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September 20, 2018

Ms. Monika Bickert
Head of Global Policy Management
Facebook
1 Hacker Way
Menlo Park, California 94025

Re: The Free Thought Project / Facebook False News and Fact-Checking Policies

Dear Ms. Bickert:

As recently retired Supreme Court Justice Anthony Kennedy recognized last year, maintaining access to places where people can speak and listen is essential to protecting the right of freedom of speech. Today, the most important of those places “is cyberspace—the ‘vast democratic forums of the Internet’ in general, . . . , and social media in particular.”¹

As a civil liberties organization that works to ensure a robust First Amendment, especially as it pertains to free speech and a free press, The Rutherford Institute² is gravely concerned about Facebook’s initiative to combat so-called “fake news” and the impact of that initiative on the viability of independent media outlets, which are vital to ensuring a free and uncensored flow of information in this nation and around the world.

Believing that the manner in which Facebook has allowed its “false news” labeling policies to be applied to independent news organizations is contrary to the values embodied in the First Amendment that support freedom of the press and a free flow of information, and is wholly inconsistent with standards of fairness and due process that should apply whenever serious accusations are levied, The Rutherford Institute has come to the defense of The Free Thought Project, a news and discussion website that specializes in exposing law enforcement abuses and fostering government accountability.³

¹ *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. ACLU*, 521 U.S. 844, 868 (1997)).

² The Rutherford Institute is a non-profit legal and educational organization that assists individuals whose civil liberties are threatened or infringed and works to safeguard the constitutional rights of all Americans.

³ As set forth in its Mission Statement, “The Free Thought Project is dedicated to holding those who claim authority over our lives accountable.” <https://thefreethoughtproject.com/about-us/>.

Restricting a news organization's access to a social media platform because of even unintentional errors is contrary to our commitment to freedom of expression and fails to give the press the kind of "breathing room" the First Amendment is meant to foster.⁴ Thus, in the interest of fostering a strong, vibrant, and independent press, it is imperative that Facebook not only reverse the "false news" designations given to Free Thought, but that it revise its policies to ensure that content publishers be afforded a timely opportunity to defend the content they post before an independent decision-maker.`

Overview

In June 2018, two news stories published by Free Thought were labeled "false news" by fact-checking organizations to which Facebook has delegated authority to police the veracity of internet content. Not only have these "false news" labels resulted in significant damage to the reputation and standing of Free Thought as a legitimate news source, but they also have threatened the very existence and economic viability of the organization by limiting its reach and readership, which are essential for driving traffic to its website and generating the ad revenues that fund its news operations.⁵

Facebook's "false news" policies fail to take into account the harm that can be inflicted on news organizations, particularly small, nascent organizations like Free Thought, when these "false news" labels are erroneously applied. As a result of its content being labeled "false news" by Facebook without any immediate means of refuting the allegations against it, Free Thought has had its distribution and visibility on the Facebook platform throttled, causing it significant economic harm.

Moreover, the appeals process available to Free Thought and other publishers appears to be deeply flawed, biased, and lacking any regard for an adequate, timely appeals process. Even when an opportunity is provided to refute allegations that news reports may be false, that opportunity only comes after a "false news" label has been applied and circulated online, by which time the damage to the news agency's reputation has already been inflicted.

The fairness of the appeals process itself is also questionable given its seeming lack of objectivity. In the first place, appeals must be made to the very fact-checking organization that designated a news agency's report as false news. Secondly, concerns have been raised that personal biases are driving some of the assessments by the fact-checking organizations. For example, there are indications that the "false news" label applied to Free Thought's news reports by one particular fact-checking organization may have been retaliatory in nature, resulting from a separate dispute between the fact-checking organization and Free Thought.

⁴ *New York Times Co. v. Sullivan*, 376 U.S. 254, 271-72 (1964).

⁵ Because Facebook's "false news" policies provide that domains found to have published false news will have the distribution of their content reduced and their ability to monetize and advertise removed, Free Thought has seen a drastic reduction of its reach and traffic at its website, which has greatly reduced its ability to generate revenues needed to fund its news operations.

Factual Background

On June 4, 2018, Free Thought published a news report on its website that a veterans group searching for homeless veterans found a bunker in a remote area of Arizona that the group suspected was being used for child trafficking.⁶ The article described items discovered at the site, such as pornography, restraints, a stroller and a crib that led the veterans to conclude that it was connected to child trafficking. Police were alerted and investigated the scene.

Significantly, Free Thought's report made clear that it was entirely possible the site was being used as an encampment for homeless people. It also stressed that it was the veterans who discovered the site who had concluded, based on the unusual objects found there, that child trafficking was occurring at the site. Indeed, the headline to the story placed the term "child trafficking bunker" in quotes to emphasize this was how the veterans had described the site.

Soon thereafter, Free Thought's report, which was shared on social media, was flagged as false news by Facebook and submitted to Snopes for fact-checking. Exactly how or why the report was submitted for fact-checking is unknown to Free Thought. Further muddling the process are the opaque procedures Facebook has adopted to counter so-called "fake news."

Despite the lack of procedural transparency and clarity, Snopes, which disparaged Free Thought as a "conspiratorial web site," posted its analysis, labeling the Free Thought report as "false."⁷ Yet the Snopes claim that Free Thought's report is "false" is wholly unjustified because little or nothing in Free Thought's report was shown to be untrue: the veterans group did find the bunker site, they believed it was being used for child trafficking,⁸ and they reported this to law enforcement.

As the news headline made clear, it was the veterans' group, clearly cited as the source of the report, that alleged the homeless encampment was a "child trafficking bunker." That a subsequent investigation by local and federal law enforcement officials contradicted the veterans' conclusion does not make the Free Thought report itself false.

Making matters worse, once Free Thought's report was branded "false news," Facebook sent out a notification to all persons who had shared the story declaring that it was false. Free Thought was given no opportunity to respond to Snopes' decision, and there is no indication that Facebook at that time or since has made any attempt to verify any of the "fact" findings by Snopes or other fact-checkers. Instead, Facebook requires content publishers to contact the fact-checking

⁶ Matt Agorist, "Veterans Organization Discovers Disturbing 'Child Trafficking Bunker' In Tucson," *The Free Thought Project* (June 4, 2018), <https://thefreethoughtproject.com/veterans-organization-child-trafficking-bunker-tucson/>.

⁷ "Did a Veteran Group Discover a 'Disturbing Child Trafficking Bunker' in Tucson?," *Snopes.com* (June 7, 2018), <https://www.snopes.com/fact-check/did-veterans-discover-trafficking-bunker-tucson/>.

⁸ Significantly, the veterans' group, Veterans On Patrol, has as its mission finding homeless veterans, so their conclusion that this site was unlike other homeless encampments did not lack credibility.

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organization to appeal a “false” rating.⁹ Free Thought did that with respect to the child trafficking bunker report, but only after numerous requests were sent to Snopes and six weeks had elapsed did it finally respond to Free Thought’s appeal.

A second Free Thought report was unfairly labeled false less than a week later. Free Thought posted a report on June 7 regarding Sen. Jeff Merkley’s attempt to inspect a shuttered Walmart store in Brownsville, Texas, that is being used to detain refugee children who were taken from their parents when they sought to enter the country.¹⁰ The report noted that there had been rumors and speculation as far back as 2015 about the reason for a spate of Walmart store closings, and that it was now confirmed at least one such facility was being used to detain refugee children. The story went on to describe the Senator’s attempts to enter the facility and the controversy that ensued when he was barred from entering.

On June 15, the Associated Press issued a fact-check report on Free Thought’s article stating that “Walmart is not working with the Department of Homeland Security to create detention centers for migrants despite reports online claiming the two have been working together in recent years.”¹¹ Again, Facebook sent a push notification to persons who had posted or shared Free Thought’s detention center article labeling it as false news. Yet nothing in Free Thought’s June 7 report indicated that Walmart was working with DHS to establish immigrant detention centers. Free Thought accurately reported that the Brownsville Walmart had been converted to a detention center and the attempts by Sen. Merkley to visit it.

Free Thought was recently cited again, this time for sharing “false news,” based upon a September 10 post on its Facebook page of a meme that raises questions about the cause of the damage to the Pentagon that occurred on September 11, 2001.¹² However, the meme shared by Free Thought made no factual claim regarding the source of the damage to the Pentagon that could be considered “false news.” The meme simply invited those who viewed it to question and critically evaluate official reports concerning the circumstances surrounding the September 11 attacks. Moreover, the meme’s content was not even created by Free Thought.

The combined effect of this recent incident and the two “false news” designations of Free Thought’s news reports has resulted in a drastic reduction of Free Thought’s content being distributed through Facebook. Free Thought has also lost the ability to advertise and monetize through Facebook. With this loss of exposure, Free Thought reports that its website traffic dropped close to nothing in less than a month. The work and money invested for over five years by Free Thought’s founders and employees in establishing a following and advertiser base has been

⁹ “Third Party Fact-Checking on Facebook,” <https://www.facebook.com/help/publisher/182222309230722>.

¹⁰ Jack Burns, “Conspiracy Theory Proven Fact as Cops Remove Senator From Walmart Converted into Detention Center,” *The Free Thought Project* (June 7, 2018), <https://thefreethoughtproject.com/conspiracy-theory-proven-fact-as-cops-remove-senator-from-walmart-converted-into-detention-center/>

¹¹ “NOT REAL NEWS: Walmart not housing immigrants for DHS,” *Associated Press* (June 17, 2015), <https://apnews.com/f60a5e9c868346c68eb72694e2c79f73/NOT-REAL-NEWS:-Walmart-not-housing-immigrants-for-DHS>.

¹² <https://www.facebook.com/thefreethoughtprojectcom/photos/a.1427971987423064/2229620817258173/?type=3&theater>.

completely undermined by the unfounded “false news” designations given by Snopes and the Associated Press.

Adding to the injustice, in each instance, the “false news” designation applied to Free Thought’s reports and push notifications were sent out before the news agency had any opportunity to defend itself or the legitimacy of its news stories. Facebook’s policy allows news to be publicly tarred as false without any independent overview and requires content publishers to contact the fact-checking organization to appeal a “false” rating. By that time, the damage is already done to the publisher’s reputation and reach.

Moreover, appeals to the fact-checking organization have proven totally ineffectual for Free Thought. After Snopes issued its false rating on the Tucson bunker report, Free Thought promptly contacted Snopes numerous times to defend the report and ask for a retraction of the rating. However, Free Thought heard nothing back from Snopes until almost six weeks after its false rating was issued, far too late to rectify the harm inflicted. Additionally, it is unrealistic to believe that Free Thought or any other publisher of content deemed false would get a fair and unbiased hearing from the very organization that made the false news designation. Indeed, once Snopes finally responded to Free Thought’s appeal, it refused to retract the false rating, asserting that the headline of the story was misleading and that the report uncritically repeated information provided by the veterans group.

There are also concerns as to whether the fact-checking organizations are wholly unbiased. For example, in 2017, Free Thought published a report concerning a legal dispute over control of Snopes.¹³ Snopes took issue with the report and demanded that it be removed from Free Thought’s website. That Snopes may be biased against Free Thought is supported by a more recent rating Snopes made about a Free Thought report regarding an increase in missing children in Iowa.¹⁴ Although the report is accurate in all respects, Snopes rated it “mostly false” because the statistics do not indicate an “alarming increase” in missing children.¹⁵ However, Free Thought never claimed in its report that there had been an “alarming increase” in the number of missing children in Iowa. Snopes has not replied to requests that it identify what in the report is false.

Thus, it cannot be discounted that Snopes continues to harbor some animosity toward Free Thought over its report on Snopes’ internal strife and that the false ratings given to Free Thought’s reports result from that animosity and not an impartial process.

¹³ Daniel Victor, “Snopes, in Heated Legal Battle, Asks Readers for Money to Survive,” *The New York Times* (July 24, 2017), <https://www.nytimes.com/2017/07/24/business/media/snopes-crowdfunding-proper-media.html>.

¹⁴ Rachel Blevins, “In Just the Last Two Weeks, Dozens of Children in Iowa Have Vanished,” *The Free Thought Project* (July 27, 2018), <https://thefreethoughtproject.com/in-just-the-last-two-weeks-dozens-of-children-in-iowa-have-vanished/>.

¹⁵ Alex Kasprak, “Has Iowa Seen an Alarming Increase in ‘Vanishing Children’ This Summer?,” *Snopes* (July 30, 2018), <https://www.snopes.com/fact-check/iowa-missing-children-summer/>. Additionally, the Snopes review again labels Free Thought as “conspiracy-prone” and uses quotation marks around the term “independent journalist” when describing the author Rachel Blevins.

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Given what is at stake when a news organization has its content deemed “fake news” by Facebook, it is crucial that safeguards be put in place to assure, as much as possible, that the designation is well-founded. Such safeguards do not exist, and Facebook continues to rely on the decisions of third-party fact-checkers who may not be impartial and who have no obligation to hear from the publisher before the damaging designation is made. Even when a fact-checker chooses to hear an appeal, it does not do so in a timely manner. As Free Thought’s experience demonstrates, the deficiencies in Facebook’s fact-checking policies can result in the ruin of a news and information organization.

The defects in Facebook’s policies are especially problematic for new and independent information sources that depend on the exposure provided by Facebook. These up-and-coming, innovative journalists are less beholden to corporate interests and are free to report on stories and issues that the mainstream media may shy away from. Because the information may be controversial, it is also more likely to be challenged and branded as “fake news,” leading to the kind of “soft censorship” and financial harm Free Thought has suffered.

This presents a very real threat to the development of a vibrant and independent press that was hoped for with the advent of the internet. Facebook, with its commitment to creating a worldwide community for the sharing of information, should have policies that foster and support the new generation of journalists. Yet as things stand now, and as shown by Free Thought’s troubling experience, those policies can and are being used to suppress freedom of the press.

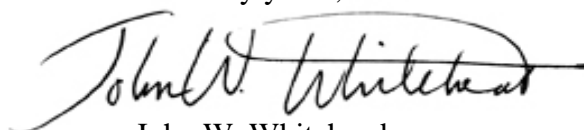
Time is critical in this matter.

The economic harm to Free Thought continues to mount as its reach and ability to monetize and advertise on Facebook are withheld. Thus, we ask that a specific Facebook representative be assigned to address this matter and remove the “false” strikes that have been issued against Free Thought for the three incidents referred to above.

We also ask that Facebook adopt clearly-defined fact-checking policies and practices that respect First Amendment values and ensure fairness to news and information organizations, affording them the due process that fundamental fairness demands. We would be happy to work with you in adopting guidelines that avoid these missteps in the future.

In order that we might best advise the Free Thought Project about their next steps, we require a response by October 1, 2018.

Sincerely yours,

A handwritten signature in black ink, reading "John W. Whitehead". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

John W. Whitehead
President