

This memorandum was written in collaboration with RadioPublic, a podcast-host startup and Public Benefit Corporation. Although the issues considered in this memorandum are applicable to many content platforms, we have kept in mind the specific challenges that young, fast-growing companies like RadioPublic—with a public mission—may face. RadioPublic functions as a platform by connecting listeners to a podcast’s RSS feed, and does not host any content. Although RadioPublic indexes some podcasts in a catalog with a search function, technically any podcast with an RSS feed can be played through the platform, without any affirmative action on the part of RadioPublic.

MEMORANDUM ON CONTENT REGULATION BY PODCAST PLATFORMS

November 29, 2018

1. INTRODUCTION

This memorandum will outline options for approaching content regulation on a podcast-hosting platform. By “content regulation,” we mean in particular how—if at all—to remove or restrict podcasts that contain hate speech. Online hate speech, and the role that content platforms have in regulating it, is a complicated and loaded issue, with practical, ethical, and philosophical dimensions. This memorandum will provide an analysis of the current content regulation landscape. It will present various strategies and examples of regulation, identifying the pros and cons of each. We focus here not on specific language for content terms of use, but instead on broad policy goals.

The memorandum will begin by describing the issues and difficulties that platforms face with content regulation by using the Alex Jones controversy as a case study. Next, we will outline how various podcast platforms—Apple, Spotify, Pandora, Google/YouTube, and Stitcher—handle content regulation, mainly by analyzing the terms of their content policies. Finally, we discuss the various paths that platforms can take to address offensive speech in podcasts, including the practical and ethical implications of each option.

1.1. The Alex Jones Story

Online speech and digital content regulation emerged prominently into the public discourse in 2018 with the controversy over Alex Jones and his radio show, Infowars. The right-wing personality and frequent conspiracy theorist was banned from most online platforms over the course of just a few weeks this summer. Jones, whose YouTube channel reached more than 2.4 million subscribers at its peak,¹ is known for his incendiary, hateful, and often bigoted commentary. But the platforms that banned him did not all do so for a single defined incident. Though podcast platforms cited terms of their content policies when removing content, they did not articulate how exactly Jones's speech violated those terms. The manner in which platforms removed Alex Jones's content sparked a national controversy about free speech on the internet and the role of tech companies—especially those large entities who collectively control the majority of online content—in regulating speech. The story illustrates well the challenges of content regulation.

YouTube became the first platform to limit Jones in July 2018. On July 24, YouTube removed four of Jones's videos and issued him a “strike” for hate speech and child endangerment.² Two of the videos contained hate speech against Muslims, a third contained hate speech against transgender people, and a fourth included a grown man pushing a child. YouTube accompanied the move with a statement saying that it has a long-standing policy against such content, and that it applies its policies consistently regardless of the speaker or the channel. The strike came with a ban on live broadcasting for 90 days.

Just a few days later, Facebook took action, suspending Alex Jones's personal account—but not the Infowars page—for 30 days for violating its community standards against hate speech and bullying.³ The response appeared to be a reaction to the same four videos that caused YouTube to flag Jones's channel. Although Facebook had apparently warned Jones of his inappropriate content in advance of the suspension, Vice President of Product Fidgi Simo had also previously defended allowing Jones on the platform, noting “the hard job of trying to find a sense of balance between freedom of expression and safety.”⁴

¹ <https://socialblade.com/youtube/c/infowars>

² <https://www.theverge.com/2018/7/25/17613492/youtube-alex-jones-strike-hate-speech-child-endangerment>

³ <https://variety.com/2018/digital/news/facebook-bans-infowars-alex-jones-hate-speech-1202887980/>

⁴ <https://variety.com/2018/digital/news/facebook-bans-infowars-alex-jones-hate-speech-1202887980/>

Facebook and YouTube’s actions were characterized by some as gradual, limited measures. Commentators called the moves “wrist slaps” and questioned why the platforms had not acted sooner, and why they had not banned Jones outright.⁵ Mark Zuckerberg said in an interview at the time that the decision to allow abhorrent content “gets down to this principle of giving people a voice,” and gave a widely criticized example of the importance of allowing Holocaust deniers to speak freely.⁶

After Facebook and YouTube’s takedowns, Alex Jones informed his social media followers that his podcasts remained on Spotify, prompting Spotify to remove some of his episodes on August 2.⁷ The streaming service confirmed that certain content of Jones’s violated its hate content policy, which justified the removals. It did not get into specifics, nor did it list the episodes that had been removed.⁸ A day later, Stitcher removed his podcast channel from its platform entirely, citing multiple instances of “harassment of private individuals and organizations.”⁹ This made Stitcher the first service to ban Jones and Infowars outright, rather than removing selected episodes or video clips.

The most dramatic action against Alex Jones came on August 6. Apple removed all of the content for five out of Infowars’ six podcasts—including the *Alex Jones Show*—from iTunes and its Podcasts app directory.¹⁰ Almost immediately, Facebook and YouTube also banned Alex Jones and removed all of his content. Also on August 6, Spotify took down all of Jones’s podcasts that remained on their platform.¹¹

Apple justified its move by saying that it “does not tolerate hate speech, and we have clear guidelines that creators and developers must follow to ensure we provide a safe environment for all of our users.”¹² Facebook released a

⁵ <https://www.nytimes.com/2018/08/06/technology/infowars-alex-jones-apple-facebook-spotify.html>

⁶ <https://www.nytimes.com/2018/08/06/technology/infowars-alex-jones-apple-facebook-spotify.html>

⁷ <https://www.npr.org/2018/08/02/634998447/spotify-pulls-some-alex-jones-podcast-episodes>

⁸ <https://www.npr.org/2018/08/02/634998447/spotify-pulls-some-alex-jones-podcast-episodes>

⁹ <https://www.billboard.com/articles/business/8468635/stitcher-alex-jones-podcast-removes-infowars-spotify-facebook-youtube>

¹⁰ <https://www.buzzfeednews.com/article/johnpaczkowski/apple-is-removing-alex-jones-and-infowars-podcasts-from>

¹¹ <https://www.nytimes.com/2018/08/06/technology/infowars-alex-jones-apple-facebook-spotify.html>

¹² <https://www.buzzfeednews.com/article/johnpaczkowski/apple-is-removing-alex-jones-and-infowars-podcasts-from>

lengthy press release accompanying its ban,¹³ in which it said the content was removed “for glorifying violence, which violates our graphic violence policy, and using dehumanizing language to describe people who are transgender, Muslims and immigrants, which violates our hate speech policies.”¹⁴ Notably, Facebook clarified that the ban was due to hate speech and bullying, not false speech. YouTube stated that it terminates accounts that repeatedly violate policies against hate speech and harassment.¹⁵ Spotify also justified Jones’ removal for “repeated violations of Spotify’s prohibited content policies”—without clarifying what those violations were.¹⁶

Although Apple removed Alex Jones’s content from iTunes and Podcasts, the Infowars app remained on the App Store.¹⁷ Through the app, users could access the same podcasts and other content that Apple had just removed from Podcasts. A few days after the ban, the Infowars app became the #3 trending news app on the App Store.¹⁸ An internal Apple review had apparently cleared the Infowars app, and although the App Store and Podcasts have slightly different content policies (more on this in Section 2.1 below), both could conceivably warrant banning Jones.

On September 6, a month after Apple, Facebook, YouTube, and Spotify acted, Twitter permanently suspended Alex Jones.¹⁹ Twitter had been the lone holdout among major social media platforms, prompting criticism. The move came apparently in response to Jones’s harassing and threatening of Senator Marco Rubio on Capitol Hill, a video of which Jones had tweeted—in addition to “the accounts’ past violations.”²⁰

Twitter’s decision may have given cover for Apple to act: on September 7, the Infowars app was removed from the App Store.²¹ The company cited its policy prohibiting content that is “offensive, insensitive, upsetting, intended

¹³ Facebook made its move hastily in response to Apple, but its carefully worded statement suggests that it had been preparing for such a move for some time.

¹⁴ <https://newsroom.fb.com/news/2018/08/enforcing-our-community-standards/>

¹⁵ <https://twitter.com/cwarzel/status/1026502736685068288>

¹⁶ <https://www.theguardian.com/technology/2018/aug/06/apple-removes-podcasts-infowars-alex-jones>

¹⁷ <https://www.buzzfeednews.com/article/charliewarzel/despite-violating-hate-speech-policies-apple-has-not>

¹⁸ <https://www.nytimes.com/2018/08/08/technology/infowars-app-trending.html>

¹⁹ <https://www.npr.org/2018/09/06/645352618/twitter-bans-alex-jones-and-infowars-cites-abusive-behavior>

²⁰ <https://www.npr.org/2018/09/06/645352618/twitter-bans-alex-jones-and-infowars-cites-abusive-behavior>

²¹ <https://www.nytimes.com/2018/09/07/business/infowars-app-alex-jones-apple-ban.html>

to disgust or in exceptionally poor taste,” but gave no other explanation for the takedown or its timing.²²

The Infowars app remains available on Google Play as of this writing.

The Alex Jones story is notable for a few reasons. In removing Infowars content, platforms rarely provided a granular analysis of the basis for their decisions. They usually did not refer to specific speech that violated a specific term of their policy. When actions did appear to come in response to particular content—either implicitly or explicitly—it was usually content that was no more offensive, threatening, or hateful than previous statements by Jones that had gone unregulated.²³ The timing of companies’ decisions suggests that they may have been made more in response to the actions of other companies and public sentiment, rather than based independent, ongoing assessment of the content.²⁴ All of this reveals how the current state of online content regulation is unsettled. As a result, while platforms banned Alex Jones for violating their content policies, their interpretations and enforcement of those policies appear arbitrary to some degree.

2. PODCAST PLATFORMS’ CONTENT RESTRICTION POLICIES

2.1. Apple

Apple Podcasts does not “host” podcasts, but rather connects users to a podcast RSS feed. Podcasters can submit their feed to be listed in the directory, which Apple then reviews for approval. Apple has by far the largest base of podcast listeners of any platform, with over 50% market share.²⁵

Apple Podcasts has one of the vaguest content policies of any podcast-hosting platform. Under the Podcasts heading in its “iTunes Connect: Resources and Help” are FAQs for everything from “How do I submit my podcast feed?” to “Why was my podcast removed or rejected?”²⁶ For the latter question, Apple includes the following response:

Podcasts, and content linked from podcasts, cannot contain any of the following:

²² <https://www.nytimes.com/2018/09/07/business/infowars-app-alex-jones-apple-ban.html>

²³ <https://www.prnewsonline.com/twitter-alex-jones-ban>

²⁴ <https://www.nytimes.com/2018/08/07/technology/tech-companies-online-speech.html?rref=collection%2Fsectioncollection%2Ftechnology&action=click&contentCollection=technology®ion=rank&module=Uisil&version=highlights&contentPlacement=2&pgtype=sectionfront>

²⁵ <https://powerpresspodcast.com/2017/06/14/podcast-statistics-us-2017/>

²⁶ <http://itunespartner.apple.com/en/podcasts/faq>

...

- References to illegal drugs, profanity, or violence in the podcast title, description, or artwork
- Content that could be construed as racist, misogynist, or homophobic
- Content depicting graphic sex, violence, gore, illegal drugs, or hate themes

Apple does not define what could be “construed” as racist, misogynist, or homophobic, nor what “hate themes” are. The only protected classes it distinguishes are race, gender, and sexual orientation. Unlike many other Terms of Service, it does not explicitly list particular ethnicities, religions, nationalities, gender identities, or ages as subjects protected from hate speech. However, the term “hate themes” is very broad, and phrasing the restriction as against content that can be “construed as racist,” rather than those that “promote hate based on race” arguably allows for a broader interpretation.

The Apple App Store has different terms of use from the Podcasts platform. This is noteworthy because, for a time, Alex Jones was removed from Podcasts while the Infowars app remained on the App Store, despite having much of the same content. The App Store “guidelines” are much more detailed than the FAQs for Podcasts. They begin with a preface that speaks to their philosophy of content regulation:

We strongly support all points of view being represented on the App Store, as long as the apps are respectful to users with differing opinions and the quality of the app experience is great. We will reject apps for any content 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.

The guidelines include a relevant section on “objectionable content”:

1.1 Objectionable Content

Apps should not include content that is offensive, insensitive, upsetting, intended to disgust, or in exceptionally poor taste. Examples of such content include:

- 1.1.1** Defamatory, discriminatory, or mean-spirited content, including references or commentary about religion, race,

sexual orientation, gender, national/ethnic origin, or other targeted groups, particularly if the app is likely to humiliate, intimidate, or place a targeted individual or group in harm's way. Professional political satirists and humorists are generally exempt from this requirement.

- 1.1.2** Realistic portrayals of people or animals being killed, maimed, tortured, or abused, or content that encourages violence. "Enemies" within the context of a game cannot solely target a specific race, culture, real government, corporation, or any other real entity.
- 1.1.3** Depictions that encourage illegal or reckless use of weapons and dangerous objects, or facilitate the purchase of firearms.
- 1.1.4** Overtly sexual or pornographic material, defined by Webster's Dictionary as "explicit descriptions or displays of sexual organs or activities intended to stimulate erotic rather than aesthetic or emotional feelings."
- 1.1.5** Inflammatory religious commentary or inaccurate or misleading quotations of religious texts.
- 1.1.6** False information and features, including inaccurate device data or trick/joke functionality, such as fake location trackers. Stating that the app is "for entertainment purposes" won't overcome this guideline. Apps that enable anonymous or prank phone calls or SMS/MMS messaging will be rejected.²⁷

Here, Apple gives many more specifics of prohibited content, including protected classes and a dictionary definition of sexual material. But it also still includes broad umbrella terms like "offensive, insensitive, upsetting... [and] mean-spirited content."

The App Store guidelines contain some ways that regulation might be limited, including most notably, an exemption for political satirists and humorists from the ban on mean-spirited content. The definition of sexual material is also

²⁷ <https://developer.apple.com/app-store/review/guidelines/#objectionable-content>

relatively narrow. It is unclear what may have allowed Alex Jones to remain on the App Store even while he was removed from Podcasts, but it possibly could have been the exemption for satirists.

2.2. Spotify

Spotify is the second leading podcast platform. Unlike Apple, however, Spotify provides users direct access to copies of content it holds, rather than merely providing a channel to an RSS feed.

Spotify's modern approach to regulating content began in May 2018. Spotify rolled out a policy on hate content and hateful conduct, which gave it the right to "remove (in consultation with rights holders) or refrain from promoting or playlisting [objectionable content] on our service" if it identified hate content or deemed that the artist had engaged in hateful conduct.²⁸ In the announcement, Spotify noted that it would classify hate content with the help of several rights advocacy groups, an internal content monitoring tool, and user feedback.²⁹

The next month, the streaming platform was forced to issue a follow-up statement in response to backlash about the policy's vague language, especially surrounding artist conduct. As a result, Spotify essentially retracted the hateful conduct part of the policy. The blog post announcing the policy change noted, "While we believe our intentions were good, the language was too vague, we created confusion and concern, and didn't spend enough time getting input from our own team and key partners before sharing new guidelines."³⁰ The policy now reads:

We do not permit hate content on Spotify. When we are alerted to content that violates this standard, we will remove it from the platform. If you believe a piece of content violates our hate content policy, complete the form here and we will carefully review it against our policy. We are also continuing to develop and implement content monitoring technology which identifies content on our service that has been flagged as hate content on specific international registers.³¹

²⁸ <https://newsroom.spotify.com/2018-05-10/spotify-announces-new-hate-content-and-hateful-conduct-public-policy/>

²⁹ <https://newsroom.spotify.com/2018-05-10/spotify-announces-new-hate-content-and-hateful-conduct-public-policy/>

³⁰ <https://newsroom.spotify.com/2018-05-10/spotify-announces-new-hate-content-and-hateful-conduct-public-policy/>

³¹ <https://artists.spotify.com/faq/music#what-content-is-prohibited-on-spotify>

Spotify defines hate content as that which “expressly and principally promotes, advocates, or incites hatred or violence against a group or individual based on characteristics, including, race, religion, gender identity, sex, ethnicity, nationality, sexual orientation, veteran status, or disability.”³² The policy also lists infringing content, illegal content, explicit content, and hate content as prohibited, but does not include any mention of artists’ hateful conduct.

2.3. Pandora

Pandora is traditionally a music platform, and more specifically, an online radio or “music discovery” service. It currently also hosts four podcasts.³³ Recently, Pandora has launched a beta version of the “Podcast Genome Project,” analogous to its “Music Genome Project,” which will allow users to discover new podcasts—including by individual episode—based on listening habits.³⁴ Though not yet available to the general public, the new platform represents an aggressive expansion for Pandora into the podcast market.

Pandora has a “Community & Content Policy” which includes the following language:

Sexually Explicit and Pornographic Materials

Do not post or distribute messages or other content that contains nudity, sexual acts, or sexually explicit materials. Do not post links to pornographic sites or sites that contain pornography.

Hate Speech

Do not post or distribute messages or other content that promotes hatred or violence toward groups of people based on their race, ethnicity, religion, disability, gender, age, marital status, veteran status, sexual orientation, or gender identity.

...

³² <https://artists.spotify.com/faq/music#what-content-is-prohibited-on-spotify>

³³ https://help.pandora.com/s/article/Listen-to-Podcasts?language=en_US

³⁴ <https://www.rollingstone.com/music/music-news/pandora-podcast-music-genome-project-755506/>

False & Misleading Content

Do not post or distribute content on the Services or through its features that is intentionally false or is intended to mislead or deceive others.³⁵

The policy includes language prohibiting hate speech towards protected classes and sexually explicit content, without additional examples, definitions, or exemptions. Without broad catch-all terms, its hate speech prohibition is relatively narrow—although it also does not include exemptions for satirists. With respect to sexual content, Pandora is broader in that it does not define the boundaries of “sexually explicit material.”

2.4. Stitcher

Stitcher is a podcast hosting platform, similar to Apple Podcasts in its basic functionality. Unlike Apple though, Stitcher acquires its own content, allowing the platform to moderate and curate at the episode level.³⁶ Podcasts must apply to be hosted by Stitcher, resulting in a more limited or curated universe, rather than the full array of podcasts that can be found on Apple. Stitcher is much more modest than the other platforms listed here in terms of size (with 50-200 employees³⁷) and resources, although like them it still claims no public benefit purpose.

Stitcher states its terms of service that it “may, but [has] no obligation to, remove content that [it] determine[s] in [its] sole discretion to be unlawful, offensive, threatening, libelous, defamatory, obscene or otherwise objectionable or violates any party’s intellectual property or these Terms of Service.”³⁸ The terms are unique from those of its peers for the explicit disclaimer—within the content policy itself—that Stitcher has no obligation to remove violating content.

3. COMPARISON AND ANALYSIS OF THE POLICIES

The policies described here range in terms of their expansiveness and specificity. On the vague and inclusive end of the spectrum is Apple Podcasts. Keeping the prohibitions very broad allows Apple to take down almost any content it wants and to justify doing so by the terms of its policy, but it also makes it difficult for Apple to articulate consistent rules and for its users to predict its future actions. On the other end of the spectrum,

³⁵ <https://www.pandora.com/legal/community-content-policy/>

³⁶ <https://daringfireball.net/linked/2016/06/06/midroll-stitcher>

³⁷ <https://www.linkedin.com/company/stitcher>

³⁸ <https://www.stitcher.com/terms>

Pandora’s policy has a much more defined scope: limiting offensive content to hate speech against certain protected classes, and eschewing umbrella terms while also declining to provide exemptions. These limiting principles demonstrate specificity and restraint, which should lead to greater predictability, but also may allow objectionable content to remain on the platform.³⁹

Apple’s App Store and Spotify attempt a hybrid approach. They define hate speech through protected classes, but offer them as non-exclusive examples underneath broader catch-all terms. Both platforms also reserve significant flexibility in terms of removing content. The differences between how the platforms function may inform the differences in how each preserves flexibility. Because Spotify, unlike Apple, creates its own copy and functions as a content host, it has the ability to remove individual pieces of content at the episode level. Thus, it warns users that when it is alerted of violations, it will delete violating content and reserves the right to totally remove repeat offenders. This option is unavailable to Apple, which functions as an indexing service and regulates at the RSS feed level. Apple’s more subjective policy, which relies on a determination that content could be perceived as objectionable rather than on an objective assessment, may be due to the lesser degree of control it exerts over content at the episode level.

Articulating more specific prohibitions provides better notice to developers, internal reviewers, and the public at large as to what type of content will be removed, while the umbrella terms still grant the platforms leeway to remove any content they subjectively find offensive. But the more specific the rules—even if only given as examples—the higher the risk the platforms will face criticism if they do not consistently apply them. The App Store’s “I know it when I see it” approach in particular can undermine attempts to articulate specific guidance.

Stitcher’s qualification that it has no obligation to take down content—even when it violates the policy provides cover for when Stitcher simply cannot identify all instances of offensive content. But it also injects a sense of arbitrariness to the policy, and could be perceived by some users as an inadequate safeguard against truly objectionable content.

In general, the policies discussed here present a clear tradeoff between flexibility and consistency. Platforms may choose language that grants them a significant amount of discretion in deeming content to be in violation, but in doing so they risk criticism that their policies are arbitrary and difficult to follow. Platforms could also articulate more specific definitions of offensive conduct, but then may find themselves in a difficult situation when the public

³⁹ This may be less problematic for Pandora than other platforms discussed here, as they are only offering a small number of pre-approved podcasts rather than an exhaustive library.

calls for the removal of content that does not fit within an established narrow definition.

4. OPTIONS FOR CONTENT REGULATION

4.1. Do nothing

The technologically easiest and clearest option any podcast platform has is to do nothing. Do not remove content, do not alter recommendation algorithms, do not regulate paid podcasts, etc. Rather than making a judgment about what constitutes acceptable speech and what does not, the platform can opt out of the decision-making process and allow all content to exist equally on its platform.

The Electronic Frontier Foundation (EFF) espouses this position, arguing against “intermediaries”—that is, those platforms that do not generate content—regulating speech.⁴⁰ EFF’s legal director, Corynne McSherry, says that “the last thing we should be doing is having intermediaries deputizing themselves to make decisions about what’s OK.”⁴¹

Infrastructure host Cloudflare, whose terms of use do not mention hateful content but do reserve the right to terminate service for any reason, opted to take action against neo-Nazi site the Daily Stormer in 2017. In hindsight, it seems that CEO Matthew Prince believes that was the wrong decision. Cloudflare’s decision was contentious in large part because by denying service to the Daily Stormer it effectively banned the site from the internet. The implications of a podcast platform’s decision will be contained to the platform, and users may have access to content it bans through other means. Still, the decision not to patrol podcast content should be considered in the broader context of the platform’s mission (especially if that mission has been made public) and resources.

The aftermath of Cloudflare’s decision exemplifies the benefits of the do-nothing approach. Since writing about its decision to remove the Daily Stormer, Cloudflare has “received more than 7,000 complaints about sites in its network,” the strangest about “a totally nonpartisan cooking blog.”⁴² Prince has since stated that “we’re going to err on the side of being neutral and not do what we did to the Daily Stormer again.”⁴³ Writing in the Wall Street Journal, Prince said “terminating the Daily Stormer is likely to be the

⁴⁰ <https://www.eff.org/deeplinks/2017/01/eff-court-dont-undermine-legal-protections-online-platforms-enable-free-speech>

⁴¹ <https://www.wired.com/story/free-speech-issue-cloudflare/>

⁴² <https://www.wired.com/story/free-speech-issue-cloudflare/>

⁴³ <https://www.wired.com/story/free-speech-issue-cloudflare/>

exception that proves the importance of content neutrality. My moral compass alone should not determine who gets to stay online.”⁴⁴ We discuss Cloudflare as an example of the strengths and weaknesses of the do-nothing approach, but we are cognizant of the numerous differences between it and the platforms, which we began to discuss above. Podcast platforms differ from Cloudflare, notably because Cloudflare’s label is not as prominent to users. In fact, Cloudflare users may not be aware that they are enjoying Cloudflare’s services. Cloudflare’s desire to be content neutral might be more feasible given that its brand is not placed next to objectionable content; if a podcast platform’s brand is, the potential to associate objectionable content with it poses a greater risk.

4.2. **Stop affirmative promotion, but leave content in the catalog and search index**

Short of doing nothing, a podcast platform could decide that podcasts with objectionable content are not eligible to participate in a promotional program or editorial curation, while otherwise keeping the content fully listed on the platform.

On the free speech front, this position allows the platform to take a more balanced moral stand than doing nothing: it will not take part in promoting hate speech, but will not censor it either. The advantage here is the ability to take the high ground on both fronts. The platform can claim disassociation with hate speech, while taking a strong stance on not censoring any speech. In other words, the platform will not employ its “services”—i.e., the ways it assists listeners in finding content of their liking—for the benefit of hate speakers, but it won’t limit the access of its “tool”—the bare mechanism through which a listener plays a podcast—either.

Another advantage of this approach, at least as applied to a promotional program and hand-curation, is that the platform likely already affirmatively reviews this content. The extra cost to flagging those that apply for promotion as objectionable, and therefore blocking the promotion, would be minimal. The platform would not have to institute any significant changes to the review process to enforce the policy.

On other hand, critics can still point to the platform as providing a forum for hate speech. Arguably, by even allowing users to find the content, the platform is providing a service to hate speakers. Relatively very few podcasts receive promotional listens or hand curated promotion, so the censure may be seen as a minor wrist slap. Especially if automated algorithms still recommend the content to users, listeners may not perceive much of an

⁴⁴ <https://www.wsj.com/articles/was-i-right-to-pull-the-plug-on-a-nazi-website-1503440771>

effect from this punishment. Podcasts deemed objectionable would remain not only searchable, but also discoverable on the platform.

4.3. Stop all promotion, including algorithmic recommendation, but leave content in catalog

This option is similar to the one above, but goes a step further: the platform will prevent offensive content from benefiting from any recommendation algorithm. Listeners would only be able to find such podcasts by typing the title into the search bar.

As compared to the previous option, the platform's disassociation from the content would be clearer. The risk of listeners attributing a "suggested" podcast to the platform itself, even when the suggestion is automatic and its staff took no knowing steps to promote it, would be gone. Also, only listeners who actively seek out the content would generally be able to listen—the risk of someone stumbling upon hate speech would be significantly diminished. This also allows for a consistent stance on the free speech dimension: we will not impede anyone from accessing hate speech who wants to, but we will not be complicit in its spread either.

But the cost of this level of regulation would be much higher. At this point, the regulation would be affecting podcasts that are not already being individually reviewed by staff. For small companies, independently reviewing all podcasts in the catalog to identify objectionable content would be impossible, especially as audio material is notoriously difficult to accurately scan for content. Rigorously and objectively enforcing a content policy that requires affirmatively identifying content would be a very difficult task. This problem is shared by all the regulation options from here on down.

The platform could still enact a policy that applies to podcasts not actively reviewed, and rely on users or the press to flag content for its attention. But this approach has two downsides. First, content with large audiences would be disproportionately targeted, while those with few listeners would stand a higher chance of going unnoticed and remaining on the platform. If the goal is to simply limit the reach of hate speech overall, this wouldn't be an issue. But if the goal is to have a policy that can be applied equally and fairly to all podcasts—large or small—the approach would fail to achieve that goal. And second, relying on user feedback could, depending on volume, end up creating a daunting review process in itself, similar to how Facebook employs tens of thousands of people to simply review the content that users have flagged.

4.4. Remove from the catalog and search index but allow direct access through URL

The distinction between a platform’s tools—the application itself—and services, like a promotional program, recommendation algorithm, search index, etc., is useful here. A platform can choose to keep its tool (the app and podcast player) open to all content creators while choosing to associate its services with podcasters who reflect the values it was built on. Providing an unfiltered tool gives the platform the flexibility to respond to public pressure to remove objectionable content and creators,⁴⁵ though it also gives it some responsibility to monitor content if it wishes to have even application of its policy—along with all the challenges previously discussed that come with monitoring content.

Removing content from the catalog and search index altogether would be taking a hard stance on the tool/service dichotomy. “Banned” podcasts could still be accessed through a URL pointing to the feed, and podcasters and users could post a platform’s link to any such feed on their websites and social media. The basic tool—a means through which to listen to content—would remain technically accessible. But the primary services that platforms provide—a convenient ability to find, discover, access, and monetize podcasts—would be blocked. The ethical balance would be similar to that in the previous section, but with the scales tipped more towards regulation and away from free speech.

Taking content off of the catalog also takes a stronger stance on disassociation from objectionable speech. Much more so than stopping affirmative promotion, catalog removal reduces the risk that the speech will be attributed to a platform, or that the platform will be seen as supporting it. But as long as the platform still provides a mechanism to listen to the speech, the disassociation is not complete. Listeners could still see the platform’s brand on an embed player or a URL on the platform’s domain when accessing the offensive podcast.

4.5. Block access on the platform altogether

On the other end of the free speech spectrum is the option of blocking access to objectionable content entirely. The approach takes the strong stance that certain speech is not worthy of protection whatsoever and should be banned. This is a morally defensible position; many countries and

⁴⁵ “Firing a Nazi customer gets you glowing notes from around the world thanking you for standing up to hate” (<https://www.wsj.com/articles/was-i-right-to-pull-the-plug-on-a-nazi-website-1503440771>).

commentators believe that hate speech is beyond the pale of free speech protection and can be banned outright.⁴⁶ And the platform would be completely disassociating itself from speech that violates its values. However, any notion of the company as a free and open platform would be surrendered.

There may be technical challenges to this as well. Some platforms operate to allow any podcast with an RSS feed to be played, without any action taken by the platform. Affirmatively blocking any feed from using this tool may be technically difficult, if not practically unfeasible.

The difficulty of reviewing content for removal is even more complicated at this level. Assuming that it is impossible for a platform to proactively and independently block offensive conduct, content slipping through the cracks and remaining on the platform would be especially inconsistent with a zero-tolerance policy. An outright ban derives from the principle that certain content should never be heard on the platform. This notion theoretically should call for the most robust review process, to ensure that such content is indeed never heard. Depending on the resources at the company's disposal, it may be incapable of having such a review process.

4.6. Hybrid options

A platform's content policy could take a tiered approach, in that different standards apply to different levels of the platform. A single offensive comment does not have to get the podcast banned from the catalog, but a trend of hateful speech can, for example. One can imagine that one strike would get the podcast kicked off of paid promotion, but three strikes would get it banned from the catalog (or even blocked access). The severity of the punishment could also depend on how qualitatively objectionable the speech is, rather than the number of instances of offensive speech.

A hybrid approach would be more nuanced and tailored, but this comes with challenges. As discussed above, policies with more specificity often can be more difficult to administer when content falls into a gray area.

A possible way to offset the difficulty with drafting a nuanced, detailed policy would be to follow Spotify's example and reach out to human rights advocacy groups for help classifying hate content.

⁴⁶ E.g., Germany recently enacted a law banning hate speech in social media—and handing platforms a hefty fine if they do not remove it:
<https://www.engadget.com/2017/10/02/germany-enacts-law-limiting-online-hate-speech/>

5. CONCLUSION

According to EFF's executive director Cindy Cohn, if platforms "get into the business of removing customers over complaints about speech, it will have a disproportionate effect on those who already have faint voices."⁴⁷ Still, even if platforms wish to remain neutral in order to maintain the premise of supporting diverse viewpoints in an open ecosystem, not taking action to limit the promotion of or access to offensive content could be construed as taking a stance in favor of that content.

All podcast platforms hold considerable power as gatekeepers. The major platforms' response to the Alex Jones controversy revealed the difficulties with content regulation, especially the tendency for policies to be vaguely and unevenly applied. Going forward, podcast platforms have the chance to approach the conversation with nuance when crafting policies on hate content with hindsight to the public furor earlier this year. Given the growing reach and influence of podcasting as a mainstream media ecosystem, it is likely that these issues and tensions will become more pronounced as the stakes get higher.

⁴⁷ <http://fortune.com/2018/08/17/infowars-videos-podcasts-social-website/>