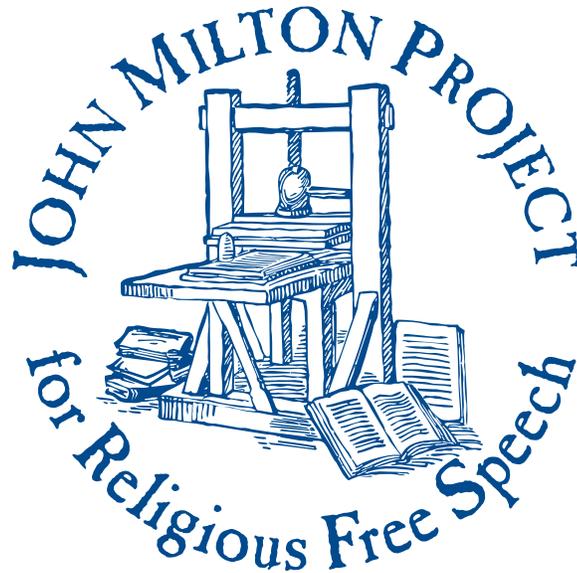


# TRUE LIBERTY IN A NEW MEDIA AGE



*A project of the National Religious Broadcasters*

## **An Examination of the Threat of Anti-Christian Censorship and Other Viewpoint Discrimination on New Media Platforms**

**September 15, 2011**

**The John Milton Project for Religious Free Speech  
A Project of the National Religious Broadcasters  
Craig L. Parshall, Sr. Vice President & General Counsel**

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September 15, 2011

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## FOREWORD

Frank Wright, Ph.D.  
President & CEO  
National Religious Broadcasters

Why is NRB addressing the operational policies of new media platforms? The answer is simple: NRB is committed to representing Christian broadcasting wherever threats to religious free speech emerge. In our view, new media platforms may be the next battleground.

Sixty-seven years ago, NRB was founded in the fires of adversity. In the early 1940's, government regulations combined with policy decisions by major networks made it virtually impossible for Evangelical ministers to buy radio airtime. Realizing that the Gospel would be absent from the airwaves, and also understanding the influence that the burgeoning television industry would have in the future, a small group of courageous and innovative leaders formed and incorporated the National Religious Broadcasters (NRB) in 1944. Today, NRB continues as a non-partisan association representing Christian communicators worldwide.

The mission of NRB is to advance biblical truth, promote media excellence, and defend free speech. Around the world, millions of individuals use radio, television, and the Internet to listen to the broadcasts, live web streaming, and podcasts of NRB member organizations. Yet if Christian content and worldview programming are censored by new media platforms like Apple's iTunes App Store and Facebook, or ever-expanding web services like Google, or Internet service providers like Verizon and AT&T, the Good News of the Gospel could become one more casualty of institutionalized religious discrimination.

That is why the John Milton Project for Free Religious Speech exists: to catalog viewpoint discrimination by new media platforms and draw attention to the censorship that is quietly (but firmly) taking hold, and to suggest solutions. Today as in the 1940's we face the same challenge, simply re-packaged in modern parlance. Yet the First Amendment guarantees free speech, a free press, and free religious speech and expression. To meet the obligations of the Constitution, the rules of the road ahead must be written in such a way that freedom can flourish. NRB looks forward to innovations of the future, and to championing the cause of Christ in a technological environment of religious and free speech liberty.

## **EXECUTIVE SUMMARY**

### **TRUE LIBERTY IN A NEW MEDIA AGE**

#### **An Examination of the Threat of Anti-Christian Censorship and Other Viewpoint Discrimination in New Media Platforms**

Craig L. Parshall  
Senior Vice President & General Counsel  
National Religious Broadcasters

The policies and practices of several major Internet-interactive “new media” communications platforms and service providers were examined and evaluated in order to determine the risk of those entities committing anti-Christian viewpoint censorship. The companies reviewed were: Apple and its iTunes App Store; Facebook; MySpace; Google; Twitter; and Internet Service Providers (ISPs) Comcast, AT&T, and Verizon. Our conclusion is that Christian ideas and other religious content face a clear and present danger of censorship on web-based communication platforms.

Four distinct factors support this conclusion. (1) Some of these new media companies have already banned Christian content, and others have adopted public positions that make such censorship all but inevitable. (2) With the single exception of Twitter, all the new media platforms and services that we examined have issued written policies governing citizen users that are clearly inconsistent with the free speech values of the U.S. Constitution. In First Amendment cases in other contexts, the Supreme Court has condemned comparable policies with similar proscriptions. (3) These new media companies have been shown to be responsive to market forces and the demands by pressure groups calling for censorship of those otherwise lawful viewpoints that are reasonably debatable but are deemed to be politically incorrect. (4) The ongoing technological convergence of these various new media platforms suggests that these free speech-inhibiting practices and unconscionable policies will be further entrenched unless corrective action is taken immediately.

Admittedly, there is some legal uncertainty as to the appropriate legal standard to apply to these communication platforms, which are owned and managed by private corporations. Court decisions defining the legal nature of the Internet are still in flux, and attempts at regulation of the Internet by one federal agency have been successfully challenged in court. Accordingly, we have suggested in this paper that the best approach for these communications companies is for them to follow a free speech paradigm guided by basic First Amendment rules set forth by the Supreme Court. Finally, we suggest several alternate approaches to remedy what we see as a free speech threat to Christian and other religious ideas on the largest of the Internet-interactive platforms.

Our findings are as follows:

**Anti-Christian censorship has already occurred on new media platforms.**

- Apple has twice removed applications that contained Christian content from its iTunes App Store. In both instances, Apple admitted that these apps were denied access because it considered the orthodox Christian viewpoints expressed in those applications to be “offensive.” One app had expressed the traditional, heterosexual view of marriage as set forth in the Bible; the other had stated the view that homosexuality is inappropriate conduct that can be changed through a Christ-centered spiritual transformation. Of the 425,000 apps available on Apple’s iPhone, the *only ones* censored by Apple for expressing otherwise lawful viewpoints have been apps with Christian content.
- The search engine giant Google has committed past practices of anti-religious censorship. For content reasons, it refused to accept a pro-life advertisement from a Christian organization, an issue that prompted litigation in England. Google is also alleged to have blocked a website in America that had conservative Christian content. It had blacklisted certain religious terminology on its China-based Internet service, and in the United States it bowed to questionable copyright infringement threats from one religious sect, which had complained when a blog site criticizing it had quoted from the sect’s materials. Google blocked that blog site on alleged copyright violation grounds, disregarding the obvious “fair use” provisions of copyright law. Such a practice could block the ability of Christian “apologetics” ministries to quote from primary source materials when using Google platforms to educate the public on the teachings of certain religious groups. Also, in March of 2011, Google established new guidelines for its “Google for Non-Profits,” a special web tool program, but specifically excluded churches and other faith groups, including organizations that take into consideration religion or sexual orientation in hiring practices.
- Facebook has partnered with gay rights advocates to halt content on its social networking site deemed to be “anti-homosexual,” and it is participating in gay-awareness programs, all of which suggest that Christian content critical of homosexuality, same-sex marriage, or similar practices will be at risk of censorship.

**The written policies of the new media demonstrate that anti-Christian censorship will occur.**

- In our opinion, only the policies of Twitter would pass First Amendment muster if they are analyzed according to free speech principles articulated by the Supreme Court. All of the other new media platforms and service providers have written policies in place that violate fundamental rules of free expression, particularly as applied to religious free speech.

- The seven other new media platforms and providers (Apple, Facebook, MySpace, Google, Comcast, AT&T, and Verizon) all prohibit various formulations of “hate speech,” a dangerously undefined and politically correct term that is often applied in the culture to stifle Christian communicators.
- All of these seven giant web-based platforms and service providers have declared the intent to ban undesirable content by using dangerously broad, vague terminology (e.g., banning speech that is deemed to be “offensive,” or “inflammatory”). Similar policies have been struck down by the Supreme Court in numerous First Amendment cases in other contexts on the grounds that they chill free speech rights.
- Facebook, Google, Comcast, and AT&T have issued written policies that prohibit controversial ideas on so-called “hot button issues” (Facebook), or that severely limit the kinds of expression that can be used regarding subjects such as abortion (Google), or that ban content merely based on the viewpoint-complaints of other users (Comcast and AT&T).
- Three of these entities have express anti-religious free-speech policies, forbidding such things as “politically religious agendas” (Facebook), or content that advocates against gay-rights groups or that might criticize, for example, the doctrines of a religious organization or sect because its tenets conflict with the Bible (Google), or content that might contain any expressions of so-called “homophobia” (MySpace).
- Two of these new media companies have policies that expressly grant special free speech rights to expression related to political issues (Apple and Facebook), while at the same time severely restricting religious expression.
- Apple and Comcast both have policies that authorize censorship of content which they determine, in their sole discretion, to be inaccurate or lacking in factual truth, or that they consider to be “misleading.” Such a broad editorial standard elevates those companies to the dangerously exalted position of being the final arbiters of truth and accuracy regarding any and all ideas of citizens that are carried over their sites.

**The problem of anti-Christian censorship and viewpoint discrimination can be solved.**

- The optimal solution is for each of these offending new media companies (other than Twitter) to voluntarily renounce any past practices of anti-Christian censorship, to embrace revisions of their written policies that reflect basic free speech principles, and to publicly declare that they will abide in the future by those principles and will avoid viewpoint censorship of otherwise lawful content.
- In the absence of voluntary, corrective action by these new media platforms and services, one possible remedy would be the enactment of very narrowly drawn federal

legislation, forbidding viewpoint censorship of otherwise lawful content by these Internet platforms and service providers.

- Another possible avenue would be to effect free speech compliance by new media platforms through a variety of regulatory inducements. We leave to another day the discussion of whether such regulation is feasible or wise, what those regulatory measures might look like, and what federal agency, if any, would have jurisdiction. However, the route taken by the Federal Communications Commission (FCC) in passing its “open Internet” regulations is not a remedy we endorse. Those rules are long on broad, complex, free market-inhibiting rules with vague standards of application, and are short on the provision of basic guarantee to citizen users that their content will not be censored because their ideas are unpopular, controversial, or politically incorrect. Further, those federal regulations do not reach the full breadth of popular “new media” platforms and services that we examine in this paper.
- A last alternative is litigation. It is questionable whether the First Amendment would apply to the censorship actions of these private, new media giants (because they arguably would not constitute “state actors”), though it is not inconceivable. However, in the absence of the enactment of new federal legislation protecting the free speech rights of the public over these web-based platforms, state law remedies and common law theories might still provide relief against new media polices and practices that blatantly violate America’s long-standing public commitment to freedom of expression and free exercise of religion.

## INTRODUCTION

**“This is true liberty, when free-born men,  
having to advise the public, may speak free....”**

**John Milton (1608-1674)**

The current state of Internet communications technology, with its breathtaking innovations and its rapidly changing functionalities, has presented us with myriad opportunities. Users can experience unparalleled access to instant information, connectivity with other web users, and new ways to communicate ideas to a potentially unlimited audience. At the same time, this technology presents a grave risk to our freedom of speech. Three-hundred-and-sixty-eight years ago a similar threat was posed when England granted a monopoly to private printers over the publishing field in return for their work in licensing, approving, and censoring all printed information in the kingdom. John Milton, a Puritan Christian and the famous epic poet of biblically themed works including *Paradise Lost*, fought against this approach with his pioneering argument for freedom of speech. Archibald Cox described the influence that Milton’s 1644 argument had on our Founders:

Although concerned chiefly with religion, John Milton stated the broader concern in his *Areopagitica* (1644), the single most influential plea known to the Framers for unlicensed access to the printing press.<sup>1</sup>

Today, a handful of “new media” giants are the gatekeepers to new web-based communications platforms. They decide, like the private printers of seventeenth century England, what content may be communicated over their Internet-interactive venues, and what will be blocked or removed. We believe in the principle of free enterprise, and the innovations that we enjoy today in communications technology are the direct result of a vibrant, relatively unregulated field for Internet-related businesses. However, there is a real and present danger that these companies can, and in some instances actually have, committed viewpoint censorship as a result of monolithic control over these technologies. That is the risk addressed in this paper, along with suggestions for remedies to this problem. The fact remains that, even if private entities can own and operate communication platforms, this does not mean that all citizens will be free to use them, or that they will have the right to use them free of the constraints of viewpoint censorship. Speaking in the context of the effect of new media technology on geopolitics and on the freedoms of citizens in nation-states, one commentator notes:

Techno-optimists appear to ignore the fact that these [new media] tools are value neutral; there is nothing inherently democratic about

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<sup>1</sup> Archibald Cox, *The Court and the Constitution*, (New York: Houghton Mifflin Co., 1987), page 187.

them. To use them is to exercise a form of freedom, but it is not necessarily a freedom that promotes the freedom of others.<sup>2</sup>

We are mindful that the issues we address in this paper regarding privately owned public venues of information technology (which we call “new media communication platforms”) broach uncertain frontiers in law, public policy and political philosophy. The value of private enterprise, innovation, and capitalism must be recognized. At the same time, the unique nature of Internet-based media platforms, indeed, the phenomena of the worldwide web itself, coupled with the rising threat of anti-religious censorship, mandates that the players in this communications arena adopt an approach that fully accommodates free speech and religious expression rights of citizens regarding otherwise lawful ideas and content.

In examining the threat of viewpoint censorship, this paper focuses on both the practices and the policies of several major “new media” communication platforms. In some cases, we have included in our evaluation of new media “practices” certain conduct or particular expressions of a communications philosophy by some of these companies which may not specifically relate to anti-Christian censorship, but which nevertheless reveals a high potential for hostility to full religious free speech liberties for all users. Our review covers Apple and its iTunes App Store, Google and its Internet search engine and related web-interactive services, social networks Facebook and MySpace, Twitter, and Internet Service Providers (ISPs) Comcast, AT&T, and Verizon.

There have been other research papers that have dealt with somewhat related issues. For instance, in October of 2010, the American Civil Liberties Union (ACLU) published its report, *Network Neutrality 101 – Why the Government Must Act to Preserve The Free And Open Internet*. But that report contained numerous failings and limitations. It ignored the issue of anti-religious censorship, which is at the heart of the new media/free speech issue. It was also released a month before Apple’s first act of overt anti-Christian censorship, which occurred in November of 2010, to be followed by another instance in early 2011. Therefore, the ACLU failed to address those instances of clear anti-Christian censorship. Furthermore, their report focused only on the conduct of ISPs rather than on the broader field of web-interactive “new media.” Ultimately it endorsed, in advance, the approach that was embodied in the Order released by the Federal Communications Commission (FCC) two months later, in December of 2010, popularly dubbed “net neutrality.” NRB strongly disagrees with the actual implementation of this concept in the FCC’s “Open Internet” Order, as we explain later in this paper.

Another approach is illustrated by the research of Rob Frieden, Professor of Telecommunications and Law at Pennsylvania State University. In his recent article in the *Penn State Law Review*, “Assessing the Merits of Network Neutrality Obligations at Law,

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<sup>2</sup> Ian Bremmer, “Democracy in Cyberspace – What Information Technology Can and Cannot Do,” *Foreign Affairs*, November/December 2010, page 87.

Medium and High Network Layers,” he notes the threat of ISPs blocking Internet access to users:

Just as the FCC has acted to prevent vertically integrated cable television operators from thwarting video programming competition, the Commission should use its *Open Internet NPRM* to establish rules that safeguard competition for content, applications, and services that travel via (“over the top”) ISP network links. ISPs can exploit some of the same gatekeeper roles as cable television operators by resorting to tactics, masquerading as legitimate network management, that block, delay, degrade, and otherwise interfere with end user access to content.<sup>3</sup>

It should be noted first, that Professor Frieden’s focus here is strictly limited to ISP’s, and secondly, that his primary concern is that the FCC’s rules should serve to “safeguard competition,” admittedly an important principle, but at the same time an approach that fails to recognize the fundamental free speech rights of citizen users.

Thus, this report does something very different: it dwells exclusively on the liberty issues relating to the censorship or blocking of otherwise lawful religious expression over Internet-related communications technologies. Our phrasing of “otherwise lawful” expression as deserving of protection is intentional. We believe that these web platforms currently have both ample tools and the legal right to block *illegal* communications that threaten harm, or violate existing law.<sup>4</sup> Our concerns, and our proposals, would in no way impede their ability to deal with those kinds of illegal or clearly harmful content.

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<sup>3</sup> Rob Frieden, “Assessing the Merits of Network Neutrality Obligations at Low, Medium, and High Network Layers,” *Penn State Law Review*, Vol. 115:1 (2010) page 74.

<sup>4</sup> As examples: (1) YouTube rightly removed a video by Anwar al-Awlaki, a cleric who called for jihad. John F. Burns and Miguel Helft, “YouTube Withdraws Cleric’s Videos,” *nytimes.com*, November 3, 2010. (2) Facebook appropriately removed a page urging violence. “Facebook removes page urging Muslims to kill Jews,” Associated Press (AP), March 30, 2011.

## IDENTIFYING THE ELEMENTS OF THE PROBLEM

As we review the current landscape, we see four primary factors that contribute in a general sense to a heightened risk of viewpoint censorship on various “new media” communications platforms. Further, we see these factors as contributing significantly to a specific risk of censorship of Christian content and ideas. These factors are: (1) the past practices of anti-Christian censorship among some of these platforms; (2) free speech-inhibiting policies that facilitate censorship and which are already in place among almost all of the web-based communications companies reviewed here; (3) both market-driven and self-interest motivations for these companies to impose viewpoint censorship; and (4) the trend toward technological convergence of these platforms, which will further entrench their discriminatory practices and/or policies.

### **Anti-Christian censorship has occurred and there is a substantial threat of its increase.**

As we describe in detail in the next section of this paper (Past Practices of Anti-Christian Censorship and Other Viewpoint Discrimination), instances of anti-Christian censorship have already occurred in the new media. Chief examples include the blocking of apps in the Apple iTunes App Store by Apple in two separate instances, each involving content of a distinctly Christian nature. The viewpoints expressed by the *Manhattan Declaration*, a statement of Christian conscience, and also those religious values held by Exodus International, a Christian ministry, were the cause of their removal from Apple’s iTunes App Store, making them unavailable as applications on the iPhone. In congressional testimony, Apple has indicated it has some 350,000 apps available for the iPhone.<sup>5</sup> The most recent figures are that it has more than 425,000 apps on its iTunes store.<sup>6</sup> Yet on only *two occasions* has the company blocked otherwise lawful apps, and both of those involved Christian-oriented expression that was suppressed.

In one instance, Google refused to place a Christian pro-life advertisement on its search engine, resulting in litigation in England. On another occasion, Google was alleged to have blocked a Christian oriented website; allegations we will examine later in this report. Other past practices of Google show a disturbing tolerance of viewpoint discrimination and a past willingness to participate in information blacklisting.

Facebook has pledged to eradicate *anti-gay* comments on its platform, and its partnership in pro-gay programs raises the specter that statements of Christian orthodoxy on the issue of homosexuality may not be tolerated on that social networking site.

<sup>5</sup> <http://touchreviews.net/apple-explain-location-tracking-senate-hearing/>

<sup>6</sup> Jake Rosati, “What’s on your home screen?” *today’siphone.com*, August 21, 2011.

## **Policies are in place that facilitate content-based/viewpoint-based discrimination against certain otherwise lawful ideas.**

With the sole exception of Twitter, the written policies of all of the other web-based communications platforms evaluated in this paper show a callous disregard for the free speech rights of users. These policies not only express the clear intent to block content by the use of overly broad, vague standards, they also prohibit certain kinds of expression, such as “hate speech,” a loosely defined phrase currently in fashion in some segments of the culture. (It has become a code-term indicating disapproval for the views of traditional, biblical Christianity, particularly regarding Christian doctrine related to issues like abortion and the orthodox rejection of homosexuality.) Some new media terms-of-service policies are even more expressly antagonistic to religion, such as that of Facebook, which expressly prohibits “*Inflammatory religious content; Politically religious agendas.*” It is virtually certain that if a court were to apply traditional First Amendment legal principles to the above policies of these new media platforms, they would be struck down as a violation of freedom of expression.

## **There is a motivation to censor based on market factors, coupled with the natural forces of self-interest.**

The evidence seems clear that acts of anti-Christian censorship by Apple were instigated by pro-gay advocates who accumulated petitions of protest in reference to the disputed Christian apps. According to media reports, the Manhattan Declaration App was pulled by Apple after the pro-gay group Change.org accumulated 7,000 signatures on an online petition.<sup>7</sup> Apple pulled the Exodus International App after more than 145,000 online signatures of protest against Exodus were presented.<sup>8</sup>

Such petitions are tantamount to implied threats of economic boycott, a technique currently employed by gay-advocacy groups. The Courage Campaign and Equality California launched a website and email campaign for a boycott against a San Diego hotel entrepreneur who donated to Proposition 8, the traditional marriage movement. That boycott effort cost the hotel operator an estimated \$7 million in revenue at his Hyatt property alone.<sup>9</sup> When Target was alleged to have donated to an “anti-gay” politician, liberal groups and homosexual activists boycotted the corporation.<sup>10</sup> One organization, Co-op American, has created an online “Boycott Organizer’s Guide,” which points out that “a nationwide survey found that business leaders consider boycotts to be more effective than other consumer techniques such as class action suits, letter writing campaigns, and lobbying.”<sup>11</sup> There is a clear economic motivation for new media companies to cave in

<sup>7</sup> Ki Mae Heussner, “Thousands Urge Apple to Remove ‘Anti-Gay’ App,” abcnews.com, March 2011.

<sup>8</sup> Sarah Pulliam Bailey, “Exodus: Apple Pulls App from Ex-Gay Ministry,” christianitytoday.com, March 23, 2011.

<sup>9</sup> Press Release, “Courage Campaign and EQCA join forces to support Manchester Hotels Boycott,” September 22, 2009.

<sup>10</sup> Cassandra Clegg, “Target receives backlash from donations,” roosevelttorch.com, September 14, 2010.

<sup>11</sup> <http://www.amerikaos.com/boycottguide.html>.

to petition drives that imply a resulting boycott if demands for censorship are not met. Further, there appears to be no mediating force within such business organizations that would strenuously advocate for the free speech rights of people of faith in the face of effective, outside economic or social pressure.

Financial realities also are at play in the market volatility of new communications technology. MySpace was acquired in 2005 by News Corporation for \$580 million, and was recently sold for a mere \$35 million.<sup>12</sup> This market value volatility creates uncertainty among media technology companies, making them even more sensitive to the ploys of viewpoint censorious organizations that can wield market pressure through threatened or actual boycotts.

In addition to the natural inclination of new media companies to respond in free speech-infringing ways as a result of market forces, there is also the reality that the business leaders within new media companies, like all of us, are not naturally solicitous of ideas that conflict with their personal values, that criticize them, or that expose them to unfavorable public scrutiny. For example, *The New York Times* has reported (citing Steve Levy's book *In the Plex*) that Google CEO Eric Schmidt attempted to have that search engine giant censor information from its own search results relating to one of Schmidt's political donations.<sup>13</sup> The question then is, when citizen viewpoints on new media platforms clash with the worldview of new media executives or with the personal values of decision-makers or customer service staff within those companies, or when religious viewpoints criticize the policies or practices of those companies, will those faith-based opinions be blocked or censored? The risk is apparent, and the probability is high.

**Convergence of new media communications technology indicates that the risk of anti-Christian censorship by practice and/or policy will continue and will escalate.**

The new media companies explored here have developed into communications giants, and their innovational plans are equally impressive. Facebook has 500 million customers using its platform and, according to *Forbes*, has built "the most promising communications business since the Bell System..."<sup>14</sup> As we illustrate later in this paper, Google seeks to capture and universalize all information on the planet. Apple's iPhone functions and apps are a communications phenomenon. But there is another trend that is appearing: convergence.

In a February 2008 C-Span broadcast of a panel discussion during the World Economic Forum, telecommunications leaders (the FCC chairman, the CEO of Google, and the Chief

<sup>12</sup> Brian Stelter, "Next Step for MySpace Still Unclear," *The New York Times*, June 30, 2011, page B1.

<sup>13</sup> "Google CEO Tried to Censor Google Search Results, Hide Political Donation, Book Claims," *huffingtonpost.com* (Huffpost Tech), April 26, 2011.

<sup>14</sup> Quentin Hardy, "In Mark We Trust," *Forbes*, October 11, 2010, page 84.

of Communications for China, among others) opined on the future of communications. The consensus was that in the very near future, we would see a convergence of all communications technology (Internet, TV, radio, cell phone, personal computers). Now, three years later, we are already seeing that trend developing.

Presently, Apple is experimenting with a crossover to social networking by turning iTunes into a social network. That company is also launching its iCloud service, where Apple's operating systems for its Macs, iPhones and iPads will integrate "cloud" storage for such things as word processing, contact lists, and calendars.

Google, which originated as a web search engine, is now developing Google TV. More and more television devices are being developed so that web access will be part and parcel of television viewing. Meanwhile, Samsung is now utilizing the computer operating system of the ever-inventive Google in its new Chromebook Series 5 laptop. Google has spent \$12.5 billion acquiring Motorola Mobility Holdings, enabling it to enter the business of making cell phones and tablets.<sup>15</sup> Facebook and Skype (which is now being acquired by Microsoft) are partnering in the development of a video chat system through the social networking site. Google has Google+, a social networking platform that also permits video chatting.

Regardless of the mixed reviews that some of these newest ventures have garnered, it shows the reality of a communications convergence, and therefore an expansion and crossover of communications technologies. What effect will that have on the free speech rights of consumers? It is logical to assume that the current practices and policies of the new media companies reviewed here, which already show (except for Twitter) disturbing signs of viewpoint censorship, will continue into their new, ever-expanded platforms and ventures. Further, if communication companies continue to create Internet-based joint venture products for consumer use, isolating and identifying the policy, practice, or decision-maker responsible for the blocking of Christian content may be much more difficult. Free speech suppression is bad enough; suppression done in the shadows or in the maze of multiple corporate labyrinths is even worse.

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<sup>15</sup> Evelyn Rusli, "Google's Big Bet on Mobile Future," [nytimes.com](http://nytimes.com), August 15, 2011.

## THE LEGAL PARADIGM: FIRST AMENDMENT VALUES SHOULD PREDOMINATE

There are thorny legal issues about the nature of the Internet, and whether it is a private, public, quasi-public, or hybrid kind of communications space. The First Amendment, like the other provisions of our Bill of Rights, does not reach private actions but only the actions of “state actors.” Mere regulation by the government does not convert a private business into a “state actor” so that the First Amendment would apply. Instead, something additional must be present, similar to the high degree of regulation that is found with public utilities.<sup>16</sup> In one case the Supreme Court indicated that state action could be found if the government provides significant encouragement, either directly or indirectly, to the private business entity such that the wrongful conduct of the private business is deemed to be that of the government.<sup>17</sup>

In a prior FCC Notice of Proposed Rule-Making regarding the “Open Internet,” it was flatly declared that “the First Amendment does not *directly* govern” the actions of private Internet Service Providers (emphasis added).<sup>18</sup> Whether the FCC’s newly instituted “Open Internet” rules qualify as sufficiently coercive in regulatory effect on web-based platforms, or whether they provide sufficient inducement for those platforms to be lax regarding the free speech interests of religious users, thereby triggering the protections of the First Amendment, remains to be seen. In a later section, **Solving the Problem**, these issues are discussed further. The point, though, is that until there is judicial clarification on these matters, then at a minimum the free speech values of the First Amendment should provide a handy, reliable, and appropriate guide for our evaluation of the practices and policies of the “new media,” and the standard to which they should aspire.

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<sup>16</sup> *Jackson v. Metro. Edison Co.*, 419 U.S. 345 (1974).

<sup>17</sup> *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982).

<sup>18</sup> *In re Broadband Indus. Practices*, 22 FCC Rcd 7894 (FCC 2007).

## PAST PRACTICES OF ANTI-CHRISTIAN CENSORSHIP AND OTHER VIEWPOINT DISCRIMINATION

### Practices of Apple

Apple has the dubious “honor” thus far of having committed the most obvious acts of anti-Christian censorship on new media platforms. It has 425,000 apps on its iTunes App Store, yet the only ones blocked on a viewpoint basis have been apps that contain Christian content. In November of 2010, Apple, having previously approved the Manhattan Declaration App (which contained a declaration of orthodox Christian beliefs about marriage, sanctity of life and religious liberty), decided to pull it off the iTunes App Store; the reason given by Apple in its prepared statement was that the *Manhattan Declaration’s* position that homosexual conduct is immoral “violates our developer guidelines by being offensive....”<sup>19</sup>

A few months later, in March 2011, Apple censored the app for Exodus International, a Christian ministry that works with those persons who are in a homosexual lifestyle, and which takes the position that homosexual acts are incongruent with the Bible’s teachings. Once again, Apple gave the same justification for its decision. Apple spokesman Tom Neumayr told a news source, “the app had indeed been deemed offensive and removed,” and added that “it violates the developer guidelines by being offensive to large groups of people.”<sup>20</sup>

Apple’s seemingly entrenched hostility toward orthodox Christian views on homosexuality is also evident in another recent incident. In July 2011, Apple pulled iTunes out of the Christian Values Network, a retail shopping portal that contributes funds to charities chosen by its consumers. The action by Apple seems clearly to have been motivated by petitions that complained that some of the recipient charities included groups like Family Research Council, which actively oppose gay rights initiatives.<sup>21</sup>

Apple’s practices of anti-Christian censorship are also consistent with its support of gay-rights policy initiatives. Apple recently became a participant in the “It Gets Better” campaign, which one media report describes this way: “Apple employees have joined the online It Gets Better project that aims to help gay and lesbian teenagers come to terms with their sexual orientation.”<sup>22</sup> To the extent that Apple’s concerted support for projects that help homosexuals feel comfortable with their homosexuality is inconsistent with the beliefs of organizations that view homosexual conduct in a negative light, we can assume that Christian apps will continue to be viewed by Apple with suspicion. Apple enjoys a pervasive market influence through its apps – its iTunes App Store has had 15 billion

<sup>19</sup> Ki Mae Heussner, “‘Anti-Gay’ iPhone App Pulled from Apple Store,” abcnews.go.com, November 30, 2010.

<sup>20</sup> Jeremy Kaplan, “Apple Pulls ‘Gay-Cure’ App Following Controversy,” foxnews.com, March 23, 2011.

<sup>21</sup> Matt Peckham, “Apple Yanks iTunes from ‘Christian Values Network’,” time.com, Techland, July 27, 2011.

<sup>22</sup> Geetaj Channana, “Apple employees go online to help gay-lesbian teens,” NDTV.com, April 15, 2010. Several other “new media” platforms have joined this campaign, including Google and Facebook.

downloads.<sup>23</sup> In light of that, its low view of religious free speech is particularly disturbing.

On the other hand, what are we to make of the fact that Apple's anti-Christian bias is not universally imposed on its iTunes App Store, because it also permits certain Christian and Bible-oriented apps? Does this mean that Apple has not discriminated against Christian ideas?<sup>24</sup> This is a faulty kind of logic, because it demands that we ignore heavy-handed censorship of a Christian view on one controversial issue (homosexuality), simply because Christian views on other, less controversial subjects have been allowed for now. The problem is that once a new media platform has been empowered to block one kind of traditional religious idea on an otherwise debatable subject, there is no guarantee that if Christian views on other subjects become culturally unfashionable they, too, may be censored as well. Furthermore, free speech should not be viewed merely as a function of quantity – i.e., “Christians have X number of apps, they should be satisfied with that.” To make that argument is to implicitly suggest that Apple could, and perhaps even should, impose some kind of arbitrary quota on the number of Christian apps – i.e., “Y number of Christian-oriented apps is all that Apple really ought to permit.” Yet would we ever tolerate a retail store that declares, “We will only serve two Hindus today, and no more”? Or would we support a telephone company that predetermines that it will provide service to only one synagogue or only one mosque in a given market, and no more?

### Practices of Google

Google, the world's most powerful Internet search engine, has had its share of free speech problems.

When The Christian Institute in England sought to take out an advertisement on Google it was initially prohibited from doing so. As a Christian legal organization, The Christian Institute wanted to buy ad space that attracted readers to its website with text that read: “Key views and news on abortion law from The Christian Institute.” At the time, Google representatives refused the ad on the grounds that its “policy did not permit the advertisement of Web sites that contain ‘abortion and religion-related content.’”<sup>25</sup> It was only after The Christian Institute sued Google under Britain's *Equality Act 2006* that Google relented, permitted the ad, and agreed to revise its policy. According to Google, the new policy permits “religious associations to place ads on abortion in a factual way.”<sup>26</sup>

In another instance, Google is alleged to have blocked a Massachusetts pro-family website because of the conservative Christian content. Google alleged that the reason related to

<sup>23</sup> “Apple's App Store Hits 15 Billion Downloads,” *Broadcasting & Cable*, July 7, 2011.

<sup>24</sup> For instance, one blogger rejected our characterization that Apple has discriminated against the evangelical Christian viewpoint on marriage and homosexuality, and cited, in support, the fact that another blogger “looked at the [Apple iTunes] app store and found a plethora of Christian apps.” Wayne Besen, “The Extreme Anti-Business, Intellectual Dishonesty of the National Religious Broadcasters,” *San Francisco Bay Times*, March 31, 2011.

<sup>25</sup> Ki Mae Heussner, “Google Oks Religious Groups' Abortion Ads,” *abcnews.com*, September 18, 2008.

<sup>26</sup> *Ibid.*

the presence of “malware” on the site, an accusation that the website host denied.<sup>27</sup>

In March of 2011, Google established new guidelines for its “Google for Non-Profits,” a web tool program that has the benefit of merging several tools into one program. However, it has specifically excluded from the free or discounted use of the program, churches and other faith groups, as well as any organization that takes into consideration religion or sexual orientation in its hiring practices. Christian churches that have applied to Google as “non-profits” are now getting rejection emails from Google.<sup>28</sup> If Google were a public institution, it seems clear that its denial of benefits to churches and other faith groups based on their religious viewpoint would violate the First Amendment under a 1995 Supreme Court decision.<sup>29</sup>

When Google permitted linking to a Norwegian anti-Church of Scientology site, lawyers for the Church of Scientology contacted Google and protested, arguing that the site, xenu.net, displayed copyrighted Scientology content supposedly in violation of the Digital Millennium Copyright Act. As a result, Google relented and removed the pages in question from its index, “much to the dismay of many First Amendment fans” as *Wired* writer Josh McHugh noted.<sup>30</sup> This result is troubling from the standpoint of freedom of religious expression because numerous Christian ministries that specialize in analyzing religious movements and exposing their divergence from Biblical Christianity need the ability to quote from original sources. Under copyright law, as one court recently noted, the “fair use” doctrine entitles authors and publications to “the fair use of a copyrighted work... for purposes such as criticism, comment, [or] news reporting” and as such it “is not an infringement of copyright.”<sup>31</sup> Following the precedent set by the Google approach, however, any group seeking to avoid exposure of its actual quoted positions on certain issues could block or inhibit otherwise valid theological criticisms by Christian writers, as an example, simply by advising Google that the opinions that criticize it violate copyright rules.

During the time when Google was operating in China through Google.cn, a China-based version of its search engine, the People’s Republic of China required that it operate as a private Internet service provider, thus mandating that, like all other ISPs, Google “self-censor” content that the Chinese government considered illegal.<sup>32</sup> Google self-censored a host of blacklisted words, including large amounts of content related to the officially censored religious group Falun Gong, and religious terminology including “new birth web,” “the Dalai Lama,” and “Armageddon.”<sup>33</sup>

<sup>27</sup> Pete Chagnon, “Accusation: Google targets, blocks pro-family website again,” onenewsnow.com, July 15, 2009.

<sup>28</sup> Matt Branaugh, “Google Cuts Churches Out of Nonprofit Program,” christianitytoday.com, August 25, 2011.

<sup>29</sup> *Rosenberger v. Rector and Visitors of the Univ. of Va.*, 515 U.S. 819 (1995).

<sup>30</sup> Josh McHugh, “Google vs. Evil,” *Wired*, accessed at: [http://www.wired.com/wired/archive/11.01/google\\_pr.html](http://www.wired.com/wired/archive/11.01/google_pr.html).

<sup>31</sup> *Righthaven LLC v. Reality One Group, Inc.*, 2010 U.S. Dist. LEXIS 111576 (D. Nev. Oct. 18, 2010).

<sup>32</sup> Professor Wayne Norman, Kristina Wilson, Yaneli Ramos, Daniel Harvey, and Professor Chris MacDonald ed., “Google in China: The Great Firewall,” The Kenan Institute for Ethics at Duke University (unpublished paper).

<sup>33</sup> *Ibid.*, pp. 2, 14, 15, 17.

In one instance, Fox News Senior Political Analyst Brit Hume noted the hypocrisy when Google had banned the ads of Republican Senator Susan Collins against the liberal site Moveon.org, a purported policy that one author describes as having “no legal basis and that is only selectively enforced.”<sup>34</sup> While Google says that it dropped the ad because it used trademarked names without permission, nevertheless at the same time it had also permitted *liberal attack ads* on such trademarked names as Walmart, Exxon Mobil, and Blackwater USA.

The ideological worldview of Google’s leadership is not entirely in plain sight, but there are indications that it could spell problems for the rights of orthodox Christians to publish their content in the future. For instance, Scott Cleland, former U.S. Deputy Assistant Secretary of State for Information and Communication Policy, and a frequent congressional witness on Google-related matters, has stated bluntly that “Google rejects traditional Judeo-Christian values....”<sup>35</sup>

Further, Google’s leadership has expressed an information-control philosophy that is troubling, suggesting the propriety of developing “truth predictor” software that could be utilized in political election news reporting fact-checking systems (based on probability), as well as the desire to establish a “single algorithm for ranking the world’s information.”<sup>36</sup> These kinds of technological intentions, if true, could make Google a possible willing censor of certain ideas if those ideas fail the probability algorithms or truth-checking systems that Google may be designing for the future.

### **Practices of Facebook**

While Facebook has removed content that it has determined to be anti-gay, it is unknown whether any of it contained religious expression. The position of Facebook on the issue of homosexuality, however, and its collaboration with gay-rights groups, coupled with its troublesome written policies (see Appendix B), are all strong indicators that its social networking platform poses a high index of risk for anti-Christian discrimination on that subject. According to one news source, “[t]he Gay & Lesbian Alliance Against Discrimination (GLAAD) has teamed up with Facebook to reduce the amount of hate speech and anti-gay bullying that goes on around the internet.”<sup>37</sup> Facebook has also become a partner in the gay-youth support program, “It Gets Better.” In another instance, after initially removing a Facebook posting of a photo of two men kissing, Facebook officials quickly reversed the decision and issued a formal apology. This can be contrasted with other instances involving sexual depictions *unrelated* to homosexuality, where Facebook has

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<sup>34</sup> Scott Cleland and Ira Brodsky, *Search & Destroy – Why You Can’t Trust Google Inc.* (St. Louis: Telescope Books 2011), page 212.

<sup>35</sup> Ibid, page 186.

<sup>36</sup> Ibid, pages 208-209, and 234.

<sup>37</sup> Jolie O’Dell, “Facebook working with GLAAD to stop anti-gay bullying,” *cnn.com*. October 14, 2010.

permanently and unapologetically removed sexual content.<sup>38</sup>

Facebook founder Mark Zuckerberg has spoken out publicly against government attempts to stifle free speech on the Internet, accepting some credit for the so-called “Arab Spring” in Middle East countries where new media, including Facebook, have been used to voice and organize protests. But what about Facebook’s anti-freedom position regarding the free speech rights of its own customers? At the recent G-8, Zuckerberg said, “You can’t isolate some things you like about the Internet and control other things that you don’t.”<sup>39</sup> If we apply this axiom to Facebook, we would advise Mr. Zuckerberg: *you cannot isolate some speech on Facebook that you like, and then block other things that you don’t like*. Even more to the point, last year on *60 Minutes*, Mr. Zuckerberg opined on the values of free speech on the Facebook platform, a position we would now challenge him to actually implement in the policies of Facebook: “When you give everyone a voice and give people power, the system usually ends up in a really good place. So what we view our role as, is giving people that power.”<sup>40</sup>

### Practices of Internet Service Providers

As a large national Internet access provider, Comcast made headlines when, in the words of the FCC, it “disrupted certain peer-to-peer (P2P) uploads of its subscribers, without a reasonable network management justification and without disclosing its actions.” The FCC also found that “[c]omparable practices have been observed in the provision of mobile broadband services” at the hands of a provider of mobile broadband services.<sup>41</sup> The Comcast blocking of the P2P traffic of BitTorrent resulted in a proceeding before the FCC, and ultimately a determination by the federal Court of Appeals that the Commission’s asserted basis for exercising jurisdiction over Comcast’s network management actions was lacking.<sup>42</sup>

Lesser known is the blocking of *The King James Bible* by Comcast. During the incident involving Comcast’s suspected blocking of P2P traffic of BitTorrent, the *Associated Press* (AP) ran three tests to see for itself whether Comcast was blocking such traffic. It chose for the tests a downloading of *The King James Bible* through BitTorrent because it was a non-copyrighted work. In two instances the download was blocked altogether, and in the third there was a delay before the download began.<sup>43</sup>

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<sup>38</sup> Darren Allen, “Facebook swiftly reverses decision on gay kiss photo,” *techwatch.co.uk*, April 21, 2011; “Facebook Apologizes for Censoring Gay Kiss Photo,” *huffingtonpost.com*, April 25, 2011.

<sup>39</sup> Joe Murphy, “Facebook founder Mark Zuckerberg today warned world leaders against any attempts to regulate free speech on the internet,” *London Evening Standard*, May 26, 2011.

<sup>40</sup> Cord Jefferson, “Facebook Considers China: ‘We’re Allowing Too Much, Maybe, Free Speech,’” *GOOD*, “Culture,” [www.good.is](http://www.good.is), April 21, 2011.

<sup>41</sup> In the Matter of Preserving the Open Internet, GN Docket No. 09-191, Broadband Industry Practices, WC Docket No. 07-52, Report and Order, December 23, 2010, ¶ 35.

<sup>42</sup> *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010).

<sup>43</sup> Jacqui Cheng, “Evidence Mounts that Comcast is targeting BitTorrent traffic,” *arstechnica.com*, October 19, 2007.

While it is unknown whether Comcast's suspected blockage of these Bible downloads was viewpoint targeted or was simply a response to a large download that threatened traffic, the fact remains that blocking can occur. If sufficient motivation exists through marketplace pressure, coupled with policies that do not protect religious free speech rights, religious texts and content of all kinds could be subjected to blocking, slow-tracking, or download degradation by Internet access providers.

## CURRENT POLICIES OF THE NEW MEDIA

### Policies of Apple

Several of Apple's policies regarding its apps are dangerously overbroad and vague, and are, in some instances, viewpoint-censorious on the subject of religion, while granting wide exemptions to "satirists and humorists" regarding "political" commentary (see Apple/iTunes App Store/web developer Guidelines in Appendix A). It is possible, of course, that Apple's political satire exemption may have been influenced by the Supreme Court's decision to extend free speech protection to satirical parody in *Hustler Magazine v. Falwell*,<sup>44</sup> together with the Court's long-standing general acknowledgment that political discourse is entitled to strong First Amendment protection. If that is so, however, then Apple faces an intractable dilemma: if it uses Supreme Court precedent to guide its policies regarding free speech rights on its particular communications iTunes App Store platform, then it needs to be consistent. In other words, Apple needs to also accept the fact that the Supreme Court has given a wide berth of protection to religious free speech rights, and it should incorporate those principles in its policies as well.

In *Snyder v. Phelps*,<sup>45</sup> in a near-unanimous decision, the Court examined the admittedly despicable public statements of a small, aberrant church. In the words of the Supreme Court, the group's pronouncements expressed "the church's view that the United States is overly tolerant of sin and that God kills American soldiers as punishment."<sup>46</sup> More specifically, the religious group of protesters in that case, picketing at a military funeral, denounced homosexuals as well as the Catholic Church.<sup>47</sup> Nevertheless, eight out of nine of the Supreme Court Justices voted to uphold the religious group's First Amendment rights against the rights of the grieving father of the slain soldier whose funeral was at the epicenter of the case. The father had been awarded civil tort damages against the group, but the High Court reversed. The Supreme Court reasoned:

As a nation, we have chosen a different course – to protect even hurtful speech on public issues to ensure that we do not stifle public debate.<sup>48</sup>

The Court's decision hinged on the fact that the public pronouncements at the core of the case were determined to be "matters of public concern"; legal rhetoric for expressive content that "plainly related to broad issues of interest to society at large."<sup>49</sup> According to the Court, issues that qualified for constitutional protection included comments (even hateful ones) relating to "the moral conduct of the United States and its citizens ...

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<sup>44</sup> *Hustler Magazine v. Falwell*, 485 U.S. 46 (1988).

<sup>45</sup> *Snyder v. Phelps*, 131 S.Ct. 1207 (U.S. 2011).

<sup>46</sup> *Ibid*, slip op. at 1.

<sup>47</sup> *Ibid* at 2.

<sup>48</sup> *Ibid*, slip op. at 15.

<sup>49</sup> *Ibid* at 8.

homosexuality...[and] the Catholic clergy...”<sup>50</sup> Hence, Apple’s protection of political speech while at the same time severely disadvantaging religious speech is disingenuous at best, and it flies in the face of the free speech values that the Supreme Court has resoundingly affirmed as recently as its current term.

In summary, Apple’s ill treatment of religious speech is evident in at least three different ways. First, those policies define prohibited content in vague, ambiguous ways (forbidding “offensive, mean-spirited” content, or content that expresses “abuse,” or is “inappropriate” or “unacceptable”). This, in effect, gives Apple employees unbridled discretion to determine which religious ideas they prefer and which they disdain. Such a policy, if we were to apply traditional First Amendment standards, would be found unconstitutional in giving officials boundless, unfettered discretion in interpreting and enforcing those vague policy terms.<sup>51</sup> Further, ambiguous speech bans against expression, couched in terms that forbid “abusive” language or expressions of “abuse” have been held to be unconstitutionally vague.<sup>52</sup> According to Apple’s own statement, it was on the basis of Apple’s perniciously vague policy against “offensive” content that it decided to censor the Manhattan Declaration App and remove it from its iTunes App Store, rejecting the *Manhattan Declaration’s* statement that marriage should be limited to “one man and one woman,” and homosexual conduct was “immoral.”<sup>53</sup> By contrast, the Supreme Court had determined that even patently “offensive” content on the Internet is protected under the First Amendment.<sup>54</sup>

Second, Apple’s policies make it an arbiter among various religious ideas, with Apple alone as the final judge of that religious content that is “*accurate and not misleading*” and that is “*educational or informative rather than inflammatory...*”

Third, Apple’s policies commit content and viewpoint discrimination, because they prohibit some speech solely on the basis of the subjects that the speech addresses, i.e., citation of religious texts deemed not to be “accurate,” or religious content determined to be religiously “inflammatory.” Apple prohibits commentary that is deemed “offensive” to any “religious group.” That kind of content-based speech discrimination was condemned under First Amendment standards in *R.A.V. v. St. Paul*.<sup>55</sup>

In summary, we have no question that the terms in Apple’s policies that we have emphasized here, if sifted and weighed under the First Amendment standards laid down by the Supreme Court, would be found extraordinarily wanting.

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<sup>50</sup> Ibid.

<sup>51</sup> *Cox v. Louisiana*, 379 U.S. 536, (1965).

<sup>52</sup> *Gooding v. Wilson*, 405 U.S. 518 (1972); *Plummer v. Columbus*, 414 U.S. 2 (1973).

<sup>53</sup> Heussner, November 30, 2010.

<sup>54</sup> *Reno v. ACLU*, 521 U.S. 844 (1977).

<sup>55</sup> *R.A.V. v. St. Paul*, 505 U.S. 377 (1992).

## Policies of Facebook

One of the most defective elements of the policies of Facebook lies in its attempt to enforce a self-styled, anti-free speech ban against “hate speech” and supposed expressions of “hate” (see the Facebook Prohibited Content Guidelines in Appendix B.) Of course, reasonable people do not knowingly promote messages that they consider to be hateful. Moreover, our organization, the National Religious Broadcasters (NRB) expects all of our members who are Christian communicators, including those in television and radio, and our webcasters and publishers as well, to express their opinions in a way that is befitting their status as ambassadors of the Christian Gospel. The problem is that within some of our culture’s politically correct quarters, “hate” is not limited to threats of violence, actual intimidation, or defamatory degradation of others. Instead, “hate” is now ascribed to the content of certain ideas, for instance, those springing from traditional Christian orthodoxy, which secularists or liberal pundits and advocates have somehow perceived to be out of step with the current winds of the American climate of opinion.<sup>56</sup>

Examples of this phenomenon abound. On a cover article of *Harper’s Magazine*, National Religious Broadcasters was labeled as a purveyor of “hate” in an article that listed – in supposed support of this mean-spirited indictment – the content of statements made during an NRB national convention supportive of the principles of the sanctity of life, religious liberty and biblical morality, opposition to the gay rights movement, support of the nation of Israel, and opposition to some political attempts to “undo 200 years of tradition” in America.<sup>57</sup> The author, a former *New York Times* foreign correspondent, ended the article with a comparison between conservative Evangelicals and Hitler. In the same issue of *Harper’s*, the magazine’s editor, Lewis Lampham, wrote an article titled “The Wrath of the Lamb” that denounced Dr. James Dobson and Focus on the Family (NRB members) as perpetrators of “gospels of fear and hate.”

When the National Hispanic Media Coalition (NHMC) filed a formal petition with the FCC in early 2010, asking it to investigate “hate speech in the media,” it included, as examples, the mere mention by commentators of any relationship between negative and/or criminal conduct and the influx of illegal aliens. The NHMC listed the following as examples of “hate speech” warranting federal investigation: statements made on MSNBC’s *Tucker* program linking some illegal aliens to “drug runners, human traffickers...people who engage in slavery and prostitution”; statements made on Lou Dobbs’ CNN program that “linked illegal immigration to crime on ninety-four episodes...”; and opinions on FOX News’ *The*

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<sup>56</sup> Gay-rights groups, as an example, used the “hate” label when they urged Apple to ban the iPhone app of Exodus International, a Christian ministry with a mission of “encouraging, educating, and equipping the Body of Christ to address the issue of homosexuality with grace and truth.” Exodus stated in its March 23, 2011, press release that they help “those struggling with unwanted same-sex attraction to live a life congruent with biblical teaching.” Gay-rights groups called Exodus’s message “hate speech.” Jeremy Kaplan, “Apple Pulls ‘Gay-Cure’ App Following Controversy,” *FOX News*, March 23, 2011.

<sup>57</sup> Chris Hedges, “Feeling the hate with the National Religious Broadcasters,” *Harper’s Magazine*, May 2005, pages 55-61.

*O'Reilly Factor*, which “made that link twenty-nine times.”<sup>58</sup>

The purported standards relied upon by the NHMC in support of its anti-hate petition illustrate the utter subjectivity and futility of attempting to define and regulate the concept of “hate speech.” The Petition recited the finding in 1993 by the National Telecommunications and Information Administration (NTIA). That agency, tasked with the mission of examining “the role of telecommunications in crimes of hate...,” attempted to define “hate speech.” The best definition that it could come up with was this: “words and images that manifest evidence of prejudice based on race, religion, sexual orientation, or ethnicity.” A further refinement included the statement that hate speech, in part, is “speech that creates a climate of hate or prejudice...”<sup>59</sup> Such a definition is a mere tautology, however, and is relatively useless in giving guidance. In essence, “hate speech” is any expression that creates “hate.”<sup>60</sup>

Thus, “hate,” being ill-defined, suffers from the evil of being potentially applicable to any Facebook content that collides with the moral, religious, social, political or sexual values of any particular Facebook staffer tasked with reviewing content.

The second major flaw in Facebook’s policies has to do with its blatant attempt to become the judge of religious ideas with which it disagrees. It bans “*Inflammatory religious content; Politically religious agendas and/or any known associations with hate.*” This policy language obviously collides violently with the clear ruling by America’s highest court in *Snyder v. Phelps, supra*, regarding the free speech protections that are provided to even outrageously inflammatory, controversial religious expression. It is also entirely inconsistent with the Supreme Court’s denouncing of content-based speech discrimination codes in the *R.A.V.* case, *supra*.

The third problem comes with Facebook’s apparent ban on almost all political speech that deals with controversial issues – its policy prohibits “*content that exploits political agendas or uses ‘hot button’ issues for commercial use regardless of whether the advertiser has a political agenda.*” Not only does this language grant to Facebook the breathtaking power to censor all political speech on controversial issues, but it also inexplicably grants a selective exemption for statements of opposition against or support of “*candidates running for public office.*” This is exactly the **reverse** of the free speech rulings of the Supreme Court. In

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<sup>58</sup> Petition for Inquiry Filed on Behalf of the National Hispanic Media Coalition, “In the Matter of Hate Speech in the Media,” January 28, 2009, page 10.

<sup>59</sup> *Ibid*, page 3.

<sup>60</sup> A second standard that attempted to define “hate” and which was advanced by the NHMC fares no better. The Petition cited the study of the UCLA Chicano Studies Research Center (CSRC) that defined hate speech as any expression containing “(1) false facts, (2) flawed argumentation, (3) [or] divisive language ...” *Ibid*. at page 11. If Facebook, as an example, were to use this kind of standard to detect prohibited “hate speech,” it would, in effect, arrogate itself to the position of judging the accuracy, logic, and semantics of all the content on its site, with the power to reject those postings that don’t measure up. It is doubtful that Facebook would ever want to journey into this kind of philosophical and journalistic swamp of no return. It is also obvious that the CSRC approach does incredible violence to the values of the First Amendment.

*Federal Election Comm’n v. Wisconsin Right to Life, Inc.*,<sup>61</sup> as an example, the Court granted First Amendment protection to discussions on political issues (content that is censorable under Facebook’s policies), while permitting selective restrictions on electioneering expression that is in support of, or in opposition to, a particular candidate running for office (a subject that is given a complete pass in Facebook’s policy).

In summary, the Facebook policies critiqued above are out-of-step with First Amendment free speech values repeatedly upheld by our highest court.

### **Policies of Google**

Google has declared that it will block any ad regarding the issue of abortion that contains the phrase “abortion is murder,” deeming it “gruesome” (see Google Advertising and Blogger Guidelines in Appendix C).

The most troubling aspects of Google’s policies are two-fold. First, they share the same defects as those of Facebook in erroneously blacklisting anything in its “Blogger” service that it subjectively considers to be “hate speech.” Here is how Google defines hate speech, in pertinent part: “*By this, we mean content that promotes hate ... towards groups based on... religion...or sexual orientation/gender identity*” (emphasis added).

As we have already shown above regarding Facebook’s ban on “hate speech,” that term is vague and amorphous and is capable of being manipulated to advance a current cultural or political agenda. In its policies, Google has declared that it generally supports “freedom of speech” and “freedom of expression.” However, this declaration is disingenuous when we realize that its “hate speech” ban would not pass free speech muster under the Supreme Court decisions in *R.A.V.* and *Snyder v. Phelps*, *supra*. While Google does give examples of prohibited hate speech (e.g., “...don’t write a blog saying that members of Race X are criminals or advocating violence against followers of Religion Y”), those extreme examples in no way limit Google’s ability to censor other controversial but reasonable debatable religious expression, e.g., “Islam is a false religion because it misrepresents Jesus,” or “Group X is a cult because of its aberrant and evil misinterpretation of the Bible.”

The second major defect in its Blogger rules is Google’s advertising ban on “anti” content. This means that Google will block any advertising content that “advocates against” any organization or group, where that group is known by its “religion” or its “sexual orientation or gender identity.” Thus, ad content by a Christian pro-traditional family group that opposes the efforts of certain homosexual advocacy groups to institute same-sex marriage, or which describes certain religious views or policy positions of other religions or sects as being theologically wrong, would violate this policy. In sum, Google’s declared preference for free speech is undermined dramatically by its actual policies.

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<sup>61</sup> *FEC v. Wis Right to Life, Inc.*, 551 U.S. 449 (2007).

## Policies of MySpace

The content policies of MySpace suffer from the same problems as Facebook in its ill-advised attempt to ban “hate speech” (see Prohibited Content and MySpace Forum Guidelines in Appendix D). For the reasons outlined above, traditional Christian ideas will be obvious targets of such a social networking campaign against “hate speech.” In addition, MySpace commits the viewpoint discriminatory error of banning any communications that are deemed to be “homophobic.” The use of that politically charged word in the content ban of MySpace creates multiple problems from a free speech standpoint.

First, there is the definitional issue in trying to determine what “homophobia” means. For instance, PBS’s *Frontline* says this regarding research on homosexuality:

... research emphasis has shifted to the other side of the problem: the study of the *negative, sometimes pathological*, reactions to homosexuals by heterosexuals.

The term “homophobia” has gained currency as a one-word summary of this widespread problem. (emphasis added).<sup>62</sup>

This is indicative of a definitional problem. “Homophobia” can be applied to the full range of opinions about sexual orientation, from a full-blown psychosocial condition (“pathological”) regarding homosexuality, to the merely “negative” feelings that Christians may have regarding the sinfulness of homosexual conduct. In social debate on the subject, the lines between “pathological” and merely “negative” are often blurred, with the result that Christians who criticize the homosexual movement can be labeled as purveyors of a worldview that is socially harmful or that even resembles a form of mental illness. The use of the “homophobia” ban in the policy of MySpace contributes to this oppressive treatment of Christian orthodoxy.

Second, the ban on content that is deemed “homophobic” violates the free speech principles laid out in the Supreme Court decision in *R.A.V., supra*, that content-based discrimination against a category of ideas is anathema to our ideas of free expression.

Finally, the MySpace polices are also fatally defective in forbidding content that it deems “abusive,” “inappropriate,” or “inflammatory,” which are terms so overly broad and vague that they permit otherwise lawful viewpoints to be suppressed at will based on the subjective complaints of users or because of the personal values of MySpace staff. We have previously outlined the free speech principles that are violated by these kind of ambiguous standards in our discussion of the policies of Apple (above).

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<sup>62</sup> <http://www.pbs.org/wgbh/pages/frontline/shows/assault/etc/quiz.html>

## **Policies of Twitter**

Among all of the web-based communications platforms we have examined, Twitter has the best policies regarding the free speech rights of users (see the Twitter General, Content, False Statements, and Behavioral Guidelines in Appendix E). Twitter states: “we do not actively monitor users’ content and will not edit or remove user content, except in cases of violations of our Terms of Service” (emphasis added).

Twitter does not pre-screen content or viewpoints. However, as Twitter points out in its policies, while it “facilitates” social networking it differs from social networking sites in as much as “following” on Twitter is a one-way relationship that lacks the mutuality that exemplifies social networking. On the other hand, Twitter’s “one-way” functionality makes it similar to standard ISP platforms that provide access for user websites, where the consumer of information can choose to interact with a website in a one-way relationship.

## **Policies of ISPs: Comcast, AT&T and Verizon**

The big Internet service providers Comcast, AT&T, and Verizon all have policies that directly or indirectly facilitate the violation of free speech rights of consumers and pose a sizable threat of viewpoint censorship to Christians. All three of them prohibit hate speech. Comcast and AT&T each forbid content that they deem “hateful,” while Verizon bans the use of its service “in a manner...which espouses or promotes or incites...hatred...” (see the Verizon Internet Service and Webhosting Guidelines in Appendix H). We have previously pointed out, in the section above dealing with the policies of Facebook, how free speech is fundamentally violated through attempts to stifle “hate speech,” and the fact that such attempts at content censorship run counter to the values embraced by the Supreme Court.

Both Comcast and AT&T also have policy language that gives them the discretion to block content based solely on their subjective perception that such content may negatively affect the “enjoyment” of their services by their other customers. Comcast also has a provision that extends that concept to allow it to ban content if it “is considered highly offensive or objectionable to a large segment of our users” (see the Comcast User Submission and Uses Guidelines in Appendix F). This language is nearly identical to the justification voiced by Apple spokesman Tom Neumayr for their censorship of the Christian ministry app of Exodus International. He stated that the app was determined to be “offensive to large groups of people.”<sup>63</sup> AT&T prohibits content that “could adversely affect any individual, group or entity...” (see the AT&T Acceptable Use Guidelines in Appendix G). This kind of language is highly problematic for two reasons. First, these type of provisions are even worse than the dreaded “heckler’s veto,” where the free speech rights of a presenter and his entire audience are made subservient to the objections of a few protesting hecklers. Rather, these policies could result in an override of the free speech rights of religious

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<sup>63</sup> Jeremy Kaplan, “Apple Pulls ‘Gay-Cure’ App Following Controversy,” *FOX News*, March 23, 2011.

persons simply where an Internet service provider *speculates* that some hecklers in cyberspace *might object*.

Second, that policy language smacks of the kind of rationale that Internet service providers could present to federal officials as a valid reason for censorship, arguing that customer relations (i.e. acceding to the heckling, protesting, objecting customer) is a legitimate exercise of “reasonable network management,” an essentially unregulated web management power granted to ISPs by the FCC. Assuming that the FCC’s Internet regulations are upheld in court, then that agency will be empowered to weigh such a justification and could conceivably permit that form of censorship by an ISP, particularly because the Commission has thus far declined to define exactly what “reasonable network management” is, deciding instead to refine and further develop that term on “a case-by-case basis, as complaints about broadband providers actual practices arise.”<sup>64</sup>

Comcast, in addition, maintains a provision that bans “misrepresentations portrayed as fact...” This is a concept similar to the Apple policy (above), that will only permit content that Apple determines is “*accurate and not misleading*,” thus making it the arbiter of truth and a censor for that which it deems to be factually misleading.

Finally, all three ISPs (Comcast, AT&T, and Verizon) have policies that grant them absolute discretion to censor almost all content that they find philosophically objectionable under ambiguous standards, such as those that ban content that is “clearly inappropriate” (Comcast), or “abusive” (AT&T and Verizon), or “offensive” (Verizon). The dangers to free speech as a result of these kinds of vague standards for content, particularly in light of the values articulated by the Supreme Court, have already been addressed previously in this paper.

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<sup>64</sup> In the Matter of Preserving the Open Internet, GN Docket No. 09-191, Broadband Industry Practices, WC Docket No. 07-52, Report and Order, December 23, 2010, ¶¶ 83.

## SOLVING THE PROBLEM

### Voluntary Recognition of Free Speech Obligation

Legislation, regulation, or the application of judicial remedies through litigation are clearly less favorable methods to insure that viewpoint discrimination against Christian content does not take place on the Internet platforms of the new media. The optimum resolution lies in the voluntary actions of Apple, Facebook, MySpace, Google, Comcast, AT&T, and Verizon. We are urging these companies to do the following:

1. Modify their policies to remove the free speech-offending policy language that has been identified in this paper;
2. Renounce any past practices that have targeted for censorship otherwise lawful Christian viewpoints or expression;
3. Affirm an intent to abide by a healthy view of the free speech rights of their users and customers, namely, an adherence to First Amendment principles using decisions of the Supreme Court as the guide.

National Religious Broadcasters stands ready to dialogue with these companies in an effort to achieve this higher, more appropriate level of protection for all lawful viewpoints, not just Christian content, on their communication platforms.

### Legislation

In the absence of the voluntary actions by these companies as outlined above, legislative or regulatory proposals could be one solution. However, we say this with two caveats: first, any such legislation or regulations must be as narrow as possible, sufficient to provide necessary free speech protections.

If legislation is necessary, it should be a narrowly drawn law with free speech at its core. Further, it should exert a minimum amount of interference with the operation of web-related services unless they involve viewpoint or content discrimination of the kind rejected by the Supreme Court in those instances where the First Amendment has been applied.<sup>65</sup>

### Regulation

Another possible avenue would be to effect free speech compliance by new media platforms through a variety of inducements in the form of federal regulation. We leave to another day the discussion of whether such regulation is feasible, or wise, what those

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<sup>65</sup> In the event of legislation, it may require the amendment of the provisions of the *Communications Decency Act*, U.S.C. sec. 230 (1996), which, while it was substantially struck down by the Supreme Court, still has a “Good Samaritan” provision in effect that provides broad immunity to Internet services, protecting them if they remove seemingly objectionable content. See: *Zeran v. American Online, Inc.*, 129 F.3d 327 (4<sup>th</sup> Cir.Va. 1997).

regulatory measures might look like, and what federal agency, if any, would have jurisdiction.

Nevertheless, the avenue chosen by the FCC in its Report and Order (“Preserving the Open Internet,” December 23, 2010) is not one we can support. While the introductory sections speak highly, as an example, of “preserving the Internet as an open platform for innovation...and free expression,” the actual provisions of the Order fail to implement any real protections for free speech. While the FCC Order prohibits “unreasonable discrimination” by Internet service providers in blocking or slowing web traffic, the Commission only goes this far (and no farther) in addressing any viewpoint censorship issues:

In evaluating unreasonable discrimination, the types of practices we would be *concerned about* include, but are not limited to, discrimination...that impairs free expression (such as slowing traffic from a particular blog because the broadband provider disagrees with the blogger’s message) [emphasis added].<sup>66</sup>

However, the Commission failed to elaborate, or quantify, how its “concerns” about such censorship would be implemented or handled. The FCC refused to adopt a “strict scrutiny” kind of rule for certain discriminatory actions by ISPs, whereby actions of censorship would be treated as presumptively illegal. Further, the Commission permits ISPs, in effect, to censor content as long as that Internet gatekeeper can justify it as a function of “reasonable network management,” a phrase that is only vaguely defined, and will only be further described “on a case-by-case basis as complaints about broadband providers’ actual practices arise.”<sup>67</sup>

Also, the Commission’s broad, complex Order creates an expansive role for that federal agency in overseeing the Internet. As this paper has argued, we do not seek an expansion of federal oversight; we desire, simply, that Internet platforms respect the basic, well-established principles of free speech.

Finally, the FCC’s regulations are aimed only at Internet access services, or in other words, focus on Internet service providers (Comcast, AT&T, Verizon), but ignore the broader range of new media communications platforms (e.g., Apple, Facebook, Google).

### **Judicial Remedies**

There may be an existing legal basis for litigation against new media companies that commit viewpoint censorship, even in the absence of enabling federal legislation. California, as an example, has expanded, under state law, the free speech rights of citizens beyond that which is provided under the federal Constitution and the First Amendment. The policies of Apple,

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<sup>66</sup> In the Matter of Preserving the Open Internet, GN Docket No. 09-191, Broadband Industry Practices, WC Docket No. 07-52, Report and Order, December 23, 2010, ¶ 75.

<sup>67</sup> *Ibid.*, at ¶ 82.

Facebook, and Google assert a California choice-of-law provision, making them amenable for suits brought under California law. In the case of *Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n*,<sup>68</sup> the court, applying California law, articulated a legal rule that could well apply (as we infer in our bracketed comments) to new media platforms: the court held that “the actions of a private property owner [or in our context, a new media company providing a public communications platform] constitute state action for purposes of [triggering] California’s free speech clause only if the property [i.e., a web-based platform] is freely and openly accessible to the public.” It seems clear that this language could have potential application to web-based, new media communications platforms.

Also, it is feasible, though far from decided, that new media companies could be sued by a customer whose content was arbitrarily censored because of an otherwise lawful viewpoint that was expressed. If a court found that the service contract of that company which contained free-speech violating terms was in violation of “public policy,” the offending portions of the policy could be judicially stricken.<sup>69</sup>

## **Conclusion**

As has been discussed in this first report of the John Milton Project for Religious Free Speech, litigation, legislation, and regulation are not the first options to be pursued in addressing viewpoint censorship in new media platforms. The best course of action is for new media platforms to recognize that with the enormous economic benefits that they have realized with their innovations in communications technology, also comes a great responsibility to the American people to facilitate their freedom of expression. History has shown the folly of those who tried to exert a tyrannical suppression of ideas by severely restricting access to the printing press. It is equally oppressive for new media enterprises to disregard the fundamental liberties of citizens who wish to use their services, their applications, and their communication platforms not only to express the mundane or trivial things of everyday life, but also to address the most important, and sometimes the most controversial, issues of the day.

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<sup>68</sup> *Golden Gateway Ctr. v. Golden Gateway Tenants Ass'n*, 26 Cal. 4<sup>th</sup> 1013, 1033 (Cal. 2001).

<sup>69</sup> Restatement 2d of Contracts § 178.

## APPENDIX A

### APPLE

**The following are Apple/iTunes App Store Guidelines, set forth in pertinent part (emphasis added):**

- 14.1 Any app that is...*offensive, mean-spirited*...will be rejected.
- 14.2 *Professional political satirists and humorists are exempt from the ban on offensive or mean-spirited commentary.*
- 19.1 Apps containing references or commentary about a *religious*...group that are...*offensive, mean-spirited*...will be rejected.
- 19.2 Apps may contain or quote *religious text provided the quotes or translations are accurate and not misleading. Commentary should be educational or informative rather than inflammatory.*<sup>70</sup>

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Although Apple encourages you to use the Services to express your creativity, Apple reserves the right to refuse to process any order submitted by you containing Content that Apple, in its *sole discretion*, deems *abusive*...or otherwise *offensive*...*inappropriate or unacceptable*.... In particular, Apple reserves the right to refuse to process orders containing Content which, in Apple's sole opinion, contains *expressions of abuse*....<sup>71</sup>

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Unsuitable sites or apps include, but are not limited to those that:

- contain *hate/violent/offensive* content;
- promote *discrimination* based on race, sex, *religion*, nationality, disability, *sexual orientation*, or age;
- otherwise are considered *offensive or inappropriate* at Apple's sole discretion<sup>72</sup>

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<sup>70</sup> September 9, 2010. <http://blogs.wsj.com/digits/2010/09/09/apples-review-guidelines-we-don't-need-any-more-fart-apps/>

<sup>71</sup> January 23, 2011. [http://www.apple.com/internetservices/terms/membership\\_terms.html](http://www.apple.com/internetservices/terms/membership_terms.html)

<sup>72</sup> <http://www.apple.com/itunes/affiliates/terms.html>

## APPENDIX B

### FACEBOOK

**The following are Facebook Guidelines, set forth in pertinent part (emphasis added):**

**3. Safety** 6, 7, 10: "...You will not post content that: is *hateful*..."<sup>73</sup>

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Facebook is a founding member of the StopCyberbullying Coalition affiliated with stopcyberbullying.org. Cyberbullying includes: - a "*hateful* message."<sup>74</sup>

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**5. Prohibited Content (d)** "Ads cannot contain, facilitate, promote, or reference the following"; i, xv – xix: "... *Inflammatory religious content; Politically religious agendas and/or any known associations with hate ... Content that exploits political agendas or uses "hot button" issues for commercial use regardless of whether the advertiser has a political agenda; Hate speech, whether directed at an individual or group, and whether based upon race, sex, creed, national origin, religious affiliation, sexual orientation, gender identity, or language of such individual or group; Content that advocates against any organization, person, or group of people, with the exception of candidates running for public office.*"<sup>75</sup>

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<sup>73</sup> <http://www.facebook.com/#!/terms.php>

<sup>74</sup> <http://www.facebook.com/help/?page=841>

<sup>75</sup> [http://www.facebook.com/ad\\_guidelines.php](http://www.facebook.com/ad_guidelines.php)

## APPENDIX C

### GOOGLE

**The following are Google Guidelines, set forth in pertinent part (emphasis added):**

#### Advertising Guidelines

##### **Abortion:**

Examples of prohibited products include:  
Gruesome language such as “*abortion is murder.*”

##### **“Anti” and Violence:**

Fundamentals of the policy – Ad text advocating against any organization, person or group is not permitted ...

- Ads and associated websites *may not ... advocate against a protected group.* A protected group is distinguished by one of the following:<sup>76</sup>
  - *religion*
  - *sexual orientation or gender identity*

#### Blogger Guidelines

##### **[General:]**

Blogger is a free service for communication, *self-expression and freedom of speech.* We believe Blogger increases the availability of information, encourages healthy debate, and makes possible new connections between people.... We respect our users’ ownership of and responsibility for the content they choose to share. *It is our belief that censoring this content is contrary to a service that bases itself on freedom of expression. In order to uphold these values, we need to curb abuses that threaten our ability to provide this service and the freedom of expression it encourages.* As a result, there are some boundaries on the type of content that can be hosted with Blogger. The boundaries we’ve defined are those that both comply with legal requirements and that serve to enhance the service as a whole.

##### **Content Boundaries:**

Our content policies play an important role in maintaining a positive experience for you, the users. Please respect these guidelines. From time to time, we may change our content policies so please check back here. Also, please note that when applying the policies below, we may make exceptions based on artistic, educational, documentary, or scientific considerations or where there are other substantial benefits to the public from not taking action on the content.

<sup>76</sup> <http://adwords.google.com/support/aw/bin/static.py?hl=en&topic=28>

## APPENDIX C (cont.)

### GOOGLE

#### **Google Blogger Guidelines, set forth in pertinent part (emphasis added), continued:**

##### **Hate Speech:**

*We want you to use Blogger to express your opinions, even very controversial ones. But, don't cross the line by publishing hate speech. By this, we mean content that promotes hate or violence towards groups based on race, ethnicity, religion, disability, gender, age, veteran status, or sexual orientation/gender identity. For example, don't write a blog saying that members of Race X are criminals or advocating violence against followers of Religion Y.<sup>77</sup>*

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<sup>77</sup> <http://www.blogger.com/content.g>

## APPENDIX D

### MYSPACE

**The following are MySpace Guidelines, set forth in pertinent part (emphasis added):**

#### **8. Content/Activity Prohibited**

The following are examples of the kind of Content that is illegal or prohibited to post on, through or in connection with the MySpace Services. MySpace reserves the right to investigate and take appropriate legal action against anyone who, in MySpace's sole discretion, violates this provision, including, without limitation, removing the offending Content from the MySpace Services, terminating the Membership of such violators and/or reporting such Content or activities to law enforcement authorities. Prohibited Content includes, but is not limited to, Content that, in the sole discretion of MySpace:<sup>78</sup>

- ...promotes...*hatred*...against any group or individual;
- harasses or advocates harassment of another person;
- constitutes or promotes information that you know is false or misleading or promotes...conduct that is *abusive*....

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#### **MySpace Forum Guidelines**

- No *Inappropriate Content*
- No posts containing...*homophobia*...or *hatred*
- No Flamebaiting
- Flaming/Flamebaiting is not tolerated here. Posts that...are otherwise *inflammatory* will be removed.<sup>79</sup>

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#### **General Safety Tips:**

- Harassment, *hate speech* and *inappropriate* content should be reported.<sup>80</sup>

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<sup>78</sup> <http://www.myspace.com/help/terms>

<sup>79</sup> <http://www.myspace.com/forums/t/3790882?SortOrder=0>

<sup>80</sup> <http://www.myspace.com/help/safety/tips>

## Appendix D (cont.)

### MYSPACE

**The following are MySpace Guidelines, set forth in pertinent part (emphasis added), continued:**

#### **8.4 Prohibited Content.**

In addition to the rules and restrictions set forth in the MySpace Agreement and this Apps Developer Addendum, your MySpace Applications and MySpace Application Content (including Advertising) must not contain, reference, promote or link to:

11. *hate speech* or otherwise promote discrimination, violence, or display defamatory, profane, *hateful*, or libelous material;<sup>81</sup>
14. advertising that misrepresents, ridicules, or attacks an individual or group on the basis of...*religion...sexual orientation...*

#### **Prohibited Content.**

In addition to the rules and restrictions set forth in the MySpace Agreement and this Addendum, your Developer Services and Developer Service Content (including Advertising) and any content you submit or post to the MySpace Services must not contain or link to:<sup>82</sup>

- *hate speech* or otherwise promotes discrimination...or displays...*hateful...* material;<sup>83</sup>
- advertising that misrepresents, ridicules, or *attacks* an individual or group on the basis of age, color, national origin, race, *religion*, sex, *sexual orientation* or disability;

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<sup>81</sup> [http://wiki.developer.myspace.com/index.php?title=Developer\\_Addendum\\_to\\_MySpace.com\\_Terms\\_of\\_Use\\_Agreement](http://wiki.developer.myspace.com/index.php?title=Developer_Addendum_to_MySpace.com_Terms_of_Use_Agreement)

<sup>82</sup> [http://wiki.developer.myspace.com/index.php?title=MySpaceID\\_Off-Site\\_Service\\_Developer\\_Addendum\\_to\\_MySpace.com\\_Terms\\_of\\_Use\\_Agreement](http://wiki.developer.myspace.com/index.php?title=MySpaceID_Off-Site_Service_Developer_Addendum_to_MySpace.com_Terms_of_Use_Agreement)

<sup>83</sup> [http://wiki.developer.myspace.com/index.php?title=Prohibited\\_Content\\_and\\_Activities](http://wiki.developer.myspace.com/index.php?title=Prohibited_Content_and_Activities)

## APPENDIX E

### TWITTER

**The following are Twitter Guidelines, set forth in pertinent part (emphasis added):**

#### **General**

We reserve the right at all times (but will not have an obligation) to remove or refuse to distribute any Content on the Services and to terminate users or reclaim usernames.

*You understand that by using the Services, you may be exposed to Content that might be offensive, harmful, inaccurate or otherwise inappropriate, or in some cases, postings that have been mislabeled or are otherwise deceptive.*<sup>84</sup>

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#### **Reporting Abusive Behavior: Offensive Content**

Everyone has different levels of sensitivity towards content. What may be shocking to one may be fine or acceptable to another. *Twitter does not pre-screen content* and we do not remove potentially offensive content. If there is something that you don't agree with, or find insulting, it's best to not look at it at all.

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#### **User disputes and false statements**

Twitter provides a communication service. As a policy, we do not mediate content or intervene in disputes between users. Users are allowed to post content, including potentially inflammatory content, provided that they do not violate the Twitter Terms of Service and Rules.<sup>85</sup>

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<sup>84</sup> <http://twitter.com/tos>

<sup>85</sup> <http://support.twitter.com/articles/15794-abusive-users>

## Appendix E (cont.)

### TWITTER

**The following are Twitter Guidelines, set forth in pertinent part (emphasis added), continued:**

**Why does Twitter monitor following behavior at all? Isn't this a social network?**

Twitter facilitates social networking, but it's not a social networking website. In fact, Twitter works quite differently from social networks: when you accept friend requests on social networks, it usually means you appear in that person's network and they appear in yours. Following on Twitter is different, because instead of indicating a mutual relationship, following is a one-way action that means you want to receive information, in the form of tweets, from someone. Twitter allows people to opt-in to (or opt-out of) receiving a person's updates without requiring mutual following.<sup>86</sup>

Twitter users are allowed to create parody, commentary, or fan accounts (including role-playing). Twitter provides a platform for its users to share and receive a wide range of ideas and content, and we greatly value and respect our users' expression. Because of these principles, *we do not actively monitor users' content and will not edit or remove user content, except in cases of violations of our Terms of Service.*<sup>87</sup>

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<sup>86</sup> <http://support.twitter.com/entries/68916-following-rules-and-best-practices>

<sup>87</sup> <http://support.twitter.com/entries/106373-parody-commentary-and-fan-accounts-policy>

## APPENDIX F

### COMCAST

**The following are the Guidelines of Internet service provider Comcast, set forth in pertinent part (emphasis added):**

#### **What uses and activities does Comcast prohibit?**

In general, the Policy prohibits uses and activities involving the Service that are illegal, infringe the rights of others, or interfere with or *diminish the use and enjoyment of the Service by others*. For example, these prohibited uses and activities include, but are not limited to, using the Service, Customer Equipment, or the Comcast Equipment, either individually or in combination with one another, to:<sup>88</sup>

#### **8. User Submissions**

Some of the material appearing on the Comcast Web Services will be provided by users. Comcast does not claim ownership of any material that users submit or post on the Comcast Web Services. You agree that you are solely responsible for (and that Comcast has no responsibility to you or to any third party for) any material that you create, transmit, or display while using the Comcast Web Services, and for the consequences of your actions (including any loss or damage which Comcast may suffer) by doing so. Further, you agree that, with respect to any communication you submit to us for posting on the Comcast Web Services, you will not:

- (ii) *publish falsehoods or misrepresentations portrayed as fact; or*
- (iv) submit any material that is unlawful, obscene, defamatory, libelous, threatening, pornographic, harassing, *hateful*, racially or ethnically offensive, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is *otherwise clearly inappropriate*.

Comcast further reserves the right to delete or remove any content from the forums or blogs without prior notice or liability. You agree that your participation in these forums, bulleting boards, chat rooms, and blogs will at all times conform with the policy available here: <http://www.comcast.net/blog/comment-policy>.

Comcast may refuse to display or remove any user submission from the Comcast Web Services for any reason in our sole discretion. However, we will typically only do so when we become aware that the material in question is harmful, clearly illegal, or *likely to be considered highly offensive or objectionable to a large segment of our users*.<sup>89</sup>

<sup>88</sup> <http://www.comcast.com/Corporate/Customers/Policies/HighSpeedInternetAUP.html>;  
<http://www.comcast.net/terms/web/2010-02/>; <http://business.comcast.com/acceptable-use-policy/index.aspx>

<sup>89</sup> <http://www.comcast.net/terms/web/2010-02/>

## APPENDIX G

### AT&T

**The following are the Guidelines of Internet service provider AT&T, set forth in pertinent part (emphasis added):**

#### **14. ACCEPTABLE USE [Website terms of use]:**

You agree to use our Site and the Content (whether provided by us or others), as well as any Software provided in connection with the Site, in a manner consistent with all applicable laws and regulations. Additionally, you will not take any of the following actions with respect to our Site, related Software, or Content, nor will you use our Site or related Software to upload, post, email, distribute, transmit, link, solicit or otherwise make available any Content or use our Site in any manner that:<sup>90</sup>

- is unlawful, harmful to minors, threatening, harassing, abusive, defamatory, slanderous, vulgar, gratuitously violent, obscene, pornographic, indecent, lewd, libelous, invasive of another's privacy, or racially, ethnically or otherwise *offensive, hateful or abusive*; disrupts, interferes or inhibits any other user from enjoying the Sites or other affiliated or linked websites, material, contents, products and/or services.

#### **AT&T Acceptable Use Policy**

[The AUP applies to the AT&T services that provide (or include) access to the Internet, including hosting services (software applications and hardware), or are provided over the Internet or wireless data networks (collectively "IP Services").]

#### **Introduction**

AT&T is at all times committed to complying with the laws and regulations governing use of the Internet, e-mail transmission and text messaging and preserving for all of its Customers the ability to use AT&T's network and the Internet without interference or harassment from other users. The AT&T AUP ("AUP") is designed to help achieve these goals.

#### **Prohibited Activities**

**General Prohibitions:** AT&T prohibits use of the IP Services in any way that is unlawful, harmful to or interferes with use of AT&T's network or systems, or the network of any other provider, interferes with the use or enjoyment of services received by others, infringes intellectual property rights, results in the publication of threatening or offensive material, or constitutes Spam/E-mail/Usenet abuse, a security risk or a violation of privacy.

<sup>90</sup> <http://www.att.com/gen/general?pid=11561>

## APPENDIX G (cont.)

### AT&T

**The following are the Guidelines of Internet service provider AT&T, set forth in pertinent part (emphasis added), continuation of the “Acceptable Use” policy:**

**Threatening Material or Content:** IP Services shall not be used to host, post, transmit, or re-transmit any content or material (or to create a domain name or operate from a domain name), that harasses, or threatens the health or safety of others. In addition, for those IP Services that utilize AT&T provided web hosting, AT&T reserves the right to decline to provide such services if the content is determined by AT&T to be obscene, indecent, *hateful*, malicious, racist, defamatory, fraudulent, libelous, treasonous, excessively violent or promoting the use of violence or *otherwise harmful to others*.

**Spam/E-mail/Usenet Abuse:** Violation of the CAN-SPAM Act of 2003, or any other applicable law regulating e-mail services, constitutes a violation of this AUP.

- Spam/E-mail or Usenet abuse is prohibited using IP Services. Examples of Spam/E-mail or Usenet abuse include but are not limited to the following activities: sending messages that are harassing or malicious, or otherwise could reasonably be predicted to interfere with *another party’s quiet enjoyment* of the IP Services or the Internet (e.g., through language, frequency, size or otherwise)...<sup>91</sup>

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### Terms & Conditions [for webhosting services]

#### 4.3 Prohibited Uses

In addition to those matters set forth in the Acceptable Use Policy, Account Holder shall not post, transmit, re-transmit or store material on or through any of Services which, in the sole judgment of AT&T (i) is in violation of any local, state, federal or non-United States law or regulation, (ii) is threatening, obscene, indecent, defamatory or that otherwise *could adversely affect any individual, group or entity* (collectively, “Persons”) ...<sup>92</sup>

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<sup>91</sup> <http://www.corp.att.com/aup/>

<sup>92</sup> <http://webhosting.att.com/Terms-Conditions.aspx>

## APPENDIX H

### VERIZON

**The following are the Guidelines of Internet service provider Verizon, set forth in pertinent part (emphasis added):**

This Agreement is between you as our Subscriber and Verizon Online LLC (or its affiliates listed in Section 16 (“Verizon” or “Verizon Online”) and it sets forth the terms and conditions under which you agree to use and we agree to provide the Service.

#### **ATTACHMENT A: ACCEPTABLE USE POLICY**

**2. Specific Examples of AUP Violations.** The following are examples of conduct which may lead to termination of your Service. Without limiting the general policy in Section I, it is a violation of the Agreement and this AUP to:

(k) use the service in any fashion for the transmission or dissemination of images containing child pornography or in a manner that is obscene, sexually explicit, cruel or racist in nature or which espouses, promotes or incites bigotry, *hatred* or racism;<sup>93</sup>

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#### **Site Policies: Verizon WebHosting Policy VERIZON ONLINE WEBHOSTING TERMS OF SERVICE**

You undertake to familiarize yourself with the content of and to comply with the generally accepted rules for Internet and e-mail usage. This includes, but is not limited to the Acceptable Use Policy, available at <http://business.verizon.net/SMBPortalWeb/policies/aup> as well as the following restrictions. Without prejudice to the foregoing, you undertake not to use e-mail forwarding: (A) to encourage, allow or participate in any form of illegal or unsuitable activity, including but not restricted to the exchange of threatening, obscene or *offensive messages*, spreading computer viruses, breach of copyright and/or proprietary rights or publishing defamatory material;

<sup>93</sup> [http://my.verizon.com/central/vzc.portal?\\_nfpb=true&\\_pageLabel=vzc\\_help\\_policies&id=TOS](http://my.verizon.com/central/vzc.portal?_nfpb=true&_pageLabel=vzc_help_policies&id=TOS)

## APPENDIX H (cont.)

### VERIZON

**The following are the Guidelines of Internet service provider Verizon, set forth in pertinent part (emphasis added), Verizon webhosting terms of service continued:**

#### **Service Agreements/Terms of Use**

##### **Acceptable Use**

...Without limiting the general policy stated above, you agree not to use the Sites (including by linking to the Sites), or any Resources, in any manner that:

- is unlawful, harmful to minors, threatening, harassing, abusive, defamatory, slanderous, fraudulent, gratuitously violent, obscene, deceptive, pornographic, libelous, invasive of another's privacy, or racially, ethnically or otherwise *offensive, hateful* or abusive;
- advocates or solicits violence, criminal conduct or the violation of law or the rights of any third party;<sup>94</sup>

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#### **Verizon's Advertising Content Guidelines**

... Advertisements may not contain any material that Verizon, in its discretion, deems to fall into the following categories or that links to such material:

- *Hate speech*; or
- Defamatory, libelous or threatening sites;<sup>95</sup>

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<sup>94</sup> [http://business.verizon.net/SMBPortalWeb/appmanager/SMBPortal/smb?\\_nfpb=true&\\_pageLabel=SMBPortal\\_page\\_pol\\_main&page\\_id=TuCows\\_tos](http://business.verizon.net/SMBPortalWeb/appmanager/SMBPortal/smb?_nfpb=true&_pageLabel=SMBPortal_page_pol_main&page_id=TuCows_tos)

<sup>95</sup> <http://responsibility.verizon.com/home/contentpolicy/policy/>