

Facebook's "Real Name" Policy: A Violation of the Corporate  
Responsibility to Respect Human Rights

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## Introduction

In September 2014, hundreds of transgender people and drag queens had their Facebook accounts shut down after they were reported as fake. As individual users started to realize that this was happening to people across their communities, they began to organize, lodge complaints and protest. Though Facebook apologized to the lesbian, gay, bisexual and transgender (LGBT) and drag queen communities after the issue garnered media attention, as of today there has not been meaningful change in Facebook's policy. Rather, the company continues to require users to provide onerous documentation to verify names that are flagged by users or Facebook as potentially unauthentic. This is problematic for a range of communities, including trans and gender non-conforming people, drag queens, survivors of violence, Native Americans and more.

In this paper, I evaluate the allegations made by activists against Facebook that its real-name policy violates the rights to privacy, expression and association. I assess Facebook's response to these allegations by drawing on standards including the UN Guiding Principles on Business and Human Rights and the Global Network Initiative's Principles on Freedom of Expression and Privacy. I also compare Facebook's policy to that of other social networking platforms to assess the company's justification that its policy is necessary for ensuring user safety, and find that Facebook is increasingly alone in its insistence on this policy. I conclude that Facebook's real-name policy amounts to a violation of its corporate responsibility to respect human rights, and that it has not taken sufficient steps to remedy the situation.

## The Case: Facebook's Real-Name Policy

Facebook's name policy states: "Facebook is a community where people use their authentic identities. We require people to provide the name they use in real life; that way, you always know who you're connecting with. This helps keep our community safe." The company requires users to verify their names, if flagged, by providing identity verification in one of three ways: 1) a government-issued ID that contains a name and date of birth; 2) two different forms of documentation such as a bank statement or school record, one including a photo or date of birth; or 3) if the documentation in the second option doesn't include photo or date of birth, two forms of ID from the second option plus a government ID that includes photo or date of birth.<sup>1</sup> Facebook justifies this policy as necessary to ensure the safety of its users. Monika Bickert, head of Facebook's global policy management, said: "Having people use their real names on Facebook makes them more accountable, and also helps us root out accounts created for malicious purposes, like harassment, fraud, impersonation and hate speech."<sup>2</sup>

Activists assert that Facebook's real-name policy violates the rights to privacy and expression of multiple communities of Facebook users. There are myriad reasons why people may want to use pseudonyms. LGBT people may need to use a different name online in order to access information, find community and express their views while maintaining their safety,

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<sup>1</sup> Facebook, "What Names Are Allowed on Facebook?," accessed June 7, 2015, <https://www.facebook.com/help/112146705538576>; Facebook, "What Types of ID Does Facebook Accept?," accessed June 7, 2015, <https://www.facebook.com/help/159096464162185>.

<sup>2</sup> Valeriya Safronova, "Drag Performers Fight Facebook's 'Real Name' Policy," *The New York Times*, September 24, 2014, <http://www.nytimes.com/2014/09/25/fashion/drag-performers-fight-facebooks-real-name-policy.html>.

particularly youth or people living in rural or isolated areas. Within the LGBT community, the policy is a particular barrier for trans people. A report published by leading human rights funder Open Society Foundations states: “The majority of trans people around the world cannot obtain official documents under their appropriate name and sex that match their gender identity.”<sup>3</sup> Without official documentation, it is very hard to obtain the other kinds of identity documents that Facebook accepts (e.g. library card, medical record). Because many trans people are unable to provide the required documentation, Facebook’s real-name policy stands as a barrier to trans people’s abilities to use the platform and exercise their right to freedom of expression. Using real names can also put trans people at risk of violence. The #MyNameIs campaign collected stories of people affected by this policy, including:

I worked stealth [not “out”] at a physical labour job for over six years. It was a verbally and sometimes physically abusive environment. Despite passing for straight and cisgender, I still dealt constantly with bullying and ostracism. Having to use my real name online would have risked having my politics, queerness, and transsexuality discovered by any number of the hundred men I worked with, putting me at even greater risk of emotional and physical abuse.

—Anonymous, Montreal, Quebec<sup>4</sup>

It is not only LGBT people who are affected. Survivors of domestic violence are unable to use Facebook with a new name, leaving them at risk of harassment and violence from abusers. Anti-domestic violence advocacy groups like the National Network to End Domestic Violence recommend that survivors of violence maximize their privacy by not using their real names online, but this is not possible on Facebook. Because of the prominence of Facebook and the social isolation that would result from leaving the site, many survivors chose to take the risk and stay on it. One survivor shared this testimonial:

My name protected me from my employers finding out about my private life, and people I don’t want to locate me. My surname is too unusual to hide behind—the man I sent to prison for childhood abuse would know me, and the man I’m divorcing for domestic abuse would find me too. It gave me anonymity, freedom to escape my everyday life, and to feel safe. Facebook took that from me.

—Anonymous<sup>5</sup>

Native Americans have also had their accounts deactivated because their names are flagged as fake. Lakota Facebook user Dane Lone Hill, who has had her account shut down twice, wrote:

One friend was forced to change his name from his Cherokee alphabet to English. Another was forced to include her full name, and a few were forced to either smash the two word last names together or omit one of the two words in the last name. Oglala Lakota Lance Brown Eyes was booted from facebook and when he turned in his proof

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<sup>3</sup> Open Society Foundations, “License To Be Yourself: Laws and Advocacy for Legal Gender Recognition of Trans People” (New York, May 2014), 8, <http://www.opensocietyfoundations.org/sites/default/files/license-to-be-yourself-20140501.pdf>.

<sup>4</sup> “#MyNameIs,” #MyNameIs, accessed June 7, 2015, <http://www.mynameiscampaign.org/>.

<sup>5</sup> Ibid.

of identification they changed his name to Lance Brown. After contacting the Better Business Bureau and threatening Facebook with a class action lawsuit, they sent him an apology and let him use his given name again.<sup>6</sup>

This amounts to blatant discrimination against a community that does not have typical Euro-American names, silencing Native people's identities and histories.<sup>7</sup> While much of the current organizing against Facebook's policy is coming from users in the United States, this raises questions of how Facebook understands what is a "real name" in the diverse national and cultural contexts in which it operates. For several constituencies, Facebook's real-name policy is a significant barrier to their ability to access the platform and enjoy their rights online.

Following escalating protests on social media and at Facebook's headquarters, Facebook held an in-person meeting with the San Francisco drag queens who initiated this activism. In October 2014, Chris Cox, Facebook's Chief Product Officer, apologized via a public Facebook post to the drag and LGBT community members who had their accounts shut down, acknowledging their hardship and pain. He explained that one individual had reported several hundred names as fake, as part of the several hundred thousand fake name reports that Facebook processes each week, and stated that this incident had caught the company off guard. He shared that 99 percent of those reports are "bad actors" engaged in "impersonation, bullying, trolling, domestic violence, scams, hate speech, and more," and until this incident, Facebook's name policy has "done a good job of creating a safe community without inadvertently harming groups like what happened here."<sup>8</sup>

Noting that it is an "authentic name," not "legal name," policy,<sup>9</sup> Cox explained that the policy distinguishes Facebook from other platforms "by differentiating the service from the rest of the internet where pseudonymity, anonymity, or often random names [are] the social norm." Further, this is the mechanism that Facebook has to protect people from bullying, impersonation, trolling and domestic abuse. He underscored that "this policy, on balance, and when applied carefully, is a very powerful force for good." At the same time, he promised that Facebook would improve its reporting and enforcement mechanism, its tools to determine "who's real and who's not," and its customer service for people affected by the policy.<sup>10</sup>

However, months after the apology, many people continue to have their accounts suspended and deactivated under this policy. As the #MyNameIs activists continued to organize and protest, in June 2015 Facebook made a second statement about improvements it made to its

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<sup>6</sup> Aura Bogado, "Native Americans Say Facebook Is Accusing Them of Using Fake Names," Text, *Colorlines*, (February 9, 2015), <http://www.colorlines.com/articles/native-americans-say-facebook-accusing-them-using-fake-names>.

<sup>7</sup> Abby Phillip, "Online 'authenticity' and How Facebook's 'real Name' Policy Hurts Native Americans," *The Washington Post*, February 10, 2015, <http://www.washingtonpost.com/news/morning-mix/wp/2015/02/10/online-authenticity-and-how-facebooks-real-name-policy-hurts-native-americans/>.

<sup>8</sup> Chris Cox, Facebook, (October 1, 2014), <https://www.facebook.com/chris.cox/posts/10101301777354543>.

<sup>9</sup> Facebook makes a distinction between "legal name" and "authentic name." Users are not required to use their exact legal name, but rather the name their friends call them in everyday life. For example, Jonathan Smith can be Jon Smith. Elizabeth Rose Jones can be Liz Jones. However, as shown in this paper, Facebook has a narrow and problematic view of what constitutes an authentic name. It fails to recognize that trans and other people may not have documentation of the names they are called in everyday life; that people may be called multiple names in different contexts for their safety and protection; and that names from diverse ethnic and cultural traditions may not appear to Facebook as authentic but of course are.

<sup>10</sup> Cox.

policy in consultation with LGBT community members. According to this post, Facebook now provides people in the U.S. with access to their account for up to seven days while their name is being verified and plans to roll this out to users outside the U.S. in the coming months. The company expanded the options of documents that people can use to verify their authentic name and clarified in its user guidelines that an authentic name does not necessarily need to be a legal name.<sup>11</sup> While these are positive improvements, activists say they do not go far enough to protect LGBT and other community members.<sup>12</sup>

It is important to note that this issue predates and is larger than Facebook. Debates have raged over anonymity and pseudonymity since people began using the Internet. These debates, also known as the “nym wars,” escalated in 2011 when Google+ launched with a real-name requirement.<sup>13</sup> Proponents of real-name policies argue that they make people more civil and accountable. In turn, digital and human rights activists argue that they silence free expression and harm constituencies including political activists, whistleblowers, victims of real-world abuse, women, LGBT people and youth. Well-respected digital rights organizations such as the Electronic Frontier Foundation have long advocated against real-name policies, including Facebook’s, arguing that they subject “the most vulnerable populations to the most risk.”<sup>14</sup>

### Evaluating Facebook’s Policy Against Business and Human Rights Standards

#### *Rights to privacy, freedom of expression and opinion, and freedom of association*

Article 12 of the Universal Declaration of Human Rights (UDHR) and article 17 of the International Covenant of Civil and Political Rights (ICCPR) establish the right to privacy. Recognizing the central role of the Internet in daily life, the UN General Assembly affirmed in a 2013 resolution that “the same rights that people have offline must also be protected online, including the right to privacy.”<sup>15</sup> In addition to the privacy issue of people’s ability to choose and protect their own names, an additional privacy concern of Facebook’s real-name policy is how it stores and protects the identity documents that it requires from flagged users. Facebook has said that it deletes them after verification, but has not shared any details about how it protects this personal data.

The UDHR and ICCPR also protect freedom of opinion and expression in articles 19, covering the freedom to seek, receive and impart information of all kinds and through any media,

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<sup>11</sup> Facebook Safety, Facebook, (June 1, 2015), <https://www.facebook.com/fbsafety/posts/861043117266861>.

<sup>12</sup> Rossalyn Warren, “Here’s Why Having To Use ‘Real’ Names On Facebook Is Putting Some People’s Lives At Serious Risk,” *BuzzFeed*, accessed June 27, 2015, <http://www.buzzfeed.com/rossalynwarren/heres-why-having-to-use-real-names-on-facebook-is-putting-so>.

<sup>13</sup> Tim Carmody, “Google+ Identity Crisis: What’s at Stake With Real Names and Privacy,” *WIRED*, July 26, 2011, <http://www.wired.com/2011/07/google-plus-user-names/>; Eric Pfanner, “Naming Names on the Internet,” *The New York Times*, September 4, 2011, <http://www.nytimes.com/2011/09/05/technology/naming-names-on-the-internet.html>.

<sup>14</sup> Nadia Kayyali and Jillian York, “Facebook’s ‘Real Name’ Policy Can Cause Real-World Harm for the LGBTQ Community,” Electronic Frontier Foundation, *Deeplinks Blog*, (September 16, 2014), <https://www.eff.org/deeplinks/2014/09/facebooks-real-name-policy-can-cause-real-world-harm-lgbtq-community>.

<sup>15</sup> United Nations General Assembly, “The Right to Privacy in the Digital Age A/C.3/68/L.45/Rev.1,” November 20, 2013, [http://www.un.org/ga/search/view\\_doc.asp?symbol=A/C.3/68/L.45/Rev.1](http://www.un.org/ga/search/view_doc.asp?symbol=A/C.3/68/L.45/Rev.1).

and freedom of association in articles 20 and 22 respectively. These freedoms are at stake given Facebook's size, scope and use. Facebook has enjoyed explosive global growth, and today claims more than 1.44 billion monthly active users and 936 million people who log on every day.<sup>16</sup> Many use the platform not merely as a "social network" to share personal news or gossip, but as a key way to express opinions and associate with like-minded people for social or political change.

### *Importance of anonymity*

The UN Special Rapporteur on freedom of opinion and expression and the UN High Commissioner on Human Rights have both called attention to the importance of anonymity for the realization and protection of human rights in the digital age. This applies to many communities, including human rights defenders who face threats because of their activism as well as LGBT people, women, and other vulnerable groups. In a dialogue with the Special Rapporteur, global internet rights organization Association for Progressive Communications, and leading global LGBT rights organizations, the International Gay and Lesbian Human Rights Commission and the International Lesbian, Gay, Bisexual, Trans and Intersex Association, delivered a statement on the importance of encryption and anonymity for people who face discrimination and persecution based on sexuality or gender:

Strong encryption and anonymity are fundamental for the protection of human rights in the digital age and are critical to individuals who face persecution because of their sexual orientation or gender identity. Anonymity has been a crucial tool for women and sexual minorities for self-expression, connecting, and mobilizing and the use of anonymity online supports the most vulnerable groups.

We highlight the Special Rapporteur report's assertion that the internet is a critical space for users to explore identity and access information in relation to gender and sexuality, and that individuals, such as those who face discrimination and persecution based on their sexual orientation and gender identity, may be forced to rely on encryption and anonymity in order to circumvent restrictions and exercise the right to seek, receive and impart information. Importantly, the report contends that anonymity, including conducting and saving searches anonymously, is fundamental for the full realization of the right to develop and hold opinions...

We assert that the moves of corporations to shift to real-name policies – requiring users to use their real names on online platforms – is a clear violation of the right to anonymity, as well as some trans and gender non conforming persons' right to self expression.<sup>17</sup>

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<sup>16</sup> Emil Protalinski, "Facebook Passes 1.44B Monthly Active Users and 1.25B Mobile Users; 65% Are Now Daily Users," *VentureBeat*, accessed June 27, 2015, <http://venturebeat.com/2015/04/22/facebook-passes-1-44b-monthly-active-users-1-25b-mobile-users-and-936-million-daily-users/>.

<sup>17</sup> Association for Progressive Communications, International Gay and Lesbian Human Rights Commission, and International Lesbian and Gay Association, "HRC29: Joint Statement by the International Gay and Lesbian Human Rights Commission, the International Lesbian and Gay Association and the Association for Progressive Communications," June 17, 2015, <https://www.apc.org/en/node/20587/>.

Advocates argue that Facebook and other corporations' real-name policies violate the right to anonymity as a key aspect of freedom of expression and association online. But what is Facebook's responsibility as a social media platform and internet intermediary?

### *Roles and responsibilities of internet intermediaries*

Internet intermediaries play a mediating role between users and content online. An intermediary is defined as "any entity that enables the communication of information from one party to another."<sup>18</sup> Internet intermediaries include search engines, internet service providers, hosting providers, cloud computing services, and social networking platforms; they are entities that host, provide access to, or facilitate the sharing of content by others. These intermediaries have been termed the "sovereigns of cyberspace" for their role in governing online life, as they both "enable various forms of online expression" and act as "chokepoints, arbiters or 'gatekeepers' of expression."<sup>19</sup> They have an important role in fostering and enabling rights online. Notably, they are almost all corporate actors.

Of the intermediaries, social networking platforms play a central role in enabling social expression and information-sharing. There are many ways in which their operations have human rights implications. For this case, the most pertinent is social media companies' self-regulation of accounts and content. Social networking platforms like Facebook reserve the right to restrict content that violates their terms of service, which can include suspending or terminating user accounts. Facebook has a reporting mechanism that allows people to report either content or users that are abusive or otherwise violating the terms of service, which is the predominant way that people's accounts get flagged for being potentially un-real.<sup>20</sup> Unfortunately, we do not know much about the breadth or depth of the accounts or content that Facebook regulates, as it has not shared that information publicly. Nor has it shared details about its internal procedures for making these determinations.<sup>21</sup>

The question is: How does Facebook manage these verification and reporting processes in ways that do not result in adverse human rights impacts for users? Because intermediaries like Facebook have such a large influence over people's online communication, it is critical that they facilitate, rather than hinder, respect for human rights. With a user base almost as large as China or India's populations, Facebook's policies amount to a form of governance over people's lives and rights.<sup>22</sup> I now review Facebook's response to activists' allegations about its real-name policy against business and human rights standards.

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<sup>18</sup> Thomas F. Cotter, "Some Observations on the Law and Economics of Intermediaries," *Michigan State Law Review* 2006 (2006): 67.

<sup>19</sup> Rebecca MacKinnon, *Consent of the Networked: The World-Wide Struggle for Internet Freedom* (New York: Basic Books, 2012); Rebecca MacKinnon, "Ruling Facebookistan," *Foreign Policy*, June 14, 2012, <http://foreignpolicy.com/2012/06/14/ruling-facebookistan/>.

<sup>20</sup> Rebecca MacKinnon et al., "Fostering Freedom Online: The Role of Internet Intermediaries" (United Nations Educational, Scientific and Cultural Organization (UNESCO), 2014), 146–147, <http://unesdoc.unesco.org/images/0023/002311/231162e.pdf>.

<sup>21</sup> *Ibid.*, 162.

<sup>22</sup> MacKinnon, "Ruling Facebookistan."

## *Guiding Principles and GNI*

The UN Guiding Principles on Business and Human Rights make clear that Facebook is responsible for respecting human rights in all its operations. Principle 12 affirms that this responsibility covers all internationally recognized rights, which include the rights to privacy, freedom of expression and association. That principle further states that businesses may need to consider additional standards, including respect for the “human rights of individuals belonging to specific groups or populations that require particular attention, where they may have adverse human rights impacts on them.”<sup>23</sup> The Principles affirm that businesses must not contribute to adverse human rights impacts, either through their own actions or through actions linked to their operations, products or services through business relationships. While Facebook is not legally liable for the actions of its users, it is responsible for the adverse human rights impacts that occur as a result of its operations, such as the way that its real-name policy and associated reporting mechanism create vulnerabilities for specific groups of users.

Facebook falls immediately short of the standard of conduct laid out by the Guiding Principles, as it does not have a human rights policy (Principle 16). As a result of its lack of a human rights policy, we do not know whether Facebook has any kind of human rights due diligence process, which would enable it to address, mitigate and be accountable for its impacts on human rights (Principle 17). A due diligence process would provide a structured way for Facebook to understand and address the positive and negative effects of its real-name policy. For example, Facebook should have conducted due diligence before developing its policy to understand what its human rights impacts might be. After it made some adjustments to its policy in June 2015, including expanding the range of documentation that people can use to verify their name, Facebook would be able to conduct further due diligence to assess whether those adjustments are actually making a difference in its users’ abilities to access the platform and exercise their rights. On this or any issue, Facebook does not engage in any public reporting on its human rights practices or impacts.

Lastly, the Guiding Principles call on businesses to engage in meaningful consultation with potentially affected groups and other relevant stakeholders in their determination of human rights risks and impacts, including paying special attention to “groups or populations that may be at heightened risk of vulnerability or marginalization” (Principle 18).<sup>24</sup> BSR, a global nonprofit business network, emphasizes the importance of information and communications technology (ICT) companies engaging in meaningful consultation with potentially affected groups, as the impact of their policies and products on the end user is particularly pronounced.<sup>25</sup> To that end, it has laid out a set of principles for ICT companies around stakeholder engagement.<sup>26</sup>

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<sup>23</sup> Office of the High Commissioner for Human Rights, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework” (United Nations, 2011), [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>24</sup> Ibid.

<sup>25</sup> BSR, “Applying the Guiding Principles on Business and Human Rights to the ICT Industry. Version 2.0: Ten Lessons Learned,” A Briefing Paper from BSR, September 2012, [http://www.bsr.org/reports/BSR\\_Guiding\\_Principles\\_and\\_ICT\\_2.0.pdf](http://www.bsr.org/reports/BSR_Guiding_Principles_and_ICT_2.0.pdf).

<sup>26</sup> BSR, “Legitimate and Meaningful. Stakeholder Engagement in Human Rights Due Diligence: Challenges and Solutions for ICT Companies,” September 2014, [http://www.bsr.org/reports/BSR\\_Rights\\_Holder\\_Engagement.pdf](http://www.bsr.org/reports/BSR_Rights_Holder_Engagement.pdf).



Facebook has partially implemented this principle by consulting with LGBT activists, drag queens and domestic violence organizations. It scores a B for “engagement with stakeholder groups” on digital rights organization Association for Progressive Communications’ report card on social media and violence against women, compared to Twitter’s C and YouTube’s F.<sup>27</sup> This is notable, given ICT companies’ generally poor record in stakeholder engagement. However, without a human rights policy and formal due diligence mechanism, Facebook’s consultations with affected communities are ad hoc and do not necessarily assess its actions against human rights standards. Neither of Facebook’s public statements about its real-name policy and its consultations with community members about it reference human rights.

In a promising acknowledgment of its human rights obligations, Facebook joined the Global Network Initiative (GNI) in 2013. The GNI is a multi-stakeholder initiative (MSI) that includes companies, civil society, investors and academics, and seeks to protect and advance freedom of expression and privacy in the ICT sector. It is a well-regarded MSI, particularly for its accountability framework. Each participating company undergoes an independent third-party assessment every two years to review its compliance with the GNI’s Principles and Implementation Guidelines. If companies are found out of compliance, they develop a corrective action plan and report on their progress.

It is a positive step that Facebook has joined the GNI. Facebook has now publicly committed to respecting the GNI Principles, which include an emphasis on privacy as a human right. They state: “Privacy is important to maintaining personal security, protecting identity and promoting freedom of expression in the digital age... Participating companies will employ protections with respect to personal information in all countries where they operate in order to protect the privacy rights of users.”<sup>28</sup> This can be applied to Facebook users’ rights to protect their identities, including their names. The GNI Implementation Guidelines usefully emphasize the importance of conducting human rights impact assessments and integrating respect for human rights into all business operations.<sup>29</sup>

Unfortunately, the GNI Principles and Implementation Guidelines focus mainly on the relationship between ICT companies and governments. They do not provide much guidance or direction about companies’ relationships with their users outside of the company-government nexus. GNI’s framework also does not include a gender or vulnerability lens, which would be an important tool in holding Facebook accountable for its obligations to specific groups. Despite these limitations, by joining GNI, Facebook has committed to establishing a human rights policy and integrating human rights principles throughout its operations. Advocates can hope that Facebook’s real-name policy will be included in its GNI assessment, and that its GNI membership will impel it to create and publish a human rights policy, undertake human rights

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<sup>27</sup> Association for Progressive Communications, “From Impunity to Justice: Exploring Corporate and Legal Remedies for Technology-Related Violence against Women,” March 2015, <http://www.genderit.org/VAWonline-research>.

<sup>28</sup> Global Network Initiative, “Principles on Freedom of Expression and Privacy,” accessed June 7, 2015, [http://globalnetworkinitiative.org/sites/default/files/GNI\\_-\\_Principles\\_1\\_.pdf](http://globalnetworkinitiative.org/sites/default/files/GNI_-_Principles_1_.pdf).

<sup>29</sup> Global Network Initiative, “Implementation Guidelines for the Principles on Freedom of Expression and Privacy,” accessed June 7, 2015, [http://globalnetworkinitiative.org/sites/default/files/GNI\\_-\\_Implementation\\_Guidelines\\_1\\_.pdf](http://globalnetworkinitiative.org/sites/default/files/GNI_-_Implementation_Guidelines_1_.pdf).

impact assessments, address the risks and gaps identified in those assessments, and report on its human rights impacts, including this issue.

### *Complicity in user actions*

In addition to Facebook's responsibility for the human rights impacts of its own actions, such as the direct barriers to access and privacy violations it creates through its real-name policy, Facebook may also be complicit in facilitating human rights abuses by other users on its site. John Ruggie defines complicity as "the indirect involvement of companies in human rights abuses," which in essence means that "a company knowingly contributed to another actor's abuse of human rights."<sup>30</sup> The Global Compact outlines three types of complicity: direct complicity, beneficial complicity and silent complicity.<sup>31</sup> Complicity is relevant in this case as it is not primarily Facebook employees or algorithms that target users with unusual names. Rather, Facebook allows users to report other users' names as fake through its reporting mechanism. Activists have shared accounts of outwardly transphobic users targeting trans women, sex workers and drag queens by reporting their accounts as invalid. It was apparently one person who caused those hundreds of accounts to be shut down in September 2014. Is Facebook complicit in their actions?

While internet intermediaries like Facebook are generally not held legally liable for third-party content or action on their sites, it is a plausible argument that Facebook is engaged in beneficial complicity. Beneficial complicity is where a company benefits from human rights abuses committed by someone else. The vast majority of Facebook's revenue comes from targeted advertising based on user data.<sup>32</sup> Facebook has a strong business reason to insist on its real-name policy, as it is a crucial component of convincing advertisers that they are reaching real consumers. Technology journalist Reed Albergotti wrote in the Wall Street Journal, "Facebook's advertising product, which will bring in an estimated \$12 billion in revenue this year, rests almost solely on its ability to gather detailed, accurate information about users."<sup>33</sup> Maintaining advertisers' confidence in the quality of that data, including the ability to match Facebook user data with other data sets on real people, is therefore a high priority for the company. It is unlikely that Facebook's motivation for this policy is only financial, as the company has believed since its founding that the use of real names promotes user civility and safety. But there is no doubt that Facebook derives immense financial benefits from this policy that is implemented in large part by its users, making it beneficially complicit in the ensuing negative human rights impacts.

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<sup>30</sup> Human Rights Council, "Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie: Clarifying the Concepts of 'Sphere of Influence' and 'Complicity,'" May 15, 2008, para. 30, <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-companion-report-15-May-2008.pdf>.

<sup>31</sup> United Nations Global Compact, "The Ten Principles of the UN Global Compact," accessed June 27, 2015, <https://www.unglobalcompact.org/what-is-gc/mission/principles/principle-2>.

<sup>32</sup> Facebook, "Facebook Reports Fourth Quarter and Full Year 2014 Results," *Facebook*, January 28, 2015, <http://investor.fb.com/releasedetail.cfm?ReleaseID=893395>.

<sup>33</sup> Reed Albergotti, "Facebook Versus the Drag Queens," *Digits: Tech News and Analysis From the WSJ*, September 12, 2014, <http://blogs.wsj.com/digits/2014/09/12/facebook-versus-the-sisters-of-perpetual-indulgence/>.

## Comparing Facebook’s Policy to Other Social Media Companies

According to a United Nations Educational, Scientific and Cultural Organization report on internet intermediaries, many social networking platforms require users to sign up with their real names.<sup>34</sup> However, besides national social media platforms operating in national contexts that require name authentication, such as South Korea and China, Facebook appears to be alone in its rigid enforcement of a real-name policy and its requirement of documentation. It is also behind the curve of other U.S.-based social media companies that have adjusted their policies in response to user feedback about their harms. A brief survey of comparable social media sites reveals that Facebook’s approach is neither uniform nor necessary.

Most notably, in 2014 Google+ gave up on its real-name policy. Google apologized for taking three years to abandon the policy and for the difficult experiences it caused for its users, acknowledging that the policy had “helped create a community made up of real people, but it also excluded a number of people who wanted to be part of it without using their real names.”<sup>35</sup> There are now no restrictions on the names that people can use. Interestingly, after an outcry about Google+’s name policy when the service launched in 2011, Google made an initial adjustment in January 2012: allowing people to use “established pseudonyms” and nicknames but still requiring evidence of their legal identity and proof that their online identity was meaningful. Digital rights activists Rebecca MacKinnon and Hae-in Lim wrote that Google’s ultimate decision to do away with a real-name policy altogether signaled that “the company now believes the downsides of real-name enforcement—not just the hassle of enforcement, but the message it sends to users about the kind of relationship the company wants to have with them—outweigh the benefits. It also creates a clearer distinction from Facebook, which touts its real-name policy as a way of holding users accountable for their behavior.”<sup>36</sup>

LinkedIn’s User Agreement requires users to use their real names but does not require any proof of documentation.<sup>37</sup> There have not been any activist or media reports of LinkedIn deactivating users’ accounts based on questions about the authenticity of their names. As a social network for professionals, LinkedIn exemplifies how a social media platform that seeks to connect people both online and offline does not need to enforce a strict verification policy—it can trust its users to use the names that best represent their authentic identities. This is yet another distinction from Facebook’s policy, demonstrating that it is unnecessary.

## Balancing User Safety with the Rights to Privacy and Expression

Online identity and safety is a complicated and controversial issue. Because Facebook’s public justification for its real-name policy is that it is necessary to ensure user safety, it is worth examining this argument in detail. Advocates for real-name policies argue that real names create a more civil environment, promote more positive user behavior, and prevent stalking and

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<sup>34</sup> MacKinnon et al., “Fostering Freedom Online: The Role of Internet Intermediaries,” 154.

<sup>35</sup> Google+, June 15, 2014, <https://plus.google.com/+googleplus/posts/V5XkYQYYJqy>.

<sup>36</sup> Rebecca MacKinnon and Hae-in Lim, “Google Plus Finally Gives Up on Its Ineffective, Dangerous Real-Name Policy,” *Slate*, July 17, 2014, [http://www.slate.com/blogs/future\\_tense/2014/07/17/google\\_plus\\_finally\\_ditches\\_its\\_ineffective\\_dangerous\\_real\\_name\\_policy.html](http://www.slate.com/blogs/future_tense/2014/07/17/google_plus_finally_ditches_its_ineffective_dangerous_real_name_policy.html).

<sup>37</sup> LinkedIn, “User Agreement,” accessed June 27, 2015, <https://www.linkedin.com/legal/user-agreement>.

harassment by making it easier to hold offenders accountable. They counter the “online disinhibition effect,” where social norms that regulate offline behavior are relaxed online.<sup>38</sup> It is true that social media companies need to grapple with how to keep women, youth and other vulnerable groups safe online. Technology-related gender-based violence is a serious problem that Facebook and other internet intermediaries need to address.

However, research about online identity has shown that real-name policies are not as effective as Facebook and others claim. There appears to be a significant difference between anonymity and pseudonymity, for example. Online commenting platform Disqus conducted an analysis of 500 million comments by 60 million users and found that pseudonym users contribute the highest quality and quantity of comments—even better than users using their real names—while anonymous users were more likely to engage in negative behavior.<sup>39</sup> Another study by Carnegie Mellon professors on a South Korean platform reached similar conclusions.<sup>40</sup> Allowing users to control their identity and expression via pseudonyms appears to support their digital participation without increasing risks for others.

Compared to other social media platforms, Facebook rates poorly but ahead of its peers in its efforts to combat violence on its site. In overall scoring on social media platforms’ work to address technology-related violence against women, Facebook received a D+, compared to Twitter and YouTube’s Fs.<sup>41</sup> However, even with its real-name policy in place, there continues to be rampant violence and abuse on Facebook. A report from the National Network to End Domestic Violence found that Facebook is the most misused social media site by abusers.<sup>42</sup> This may simply be because of its ubiquity, but it may also be because it is easy to find targets for abuse by searching for their names.

Facebook’s policy has to strike a balance between two issues: promoting user safety while protecting the rights to privacy and expression. In order to justify its real-name policy, given the harms it causes, Facebook would need to provide an evidence-based rationale that demonstrates that the policy actually improves user safety. For example, why is it necessary for users to be able to report entire accounts as fake? Why not only allow people to report abusive behavior or content? To date, Facebook has failed to provide a sufficient rationale that justifies the restriction of people’s privacy, expression and association. Facebook has also not addressed the contradiction inherent in its rationale, which is that pseudonyms are actually necessary for many constituencies to protect their safety online.

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<sup>38</sup> John Suler, “The Online Disinhibition Effect,” *CyberPsychology & Behavior* 7, no. 3 (June 2004): 321–326, doi:10.1089/1094931041291295.

<sup>39</sup> Disqus, “Pseudonyms,” *Company Blog*, January 10, 2012, <http://blog.disqus.com/post/15638234811/pseudonyms>.

<sup>40</sup> MacKinnon and Lim, “Google Plus Finally Gives Up on Its Ineffective, Dangerous Real-Name Policy.”

<sup>41</sup> Association for Progressive Communications, “From Impunity to Justice: Exploring Corporate and Legal Remedies for Technology-Related Violence against Women.”

<sup>42</sup> National Network to End Domestic Violence, “A Glimpse From the Field: How Abusers Are Misusing Technology,” 2014, [http://static1.squarespace.com/static/51dc541ce4b03ebab8c5c88c/t/54e3d1b6e4b08500fcb455a0/1424216502058/NNEDV\\_Glimpse+From+the+Field+-+2014.pdf](http://static1.squarespace.com/static/51dc541ce4b03ebab8c5c88c/t/54e3d1b6e4b08500fcb455a0/1424216502058/NNEDV_Glimpse+From+the+Field+-+2014.pdf).

## Conclusion

Based on a review of the human rights impacts of Facebook's real-name policy and an assessment of its response against the business and human rights standards laid out in the Guiding Principles, it is clear that Facebook has not lived up to its corporate responsibility to respect human rights. Being able to control one's identity and expression is a fundamental precondition to the protection and exercise of human rights online; it is in fact a key component of online safety for queer, trans, youth and other communities. Facebook has not given due attention to the implications of its policy on the abilities of those and other groups, including survivors of violence, to use its site freely and safely. Particularly given Google+'s shift away from its prior real-name policy, Facebook is increasingly alone in its insistence on real names. Now that it has joined the GNI, Facebook should make public human rights commitments and remedy this issue.