Trusted Online Content Moderation

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Trusted Online Content Moderation

- **Current social media content moderation is not trusted**
  - People on both sides view content moderation as being biased and broken
- **Proposed Solution**
  - Define generalized content moderation guard rails for each platform's independent rules
  - Certify platforms that transparently publish content moderation rules
  - Outsource appeals of user/platform content disputes to trusted non-govt 3rd party
- **Benefits**
  - Reduce legal costs, PR issues, and costs of handling appeals of disputes for the companies
  - Provide trusted non-govt solution that embraces both online safety and neutrality

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Guard Rails of Content Moderation

- **Safety**
  - Protect users from content that is criminal or imminently harmful
- **Neutrality**
  - Don’t favor one side on an issue – except to protect against imminent harm
- **Transparency**
  - Publish clear & detailed content moderation rules as well as enforcement actions
- **Accountability**
  - Appeals outsourced to independent non-govt entity with power to ensure platform compliance

Ensuring Online Safety

Criminal and imminently harmful content should be blocked

- **Criminal content**
  - Exhorting violence, criminal/terrorist planning, child porn, trafficking, extortion
- **Cyber-security threats & viruses**
- **Imminently harmful content**
  - Hateful/bullying speech targeting specific non-public persons, interference in election voting, threats of violence, doxxing
- **Disinformation from designated terrorist orgs & overseas governments**

Ensuring Neutrality

- **Avoid taking sides on controversial issues**
  - Avoid role of true/false arbiter - except to protect against imminent harm to a person(s)
  - True/false test inevitably breaks neutrality and perception of neutrality "Who decides?"

- **Ensure platform algorithms amplify or depress content on neutral basis**
  - Protect against viewpoint amplification/SPAM from bots, troll farms & inauthentic user networks

- **Ensure enforcement is consistent with published rules & applied fairly to all users**
  - Violations of safety rules enforced regardless of user popularity, viewpoint or political affiliation

- **Government officials can offer info, but inherently cannot act as neutral fact-checkers**

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Neutrality is not Uncontrolled Free Speech

- **Content moderation innovations within the Guard Rails are encouraged**
  - Content moderation can contribute to Quality of Service & Features

- **Some categories of content moderation allowed, even if not imminently harmful**
  - Adult content
  - Requirement to authenticate users
  - Spam and click-bait for purpose of commercial gain

- **Smaller platforms and user sub-groups may be publicly non-neutral**
  - Platforms smaller than threshold – must publish their non-neutral standards
  - Examples - Reddit subgroups, family-friendly groups, religious groups, etc

- **Key is for any content moderation to be Safe, Neutral & Transparent**

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Ensuring Transparency

- **Publish content moderation standards & related enforcement actions**
  - Users & content creators should easily know the specific rules/standards they violated

- **For any enforcement action, provide clear explanation & justification to user**
  - Specific content rules broken, explanation of review/adjudication process, steps to appeal
  - Involvement and communications between platform and 3rd party fact-checkers

- **Identify and publish qualifications of 3rd party fact-checkers**
  - Publish their names, qualifications, affiliations, funding, and history of previous decisions

- **Report all communications to/from government employees/contractors within 24 hours**

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Ensuring Accountability

- **Platforms benefit when user appeals outsourced to trusted 3rd party**
  - 3rd party entity can ensure perception of neutrality/fairness between users and platforms

- **FINRA as a model for a non-govt trusted entity with enforcement powers**
  - FINRA, funded by financial industry, outsources appeals of investor/advisor disputes
  - Governance designed for neutrality/fairness; no hire/fire influence from govt or industry
  - Access to 8000 arbitration judges for handling scale volume of online appealed disputes
  - FINRA has power to levy material fines, suspend/ban financial advisors to ensure compliance

- **Proposed OMRA entity would operate similar to FINRA – for online platforms**
  - Platforms would need to accept OMRA judgements for legitimacy
  - Industry-wide buy-in ensures benefits to platform companies (PR, govt anti-trust, legal)
  - FINRA = Financial Industry Regulatory Authority OMRA = Online Media Regulatory Authority

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True/False Standard Inevitably Breaks Trust

- **Who Decides ? Is it true/false or just a disagreement ?**
  - Whichever choice is made on controversial public topics, a large share of users will claim bias
- **Misinformation/Disinformation concept is disconnected from online safety**
  - Misinformation should only be blocked to prevent imminent harm/danger
- **Outsourcing to third-party fact-checkers does not solve the problem**
  - Fact-checkers, especially govt or media-based fact-checkers, have their own biases, politics & funders
- **Harm of censorship is worse than the harm of falsehoods**
  - Progress and fairness happen when all voices can be heard
  - If the government (or monopolies on govt's behalf) acts as arbiter of truth, this leads to authoritarianism

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A Better Standard: Imminently Harmful or Not

- **Harmful/Not Harmful is a test that supports both Safety and Neutrality**
- **Imminently Harmful/Not Harmful is easier to adjudicate than True/False**
  - Avoid issues of " Who Decides? " Avoid disagreements among subject-matter "experts"
  - Arbitration judges capable of assessing harm without needing subject expertise
- **Scalable across millions of contentious topics, disagreeable opinions, etc**
  - Avoid controversial disagreements between users and company-selected media fact-checkers
- **Should "misinformation" be moderated ? Only if it leads to imminent harm**

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IBI's Proposal:

New entity to outsource appeals & certify platforms' content rules

- **Tweak Section 230 to adjust legal incentives for content moderation**
  - Replace "Objectionable" with "Imminently Harmful"

- **Create a non-govt entity (modeled after FINRA) for 4 functions:**
  1. Outsource appeals of selected user/platform disputes
  2. Certification of each platform for operating within the Guard Rails
  3. Review data reports periodically received from companies
  4. Review/publish 24-hour reports of govt communications with companies

- **Non-govt entity is funded and supported by the industry**
  - Social media companies "Opt In" if they want Section 230 legal benefits
  - Realistic financial enforcement (including penalties) accepted by companies

In Section 230:
“Imminently Harmful” Rather Than “Objectionable”

- “Imminently Harmful” can be defined & adjudicated by arbitration judges
- The term ”Otherwise Objectionable” is vague & not defined anywhere
- Original intent of Sec230 was to prevent porn & dangerous content

FINRA as a Model for a Non-Govt Regulatory Entity

- **FINRA handles investor/advisor disputes for a portion of the financial industry**
  - $800M budget, 3000 employees, 8000 arbitration judges
  - FINRA has handed out fines to companies and suspended 100s of financial advisors/brokers/etc
  - Started from NASDAQ/NYSE with governance to avoid regulatory capture by the industry

- **Proposed OMRA (Online Media Regulatory Authority) will operate like FINRA**
  - As FINRA is loosely overseen by SEC, OMRA would be loosely overseen by the FCC or FTC
  - Power to levy fines large enough to motivate the companies

- **FINRA outsources investor appeals, OMRA outsources online user appeals**
  - Companies can build user trust and off-load the costs of PR controversies and legal issues

- **OMRA governance carefully designed to ensure all stake-holders fairly represented**
  - Social media platforms (large & small), content creators, news publishers, right and left, user representatives
  - Balanced governance: No regulatory capture, no political appointees, and no govt funding

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OMRA Will Reduce Litigation Costs

- **User EULAs modified to drive users to online arbitration with OMRA**
  - Users will have simple online mechanism to appeal their disputes to OMRA
- **OMRA structure will include two-tiers of appeals**
  - Accepted user disputes are resolved via online video arbitration with 1 arbitration judge
  - Accepted 2nd tier appeal is escalated to an online video arbitration with a panel of judges
- **OMRA precedents will be organized and searchable online**
  - User dispute categories, resolutions, opinions, enforcement actions, penalties if any
  - Platforms can point users to similar disputes previously resolved by OMRA
- **Clear published content moderation rules will reduce user disputes**
  - When users understand the specific rules violated, they're less likely to dispute the enforcement

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Low Cost of an OMRA Model of Regulation

- **OMRA can be industry-funded on similar scale as FINRA**
  - Top 10 companies are profitable with annual revenues exceeding $500B
  - Meta already committed $130M for its hand-picked Oversight Board
- **Minimal reporting requirements and regulatory processes**
  - Data reports on content moderation categories, enforcement actions, fact-checkers, user disputes, etc
  - Reporting requirements limited to larger online media companies
- **Cost efficient use of online video rather than F2F meetings for arbitrations**
  - FINRA successfully uses online video meetings for thousands of investor-vs-industry arbitrations
- **Some business/legal costs for dispute appeals can be outsourced to OMRA**

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Dealing with Massive Scale

- **"Certified" online platforms will have fewer & simpler appeals**
  - Accepted appeals would adjudicate based on whether platform followed its own published rules
  - Transparency and clear enforcement explanations to users will reduce appeals

- **Companies will handle initial content disputes - OMRA will receive only the appeals**
  - OMRA will rely on its published precedents – and may or may-not accept each appeal based on merits
  - Refundable ominal fee (e.g. $100)to discourage frivolous appeals by users

- **OMRA penalties incentivize platforms to improve algorithms & transparency**
  - Improve content moderation algorithms and transparency, neutrality rating of fact-checkers
  - Platform moderation algorithms & published standards will provide the heavy-lifting to handle scale

- **OMRA can be industry-funded at similar scale as FINRA (with far fewer employees)**
  - Cost efficient use of online video rather than F2F meetings for arbitrations

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Monopoly Service Providers Cannot Pick Their Users

- **Key is equal treatment of all users (those who follow the rules)**
  - Common Carrier definition: monopoly public service provider (train, toll road, utility, telecom)
  - Monopoly platforms can avoid Common Carrier legal status if they are legislatively mandated to treat all users equally and can no longer pick & choose their users/customers
- **Vast majority of users click Terms of Service without reading them**
- **Private Rights of monopoly service providers are superseded by public speech rights of users and content publishers/communicators**
- **Largest online platforms qualify as monopolies**
  - Google 90% monopoly of search and online video (YouTube)
  - Facebook 85% of social media (Facebook, Instagram, WhatsApp)
  - Amazon 80% of retail books
  - Apple & Google 90% of online mobile app store

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Govt Cannot Legally Influence Content Moderation

- **Monopoly platforms cannot censor on behalf of government**
  - Govt officials can provide info/expertise, but cannot serve as “fact checkers”
  - Govt efforts to determine true/false is a constitutional threat per US Supreme Court
- **Government suffers from partisan political incentives toward bias**
  - Govt agency leaders are appointed and influenced by partisan politicians
- **Government content standards is a recipe for Authoritarian States**
  - Who Decides ? Do standards change upon 4 year election cycles ?
  - Supreme Court: Govt efforts to decide true/false are more harmful than falsehoods

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Guard Rails & OMRA Also Apply to Online Payments

- **Online payment & site monetization are key components of free speech**

- **Examples of near-monopoly online payment platforms covered include:**
  - PayPal and Venmo
  - Credit Card brands/networks
  - GoFundMe and other donation sites
  - Ad-based hosting platforms
  - Mobile app payment gateways