

June 22, 2022

TO: Mark Zuckerberg, Chief Executive Officer
Meta Platforms, Inc.
1 Hacker Way
Menlo Park, CA 94025

CC: Gary M. Restaino, Acting Director
Bureau of Alcohol, Tobacco, Firearms and Explosives
99 New York Avenue, NE
Washington, DC 20226

Dear Mr. Zuckerberg,

We are writing to express deep concern over Facebook's current policy allowing individuals attempting to buy or sell firearms on your platform up to ten strikes before being removed. As explained in more detail below, the policy – which was kept hidden from public view until reported on by the [Washington Post](#) – likely facilitates the illegal sale of firearms by the very nature of its lenient design.

In light of the recent tragedies in Uvalde and Buffalo, along with the everyday surge of gun violence [raging](#) across the country, we request that Facebook immediately replace its ten-strike policy with a more decisive two-strike policy. Should Facebook refuse to amend this policy, we request the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) immediately investigate the company for its role in facilitating the illegal exchange of firearms.

Guns Sales on Facebook

Although Facebook [purported to ban](#) the sale of firearms on its platform in 2016, the company's current policy amounts to anything but a prohibition on gun sales. According to internal guidance obtained by the Washington Post, Facebook allows users to violate the platform's policy up to ten times before being banned from utilizing the platform. In effect, that means Facebook does allow users to sell guns on its platform, as long as a user is caught doing so fewer than ten times.

This policy undermines Facebook's original justification for restricting gun sales on its platform in 2016: that gun sales facilitated online without a background check are unsafe. That justification was, and remains, correct. The internet has made it increasingly easy for people who are prohibited from owning a gun to gain access to them by exploiting the "[private sale loophole](#)" – a loophole in federal law that allows individuals to sell a small number of guns without conducting background checks.

Predictably, the online market has become an attractive source of weapons for people who could not pass a background check at a gun store. According to a large-scale survey, [45%](#) of gun owners who acquired a gun online did so without any background check. Indeed, an [investigation](#) into Facebook conducted prior to the company claiming to ban gun sales on the platform found individuals with criminal records attempting to illegally buy guns through the platform, including a convicted felon and domestic abuser. Facebook's *current* policy still allows

such individuals to access guns through Facebook marketplace, as long as the seller makes fewer than ten transactions.

In an online marketplace with an abundance of loopholes, Facebook policy gives illegal gun buyers and traffickers enormous latitude to operate unchecked, including those who sell guns *and* actively call for violence or praise a known dangerous organization.

Facebook has an obligation to take more serious measures to ensure that illegal gun sales — all of which pose an active threat to public safety — do not take place on the platform.

Facebook’s Policy Design Facilitates Illegal Gun Sales

Users who sell up to ten guns on Facebook are not just putting Americans in danger, they are very likely violating federal law. Under the Gun Control Act of 1968 (GCA), any person who is engaged “in the business” of selling guns is a firearms dealer and must obtain a federal firearms license (FFL).¹ This distinction triggers certain federal laws and regulations that FFLs must follow, including the statutory requirement that they conduct a background check on potential purchasers; keep firearms transaction records so that guns used in a crime can be traced to their first retail purchaser; and ensure safety locks are provided with every handgun and are available in any location where firearms are sold.²

The GCA does not specify the level of sales activity that distinguishes someone who sells guns occasionally—and is not subject to federal licensing requirements—from someone who is “engaged in the business” of firearm sales and therefore must be licensed. However, courts have frequently upheld convictions for dealing firearms without a license in cases involving a number of gun sales that is less than the ten sales currently allowed under Facebook policy.³ As the [ATF itself noted](#) in guidance to firearm sellers, “courts have upheld convictions for dealing without a license when as few as two firearms were sold, or when only one or two transactions took place.”

In addition to court holdings, the legislative history surrounding the law shows Facebook’s policy likely allows unlawfully unlicensed gun sellers to facilitate sales using the platform. When the current legislative language that allows unlicensed people to make “occasional sales” and sell guns from their “personal collections” was passed in 1986 as part of the Firearm Owners’ Protection Act (FOPA), the standard was discussed in legislative hearings. According to one [analysis](#), the testimony indicates that the goal of the legislation was to create a clear definition for what constitutes “engaged in the business” and to protect people who sell guns in very small numbers.

For example, Senator James McClure (R-ID), sponsor of the FOPA, said that the legislation would address the problem wherein sellers were prosecuted for transferring “two, three, or four

¹ 18 U.S.C. § 923(a).

² 18 U.S.C. § 922(t)(1)(A)–(B).

³ See, e.g., *U.S. v. McGowan*, 746 F. App’x 679, 680 (9th Cir. 2018) (defendant bought 8 guns over a span of “a few years” and sold six of them during such period); *U.S. v. Conn*, 297 F.3d 548 (7th Cir. 2002) (rejecting the defendant’s sufficiency-of-the-evidence argument on plain-error review where the defendant sold undercover agents seven firearms on six occasions in a three-month period and government presented indirect evidence of additional transactions); *U.S. v. Collins*, 957 F.2d 72 (2d Cir. 1992) (defendant agreed to sell undercover officers five guns in three transactions over seven months and government presented evidence of additional sales; defendant did not challenge sufficiency of the evidence on appeal); *U.S. v. Perkins*, 633 F.2d 856, 860 (8th Cir. 1981) (defendant engaged in at least three transactions involving eight guns over three months).

guns from their collection.”⁴ Senator Orrin Hatch (R-UT) said that the new definition would protect people from selling “two or three weapons from their personal collections and thus unwittingly violating” the law.⁵ The head of the National Rifle Association’s Institute for Legislative Action described the problem as “prosecutions on the basis of as few as two sales.”⁶

Given these facts, it is reasonable to assume that if a user is attempting to sell up to ten guns on Facebook – as Facebook’s current policy allows – they could be “in the business” of selling guns, and as such, should be required to be a licensed dealer and conduct background checks under federal law. Thus, in choosing a ten strike threshold, Facebook’s policy design itself is potentially facilitating illegal gun purchases and illegal, unlicensed sales.

Immediate Action Must Be Taken to Save Lives

This is not a matter of moderating speech. It is not even a matter of moderating lawful activity. Facebook’s current ten strike policy is about the moderation of commerce – including illegal commerce – on its platform.

While we would not assume that Facebook takes the issue of gun safety lightly, we are also well aware that the platform has historically changed its policies on this issue *only* when public pressure demands it. That was the case when Facebook announced that it would block minors from seeing pages that advertised guns for sale in [2014](#), it was true in the lead-up to Facebook’s decision to ban the sale of firearms on its platform in 2016, and we hope it will be true today.

It is critical that the company’s policies more clearly demonstrate the severity of violating its purported ban on the sale of firearms, and enforce it accordingly. Facebook can do that by ensuring users receive no more than one warning to stop selling firearms before being permanently banned on their second offense. This policy should also apply to the sale of firearm component parts, 3D guns, or ammunition – all of which are still [abundantly available](#) on the platform.

After a 2017 shooting in Las Vegas, [you wrote](#), “It’s hard to imagine why we don’t make it much harder for anyone to do this.” Now, Facebook has a chance to do its part to make it harder for the next shooting to happen. As both gun safety and tech accountability advocates, we urge you to do more to protect public safety and amend your ten strike policy. In the fight to save lives, there is no time for half measures.

Sincerely,

Nicole Gill, Co-founder and Executive Director
Jesse Lehrich, Co-founder and Senior Advisor
Accountable Tech

Adam Skaggs, Chief Counsel and Policy Director
Giffords

⁴ The Firearms Owner Protection Act, Hearing Before the S. Comm. On the Judiciary, 97th Cong. 47(1981) (statement of Sen. James McClure).

⁵ The Federal Firearms Owner Protection Act, Hearing Before the S. Comm. on the Judiciary, 98th Cong. 5 (1983) (Statement of Senator Orrin Hatch).

⁶ The Firearms Owner Protection Act, Hearing Before the S. Comm. On the Judiciary, 97th Cong. 47 (1981) (Statement of Neal Knox, Exec. Dir. NRA-ILA).