

NWC | NATIONAL WHISTLEBLOWER CENTER

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October 27, 2020

The Honorable Roger Wicker
Chair, Senate Committee on Commerce
512 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
Ranking Member, Senate Committee on Commerce
511 Hart Senate Office Building
Washington, D.C. 20510

Dear Chairman Wicker and Ranking Member Cantwell:

The National Whistleblower Center (NWC) is a nonprofit organization working with whistleblowers around the world to fight corruption and protect people and the environment. Since 2016, NWC has been working with confidential whistleblowers to hold social media companies accountable for misrepresentations and omissions about their handling of illegal and otherwise harmful content on their websites. We are particularly concerned about misrepresentations and misleading omissions by Facebook. NWC is working with a number of whistleblowers who have filed petitions with the Securities and Exchange Commission regarding Facebook's misleading statements and omissions about its handling of three serious problems on its website: illegal wildlife trafficking, antiquities trafficking, and terror and hate content.

As the Senate Commerce Committee meets tomorrow to hear testimony from the largest technology and social media companies regarding the liability shields in Section 230 of the Communications Decency Act, we ask that the Committee keep in mind these companies' obligations under federal securities laws. Despite the fact that Facebook has known for years that there is widespread trafficking of illegal wildlife and antiquities and extensive networking and recruiting by hate and terror groups on its website, it has offered nothing more than vague and misleading assurances that it is implementing solutions.^{1, 2, 3} To date, Facebook has never acknowledged that, as revealed by the whistleblower supported by our organization, it facilitates networking and recruiting by white supremacist and terror groups through its "auto-generation" of new web pages for those groups.^{4, 5} Tomorrow's hearing provides a critical

¹ See, e.g., Michael Biesecker and Michael Liedtke, *Body parts from threatened wildlife widely sold on Facebook*, Associated Press, Apr. 9, 2018, <https://apnews.com/article/298a1c37738842dd845fd07e10167883>.

² Vernon Silver and Sarah Frier, *Terrorists Are Still Recruiting on Facebook, Despite Zuckerberg's Reassurances*, Bloomberg Businessweek, May 10, 2018, <https://www.bloomberg.com/news/articles/2018-05-10/terrorists-creep-onto-facebook-as-fast-as-it-can-shut-them-down>.

³ See, e.g., Steve Swann, *Antiquities looted in Syria and Iraq are sold on Facebook*, BBC News, May 2, 2019, <https://www.bbc.com/news/world-middle-east-47628369>.

⁴ Desmond Butler and Barbara Ortutay, *Facebook auto-generates videos celebrating extremist images*, Associated Press, May 9, 2019, <https://apnews.com/article/f97c24dab4f34bd0b48b36f2988952a4>.

⁵ Desmond Butler and Barbara Ortutay, *Facebook still auto-generating Islamic State, al-Qaida pages*, Associated Press, Sept. 18., 2019, <https://apnews.com/article/3479209d927946f7a284a71d66e431c7>.

opportunity to force Facebook to explain, under oath and with specificity, what it is doing to address these problems.

Tomorrow's hearing will, in part, center on how and whether social media companies should be held accountable for the harmful content and networking and recruiting activities on their websites. Closely related to this question is whether these companies are adhering to their duties under the Securities Exchange Act and other laws to communicate honestly with the public and shareholders about such matters.⁶ How Facebook handles illegal and harmful content on its website, and whether it accurately communicates its actions, is of enormous importance to the public as well as its shareholders.

Although Facebook continues to enjoy Section 230 immunity for content hosted on its website, the company is nonetheless accountable under federal securities law. To that end, we urge the Committee to use the opportunity to investigate the specific steps that Facebook is taking to address harmful content on its website and to evaluate the accuracy of its statements to shareholders and the public on this topic.

Sincerely,

A handwritten signature in cursive script, appearing to read "John Kostyack".

John Kostyack
Executive Director, National Whistleblower Center

A handwritten signature in cursive script, appearing to read "Sharon Y. Eubanks".

Sharon Y. Eubanks
Chief Counsel, National Whistleblower Center

⁶ See Securities and Exchange Act, Sections 10(b) and 10b-5.