

Re: Case 2023-022-IG-UA

This submission addresses Meta’s human rights obligations related to Holocaust denial. In short, Holocaust denial is anti-Semitic hate speech and Meta should treat it the way it treats other hate speech. While free expression is a core right, private companies may ban hateful speech on their platforms, and Meta has chosen to do so.¹ To regulate *some* hate speech but fail to similarly regulate Holocaust denial would treat a prevalent, virulent, and dangerous form of anti-Semitic hate speech differently than other forms of hateful content and provide Jewish users with less protection from hateful content than users who identify with groups targeted by other types of hate speech. Consequently, the Oversight Board should strongly recommend that Meta:

- (i) continue to treat Holocaust denial and distortion as Tier One hate speech; and
- (ii) implement the U.S. National Strategy to Combat Antisemitism’s calls to social media platforms to fight Holocaust denial and anti-Semitism by improving its algorithms, better training content moderators, and working with Jewish users and groups to understand how they experience anti-Semitism online and stand up against it, among other measures.

For concision, this submission focuses on the anti-Semitic nature of Holocaust denial, though the Oversight Board should be conscious of the need to protect the dignity of other groups victimized during the Holocaust, such as Roma, LGBTQ+, and disabled persons.

1. Definition of Holocaust denial

Meta and the Oversight Board should rely on leading definitions of Holocaust denial. The International Holocaust Remembrance Alliance (“IHRA”) defines Holocaust denial as “discourse and propaganda that deny the historical reality and the extent of the extermination of the Jews by the Nazis and their accomplices during World War II, known as the Holocaust or the Shoah”, including “publicly denying or calling into doubt the use of principal mechanisms of destruction (such as gas chambers, mass shooting, starvation and torture) or the intentionality of the genocide of the Jewish people.”²

The Oversight Board should treat materials that qualify as Holocaust distortion by, for instance, attempting to excuse or minimize the impact of the Holocaust or its principal elements; minimizing the number of victims in contradiction to reliable sources; attempting to blame the Jews for “causing their own genocide”; casting the Holocaust as a *positive* event; or attempting to blame other nations or groups for actions taken by Nazi Germany,³ in the same way it treats denialist material.

¹ Meta, Facebook Community Standards, Hate Speech (2023) (“Hate Speech Community Standard”), <https://transparency.fb.com/policies/community-standards/hate-speech/> (“we don’t allow hate speech on Facebook”).

² IHRA, *Working Definition of Holocaust Denial and Distortion*, <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-holocaust-denial-and-distortion> (“Denial Definition”).

³ Denial Definition; U.N. Doc. A/RES/76/250, Holocaust Denial, p.2, <https://digitallibrary.un.org/record/3956241?ln=en> (“UNGA Res. 76/250”).

2. The Oversight Board should acknowledge the facts of the Holocaust in its recommendation

A basic respect for the victims of the Holocaust requires briefly cataloguing the indisputable evidence of the crimes against them before discussing the legal aspects of denying those crimes. In summary, even before World War Two started, the Nazis had stripped Jews of the rights of full citizenship or even to work in many professions in Germany.⁴ Some were killed. Many fled. As the Nazis took over other parts of Europe, in some areas (particularly in the former Soviet Union), they promptly executed most or all Jewish civilians.⁵ In other areas, Jews were forced to move into segregated and overcrowded areas of town known as ghettos, leaving behind their homes and possessions. Many died there.⁶ Later, surviving Jews were transferred to concentration camps, where Nazis executed millions, many in gas chambers.⁷ By late 1941, the Nazi leadership had decided to exterminate all Jewish people, though some were kept alive for a time to serve as slave labor.⁸ All told, approximately six million Jews were murdered, constituting most of the Jewish population of Europe. Each of those six million was a unique human being – not merely a statistic.⁹

The Holocaust was proven beyond a reasonable doubt in front of a duly-constituted international court.¹⁰ In its judgment in the case against ‘Major War Criminals’ of the Nazi regime, the Nuremberg Tribunal considered that the Holocaust had been “proved in the greatest detail”,¹¹ noting “grim evidence of mass murders” which had been carried out pursuant to a “plan for exterminating the Jews”¹² and eventually finding “approximately six million Jews were murdered.”¹³ High-ranking Nazi officials testified and acknowledged the genocidal campaign. Among others, the commandant of Auschwitz, the deadliest of the Nazi concentration camps, testified and described the process of screening camp detainees for extermination and the process of mass murder.¹⁴ Nazi officers testified and described learning of the order for the complete extermination of the Jewish people.¹⁵

⁴ U.S. Holocaust Memorial Museum, *Anti-Jewish Legislation in Prewar Germany*, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/anti-jewish-legislation-in-prewar-germany>.

⁵ U.S. Holocaust Memorial Museum, *Mass Shootings of Jews During the Holocaust*, HOLOCAUST ENCYCLOPEDIA (Aug. 31, 2021), <https://encyclopedia.ushmm.org/content/en/article/mass-shootings-of-jews-during-the-holocaust>.

⁶ U.S. Holocaust Memorial Museum, *Ghettos*, HOLOCAUST ENCYCLOPEDIA (Dec. 4, 2019), <https://encyclopedia.ushmm.org/content/en/article/ghettos>.

⁷ Auschwitz-Birkenau Memorial and Museum, *The Extermination Procedure in the Gas Chambers*, <https://www.auschwitz.org/en/history/auschwitz-and-shoah/the-extermination-procedure-in-the-gas-chambers/>.

⁸ For instance, an Einsatzkommando commander reported in December 1941 that only “Work Jews” remained alive in his area while otherwise the “goal to solve the Jewish problem” had been achieved. Report from Commander of the Security Police and Einsatzkommando 3, December 1, 1941, p.7, <https://phdn.org/archives/holocaust-history.org/works/jaeger-report/htm/img007.htm.en.html>.

⁹ U.S. Holocaust Memorial Museum, *Who were the victims?*, HOLOCAUST ENCYCLOPEDIA (Mar. 4, 2020), <https://encyclopedia.ushmm.org/content/en/article/mosaic-of-victims-an-overview>.

¹⁰ U.S. Holocaust Memorial Museum, *International Military Tribunal at Nuremberg*, HOLOCAUST ENCYCLOPEDIA (Nov. 17, 2020), <https://encyclopedia.ushmm.org/content/en/article/international-military-tribunal-at-nuremberg>.

¹¹ International Military Tribunal, Trial of German Major War Criminals (“Major War Criminals”), 6 F.R.D. 69 (Int’l Mil. Trib. 1946), Judgment, October 1, 1946.

¹² *Id.* p.77.

¹³ *Id.* p.112.

¹⁴ *Id.* at p.78.

¹⁵ *E.g. id.*, transcript of January 3, 1946.

Considering the allegations of Holocaust crimes so massive that “believability must be bolstered with assurance a hundred times repeated”, one of the subsequent Nuremberg proceedings still found the Einsatzgruppen responsible for more than one million murders without the Prosecution calling a single witness, based on reports in which the Einsatzgruppen described their campaign of genocide by recording how many people they had murdered in a particular place on a particular day.¹⁶ Indeed, though Nazi leaders tried to destroy evidence of the Holocaust after the first reports of mass murders became public,¹⁷ the surviving evidence renders the Holocaust the most clearly-documented genocide in history. German leaders have acknowledged and apologized for their country’s responsibility.¹⁸

3. Holocaust denial is anti-Semitic

Social media platforms have been called upon to ensure their definitions of hate speech are “in line with international standards.”¹⁹ Those standards recognize that denying or distorting the Holocaust is anti-Semitic. The IHRA, the U.N., and the OSCE have found Holocaust denial is anti-Semitic.²⁰ Faced with a claim that Holocaust denial was protected speech, the European Court of Human Rights held:

There can be no doubt that denying the reality of clearly established historical facts, such as the Holocaust, as the applicant does in his book, does not constitute historical research akin to a quest for the truth. The aim and the result of that approach are completely different, the real purpose being to rehabilitate the National-Socialist regime and, as a consequence, accuse the victims themselves of falsifying history. Denying crimes against humanity is therefore one of the most serious forms of racial defamation of Jews and of incitement to hatred of them.²¹

The European Commission on Human Rights repeatedly found Holocaust denial to be “attacks on the Jewish community... inciting to racial hatred, anti-Semitism, and xenophobia...”²² And denial is often used to legitimize neo-Nazis and other violent anti-Semitic groups.²³ As a result, in many states where

¹⁶ *United States of America v. Otto Ohlendorf*, 4 N.M.T. 411 (1947), Judgment, p.415.

¹⁷ *Yad Vashem, Aktion 1005*, https://www.yadvashem.org/odot_pdf/microsoft%20word%20-%205721.pdf.

¹⁸ Jason Dawsey, *Two Moments of Remorse for Nazi Crimes: Willy Brandt, Frank-Walter Steinmeier and the Memory of the Warsaw Uprising*, NATIONAL WWII MUSEUM (Apr. 24, 2023), <https://www.nationalww2museum.org/war/articles/two-moments-remorse-nazi-crimes-willy-brandt-frank-walter-steinmeier-and-memory-warsaw>.

¹⁹ UNESCO, *Addressing Hate Speech on Social Media: Contemporary Challenges* (2021), <https://unesdoc.unesco.org/ark:/48223/pf0000379177>.

²⁰ Denial Definition; UNGA Res. 76/250; OSCE, *Understanding Anti-Semitic Hate Crimes and Addressing the Security Needs of Jewish Communities*, pp. 17-18 (2017), <https://www.osce.org/files/f/documents/c/c/317166.pdf> (“OSCE Hate Crimes Report”); International Holocaust Remembrance Alliance, *Working Definition of Antisemitism*, <https://www.holocaustremembrance.com/resources/working-definition-antisemitism>.

²¹ *Garaudy v. France*, Case No. 65831/01, Decision, June 24, 2003.

²² *Perinçek v. Switzerland*, Case No. 27510/08, Judgment, October 15, 2015 (collecting cases).

²³ UNESCO, *History Under Attack: Holocaust Denial and Distortion on Social Media*, p. 34 (2022), <https://unesdoc.org/ark:/48223/pf0000382159> (“History Under Attack”).

domestic law permits criminalizing hate speech, Holocaust denial is banned.²⁴ Another state moved to prohibit Holocaust denial while this call for submissions was open.²⁵

4. Holocaust denial relies on anti-Semitic conspiracy theories

As set forth above, the general facts about the Holocaust have been established by incontrovertible evidence. Precisely because the evidence is so overwhelming, Holocaust deniers typically “claim that there is a vast conspiracy” which has manufactured this overwhelming evidence.²⁶ Deniers typically allege that Jews are behind this conspiracy, acting for selfish motives – including financial profit. False allegations of Jewish conspiracies, greed, and purported control of the media are “age-old antisemitic lies, myths, and tropes”.²⁷ As such, “Holocaust denial is at its core an antisemitic conspiracy theory”²⁸ in that it is not possible to deny the Holocaust “without believing antisemitic tropes” about Jews.²⁹ Meta bans the use of such harmful stereotypes on its platform and identifies them as ‘Tier One’ hate speech.³⁰ Its policy correctly treats Holocaust denial the same way.

5. Meta’s obligations

Social media companies like Meta have been called on by the United Nations and the United States government, among others, to fight the spread of Holocaust denial and other anti-Semitic content on their platforms. For instance, the United Nations General Assembly has called upon social media companies to “take active measures to combat antisemitism and Holocaust denial or distortion by means of information and communications technologies and to facilitate reporting of such content” in a resolution cosponsored by Germany, Israel, and dozens of other states which passed without a single negative vote.³¹ UNESCO has called on social media companies to “adopt community standards that recognize that denial and distortion of the Holocaust promotes antisemitism and discrimination, and can, in some instances, incite hostility and violence.”³² The U.S. National Strategy to Combat Antisemitism calls for ten actions from social media companies.³³

²⁴ E.g. European Parliament, Briefing: Holocaust denial in criminal law: legal frameworks in selected EU member states, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698043/EPRS_BRI\(2021\)698043_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2021/698043/EPRS_BRI(2021)698043_EN.pdf).

²⁵ Andrew Lapin, After leading minister joked about Nazis, Finland moves to criminalize Holocaust denial, JERUSALEM POST (Sept. 1, 2023), <https://www.jpost.com/diaspora/antisemitism/article-757125>.

²⁶ U.S. Holocaust Memorial Museum, Holocaust Deniers and Public Misinformation, HOLOCAUST ENCYCLOPEDIA, <https://encyclopedia.ushmm.org/content/en/article/holocaust-deniers-and-public-misinformation>.

²⁷ History Under Attack. See also Anti-Defamation League, *Myth: Jews are Greedy*, <https://antisemitism.adl.org/greed/>; Anti-Defamation League, *Myth: Jews Have Too Much Power*, <https://antisemitism.adl.org/power/>.

²⁸ Anti-Defamation League, *Myth: The Holocaust Didn’t Happen*, <https://antisemitism.adl.org/denial/>.

²⁹ History Under Attack (quoting U.S. Special Envoy for Monitoring and Combating Anti-Semitism Deborah Lipstadt).

³⁰ Hate Speech Community Standard (prohibiting the use of “dehumanizing comparisons that have historically been used to attack, intimidate, or exclude specific groups, and that are often linked with offline violence”).

³¹ UNGA Res. 76/250.

³² History Under Attack.

³³ The White House, *U.S. National Strategy to Counter Anti-Semitism* (“National Strategy”), p. 33 (May 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/05/U.S.-National-Strategy-to-Counter-Antisemitism.pdf>.

These calls were issued in the context of rising and increasingly normalized anti-Semitism.³⁴ And social media is not immune: “antisemitic comments, tropes, and conspiracies are rampant on social media platforms.”³⁵ Social media thus “have a special responsibility” to help fight targeted hate.³⁶ To fulfil that responsibility, the Oversight Board should strongly recommend that Meta:

- (i) maintain Holocaust denial and distortion as a ‘Tier One’ violation; and
- (ii) act on the calls to social media platforms in the National Strategy by improving its algorithms, training community moderators, ensuring access to credible information,³⁷ and working with and listening to Jewish users and groups, among other actions.

Any other approach would put the Oversight Board on the sidelines of the fight against rising anti-Semitism – or the wrong side. The Oversight Board should also recommend that training be done and training materials developed in consultation with experts in Holocaust education and anti-Semitism.

6. Conclusion

Thank you for your consideration of this important issue. We reiterate our request that you recommend that Meta maintain the Tier One classification of Holocaust denial and implement the calls to action for social media companies in the National Strategy. This will ensure Meta’s definition of hate speech remains consistent with international standards and Meta does not discriminate against Jewish users by treating a common form of anti-Semitic hate speech differently than other hate speech, and will place Meta in line with best practices in fighting online anti-Semitism at a particularly critical time.

Please do not hesitate to contact us with any questions or if we can further assist the Oversight Board in formulating its recommendations.

Best Regards,



Arthur Traldi
Senior Counsel



Alyza D. Lewin
President

³⁴ *Id.*, p.6; Anti-Defamation League, *Audit of Antisemitic Incidents* (2022), <https://www.adl.org/resources/report/audit-antisemitic-incidents-2022>.

³⁵ National Strategy, p. 37.

³⁶ National Strategy, p. 17.

³⁷ Reportedly, Meta has established processes to redirect users to credible information. The Oversight Board should recommend Meta maintain these processes. *History Under Attack*, p.64.