Partnerships Manager at Ranking Digital Rights (RDR).

RDR is an independent research program housed at the New America think tank. We promote freedom of expression and privacy on the internet by creating global standards and incentives for companies to respect and protect the rights of internet users and their communities. We do this by ranking the world's most powerful digital platforms and telecommunications companies on international human rights standards. Our methodology is recognized in our field as the "gold standard" of corporate norms for tech and human rights, setting a high but achievable bar for a wide range of global tech and telecom companies. Our Corporate Accountability Index evaluates 26 publicly-traded companies headquartered in 15 countries. Among them are the U.S. "Big Tech" giants: Alphabet, Amazon, Apple, Meta, Microsoft and Twitter, but also large digital platforms based in China, Russia and South Korea, and global telecom operators. All told, these companies hold a combined market capitalization of more than USD \$11 trillion. Their products and services affect a majority of the world's 5.1 billion internet users.

As Congress crafts legislation to hold Big Tech accountable for its negative impacts on society, I urge you to focus on upstream structural reforms by regulating online advertising, mandating transparency and researcher access to data, and encouraging the Securities and Exchange Commission (SEC) to act within its existing regulatory authority to do what shareholders are unable to: Get Big Tech to comply with the same laws as all other public companies.

In 2020, our two-part report, "It's the Business Model," took a critical look at what drives profits at Facebook, Twitter, and Google.¹ All three companies have built their business models on targeted advertising and algorithmic systems that can drive the reach of a message by targeting it to people who are most likely to share it, and thus influence the viewpoints of thousands or even millions of people. Companies' failures to staunch the flow of problematic content and disinformation online are rooted in these systems and the surveillance-based business models that they serve.

¹ Maréchal, Nathalie, & Ellery Roberts Biddle. *It's Not Just the Content, It's the Business Model: Democracy's Online Speech Challenge - A Report from Ranking Digital Rights*. New America. March 17, 2020, <http://newamerica.org/oti/reports/its-not-just-content-its-business-model/>
Maréchal, Nathalie, Rebecca MacKinnon & Jessica Dheere. *Getting to the Source of Infodemics: It's the Business Model*. New America. May 27, 2021, <https://www.newamerica.org/oti/reports/getting-to-the-source-of-infodemics-its-the-business-model/>

Social media platforms will never be able to rid the internet of problematic speech, even if we could all agree on what speech is problematic. So instead of seeking to hold them liable for content posted by their users, Congress and advocates should focus on how content is amplified and targeted by regulating the surveillance-based business model that incentivizes platforms to collect massive amounts of personal information without meaningful consent, to optimize product design for virality and engagement, and to make business decisions without adequately considering the negative impact on society, much less put proper measures in place to mitigate harms. We think it's bad in the United States, but Facebook cares even less about its negative impact on society in parts of the world less valuable for serving its business model, like Ethiopia² and Myanmar.³ Facebook's documented failure to implement robust content moderation systems in languages other than English is particularly egregious, but it's hardly an outlier.

Last week, the Subcommittee on Communications and Technology held a hearing on potential reforms to the Section 230 intermediary liability shield. Reforming Section 230 could enable those who have been harmed by online speech or conduct to sue the platform hosting the content in question, but only if said content was already illegal. This would not address hate speech, false statements about political candidates, public health misinformation, and other types of content that members of Congress are rightly concerned about but are nonetheless protected by the First Amendment. Nor would it help us understand the inner workings of the "black box" platforms whose algorithmic decision-making holds so much power over our lives. Evidence-based policymaking requires industry-independent research, which in turn requires access to platform data. The Social Media DATA Act takes a necessary first step in that direction by compelling greater transparency about online advertising, including targeting parameters, and by creating a mechanism for the FTC to provide qualified, industry-independent researchers access to non-advertising platform data for research purposes.

The tenor and substance of Congressional hearings on the tech industry has come a long way in the past few years, thanks to a growing recognition that the harms users experience through social media platforms are connected to platform business models centered on maximizing revenue from targeted advertising. This business model incentivizes rapid growth; anti-competitive behavior, such as predatory acquisitions of would-be competitors and vertical integration across the ad tech value chain; mass data collection without knowledge or consent; reliance on automation to perform tasks that

² Zelalem, Zecharias and Peter Guest. "Why Facebook Keeps Failing in Ethiopia." Rest of World, November 13, 2021, <https://restofworld.org/2021/why-facebook-keeps-failing-in-ethiopia/>.

³ Wodinsky, Shoshana. "Rohingya Sue Meta for \$150 Billion Over Facebook's Alleged Role in Myanmar Genocide." Gizmodo, December 7, 2021, <https://gizmodo.com/rohingya-sue-meta-for-150-billion-over-facebooks-alleg-1848172791>.

require human nuance and contextual judgment; and consolidation of corporate power that thwarts any internal attempt at reform. The company now known as Meta is the most brazen example of these dynamics, but the basic point that how a company makes money plays a determinant role in its products and behavior is true across the tech sector and beyond. A business model that relies on the violation of rights will necessarily lead to products/behaviors that create and amplify harms.

So what should Congress do about it?

First, regulate the online advertising industry. Transpose the basic principles that govern offline advertising to the online world, and pursue antitrust enforcement in the ad tech sector. These measures will directly address consumer and civil rights harms related to privacy, discrimination, and fraud in online advertising. They will also shift the incentive structures that contribute to product design and corporate decisions that harm consumers and destabilize democracies around the world. Further, increased competition in the ad tech market will undercut the Alphabet and Meta duopoly and enable greater accountability for two mega-corporations that often behave as though they are above the law.

Second, create the conditions for evidence-based policymaking by mandating specific types of transparency for information that can safely be made public and by creating mechanisms for qualified, trustworthy, industry-independent researchers to verify companies' claims about users' experiences and expand knowledge and understanding about how these platforms impact societies and democracy around the world.⁴ The RDR methodology and the Santa Clara Principles on Transparency and Accountability in Content Moderation both provide granular recommendations for the data that companies should disclose publicly.⁵

Third, Congress should encourage the Securities and Exchange Commission (SEC) to act within its existing regulatory authority to do what shareholders are unable to: Get Big

⁴ Carter, Daniel, Amelia Acker, and Dan Sholler. "Tech Companies are Secretive; Researchers Need to Get Investigative." *Information Matters*, December 2, 2021, <https://informationmatters.org/2021/10/tech-companies-are-secretive-researchers-need-to-get-investigative/>.

Whittaker, Meredith. "The Steep Cost of Capture." *ACM Interactions* 28, no. 6 (November-December 2021): 50, <https://interactions.acm.org/archive/view/november-december-2021/the-steep-cost-of-capture>.

Benesch, Susan. "Nobody Can See Into Facebook." *The Atlantic*. October 30, 2021, <https://www.theatlantic.com/ideas/archive/2021/10/facebook-oversight-data-independent-research/620557/>.

⁵ "2020 Indicators." *Ranking Digital Rights*, accessed December 6, 2021, <https://rankingdigitalrights.org/2020-indicators/>.

"The Santa Clara Principles." *The Santa Clara Principles*, accessed December 6, 2021, <https://santaclaraprinciples.com/>.

Tech to comply with the same laws as all other public companies. Numerous whistleblower disclosures to the SEC indicate that several Big Tech companies are violating the securities laws, but because of their dual-class share structure, shareholders are unable to hold corporate management accountable.

The SEC must address the private market exemptions that allowed Big Tech companies to become so large and with concentrated governance. Because Meta was able to obtain significant private-market funding before going public, the company was able to impose a dual-class share structure and a governance structure that allows Mark Zuckerberg to unilaterally make decisions that impact billions of people without any accountability. This loophole must be closed so that shareholder democracy of the future Facebooks can take hold. To address the excesses of today's Big Tech firms, the SEC should issue an enforcement policy declaring that it will not grant bad actor waivers to, and will seek increased enforcement penalties for, companies with Class B shares or those in which a single individual serves as CEO and Chair of the company's Board of Directors.

The bills under consideration today all seek to shine a light on Big Tech's secretive business practices and hold them accountable when they harm their users, their competitors, or society more broadly, whether through deliberate action or through their failure to proactively identify and mitigate potential harms ahead of time. The Republican Big Tech Accountability Platform also contains many provisions that Ranking Digital Rights has long called for: transparency into how Big Tech develops its content policies and regular disclosures about content policy enforcement, including the types of content taken down and why, and clearly understood appeals processes.⁶

Big Tech accountability is not a partisan issue. Americans may disagree about how social media companies should govern content on their platforms, but there is strong bipartisan agreement that Big Tech is not above the law, and that whatever companies do, they should be transparent about it, and they should be accountable to their users, their shareholders, and the American people. Legislation should start there.

Thank you again for the opportunity to testify today, and I look forward to your questions.

⁶ Republican Leader McMorris Rodgers to Energy and Commerce Committee Republican Members. "Big Tech Accountability Platform," accessed December 7, 2021, <https://republicans-energycommerce.house.gov/wp-content/uploads/2021/01/Big-Tech-Accountability-Platform-Memo.pdf>.