

**VIA E-MAIL**

May 17, 2018

Mr. Elliot Schrage, Vice President of Communications and Public Policy  
Mr. David Ginsberg, Director of Research  
Facebook, Inc.  
One Hacker Way  
Menlo Park, California 94025

Dear Mr. Schrage and Mr. Ginsberg:

As leaders of the Business and Human Rights Teaching Forum (Teaching Forum) and the Global Business and Human Rights Scholars Association (Scholars Association), we write to commend Facebook on its initiative to support scholars in assessing the role of social media in elections and democracy, to urge you to ensure business and human rights initiatives are addressed in the initiative, and to request the inclusion of a business and human rights scholar on the Commission.

Together, the Teaching Forum and the Scholars Association represent over 350 business, law, and social science professors in over 35 countries on 6 continents.<sup>2</sup> In their innovative thought piece that inspired the creation of the Commission, Professors Gary King and Nate Persily wrote that “the process will only work if the commission has the trust of the broader academic community and general public. It is therefore designed to be composed of well-known, highly-respected, distinguished, senior scholars who represent the scientific community across important dimensions of demographic, political, substantive, and methodological diversity.”<sup>3</sup> Respectfully, we wish to emphasize that our collective membership represents a large, significant, interdisciplinary, and globally diversified segment of this academic and scientific community.

Business and human rights scholars are uniquely positioned to provide clarity on the most serious impacts of business on human rights, in particular on what social media

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<sup>2</sup> For more on the Business and Human Rights Teaching Forum, see <http://teachbhr.org>. For more on the Global Business and Human Rights Scholars Association, see [www.bhrscholarsassociation.org](http://www.bhrscholarsassociation.org)

<sup>3</sup> Gary King and Nate Persily, “A New Model for Industry-Academic Partnerships.” Available at <https://gking.harvard.edu/partnerships>

companies like Facebook should do to respond appropriately, effectively, and expeditiously to address human rights harms with which it is involved. Through Facebook's participation in the Global Network Initiative regarding its commitments to respect human rights in the face of government demands to censor or surveil users, you no doubt have some prior appreciation of the value of scholarly expertise in business and human rights. Appointing a business and human rights scholar to the Commission will ensure that the requests for proposals are designed so that they invite scholarly projects that address human rights analysis, which is critical to understanding the impact of social media on elections and on democracy more generally. Additionally, appointing a business and human rights scholar to the Commission will equip the Commission with the expertise needed to assure informed peer review of such proposals.

The unique contribution business and human rights expertise offers the Initiative is evident in the following five ways:

**1. The connection between human rights and election integrity.** As you know well, we have entered a period in which election disinformation is being weaponized to manipulate the outcomes of democratic elections. That human rights risks are inherent in the misuse of social media to manipulate election results is beyond doubt. Elections cannot be democratic without specific human rights protections during the campaign, especially those closely associated with civic participation, such as freedom of association, freedom of assembly, freedom of expression, and equality of opportunity—and the right to participate in public affairs free from discrimination. The protection of these citizenship-related human rights during elections is not only a matter of moral principle; it is of paramount concern to guarantors of democratic elections, including the United Nations, the Council of Europe, the Organization of American States, and the Organization for Security and Cooperation in Europe, working in collaboration with civil society groups, such as the Carter Center.<sup>4</sup>

**2. The human rights aspects of privacy.** There are fundamental human rights at stake in the privacy concerns arising from the activities of Cambridge Analytica that recently came to light. From a human rights perspective, privacy is more than a mere property interest in personal data that an individual may voluntarily and knowingly elect to disclose. You are no doubt aware that some 120 countries already have general data protection laws to regulate the processing of their citizens' personal data, most of which also have institutional arrangements capable of guaranteeing the enforcement of the law. These local laws are based on international human rights principles.

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<sup>4</sup> See, for example: Declaration of Principles for International Election Observation, commemorated October 27, 2005, United Nations, New York, available at [https://www.cartercenter.org/resources/pdfs/peace/democracy/des/declaration\\_code\\_english\\_revised.pdf](https://www.cartercenter.org/resources/pdfs/peace/democracy/des/declaration_code_english_revised.pdf)

A human rights approach considers a zone of privacy, a place where a person can retreat for private reflection to create a conception of the self. While we can voluntarily relinquish some aspects of this right, it is generally understood that there is a core component of the right that is protected even when we act on public platforms or in public spheres. It is for this reason that the United Nations Human Rights Committee declared as early as 1998 that every individual should have the right to ascertain in an intelligible form, whether, and if so, what personal data is stored in automatic data files, and for what purposes. Every individual should also be able to ascertain which public authorities or private individuals or bodies control or may control their files. If such files contain incorrect personal data or have been collected or processed contrary to the provisions of the law, every individual should have the right to request rectification or elimination.<sup>5</sup>

Similarly, the notion that there is a core component to the right of privacy that we do not ever voluntarily relinquish underpins the recognition of a “right to be forgotten” by the European Court of Justice. The public interest in preserving and sharing information and data about us must be weighed against our own reputational and privacy interest.

**3. Global recognition of the importance of the application of human rights standards to social media companies.** The United Nations Guiding Principles on Business and Human Rights (UNGPs) were unanimously endorsed by member states of the UN Human Rights Council in 2011 and are widely considered the authoritative standard on business and human rights. One measure of their importance is that they have been adopted by the OECD, the World Bank, the European Commission, the International Standards Organization, and a growing number of states in the Global North and Global South through National Action Plans. The UNGPs spell out the basic operational measures that business enterprises must implement so that they can meet their human rights responsibilities, namely: avoiding causing or contributing to adverse human rights impacts through their own activities; addressing such impacts when they occur; and seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products, or services by their business relationships, even if they have not contributed to those impacts (UNGP 13).

The quality of a social media company’s human rights due diligence is an important factor to be considered for a comprehensive analysis of that company’s impact on free and fair elections. Human rights due diligence must be an ongoing process of identifying human rights harms with which a social media company may be involved, either through their own activities or in connection with their business relationships; taking steps to address these impacts; tracking or monitoring the effectiveness of these actions; and public reporting on due diligence processes and outcomes. Facebook, along with other Global Network Initiative members, has committed to conducting human rights due diligence, and to undergoing regular assessments regarding their commitments to respect freedom of expression and privacy online in responding to direct government

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<sup>5</sup> UN Human Rights Committee, *General Comment No. 16: Article 17 (Right to Privacy)*, available at <http://www.refworld.org/docid/453883f922.html>

demands. The empirical and ethical analyses of the substance, implementation, and verification processes associated with these commitments are of great interest to our scholarly community, as are other important related subjects. Moreover, human rights due diligence must address additional human rights risks stemming from commercial data practices and terms of service—ranging from the way user data is collected and stored, to the form an API specification will take, to the company’s legal duty of care over the data of its users—as well as abuses caused by business partners, users, or other nongovernmental agents whose activities are directly linked to those of Facebook and other social media companies.

The important point is this: Due diligence that is not human rights–specific could result in less-effective prevention and mitigation of the risk that third parties might inappropriately access information about users and engage in undesirable behavior, such as election interference or spreading of disinformation.

**4. Geographically located across Facebook’s business footprint, business and human rights scholars can offer local scholarly expertise on seemingly intractable situations.** One concern is the misuse of Facebook’s Free Basics application, which has fueled violence against the Rohingya in Myanmar, and against Muslims in Sri Lanka. As you may know, the Sri Lankan government had to declare a state of emergency in response. The fact that Facebook created so much controversy in India that it had to withdraw the use of the Free Basics platform from the country underscores the importance of understanding a human rights–based approach to Facebook data specifically and to Facebook’s design generally. Facebook’s initiative in Brazil to develop a bot that will work with Messenger to help users distinguish between reliable and fake news can have the inadvertent effect of censoring the digital space (blogs and other noncommercial pages) of minority groups, thereby undermining their freedom of expression. Business and human rights scholars working collaboratively in these regions are best positioned to conduct rigorous and informed scholarly studies, which would help to identify solutions for Facebook and other social media companies who want to operate responsibly in diverse geographical and political settings.

**5. The benefit to the business and human rights field.** Business and human rights is a new and fast growing interdisciplinary academic field—drawing scholars from every region of the world in business, law, and the social sciences, and strengthened by the launch of the *Business and Human Rights Journal* (Cambridge University Press) in 2016.<sup>6</sup> A business and human rights scholar would be interested in conducting a study about an empirical question involving variables connecting business activities and human rights outcomes. One could imagine a study where a cross-national database on media censorship could be correlated with many variables in the Facebook database that stand as proxies for human rights impacts. While Commission scholars

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<sup>6</sup> For information about the *Business and Human Rights Journal* see <https://www.cambridge.org/core/journals/business-and-human-rights-journal>

representing other fields of expertise undoubtedly will be qualified to evaluate the rigor of the methodologies of such proposed empirical studies, only a business and human rights expert would be qualified to evaluate the significance of such a proposed study on the broader business and human rights academic field, and on the work of corporate responsibility advocates working in government, NGOs, and international institutions, including the United Nations Working Group on Business and Human Rights.

Business and human rights scholars are also uniquely positioned to study what kinds of data storage and access questions create ethical vulnerabilities. These scholars will be interested in studying how the Facebook database itself protects or fails to protect privacy and other human rights interests. They will want to examine such questions as how anonymous the database truly is, what data it contains, and how vulnerable racial and ethnic minorities and other marginalized populations might be to data abuse. Such studies could help inform Facebook's own understanding of the ongoing risks of making the data available to scholars and would thus further advance the work of the Initiative.

We ask you to consider that business and human rights expertise is essential to the success of Facebook's Initiative. Our field of scholarship would welcome the opportunity to be represented on the Commission to help shape the research agenda. To take this forward, we would be happy to arrange a time to discuss these suggestions further. We would also be pleased to recommend colleagues who are best placed to represent business and human rights-related issues on the Commission.

Sincerely,

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