

## Move Slow and Fake Things

### EXAMINING FACEBOOK'S 'OVERSIGHT' BOARD

It was April of 2018, and Facebook was reeling. Rampant hate speech had helped fuel [genocide in Myanmar](#), [ethnic violence in Sri Lanka](#), and Mark Zuckerberg was set to testify on how Russia and Cambridge Analytica abused the platform to corrupt the 2016 election.

This was the backdrop against which Zuckerberg first floated the concept for the Facebook Oversight Board. In an [interview](#), he outlined his desire to create an independent “Supreme Court... who ultimately make the final judgment call on what should be acceptable speech in a community that reflects the social norms and values of people all around the world.”

More than two years later – amid growing skepticism and unprecedented internal dissent at Facebook – the Oversight Board remains a mere talking point. Deadlines were missed; its purview narrowed; its independence undermined; its authority defanged.

The story of the Oversight Board is the story of Facebook itself. In the most charitable reading, a well-intentioned endeavor failing to live up to its promise. In the more cynical interpretation, a bill of goods designed to perpetuate unchecked growth at any cost.

## I. Timeline

**For two years, Facebook said Oversight Board members would be announced in 2019 and quickly start hearing cases...**

**JANUARY, 2018** After a year of reckoning over his failure to protect Facebook's integrity in 2016, Mark Zuckerberg embraces a white paper from Harvard Law professor Noah Feldman proposing the creation of a 'Facebook Supreme Court.'

- > [Harvard Law Professor Noah Feldman](#): “I dreamt up the idea of a ‘Facebook Supreme Court’ at the end of January 2018, and I sent a one-pager to Sheryl Sandberg, who said, ‘Let me send it to Mark.’ Mark was intrigued.”
- > [WIRED](#): The Oversight Board is a direct product of Facebook’s woes after the 2016 election. In the following year, Zuckerberg thought a lot about how much responsibility came from Facebook’s role... Regulating the speech of billions of people was a lot of responsibility—and he didn’t want it... He was in the midst of those ruminations in January 2018 when Sheryl Sandberg forwarded an email from [Noah Feldman]”

- > **Facebook:** "Core features from Feldman's white paper remain, and he has been advising Facebook on the Board throughout its development."

**APRIL 2, 2018** In an [interview with Vox's Ezra Klein](#), Zuckerberg first floats the idea for the 'Supreme Court' that would become the Facebook Oversight Board.

- > "You can imagine some sort of structure, almost like a Supreme Court, that is made up of independent folks who don't work for Facebook, who ultimately make the final judgment call on what should be acceptable speech in a community that reflects the social norms and values of people all around the world."

**NOVEMBER 15, 2018** Zuckerberg [formally announces](#) plans for the Oversight Board, and the intention to have it operational in 2019.

- > "Facebook should not make so many important decisions about free expression and safety on our own. In the next year, we're planning to create...an independent body, whose decisions would be transparent and binding."

**JUNE 27, 2019** In a [video](#), Zuckerberg says they've been working on the Oversight Board for more than a year, and reiterates it should launch by the end of 2019.

- > "This is an experiment in independent governance around expression, which we've been working on for more than a year now... Now the next step going forward is going to be to try to lock down some of these decisions, make some of these decisions over the next few months, and launch this independent oversight board by the end of the year."

**AUGUST 22, 2019** Facebook [says](#) its 'soon-to-be-formed' Oversight Board will select members by the end of the year and prepare to start hearing cases.

- > "By the end of the year, initial Board members will be selected and begin preparations to review their first cases... Facebook plans to select the first few Board members who will then, with Facebook, select additional members by the end of the year."

**SEPTEMBER 17, 2019** Facebook finally rolls out the Oversight Board [charter](#). On a [press call](#), senior officials affirm board members should be announced by the end of the year and promptly begin hearing cases.

- > *Heather Moore, leader of development for Oversight Board governance & structure:* "We are hoping to be in a position to announce an initial group of members by the end of 2019, for the board to start its work."
- > *Brent Harris, Director of Governance & Global Affairs:* "In the months ahead, we'll be doing everything we can to get the board fully up and running and hearing cases early in 2020."

**OCTOBER 23, 2019** In sworn testimony before the U.S. Congress, Mark Zuckerberg [says](#) that the co-chairs for the Oversight Board should be announced in 'the next few months'.

- > "We will appoint the first set of co-chairs for the body, and we hope to do this in the next few months, and then they will nominate a set of other members, and we will jointly agree on them. Once the board is up and running, it will nominate and refill itself."

**...But nearly two years after its conception, the long-standing timeline began to collapse. The first board members were not even named until May of 2020, and it's been made abundantly clear that they won't be operational anytime soon.**

**DECEMBER 12, 2019** Facebook [announces](#) that despite previous promises, no Oversight Board members or co-chairs will be announced in 2019.

- > "While we had hoped to announce members by the end of this year, we've decided to take additional time to consider the many candidates who continue to be put forward."

+ [Reuters](#): "[T]he board's creation is behind schedule... It will now probably not name the board's co-chairs and first members until after January 2020."

**JANUARY 28, 2020** Facebook [releases](#) proposed bylaws and names a Director of Oversight Board Administration. In public statements, officials further push back the timeline. WIRED reports 20 board members will be announced in February.

- > [Carolyn Glanville, Communications](#): "We'll continue to keep everyone posted on the rollout of the board in the coming weeks and months."
- > [Brent Harris](#): "I know that the question of who will sit on the board is front of mind for many people. We're taking the time required to run a thoughtful process and considering the many candidates who continue to be put forward. We're making progress and very much hope to be in position to announce members within the coming months."
- > [WIRED](#): "Next month [Facebook] will reveal the names of the first set of content arbiters, starting with around 20."

**FEBRUARY 15, 2020** Pressed by Business Insider, a Facebook official [says](#) they expect the Oversight Board to begin hearing cases 'in the next few months'.

**FEBRUARY 16, 2020** Zuckerberg pens an [op-ed](#) ostensibly calling for more regulation of Big Tech in which he touts his (*still non-existent*) Oversight Board.

"People need to feel that global technology platforms answer to someone, so regulation should hold companies accountable when they make mistakes. Companies like mine also need better oversight when we make decisions, which is why we're creating an independent Oversight Board so people can appeal Facebook's content decisions."

**MAY 6, 2020** Facebook [finally announces](#) initial cohort of 20 Oversight Board members, including four co-chairs.

**MAY 17, 2020** One of the newly minted co-chairs of the Facebook Oversight Board [tells NPR](#) that the board is still months away from hearing cases.

> *Columbia Law Professor Jamal Greene:* "[I]t will be a few months before we are fully up and running and able to start hearing cases. It's hard to say exactly when that will be. But it is safe to say that it's unlikely to be this summer... I think we were all hopeful that we're up and running before the election."

**JUNE 3, 2020** Amid outrage at Zuckerberg's inaction on Trump's posts inciting racial violence, the Oversight Board issues a [statement](#) reiterating that they're far from being operational and will not be weighing in.

> "As an institution that announced our first members less than a month ago, and which will not be operational until later this year, we are not in an immediate position to make decisions on issues like those we see unfolding today."

+ "An onboarding and training program for Board Members is currently underway"

+ "Over the coming weeks Members will focus on having the Board develop [institutional norms]... this process must be thorough."

+ "The final phase will be training on the Case Management Tool created by Facebook"

+ "Following completion of the tool, a series of readiness exercises will take place..."

**JUNE 17, 2020** Facebook's VP of Global Affairs and Communications Nick Clegg [says](#) the board "be fully operational...until the later part of this year."

**The Bylaws that govern the Oversight Board's operational procedures have not been adopted by board members yet. Perhaps that's because board members haven't been formally appointed by the independent trustees, as required by the Oversight Board Charter. And perhaps that is because Facebook has not bothered to appoint the independent trustees.**

**Facebook Oversight Board Charter [Article 1: Section 8]: “To support the initial formation of the board, Facebook will select a group of co-chairs. The co-chairs and Facebook will then jointly select candidates for the remainder of the board seats. The trustees will formally appoint those members.”**

- > **Facebook, [September 2019]**: “Facebook will extend a limited number of offers to candidates to serve on the Oversight Board as co-chairs. If and when those members accept the role, they will then work together with us to select, interview and make offers to candidates to fill the remaining board positions, over time. All members, including the co-chairs, will be formally appointed by the trustees.”
- > **Mark Zuckerberg, in Congressional Testimony, [October 2019]**: “We will appoint the first set of co-chairs for the body, and we hope to do this in the next few months, and then they will nominate a set of other members, and we will jointly agree on them.”
- > **Facebook, [December 2019]**: “The trust will have at least three individual trustees and a corporate trustee... Facebook is currently conducting a search for the individual trustees... We will announce these trustees next year.”

*The co-chairs were announced concurrently with 16 additional board members in May of 2020. To date, no individual trustees have been announced.*

**Oversight Board Bylaws [Introduction]: “The bylaws will be operational upon their respective adoption by Facebook, the trustees and members of the board.”**

**Whenever the Oversight Board actually begins to function, don't expect a rapid output... they have a 90-day window to review most cases; each case will be held by a five-member panel; and members are only expected to work 15 hours per month (compensation: unknown).**

- > **Bloomberg**: Facebook's Content Oversight Board May Take Months for Decisions
- > **Bylaws [Article 1: Section 3.1]**: “The timeframe for case decisions and implementation will be a maximum of ninety (90) days, starting from Facebook's last decision on the case under review. The administration, on behalf of the board, will monitor each chosen case and ensure the board issues its decision within this timeframe.”
  - + “Once a case has been selected by the case selection committee, it will be assigned to a board panel of five members”

- > **Bloomberg:** "Being a part of the board is a part-time commitment — an estimated 15 hours per month as the members continue with other roles."
- + **Brent Harris, 9/17/19:** "So, what we're envisioning is that the board members will be part-time... On compensation, we're still working out those details, and that's something that over the next few weeks, we anticipate that we will resolve."
- + **CNBC, 5/6/20 (8 months later):** "The board will be compensated an undisclosed amount for their time."

## II. JURISDICTION

**Zuckerberg and others at Facebook have long painted the Oversight Board in grandiose terms – an independent body empowered to make binding decisions on major questions that pit free expression against mitigating harm.**

**But the board's initial jurisdiction is limited to appeals over individual posts that were taken down, not harmful content left up. Its decisions are binding only for those individual posts. And when they make broader policy recommendations, Facebook is free to reject them.**

**Zuckerberg has repeatedly cast the Oversight Board as a solution to Facebook's inability to protect the integrity of its platform, with broad and binding power.**

- > **First public description of the Oversight Board:** "[A]most like a Supreme Court, that is made up of independent folks who don't work for Facebook, who ultimately make the final judgment call on what should be acceptable speech in a community that reflects the social norms and values of people all around the world."
- > **First formal announcement of the board:** "I've increasingly come to believe that Facebook should not make so many important decisions about free expression and safety on our own. In the next year, we're planning to create a new way for people to appeal content decisions to an independent body, whose decisions would be transparent and binding. The purpose of this body would be to uphold the principle of giving people a voice while also recognizing the reality of keeping people safe."
- > **Letter accompanying the Oversight Board's charter:** "The board will be an advocate for our community -- supporting people's right to free expression, and making sure we fulfill our responsibility to keep people safe."

But the [bylaws](#) specify, “when the board begins operations, people may request the board’s review,” but that only applies to “content that has been removed for violations...on Facebook or Instagram”.

When will that scope may expand? “In the future.”

- > [Nick Clegg, Facebook VP of Global Affairs and Communication, \[June 2020\]](#): “The initial cases that they will be able to hear, principally for technical reasons, are related to content that has been taken down and where there is an appeal or where there was a question mark about whether it should have been taken down. And then only the later stage, the date of which I cannot give you – I cannot give you with any precision, only the later stage will the reverse be possible as well.”
- > [The Verge](#): “At least at launch [the board] will only review cases in which an individual believes their content was removed in error. If a post was allowed to stay up in error — a piece of viral misinformation about a health crisis, for example — the board will initially have no jurisdiction.”
- > [Washington Post Editorial](#): “Yet it is exactly these ‘leave-ups’ that catch the company the most flak, such as a video of House Speaker Nancy Pelosi distorted to make her appear drunk, and hate speech in Myanmar that helped lead to genocide.”
- > [Bylaws \[Article 2: Section 1.2.1\]](#): “The following types of content are not available for the board’s review, unless reassessed in the future by Facebook: *Content types*: content posted through marketplace, fundraisers, Facebook dating, messages, and spam. *Decision types*: decisions made on reports involving intellectual property or pursuant to legal obligations. *Services*: content on WhatsApp, Messenger, Instagram Direct, and Oculus.”

**What’s more, board rulings will be binding only to the individual piece of content. Facebook isn’t required to treat them as precedent or apply them to similar posts. The board can issue broader “policy advisory statements” but Facebook needn’t listen to them.**

- > [Bylaws \[Article 2: Section 2.3\]](#): “The board’s resolution on each case will be binding on Facebook, unless implementation of a resolution could violate the law, while the policy advisory statement from the board will be considered as a recommendation”
- > [WIRED](#): “Facebook came up with a process where the board could suggest, but not force, the company to regard its decisions as precedent for other cases. Members of the board ruling on a case can ask Facebook to change its Content Standards to adhere to its decision more generally. When that happens, Facebook must consider the request but is not obligated to fulfill it.”
  - + “Heather Moore agrees that there will definitely be instances where Facebook rejects the board’s recommendations.”

> **Bylaws [Article 2: Section 2.3.1]**: “Facebook will undertake a review to determine if there is identical content with parallel context associated with the board’s decision that remains on Facebook. If Facebook determines that it has the technical and operational capacity to take action on that content as well, it will do so promptly.”

+ **CNBC**: “This means that the decisions made by the oversight board will, by default, apply narrowly to the specific piece of content that is being reviewed, and will not create any precedents that Facebook has to follow in the future for similar types of violations. The company retains final say on whether or not to broadly apply the decisions of the board.”

**The Oversight Board’s mandate conveniently skirts key issues that could impact Facebook’s bottom line. They’ll have no jurisdiction over the algorithms Facebook uses to amplify (often toxic) voices and suppress others. And any examination of their controversial policy to allow politicians to run false ads has been intentionally punted until after the election.**

**Oversight Board expert [Evelyn Douek](#): “The way Facebook’s algorithms rank content for display to users is conspicuously absent from the [bylaws] altogether”**

> **Douek**: “ Most worryingly, this provides Facebook with a loophole through which to avoid FOB oversight: Facebook could simply downrank hard cases rather than taking them down completely. Not to mention that many of the main concerns about Facebook’s effects on public discourse relate to the kinds of content that it algorithmically amplifies.”

> **Media Professor Siva Vaidhyanathan**: “Most importantly, the board will have no say over how the algorithms work and thus what gets amplified or muffled by the real power of Facebook.”

> **Ranking Digital Rights director, Rebecca Mackinnon**: “[The board] cannot stop the exploitative collection & sharing of user data, which enables advertisers to target people most susceptible to their messages, or stop the company from deploying opaque algorithms that prioritize inflammatory comment to maximize engagement.”

**Senior Facebook executive Nick Clegg made clear in January that the board wouldn’t address the issue of false ads until after the 2020 election.**

> **TechCrunch, 1/28/20**: “Clegg also emphatically told Wired that the Board won’t approach the urgent issue of misinformation in political ads before the 2020 election”

+ **WIRED**: “Clegg is emphatic that it won’t happen before the 2020 election, but instead at a later time, after the board ‘finds its feet.’ A counter-argument might be that making the decision when we need it most will be instrumental to gain footing for this experiment. The bylaws do allow for Facebook to ask the board to handle an issue about ads on an expedited schedule.”



- > **Recode**: "Eventually, the board could also have the power to overrule Facebook's controversial ad policy that allows politicians to make false statements in political ads... But we have very few details for now on exactly when or how that would happen."

## III. INDEPENDENCE

The entire point of the board is to create **independent oversight and accountability**. We've already outlined the severe limitations that have been placed on the board with regard to scope and enforcement but there are additional questions about its independence.

Facebook fully funded the Oversight Board. Facebook will (presumably, at some point) appoint its powerful trustees. Facebook selected the first 20 board members. Facebook has written and approved the board's charter. Facebook drafted its bylaws, which if approved, can largely not be amended by the board without Facebook's signoff.

**Charter [Article 5: Section 3]: "Facebook will fund the trust and will appoint independent trustees."**

- > **Bylaws [Article 2: Section 1.3.1]**: "Facebook will fund the trust upfront for at least six (6) years. It will review the annual reports prepared by the trust to determine the operational and procedural effectiveness of the board.

+ **CNBC**: "In other words, Facebook can just let the board die after six years."

**Though Facebook has not bothered to name trustees yet, those trustees will have great power, including over the appointment and removal of board members.**

- > **Charter [Article 1: Section 8]**: "The trustees will formally appoint the members. The trustees may remove a member before the expiration of their term for violations of the code of conduct"
- > **Bylaws [Article 4: Section 1.2]**: "The trust will be comprised of at least three and no more than eleven individual trustees and one corporate trustee who will be selected by Facebook. The trustees will be responsible for confirming future board members and ensuring that the board is operating according to its purpose and its governing documents."

- > **Just Security:** “The trustees and the company itself retain authority over other matters that underpin the board’s independence, such as its budget and the appointment and removal of board members, a degree of power that could be exercised to influence the direction of the board.”

**Facebook wrote the board’s charter and drafted the bylaws. The board can’t amend key sections of the bylaws without Facebook’s approval. At the same time, Facebook and the trust can make major changes without the board’s signoff.**

- > **Brent Harris, 1/28/20:** “What we are publishing today is our recommendation for those by-laws which will be submitted to the board’s members for formal approval. I want to preempt an obvious question that some of you may have, which is why Facebook has written these at all and not waited for the members to be appointed to create these bylaws themselves from scratch.... We did not feel it was fair to expect the board’s first weeks and months to be consumed by writing all of these rules.”
- > **TechCrunch:** “The Board can’t amend some critical bylaws such as those about Case Review and Decisions without [Facebook’s] approval”
- > **Just Security:** “The trust can amend the section of the bylaws governing its role in the appointment and removal of board members, which is key to insulating the board from the company’s influence, with only the approval of Facebook and the trust’s corporate trustee... [S]o long as it does not conflict with the charter or remove a previously granted authority to the board, only board consultation, not approval, is required for Facebook to amend the section of the bylaws governing case-review timelines, the types of content the board can review, and appeal-submission procedures.”

## IV. CONCLUSION

Since his 2018 apology tour for Facebook’s many sins, Mark Zuckerberg has used the Oversight Board as compelling evidence that he’s embracing his societal responsibilities. He successfully staved off existential threats to his empire with the promise of an independent ‘Supreme Court’ to impose justice and accountability on Facebook.

Thirty months after its conception, the Facebook-funded Oversight Board is nowhere near operational. The Facebook-selected board members can’t approve their Facebook-written governing bylaws, in part because Facebook hasn’t even named the trustees empowered to ‘formally appoint’ them. The board will eventually begin hearing a handful of cases, over 90-day periods, to decide if individual posts were wrongfully removed for violating Facebook’s Community Standards – and if they so choose, issue corresponding ‘advisory statements.’ They won’t set policy or precedent, evaluate Facebook’s content-shaping algorithms, or even address harmful misinformation and hate speech riddling the platform until sometime ‘in the future’.

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At a global inflection point fueled by the erosion of shared reality and humanity, Facebook is conducting business as usual, while its Potemkin court conducts virtual orientation. The Oversight Board is a sham, a PR stunt to avoid accountability and kick the can until at least after the 2020 election. If ever there was one, *this* is a Mark Zuckerberg production.