



Public Comment Appendix for

2021-012-FB-UA

Case number

Case description

In August 2021, a Facebook user posted a picture of Indigenous artwork, with accompanying text description in English. The picture shows a traditional wampum belt, made with shells or beads. The belt includes a series of depictions, which the user says were inspired by "the Kamloops story", a reference to the discovery of unmarked graves at a former residential school for First Nations children in British Columbia, Canada.

The text gives the artwork the title "Kill the Indian/ Save the Man", identifies the user as its creator, and provides the phrases "Theft of the Innocent", "Evil posing as Saviours", "Residential School/Concentration Camp", "Waiting for Discovery" and "Bring Our Children Home." Each of these phrases appears to correspond to a distinct section of the series of depictions on the wampum belt.

The user states that wampum belts have "always been a means of documenting our history", and that before colonisation storytellers would travel from village to village "teaching our people our history." The user states that their belts today are much the same but instead travel by social media and on display in exhibits. They say that the belt was not easy to create, and that it was very emotional bringing the story to life but also that it was too important to not document it. They also say that the belt will be one of a three-belt set, and will not be for sale as this is a story that cannot be hidden from public knowledge again.

The user says that they made the belt after the news of the Kamloops story, a reference to the discovery of unmarked graves at a former residential school for First Nations children in Canada. In the post, the user apologises for any pain their belts cause to survivors, and that this is not the intent – the "sole purpose is to bring awareness to this horrific story."

Facebook removed the content under its [Hate Speech Community Standard](#). As a result of the Board selecting this case, Facebook identified its removal as an "enforcement error" and restored the content – the content remains available on the platform. At the time of removal, the content had been viewed over 4,000 times, and shared over 50 times. No users reported the content.

Under its Hate Speech policy, Facebook takes down content that targets people with "violent speech" on the basis of a protected characteristic, including race, ethnicity and national origin. Indigenous origin or identity is not expressly listed as a

protected characteristic. The policy includes the following exceptions: "We recognise that people sometimes share content that includes someone else's hate speech to condemn it or raise awareness. In other cases, speech that might otherwise violate our standards can be used self-referentially or in an empowering way. Our policies are designed to allow room for these types of speech, but we require people to clearly indicate their intent. If the intention is unclear, we may remove content."

In their appeal, the user states that they are a traditional artist sharing their artwork, which is important to documenting history. They state that this is censorship and that it is important that people see what they posted.

The Board would appreciate public comments that address:

- Whether Facebook's initial decision to remove the post was consistent with the company's Hate Speech Community Standard, the company's stated values and human rights responsibilities and commitments.
- Concerns related to Facebook's moderation of artistic expression, particularly art that may address sensitive themes.
- The history and use of the phrase "Kill the Indian/Save the Man" in North America.
- Contextual information on human rights abuses against children of Indigenous origin or identity in residential schools in Canada, including First Nations children at the Kamloops Indian Residential School.
- If Indigenous origin or identity should be a protected characteristic in Facebook's Hate Speech Policy.
- How Facebook's content moderation, including the use of automation, affects the freedom of expression of Indigenous peoples, and how negative effects may be prevented or mitigated.

In its decisions, the Board can issue policy recommendations to Facebook. While recommendations are not binding, Facebook must respond to them within 30 days. As such, the Board welcomes public comments proposing recommendations that are relevant to this case.



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The Oversight Board is committed to bringing diverse perspectives from third parties into the case review process. To that end, the Oversight Board has established a public comment process.

Public comments respond to case descriptions based on the information provided to the Board by users and Facebook as part of the appeals process. These case descriptions are posted before panels begin deliberation to provide time for public comment. As such, case descriptions reflect neither the Board's assessment of a case, nor the full array of policy issues that a panel might consider to be implicated by each case.

To protect the privacy and security of commenters, comments are only viewed by the Oversight Board and as detailed in the [Operational Privacy Notice](#). All commenters included in this appendix gave consent to the Oversight Board to publish their comments. For commenters who did not consent to attribute their comments publicly, names have been redacted. To withdraw your comment, please email contact@osbadmin.com.

To reflect the wide range of views on cases, the Oversight Board has included all comments received except those clearly irrelevant, abusive or disrespectful of the human and fundamental rights of any person or group of persons and therefore violating the [Terms for Public Comment](#). Inclusion of a comment in this appendix is not an endorsement by the Oversight Board of the views expressed in the comment. The Oversight Board is committed to transparency and this appendix is meant to accurately reflect the input we received.



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8

Number of Comments

Regional Breakdown

1	0	2	0
Asia Pacific & Oceania	Central & South Asia	Europe	Latin America & Caribbean
0	1	4	
Middle East and North Africa	Sub-Saharan Africa	United States & Canada	

2021-012-FB-UA

Case number

PC-10206

Public comment number

Asia Pacific and Oceania

Region

Andrew

Commenter's first name

Situ

Commenter's last name

English

Commenter's preferred language

DID NOT PROVIDE

Organization

No

Response on behalf of organization

Short summary provided by the commenter

Indigenous status is sacred.

Full Comment

We are not allowed to use slurs that refer to people of Chinese, Jewish or Indian origin. Yet we see racial epithets liberally thrown at indigenous people but no community standards were broken. It is very inconsistent.

Link to Attachment

No Attachment

2021-012-FB-UA

Case number

PC-10208

Public comment number

United States and Canada

Region

Shannon

Commenter's first name

O'Loughlin

Commenter's last name

English

Commenter's preferred language

Association on American Indian Affairs Yes

Organization

Response on behalf of organization

Short summary provided by the commenter

The language facebook considers as hate speech: "Kill the Indian/Save the Man" is actually a quote from Richard Henry Pratt, an Army officer who developed the Carlisle Indian School, the first federal Indian boarding school, from his efforts regarding Native American prisoners of war.

Full Comment

The language facebook considers as hate speech: "Kill the Indian/Save the Man" is actually a quote from Richard Henry Pratt, an Army officer who developed the Carlisle Indian School, the first federal Indian boarding school, from his experience regarding Native American prisoners of war. Federal boarding schools were created as part of the United States genocide and assimilation policies against Native Americans. Children were stolen, and Native peoples were put in jail, their food and shelter were taken, among other things, if they prevented their children from going to these boarding schools. The person who posted this quote was not committing hate speech, but merely quoting a well-known statement used to drive this racist US policy.

Link to Attachment

No Attachment

2021-012-FB-UA

Case number

PC-10227

Public comment number

United States and Canada

Region

Robin

Commenter's first name

Fussell

Commenter's last name

English

Commenter's preferred language

DID NOT PROVIDE

Organization

No

Response on behalf of organization

Short summary provided by the commenter

I address each request by the oversight committee. Explaining why this comment should be allowed, and why the blocking of the comment itself is oppressive in nature, the opposite of what FB claims it is doing. Given the regularity of this, one must question the actual intent of FB

Full Comment

=== Whether Facebook's initial decision to remove the post was consistent with the company's Hate Speech Community Standard, the company's stated values and human rights responsibilities and commitments. It is a story through images of a native people's plight with the attempt at washing away their "indian" and leaving just a "normal" person. THAT ITSELF is racist, and this is opposition through to element of telling a story. That it was taken down is dridiculous. === Concerns related to Facebook's moderation of artistic expression, particularly art that may address sensitive themes. Art is art, expression is expression, why is it facebook is taking this down, when it is in favor of spreading stories again colonial mistreatment of a native culture, yet when I report a comic with ridiculously exaggerated imagery of black people, I'm told "sorry it doesn't violate our ridiculous rules" by FB. FB should be ashamed of itself blocking this post. Art is not art when it becomes a tool to bully, which the comic I'm speaking of is. This is not, clearly. === The history and use of the phrase "Kill the Indian/ Save the Man" in North America. If you don't know or understand, this never should have been taken down. This phrase was used at the children's school by it's head, speaking of basically whitewashing / colonizing the individuals, removing the "indian" from them, and leaving a person of their design, a "normal" citizen of the "new civil society" It's racism at core. This usage in this was to highlight the abusrdity of what they had done to the children at the schools. === Contextual information on human rights abuses against children of Indigenous origin or identity in residential schools in

Canada, including First Nations children at the Kamloops Indian Residential School. These schools were utilized by imperial colonists for the purpose of creating "normal people" of the natives, who were "unfit" to fill society. An idea and often unknown extreme oppression and colonialism. = = = If Indigenous origin or identity should be a protected characteristic in Facebook's hate speech policy. Did you really feel you should ask this? YES. YES. YES. Of course. But you should NOT use AI filters to determine "hate speech" This leads to the oppression of a message from indigenous people who are suppressed by the badly learned machine learning algorithms which determine indigenous people's posts to tell stories of their culture and hardships are hate speech. It is doing the opposite of protecting when you strike down a single post used to tell a story of oppression. You need to do it manually, or not at all. This is the worst element of Facebook's atrocious handling of these things. How Facebook's content moderation, including the use of automation, impacts the freedom of expression of Indigenous peoples, and how negative impacts may be prevented or mitigated. This leaves one to consider, is this intended? Does Facebook truly not realize how often it blocks content that spreads awareness OF hate, which itself further oppresses people by disallowing their message because of unaware machine learning which has no true appeals process and half the time does not even allow for a second decision request which means the person cannot appeal to the board? It is all a game of juggling knives blindfolded when posting something concerning to Facebook. What happens when an activist organization posts something similar, and they are banned for 30 days, and no appeal option, how many lives can that harm by keeping a resource that helps others from utilizing what is becoming a core element of human societies (a very unfortunate matter, but one we cannot address as FB is replacing the telephones for contact of the times past) Truly it is oppression that I'm even here having to argue for this post, it never should have been blocked.

[Link to Attachment](#)

No Attachment

2021-012-FB-UA

Case number

PC-10233

Public comment number

Europe

Region

Jasmina

Commenter's first name

Lazovic

Commenter's last name

English

Commenter's preferred language

Freemuse

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

The removal of the post is a violation of the artist's right to freedom of expression as protected under international human rights law. Considering that the artist outlined their intent to 'raise awareness of this horrific story' (discovery of unmarked graves) and the fact that no user has reported the content – at the time of removal or since its restoration, the decision to remove the content for qualifying as hate speech violates the UN principles introduced in the Rabat Plan of Action. The established threshold test requires an analysis of the social and political context, the status of the speaker, the intent to incite audience against a target group, extent of message dissemination and likelihood of harm, including imminence.

Full Comment

The removal of the post by Facebook is a violation of the artist's right to freedom of artistic expression as protected under international human rights law. Specifically, Article 19(2) of the International Covenant on Civil and Political Rights upholds the right to freedom of expression 'in the form of art' and Article 15(3) of the International Covenant on Economic, Social and Cultural Rights determines that states respect the freedom indispensable for creative activity. The jurisprudence of European Court of Human Rights in *Handyside v. the United Kingdom* (1976) further highlights that the right of freedom of expression is 'applicable not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb.' Artistic freedom is crucial to uphold democratic engagement, to assure the right to peaceful opposition, and gives voice to the marginalised and the oppressed. Further, online platforms such as Facebook are an imperative space for artists to contribute to political and social debates, disseminate their artistic work and provide enjoyment of the arts. However, Freemuse research demonstrates that artistic voices from

minority communities are disproportionately silenced and subjected to censorship - as this case illustrates. Regulation of hate speech according to international human rights standards On analysis of the given factual situation (Case 2021-012-FB-UA) and considering that the artist outlined their intent to 'raise awareness of this horrific story' (referring to the discovery of unmarked graves at a former residential school for First Nations children in Canada) as well as the fact that no user has reported the content - at the time of removal or since its subsequent restoration on the platform, the decision to remove the content for qualifying as hate speech violates the international standards related to freedom of artistic expression. Even though the international human rights law does not provide a precise definition on what constitutes hate speech, it has been clear about restrictions of freedom of expression. Article 20(2) of the ICCPR provides that 'any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law'. Further, restrictions on freedom of expression must be subject to the tests of necessity and proportionality. The UN Human Rights Committee elaborated that they must be 'necessary to protect a legitimate interest and to be the least restrictive means to achieve the purported aim'. The removal of this case does not satisfy these requirements. The UN Office of the High Commissioner for Human Rights 2013 report outlining the Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred defines what constitutes incitement to discrimination, hostility or violence. It provides for a threshold test to be considered while determining whether certain expression would qualify for censorship. The test requires an analysis of the social and political context, the status of the speaker, the intent to incite the audience against a target group, the content and form of the speech, extent of its dissemination and likelihood of harm, including imminence. In the case being analysed, the Facebook's decision to remove the content fails to account for the artists' intent, their status as a member of a minority community as well as the fact that the post sought to raise awareness about the experiences of indigenous persons. Hate speech regulation in online spaces Digital spaces, like Facebook, are crucial for artists to disseminate their content, especially those from communities that have been marginalised from traditional political and social vernaculars. Digital mediums allow artists to share their work widely, reaching extended audiences, and share their experiences and ideas in the form of art. There is consequently a great need to assure the right to freedom of artistic expression in digital space. However, this case illustrates how the removal of content by the algorithm and the absence of a contextual analysis of the expression can lead to a violation of artistic freedom in online spaces. In the 2020 report, *Privatising Censorship, Digitising Violence*, Freemuse highlights how the vagueness of hate speech policies of social media platforms leads to inconsistent enforcement mechanisms and penalising of vulnerable groups. It is imperative that Facebook applies the threshold test and the highest standards applicable to freedom of expression, crucially in cases of expression relating to marginalised groups, such as indigenous persons. This right is especially pertinent as cases of artistic freedom violations in the digital space are proliferating across the globe. In 2020, Freemuse documented 212 acts of violations of artistic freedom online, which amounted to 22 percent of all documented

violations. In at least 81 instances, artists were censored by social media and film streaming platforms. Censorship exercised by social media platforms emerged on the foundations of community guidelines, content controls, and algorithms that do not always accommodate context, nuance, or satire within artistic content, as is evidenced by the current case of removal of content by Facebook. Such violations not only directly violate artistic freedoms but also have a chilling effect on artists online who self-censor in order to avoid the removal of their content.

[Link to Attachment](#)

No Attachment

2021-012-FB-UA

Case number

PC-10240

Public comment number

Europe

Region

Carl

Commenter's first name

Soderbergh

Commenter's last name

English

Commenter's preferred language

Minority Rights Group

Organization

Yes

Response on behalf of organization

Short summary provided by the commenter

Explanation of key indigenous rights related to the Decision

Full Comment

Minority Rights Group International (MRG) would like to take this opportunity to comment on case no. 2021-012-FB-UA. Whether Facebook's initial decision to remove the post was consistent with the company's Hate Speech Community Standard, the company's stated values and human rights responsibilities and commitments. While we understand how the decision can have occurred, we feel that this decision was not consistent with the Facebook's Hate Speech Community Standard, nor was it consistent with the company's human rights responsibilities and commitments. We start with the company's human rights responsibilities: MRG urges Facebook to uphold indigenous peoples' rights, including their rights to self-determination and meaningful participation. Over the past decades, there has emerged a broad consensus in international law that indigenous peoples enjoy the right to free, prior and informed consent in all areas of concern to their communities. This has been repeatedly expressed in international law, most notably the UN Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) and the Outcome Document of the World Conference on Indigenous Peoples at the United Nations in New York (2014). Therefore, Facebook has a particular responsibility to turn to indigenous community representatives in order to ensure their participation in decisions concerning their communities and their communities' consent on how the company handles posts that reflect and express their history and culture. Regarding Facebook's Hate Speech Community Standard: It is clear to us that the title 'Kill the Indian/ Save the Man' falls within the exception stated in the Standard, namely, 'We recognise that people sometimes share content that includes someone else's hate speech to condemn it or raise awareness. In other cases, speech that might otherwise violate our standards can be used self-referentially or in an empowering way.' The fact that the decision of the Oversight

Board quoted this exception means that the Oversight Board took its decision on this basis. However, we would say that the removal of the post should not have occurred to begin with. The fact that the phrases were on a wampum belt and that the post stated that the user was the creator of the wampum belt makes it clear that this exception should have been applied directly. If Indigenous origin or identity should be a protected characteristic in Facebook's hate speech policy. MRG would urge Facebook to include indigenous origin or identity among the protected characteristics in the company's hate speech policy. Indigenous peoples around the world face very particular forms of marginalization relating to their identity and history. Very many indigenous communities have faced (and continue to face) attempts at total erasure of their cultures, faiths, languages and identities. The Residential School system highlighted by the artwork in the post is one example, but there are many others – such as forced conversion to dominant religions. Many indigenous peoples now face an onslaught on their customary land rights by governments, corporations and other private actors. All this means that the current protected characteristics (those that might be thought relevant) of 'race' and 'ethnicity' are insufficient to reflect the particular vulnerabilities of indigenous peoples to hate speech. How Facebook's content moderation, including the use of automation, impacts the freedom of expression of Indigenous peoples, and how negative impacts may be prevented or mitigated. Again, we would urge Facebook to consult with indigenous peoples' representatives, but we wish to provide a few pointers ourselves. Firstly, there is another key indigenous right, namely the right of self-identification. We would suggest that Facebook's content moderation takes into account previous posts of users, in order to ascertain if the user self-identifies as indigenous. This would have signaled that the artwork in the present post was an expression of indigenous culture and history (and fallen within the bounds of the exception mentioned above). The second would be for the content moderation to ascertain the means by which the phrases in question were conveyed. The fact that there was a photo of an object should have alerted the content moderation process that this could be an artwork and a form of self-expression. This should then have led to a content moderator to view the post and consider the full circumstances and nature of the case. Of course, some photos of artworks and other objects may well violate Facebook's Hate Speech Community Standard, but at that point, there should have been a pause to review this post. Carl Söderbergh Director of Policy & Advocacy Minority Rights Group International

[Link to Attachment](#)

No Attachment