



Overview:

Companies must understand how their product/service access and use policies impact the freedom of individuals and groups to publicly voice diverse viewpoints, operate businesses and nonprofits consistent with a wide array of beliefs, and participate equally in the marketplace. While it's common for companies to require customers/users to comply with certain standards as a condition of using their products and services (e.g., prohibiting certain illegal or unethical practices such as using a product/service to commit fraud or violate intellectual property rights) businesses must guard against including terms that could be used to unduly restrict stakeholders' speech or expressive activity.

Relevant Policies or Practices:

Any policy or requirement that conditions access/use of a product or service on adherence to certain standards of conduct or speech. Depending on the company and industry, this might include:

- non-discrimination, harassment, or bullying policies,
- terms of use/service,
- content moderation policies/guidelines,
- e-commerce marketplace seller guidelines/standards,
- algorithmic system use policies,
- ad content policies,
- ad targeting policies,
- risk avoidance/risk mitigation/identifying and managing social risks or impacts/social risk policies,
- code of ethics, and
- human rights policies.

Risk Factor(s):

1. Policies that limit protection against legitimately harmful behavior to individuals with certain personal characteristics or identifiers – instead of protecting everyone from the behavior.
2. Policies that could be used to condition/restrict use of a product or service based on a subjective judgment about whether certain views are offensive to a member of a protected group.

Steps to Identify and Mitigate Risk:

Apply policies that prohibit legitimately harmful behavior such as “bullying” and “harassment” equally to everyone, irrespective of personal characteristics or identifiers.

Policies that bar harmful conduct based on certain personal characteristics serve a laudable and important purpose. However, experience has shown that these policies can at times pose two problems: (1) by limiting their scope to certain personal characteristics, they fail to protect everyone from the harmful conduct



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they ban, and (2) they are sometimes relied on to justify suppressing a particular point of view or punishing the exercise of religion.

The below table provides guidance to help companies apply their policies equally and reduce the risk that policies will be used/applied in ways that restrict expression.

Good TOS/Content Policy	Bad TOS/Content Policy
<ul style="list-style-type: none"> Defines harmful conduct without reference to a list of protected characteristics or identifiers (E.g., race, sex, religion, sexual orientation, and gender identity). Protects <i>all</i> customers/sellers/creators /users from the targeted harmful conduct. Avoids unclear and imprecise terms that risk treating mere expressions of political, religious, or social views on matters of public concern as “harassing,” “hateful,” “threatening,” “violent,” “discriminatory,” or the equivalent. 	<ul style="list-style-type: none"> Defines harmful conduct based on a list of protected characteristics or identifiers (E.g., race, sex, religion, sexual orientation, and gender identity). Provides no protection from the targeted harmful conduct to customers/sellers/creators/users whose personal characteristics are not listed in the policy. Includes unclear and imprecise terms that could treat mere expressions of political, religious, or social views on matters of public concern as “harassing,” “hateful,” “threatening,” “violent,” “discriminatory,” or the equivalent.

TOS/Content Policy Examples (next page)

Key:

Text with ~~strikethrough~~ and highlighted in red = Defines prohibited conduct or expression based on personal characteristics.

Text with ~~strikethrough~~ and highlighted in yellow = Original verbiage that is unclear and/or imprecise.

Text highlighted in green = Verbiage added or changed to improve or clarify original text.

Text NOT highlighted and without ~~strikethrough~~ = Acceptable verbiage.

 = Policy contains unacceptable verbiage.



[W]e prohibit behavior that targets individuals or groups with abuse based on their perceived membership in protected category.

<https://help.twitter.com/en/rules-and-policies/hateful-conduct-policy>



Hate speech [S]peech that encourages violence is not allowed on YouTube. We don't allow content that promotes violence or hatred against anyone, individuals or groups based on any of the following attributes, which indicate a protected group status under YouTube's policy:

- Age
- Caste, Ethnicity, or Race
- Disability
- Immigration Status
- Nationality
- Religion
- Sex, Gender, or Sexual Orientation
- Veteran Status
- Victims of a major violent event and their kin

<https://support.google.com/youtube/answer/2801939?hl=en>



Etsy does not allow hateful content, including hate speech. Hate speech occurs when Etsy bans violent, or degrading language is incitement or encouragement of violence directed at a person or group based on their one or more protected group attributes.

<https://www.etsy.com/legal/policy/anti-discrimination-and-hate-speech/123551108902>



You may not promote violence against, threaten, or harass an individual or group of people, other people on the basis of race, ethnicity, national origin, caste, sexual orientation, gender, gender identity, religious affiliation, age, disability, or serious disease.

<https://explore.zoom.us/en/community-standards/>

(Editor's note: The terms "threaten" and "harass" should either be stricken or defined in such a manner that they cannot be applied to mere expressions of political, religious, or social views on matters of public concern).



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Avoid terms frequently used in conjunction with harmful conduct policies that risk unduly restricting expression. Policies that pose these concerns often frame their restrictions using one or more of the below terms.

Bigotry
Bully/Bullying
Degrading
Dehumanizing
Demeaning
Denigrating
Derogatory
Directly attack
Discriminating/Discriminatory
Deadnaming

Harass/Harassment/Harassing
Hate group
Hate speech
Hateful/Hateful conduct
Harm
Intolerance/Intolerant
Misgendering
Threaten
Violence

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