

# STOPPING CENSORSHIP IN TERMS OF SERVICE

**Vaguely worded terms of service policies are a threat to everyone—setting the stage for censorship against Americans of every political and religious stripe**

## Overview

Nearly every aspect of our public and private lives are mediated by corporate entities and influence. What we say or share online, how we receive information, pay our bills, and the digital tools we use to facilitate our work—all of it is done through corporate entities. Today, companies like Meta and Alphabet arguably have more power over speech than the U.S. government and have used that power to censor mainstream conservative and religious views under vague and subjective terms like “hate speech” and “misinformation.”

Financial institutions, critical tech service providers, and ad sellers can—and have—effectively shut disfavored actors out of the marketplace under these terms. What’s worse, they often rely on the discredited Southern Poverty Law Center or hyper-partisan groups like the Global Alliance for Responsible Media or Global Disinformation Index to determine what these terms mean.

This should not be a surprise. While companies may have good intentions when adopting these policies, they evade any objective enforcement and instead invite enforcement based on majoritarian preferences and who might be offended. These same terms have been proven to chill speech in the First Amendment context. Ultimately, this puts companies in the middle of contentious social and political issues that are unnecessary to their business and exposes them to legal and political backlash for discrimination.

# TALKING POINTS

- Vaguely worded policies are a potential threat to everyone because they set the stage for censorship of every American, regardless of political and religious views.
- The tech and financial industries are shot through with ideological censorship, and the problem is most often found in the companies' terms of service and reputational risk policies, which give activists and government regulators a foothold to push their political agendas on companies.
- In many instances, Big Tech companies have pledged to create platforms dedicated to free speech and open to a broad diversity of views. They should look to the First Amendment for best practices on how to make good on those promises

# WHY HATE SPEECH AND MISINFORMATION POLICIES ARE MISGUIDED

Terms like “hate speech,” “misinformation,” or “intolerance” create systemic risks of political and religious bias and pervade these industries. And while they may be well intended, the policies sweep in broad swaths of mainstream viewpoints and speech and invite arbitrary and subjective enforcement. The First Amendment is a helpful guide here because these companies control access to the modern public square and the commercial marketplace. Nearly everyone interacts daily with products from Apple, Microsoft, Alphabet, Meta, or Zoom, just to name a few.

For example, “hate” speech policies aim to prohibit fighting words, obscenity, or other types of conduct that are not protected speech, the First Amendment defines these categories narrowly. On the other hand, the Supreme Court has said that banning speech just because someone “finds [it] offensive” is the “essence of viewpoint discrimination,” which is “poison to a free society.”<sup>1</sup> Courts have struck down all kinds of similar terms in policies, including threats, insults, epithets, ridicule, and personal attacks;<sup>2</sup> stigmatizing or victimizing;<sup>3</sup> derogatory comments;<sup>4</sup> words that denigrate, belittle, or offend the listener;<sup>5</sup> and acts of intolerance that demonstrate malicious intent toward others.<sup>6</sup>

Other policies apply these terms to prohibit things like “racial intolerance” or “bigotry” based on one’s protected characteristics. But these are just as problematic. In *R.A.V. v. City of St. Paul*, the Supreme Court struck down a town ordinance prohibiting any speech that “arouse[d] anger, alarm or resentment in others on the basis of race, color, creed, religion or gender.” The Court explained that instead of protecting against discrimination, this just created “special prohibitions on those speakers who express views on disfavored subjects” singled out by the ordinance.<sup>7</sup>

<sup>1</sup> *Iancu v. Brunetti*, 588 U.S. 388, 393, 399 (2019).

<sup>2</sup> *Roberts v. Haragan*, 346 F. Supp. 2d 853, 872 (N.D. Tex. 2004).

<sup>3</sup> *Doe v. Univ. of Mich.*, 721 F. Supp. 852, 853 (E.D. Mich. 1989).

<sup>4</sup> *Nuxoll ex rel. Nuxoll v. Indian Prairie Sch. Dist. #204*, 523 F.3d 668, 670 (7th Cir. 2008).

<sup>5</sup> *Saxe v. State Coll. Area Sch. Dist.*, 240 F.3d 200, 215 (3d Cir. 2001).

<sup>6</sup> *Bair v. Shippensburg Univ.*, 280 F. Supp. 2d 357, 370 (M.D. Pa. 2003).

<sup>7</sup> *R.A.V. v. City of St. Paul*, 505 U.S. 377, 291 (1992).

<sup>8</sup> *United States v. Alvarez*, 567 U.S. 709, 723 (2012).

“Misinformation” is similarly problematic. The Supreme Court has emphatically stated that “[o]ur constitutional tradition stands against the idea that we need Oceania’s Ministry of Truth.”<sup>8</sup> Further, what is “true” in terms of public debate is often open to interpretation and can swiftly change. Just a few short years ago for example, the government declared the idea that COVID-19 leaked from a lab in Wuhan to be dangerous misinformation and a conspiracy theory that needed to be suppressed. But recently, the [CIA admitted](#) that they now favor the lab leak theory as the origin of COVID-19. This is an important and vivid reminder of why those in power, whether government officials or huge tech or finance companies, should not be allowed to end debate by silencing views they deem misguided.

We cannot advance truth without disagreeing, and we cannot disagree without risking offense. We thus ought to have “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks.”<sup>9</sup> *New York Times v. Sullivan*, 376 U.S. 254, 270 [1964].

## SYSTEMIC RISK OF POLITICAL AND RELIGIOUS BIAS PERVADES TECH AND FINANCE

Problematic terms of service span the tech and digital services industry, including social media platforms. The 2024 [Viewpoint Diversity Score Business Index](#) is the premier benchmark for measuring corporate respect for free speech and religious liberty, evaluating policies at 85 financial services, technology, and software companies on the Fortune 1000 companies. The Index found that **76% of scored companies have vague or subjective terms of service**. This includes every major social media platform, **69%** of financial institutions, including **2 of the largest 3** banks and **100%** of digital service providers like Salesforce, Microsoft, DocuSign, and Adobe. Further, **57%** of digital service providers also impose viewpoint-based restrictions on ad placements.

We cover financial institutions and social media censorship in our First Steps resource for debanking and the “S” in ESG. The below covers common problematic terms of service for digital service providers and advertising.

## ACCEPTABLE USE POLICIES

Digital service providers often prohibit the use of their services for “hate,” “intolerance,” “misinformation,” or similar terms under Acceptable Use Policies. These policies closely mirror model policies put forward by the discredited, dysfunctional, and hyper-partisan Southern Poverty Law Center from its 2018 [“Change the Terms”](#) campaign pressuring most of Silicon Valley to adopt acceptable use policies that barred the use of their essential digital services or social media platforms by alleged “hate groups” or to promote “hate.” Some major brands, including Meta, Alphabet, Salesforce, and Amazon have [expressly stated](#) that they rely on the SPLC to police content and organizations that use their platforms.

<sup>9</sup> *New York Times v. Sullivan*, 376 U.S. 254, 270 [1964].

This is troubling because, as we have explained in our resource [10 Things to Know About the SPLC](#), the SPLC is widely considered deceitful, discredited, and dysfunctional. Even Politico acknowledges that the SPLC is “using the reputation it gained decades ago fighting the Klan as a tool to bludgeon mainstream politically conservative opponents.” It uses “hate,” which is inherently subjective, to target mainstream groups like Moms for Liberty, Alliance Defending Freedom, the Family Research Center, Homeschool Legal Defense Association, Ruth Institute, Dr. Ben Carson, and Franklin Graham. The SPLC has consistently dealt with internal dysfunction, most notably a “systemic culture of racism and sexism within its workplace” that led to the firing of its co-founder in 2019. Silicon Valley’s willingness to work with the SPLC is itself an ill-advised endeavor.

These policies have also generated significant political and legal backlash. Bonterra, a fundraising software, was recently [subpoenaed](#) by the Senate Commerce Committee for deplatforming a conservative group. In 2023, Eventbrite also generated significant public controversy for deplatforming speakers like Riley Gaines and promoting pro-Hamas groups. Their actions led to a [letter](#) from 18 state attorneys general and an [investigation](#) from the Commerce Committee.

These policies also raise significant legal risk. Many states and municipalities have broad public accommodation laws that forbid discrimination on the basis of religion, race, citizenship, or other protected classes. Many of these statutes “[apply or are likely to apply to online entities](#)” that operate either inside the state or, though out of state, serve clients inside the state.

Additionally, many digital service providers operate in California, which has one of the country’s strongest public accommodation laws, the [Unruh Civil Rights Act](#), which applies to all businesses operating in the state and has been applied to protect participation in the “John Birch Society” or “American Civil Liberties Union,”<sup>10</sup> “decisions, or choices fundamental to a person’s identity, beliefs and self-definition,”<sup>11</sup> or their “perceived social or political philosophies.”<sup>12</sup> ADF attorneys [recently filed](#) a lawsuit under Unruh against a similar policy in *Holy Sexuality v. Asana*.

## THE GLOBAL ALLIANCE FOR RESPONSIBLE MEDIA AND ADVERTISING

The Global Alliance for Responsible Media was a collection of the world’s largest advertising buyers, agencies, industry associations, and social media platforms whose explicit purpose was to censor speech. GARM was a product of the World Federation of Advertisers, whose members represent about [90% of global advertising spending](#), nearly a trillion dollars annually. GARM formed in 2019 with the [express mission](#) to “do more to address harmful and misleading media environments,” specifically

<sup>10</sup> *In re Cox*, 3 Cal. 3d 205, 217–218, 474 P.2d 992, 1000 (1970).

<sup>11</sup> *Koebke v. Bernardo Heights Country Club*, 36 Cal. 4th 824, 842–43 (2005).

<sup>12</sup> *Gray v. Kircher*, 193 Cal. App. 3d 1069, 1075 (1987) [citing *Marina Point, Ltd. v. Wolfson*, 30 Cal. 3d 721, 180 Cal. Rptr. 496, 640 P.2d 115 (1982)].

“hate speech, bullying and disinformation,” all under the guise of “brand safety.” GARM leader Rob Rakowitz [explained](#) that the “whole issue bubbling beneath the surface” of the advertising industry and digital platforms is the “extreme global interpretation of the US Constitution.”

GARM [graded platforms](#) on how much they censored using the above terms as well as terms like “insensitive” or “irresponsible” treatment of “debated sensitive social issues.” For its part, GARM promoted [hyper-partisan and censorial groups](#) like the Global Disinformation Index and NewsGuard, which smear many mainstream outlets as “disinformation.” GARM threatened Spotify because Joe Rogan promoted views it disagreed with on COVID-19. And it infamously [boycotted X](#) because Elon Musk loosened some of the platform’s censorship restrictions.

GARM [disbanded](#) in 2024 shortly after a probe from the U.S. House Judiciary Committee and a lawsuit from X, in 2024, which ironically evinced how brand-damaging its practices were. But these censorious practices are still prevalent. Many of the “Big Six” advertising agencies that were all a part of GARM, for example, [maintain similar policies](#). And many ad sellers even maintain explicit policies that prohibit advertisers from promoting religious or political views.

## RECENT PROGRESS

Fortunately, some companies are starting to turn around. In 2025, ADF and the National Center for Public Policy Research engaged in a dialogue with Comcast that resulted in Comcast implementing [protections for religious and political views](#) in its advertising policies for NBC Universal and Peacock, which have about \$100 billion in market capitalization and includes many major television networks. ADF also successfully worked with Bowyer Research to get [Johnson & Johnson](#) and [PepsiCo](#), former GARM participants, to adopt statements promising that they would be viewpoint-neutral with respect to religious and political views when choosing where to place advertisements.

Facebook, for its very large part, has also made a 180-degree turn on censorship, with Mark Zuckerberg [announcing](#) in January 2025 that Facebook was making major changes to roll back its content censorship. There is still much work to be done. But it is increasingly clear that protecting free speech, including speech from mainstream conservative and religious Americans, is on the rise.

## EXAMPLES

- **HIGH RISK:** “Advertisers, advertisements, and creative content is prohibited if it is inconsistent with Uber’s values or involves, facilitates, advocates, promotes, or links to...**culturally insensitive or inappropriate** content in any region to which it is directed...**misinformation, including claims which are likely to be debunked by third party fact checkers.**” (Uber) This policy threatens to punish speech just because some may find it offensive or think it is untrue at the time.
- **HIGH RISK:** “Apps should not include content that is **offensive, insensitive, upsetting, intended to disgust, in exceptionally poor taste, or just plain creepy.** We will reject apps for any con-tent or behavior that we believe is **over the line.** What line, you ask? Well, as a Supreme Court Justice once said, ‘I’ll know it when I see it.’ And we think that you will also know it when you cross it.” (Apple) This policy uses subjective and vague criteria and allows companies unlimited discretion to punish viewpoints.
- **LOWER RISK:** “We are often asked to take action on content that others find objectionable...[W]e will refrain from taking action unless the content falls into a few important categories...If content goes beyond...expression and crosses over to inciting violence, we will take appropriate action.” (GoDaddy) This policy provides affirmative protections for speech and more objective guidelines for when the company will or will not censor speech.

## SAMPLE TERMS

Avoiding unclear and imprecise language will significantly reduce the risk of enforcing terms of service, content moderation policies, and other similar policies in a manner that undermines freedom of expression. See the table below for some of the most common terms that pose a serious risk of suppressing speech and/or expressive activity. (A full list is available in the Risks of Unclear and Imprecise Terms in Usage Policies [resource](http://www.ViewpointDiversityScore.org) at [www.ViewpointDiversityScore.org](http://www.ViewpointDiversityScore.org))

Bigotry	Controversial	Disinformation	Hate speech	Intolerant
Insensitive	Misinformation	Objectionable	Offensive	Unacceptable

## RECOMMENDATIONS

- **Recognize.** When companies use inherently subjective terms in their policies, they place the expression of customers or users at risk. That’s because such policies grant broad discretion that can easily be used to suppress particular points of view. Companies should eliminate unclear or imprecise restrictions on what customers or users can say or do.

- **Replace.** Avoiding unclear and imprecise language will significantly reduce the risk of enforcing terms of service, content moderation policies, and other similar policies in a manner that undermines freedom of expression. A clear policy uses precise terms with common meanings known to average readers.

## RESOURCES

- [Risks of Unclear or Imprecise Terms in Usage Policies](#) (Viewpoint Diversity Score)
  - This resource exists to help companies understand how their product/service access and use policies impact the freedom of individuals and groups to publicly voice diverse viewpoints, operate businesses and nonprofits consistent with a wide array of beliefs, and participate equally in the marketplace.
- [Preventing Viewpoint Based Discrimination in Product or Service Policies](#) (Viewpoint Diversity Score)
  - This resource exists to help companies guard against including terms that could be used to unduly restrict stakeholders' speech or expressive activity.

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