

July 9, 2021

RE: Policy advisory opinion 2021-01

The American Civil Liberties Union writes in response to the Facebook Oversight Board's (FOB) request for comment on an advisory opinion it plans to issue regarding Facebook's policy against publishing residential information. We recognize that the publication of residential information can, at times, place Facebook users in physical danger. This risk must, however, be balanced against the need for disclosure of information related to matters of public concern. Efforts to stop harmful conduct or protect privacy should not focus on stemming the flow of information or stifling the right to protest. For that reason, we urge the FOB to include in its recommendations robust protections—including, if necessary, exceptions—for the discussion of information related to matters of public concern and for the ability to organize protests. In addition, we urge provisions for human review of enforcement of this rule, appeals for impacted users, and transparency regarding rule enforcement.



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Facebook's Current Rule

Currently, Facebook prohibits imagery that displays the external view of private residences if all of the following conditions apply:

- The residence is a single-family home, or the resident's unit number is identified in the image/caption.
- The city/neighborhood or GPS pin (for example, a pin from Google Maps) are identified.
- The content identifies the resident(s).
- That same resident objects to the exposure of their private residence, or there is context of organizing protests against the resident (This does not include embassies that also serve as residences).

Facebook also prohibits content that exposes information about safe houses by sharing any of the below, unless the safe house is actively promoting information about their facility:

- Actual address (Note: "Post Box only" is allowed.)
- Images of the safe house.
- Identifiable city/neighborhood of the safe house.
- Information exposing the identity of the safe house residents.

Little is publicly known about Facebook's current enforcement of these policies because Facebook does not specifically include enforcement data for these rules in its regular reporting. News outlet reporting around the rules' enforcement indicates that the policy [applies worldwide](#) and that Facebook [does not](#) keep track of the articles it has censored for violating the rule against publishing residential information. Enforcement examples appear to relate mostly to the removal of content related to high-profile people. For instance, a [New York Times article](#) mentioned the company's deletion of photos of Tucker Carlson's home from the platform. In another prominent example, [Facebook removed](#) multiple articles by outlets like the New York Post and the Daily Mail which detailed the properties owned by Patrisse Cullors, the co-founder of the Black Lives Matter movement.

The FOB has asked, among other things, whether freedom of expression is unduly restricted if Facebook prohibits users from sharing any private residential information and the extent to which existing policies adequately protect people from harm resulting from privacy infringements and the benefits and limitations of automated technologies in enforcing this policy. We focus our comments on these questions.

Recommendations

We encourage the Board to include robust protections for the right to protest and the discussion of information related to matters of public concern in its advice to Facebook on the parameters of this policy. Broad discretion to organize protests and disclose matters of public concern are needed to ensure sufficient freedom for important discussions to occur on the platform without fear of interference.

We also urge the FOB to advise Facebook to implement any enforcement via artificial intelligence carefully and to ensure both robust transparency when this rule has been allegedly violated and the availability of human review for any enforcement action. We further note that given the current rule, which consists of a four-part test, including knowledge of whether a resident (and not, for example, merely an individual in front of the building) has been identified *and* whether that same resident has objected to exposure of their private residence, it is unclear how artificial intelligence could accomplish enforcement of this policy. Overreliance on artificial intelligence is likely to result in misapplication of the community standard.

1. Preserving Protests

Facebook's current rule prohibits the publication of images of a residence where there is "context of organizing protest against the resident," with an exception for embassy buildings that also serve as residences. This appears to apply even absent any resident's objection to the publication of their residential information. This rule is entirely too broad, and does not appear to be tied to the platform's purported interest in protecting users against "exposure" of a private residence. If people have already gathered near a residence in protest, it is safe to assume that that address is publicly known.

Applying this rule would cut off an organizational tool that protesters use to safely and respectfully make their voices heard. To provide one example, last year, Chad Wolf was performing the duties of the Secretary of Homeland Security. The Department of Homeland Security, under his leadership, engaged in violent attacks on Black Lives Matter protesters in Portland. DHS officers used tear gas, rubber bullets, batons, and other weapons of war against civilians in the streets of an American city. These officers abducted protesters from the street in Portland without warning and without a warrant or probable cause to arrest. The people of this country were horrified and they chose to let Wolf know. A group of protesters marched outside of Chad Wolf's house on multiple occasions chanting "Black Lives Matter" and "Who's afraid of the big bad wolf?" in protest of Wolf's failure to protect protesters in Portland and across the country.

Under Facebook's current policy, the protest at Wolf's house could not have been organized or advertised using any images of Wolf's residence, including photographs of the protest as it was happening, on Facebook, despite the fact that the protesters did not advocate or threaten violence. Outlets like the [Washington Post](#) and [Newsweek](#) covered the protests, bringing additional attention and public pressure on Wolf to end the very policies the protesters opposed. Assuming that the images included in these articles show Wolf's home, these articles, too, could not have appeared on Facebook. Alternatively, to comply with Facebook's policy, they would have had to remove images that offered the public additional information relevant to the advocacy effort, including the size of the protest, the signs displayed, and more.

To preserve users' ability to organize protests and demonstrations that advocate for policy change, and the ability of the media to report on these protests when they occur, the FOB should recommend that Facebook permit the publications of residential addresses—including the publication of images of a residence—as part of the organization of protests where there is no evidence of a threat of violence to residents or to the community.

2. Preserving Discussions on Matters of Public Concern

Facebook's current rule also makes no exception for information disclosed related to matters of public concern. We recommend such an exception. Residential information, including address, GPS location, and images of a house can be instrumental in investigations of public corruption, money laundering, tax evasion, and other criminal enterprises. Journalists, bloggers, and concerned individuals generally have the right and ability to research and publish that information without restraint in the United States.

Recently, for example, details about the residential address [of Allen H. Weisselberg](#), a top executive in the Trump Organization, proved central to [criminal tax evasion charges](#) against the business. And the [residential address of Eric Adams](#), Brooklyn borough president and candidate in the New York mayoral Democratic primary, became a topic of public debate and controversy in the run-up to the primary. While these examples do not necessarily involve images of the residences, as contemplated by the Facebook policy, they highlight the important role details about residential addresses can play in informing the public and enabling political discourse. Images of residential property can also inform discourse on matters of public concern in other ways. For instance, in 2003, Barbra Streisand attempted to prevent the publication of an image of her home in Malibu, which had been taken by the California Coastal Records Project to document coastal erosion. Her attempts to suppress the photo sparked large public interest and reporting, leading [TechDirt's Mike Masnick](#) to dub the phenomenon of inadvertently publicizing the thing you want to hide "[The Streisand Effect](#)." This example also suggests another danger of imposing Facebook's standard without any public interest exception: a photograph meant to convey information on matters of public concern that are not related to a person's address may nevertheless include an image of their residence.

The freedom to engage in this kind of reporting is essential to maintaining the transparency and accountability necessary to our democracy. For that reason, Facebook should implement a broad exception to any rule against posting residential information to permit discussions and disclosures of that information related to matters of public concern. Relatedly, Facebook's platform is a powerful distribution mechanism for content. If Facebook prohibits certain content from appearing in articles that can be made available on its platform, Facebook may, in effect, be dictating proper journalistic standards for news publications that cannot afford to lose Facebook as a distributor of their content. Facebook should not be unilaterally dictating journalistic standards. To address this concern, Facebook's rules must preserve the ability to post articles,

even over the objection of the owners and occupants of the residences when the articles address matters of public concern. Otherwise, important discussions could be silenced.

Furthermore, we urge the Board not to make distinctions regarding which outlets or Facebook users can be “trusted” over other users to post this information. While articles published in newspapers should presumptively fall within the matters of public concern exception for disclosure of and articles containing residential information, the exception should apply to all users of the platform, whether the New York Times or an individual user, based on the content of the post. Indeed, this is the approach that U.S. courts take in assessing the application of reporter privilege laws. See, e.g., *von Bulow by Auersperg v. von Bulow*, 811 F.2d 136, 144 (2d Cir. 1987) (defining “reporter” not by professional credentials but by purpose in disseminating information); see also *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993) (“What makes journalism journalism is not its format but its content.”); *Cusumano v. Microsoft Corp.*, 162 F.3d 708, 714 (1st Cir. 1998) (holding that academic researchers engaged in pre-publication research are also considered members of the press for purposes of the reporters privilege).

3. Enforcement

Finally, Facebook has asked the FOB for advice about the potential role of artificial intelligence in enforcing this policy. We recognize that using artificial intelligence makes policing the sheer volume of content that traverses Facebook’s platforms closer to possible. However, we are also sensitive to the fact that algorithms—including those on which Facebook relies—make mistakes. To properly enforce this rule, context, and knowledge of specific facts about who resides where and whether they object to images of their residences appearing on Facebook, will be key and we are concerned that an overreliance on AI to enforce these policies will lead to greater censorship than is warranted. It is not at all clear, for example, how an algorithm will be able to distinguish reporting on matters of public concern that contains residential information from any other publication of such information. For that reason, we urge Facebook to build any AI used to enforce this rule in a manner that attempts to account for the concerns surrounding protests and discussions regarding matters of public concern into its design, and to test the efficacy of the system periodically to ensure effectiveness.

In addition, we urge Facebook to ensure that clear notice is provided to a user when Facebook believes they have violated the rule against publishing residential information. Facebook should also give the user an opportunity to appeal the decision to a human reviewer. We also ask that details about enforcement of this policy—including how the four-factor test is administered—be included in Facebook’s Transparency Reports and Transparency Center.

Conclusion

We acknowledge that removing this information may make sense to protect privacy in many circumstances, but argue there must be exceptions for matters of public concern and for protests. We appreciate the opportunity to submit these comments and trust that the FOB will find them useful. If there are any further questions, please do not hesitate to reach out to Kate Ruane, kruane@aclu.org, Vera Eidelman, veidelman@aclu.org, or Jennifer Granick, jgranick@aclu.org.