

Elon Musk should align with Twitter's terms of service with the law

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Social media companies have received criticism in recent years due to their alleged bias and severe moderation standards. Elon Musk, the world's richest man and an avid Twitter user, is currently seeking to acquire Twitter in order to mitigate the perceived suppression of speech on the forum.

An apparent dilemma is presented when deciding which speech on social media is permissible and which should be censored. At the crux of the debate, conservatives generally argue that moderation violates the principle of free speech, while progressives often argue platforms should moderate potentially harmful content such as conspiracy theories, misinformation and hate speech.

Social media sites' terms of service should conform to free speech legal standards — censoring speech only if it breaks the law. The reward of having more creative ideas, which can then be openly criticized, is worth the risk of having to filter through misinformation or harmful and offensive content. When discussing the permissibility of certain speech on social media, we should be focusing on the moral aspect of the debate.

The free speech dilemma is exemplified across polling data; in a PEW Research Center poll, almost three-fourths of Americans said that it is at least somewhat likely social media sites intentionally censor political viewpoints they find objectionable. Similarly, according to the CATO institute, 75% of Americans say they don't trust social media companies to make fair decisions about what information is allowed to be posted on their platforms.

Nevertheless, a majority of Americans strongly or somewhat approve of social media companies labeling posts on their platforms as inaccurate or misleading. During the COVID-19 pandemic, almost two-thirds of Americans believed social media sites should be able to remove content that promotes misleading health information — almost half of Republicans agreed. Adding to the free speech dilemma, a 2021 Ipsos survey showed that a majority of Americans support social media companies permanently banning accounts that post misinformation or bullying messages.

W. Wat Hopkins, a professor of communication law at Virginia Tech, argues that there must be some limitations of speech on the internet.

“The First Amendment protects social media outlets. No responsible outlet, however, has completely open publishing,” said Dr. Hopkins. “Social media need controls to protect from harassment, incitement, and other evils.”

Freedom of speech is fundamental to the prosperity of our civilization. Elon Musk agrees — referring to the First Amendment as “the bedrock of a functioning democracy.” The 200-plus billionaire has said that “Twitter is the digital town square where matters vital to the future of humanity are debated.” This analogy is accurate in principle but overestimates the extent to which the country utilizes the medium. According to a PEW Research study, less than a fourth of Americans use Twitter and the top 25% of users produce 97% of the content. So, while not many people use the site, the forum has become a digital space for fervent discourse.

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Musk wants to introduce a terms of service which closely parallels established free speech laws, while making Twitter more trustworthy and creative at the same time. To accomplish this, Musk claims he must take the company private; he wants to remove the spam bots — automated accounts that typically interact with real accounts — and make the content algorithms open-source: giving users the rights to use, study, change and distribute the software.

Musk has previously referred to himself as a “free speech absolutist” — which could be interpreted by some as though he is in favor of incitement of violence, obscenity, defamation, true threats, etc. He has since clarified his stance on free speech, arguing in a tweet: “By ‘free speech’, I simply mean that which matches the law. I am against censorship that goes far beyond the law.”

He went on to write, “If people want less free speech, they will ask government to pass laws to that effect. Therefore, going beyond the law is contrary to the will of the people.” Here, Musk is referring to Twitter's terms of service; the terms are similar to other popular sites, such as Google and Facebook, which incorporate stricter rules than the free speech legal precedent. According to the CATO Institute, “58% of Americans support a First Amendment content moderation standard” as of December 2021.

In many circumstances, however, the Supreme Court interprets if a certain type of speech is permissible — the electorate does not vote on those laws. Musk's idea of having the people vote directly on free speech laws is faulty using this premise. Furthermore, he would presumably be against censoring groups of society using racial, sexual or ethnic barriers — even if a majority of the electorate voted for it. So, Musk has the right mentality, but is clearly ignorant of the system and the ways it could be abused by bad actors.

Musk has also stated that “Twitter obv [sic] has a strong left wing bias” — almost 70% of Republicans agree. According to a recent MIT and Yale-led study, less than 8% of the Democrat accounts observed had been suspended in the six months following the election in 2020. In the same time frame, over 35% of the Republican accounts studied had been suspended. The researchers found that the discrepancy could be explained by the fact that Republicans shared significantly more posts from misinformation sites compared to Democrats.

In October 2021, Twitter responded to the general idea of an algorithmic left-wing bias in an internal report that said, “In 6 out of 7 countries studied, the mainstream political right enjoys higher algorithmic amplification than the mainstream political left. Consistent with this overall trend, our second set of findings studying the U.S. media landscape revealed that algorithmic amplification favors right-leaning news sources.”

Settling who the true victims are of moderation is not critical at the moment: the problem is much more fundamental and has little to do with political bias. What is important is the overreach of the companies’ terms of service juxtaposed with the legally established limitations on free speech. Although Musk’s precise formula to create a social media platform that does not over-moderate content is undetermined, his noble goal should nevertheless be applauded.

Twitter will potentially lose some ideological progressive users if the terms of service are relaxed, as Democrats are much more likely to approve of social media sites moderating content. Democrat Sen. Elizabeth Warren has said that Musk acquiring Twitter “is dangerous for democracy” — alluding to her expectation that there will be a proliferation of harmful content on the site. Conversely, Republican Sen. Ted Cruz has asserted that “Elon Musk purchasing Twitter is the biggest development for free speech in decades.” Twitter may, indeed, see an increase in harmful content due to the loosening of its moderation standards. Likewise, Twitter may see an increase in ideologically conservative users on the site due to Musk’s espoused free speech absolutism and his recent political shift to the right.

The only thing left for Musk to accomplish is to implement the policy changes. The new regulations will allow ideas to be put out into the open for everyone to debate, making the transition worthwhile. We cannot reject bad ideas until we can assess the merits of the ideas in and of themselves — not because the company disapproves of the content. Elon Musk should continue on this endeavor: not just for Republicans, or even for the constitution's sake, but instead, for the sake of ideas that would not otherwise be debated — whether accepted or rejected in the end.