



GARM'S HARM: HOW THE WORLD'S BIGGEST BRANDS SEEK TO CONTROL ONLINE SPEECH

Interim Staff Report of the
Committee on the Judiciary
U.S. House of Representatives



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EXECUTIVE SUMMARY

The Committee on the Judiciary has jurisdiction over the “[p]rotection of trade and commerce against unlawful restraints and monopolies.”¹ In exercising oversight of the adequacy and sufficiency of existing U.S. antitrust laws, the Committee has been investigating apparent collusion within the World Federation of Advertisers (WFA) and specifically its Global Alliance for Responsible Media (GARM) initiative. Through GARM, large corporations, advertising agencies, and industry associations participated in boycotts and other coordinated action to demonetize platforms, podcasts, news outlets, and other content deemed disfavored by GARM and its members. This collusion can have the effect of eliminating a variety of content and viewpoints available to consumers.

Created by WFA in 2019,² GARM quickly amassed tremendous market power in the advertising industry.³ Among other data points:

- WFA members represent roughly 90% of global advertising spend, or almost one trillion dollars annually.⁴
- GARM includes every major advertising agency holding company in its ranks and includes the world’s largest media buying agency, GroupM, on its Steer Team.⁵
- GARM’s Steer Team, which acts as a board of directors and is also closely involved in GARM’s day-to-day operations, includes four large corporations (Unilever, Mars, Diageo, and Procter & Gamble) that spend billions annually on advertising.⁶
- GARM reports to the WFA Executive Committee, which must endorse GARM’s work and includes representatives from AB InBev, L’Oréal, Nestlé, IBM, as well as many more large corporations and household name brands.⁷

GARM calls itself “an industry first effort that unites marketers, media agencies, media platforms, industry associations, and advertising technology solutions providers to safeguard the potential of digital media by reducing the availability and monetization of harmful content online.”⁸ GARM claims that it was created to drive transparency in policies to help companies achieve “brand safety,” or in other words “transparency on where ads [are] placed [to] mak[e] sure that [advertisers] don’t inadvertently support” certain content on social media platforms.⁹ To achieve this goal, GARM asserts that it works in the “content monetization” space, defined as

¹ Rules of the House of Representatives R. X(1)(l)(16) (2023).

² Transcribed Interview of Robert Rakowitz, Initiative Lead, Global Alliance for Responsible Media (June 4, 2024) at 42:24 [hereinafter Rakowitz Testimony].

³ See *infra* section I.A.

⁴ *Who We Are*, WFA, <https://wfanet.org/about-wfa/who-we-are>.

⁵ *GARM Frequently Asked Questions*, GARM, <https://wfanet.org/leadership/garm/frequently-asked-questions>.

⁶ *Id.* See also Rakowitz Testimony, *supra* note 2 at 63:5-6.

⁷ *Our Leadership*, WFA, <https://wfanet.org/about-wfa/our-leadership>. See also Rakowitz Testimony, *supra* note 2 at 7:21-23.

⁸ HJC-WFA-GARM-000001893.

⁹ Rakowitz Testimony, *supra* note 2 at 10:5-7.

“what content ads actually support and the practice of insertion of the ads online.”¹⁰ GARM disclaims involvement in “content moderation,” which is the “practice and determination of what content is appropriate for hosting[,], recommend[ing,] and [making] availab[le] on [a] platform.”¹¹ GARM admits, however, that “[c]ontent monetization and moderation are inextricably linked and lapses in moderation put advertising and advertisers at risk[.]”¹² In other words, GARM’s monetization work has the effect of influencing what content appears online.

For an organization reliant on speech and persuasion in advertising, GARM appears to have anti-democratic views of fundamental American freedoms. In discussing his views on freedom of speech, GARM’s leader and co-founder, Rob Rakowitz, has expressed frustration with an “extreme global interpretation of the US Constitution” and complained about using “‘principles for governance’ and applying them as literal law from 230 years ago (made by white men exclusively).”¹³ With this worldview, GARM pushed what it called “uncommon collaboration” to “rise above individual commercial interest[.]”¹⁴

Section 1 of the Sherman Act makes unreasonable restraints of trade illegal.¹⁵ Included in these illegal restraints are certain group boycotts and coordinated actions that harm consumers.¹⁶ Documents produced to the Committee suggest that GARM may have engaged in coordinated conduct that violates Section 1. GARM has undertaken various actions to eliminate the monetization, and in effect existence, of certain voices online. For example:

- *Twitter and Elon Musk*: According to one GARM member, GARM recommended that its members “stop[] all paid advertisement” on Twitter in response to Mr. Musk’s acquisition of the company.¹⁷ GARM’s internal documents show that GARM was asked by a member to “arrange a meeting and hear more about [GARM’s] perspectives about the Twitter situation and a possible boycott from many companies.”¹⁸ GARM also held “extensive debriefing and discussion around Elon Musks’ [*sic*] takeover of Twitter,” providing ample opportunity for the boycott to be organized.¹⁹ GARM bragged about “taking on Elon Musk” and “[s]ince then [Twitter was] 80% below revenue forecasts[.]”²⁰
- *Spotify and The Joe Rogan Experience*: At the urging of its members, GARM and its Steer Team threatened Spotify over alleged misinformation on Joe Rogan’s podcast, *The Joe Rogan Experience*, because Mr. Rogan stated an opinion that young, healthy people

¹⁰ Rakowitz Testimony, *supra* note 2 at 17:22-23.

¹¹ *Id.* at 17:19-20.

¹² HJC-WFA-GARM-000118620. *See also* Rakowitz Testimony, *supra* note 2 at 58:13-16.

¹³ *See infra* section I.B. *See also* HJC-WFA-GARM-000125324.

¹⁴ *See infra* section I.C. *See also* HJC-WFA-GARM-000016155.

¹⁵ *See* 15 U.S.C. § 1.

¹⁶ *See, e.g., FTC v. Indiana Fed’n of Dentists*, 476 U.S. 447, 458 (1986); *Northwestern Wholesale Stationers v. Pacific Stationery & Printing Co.*, 472 U.S. 284, 295-98 (1985); *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 135 (1998); *Klor’s, Inc. v. Broadway-Hale Stores*, 359 U.S. 207, 210-12 (1959).

¹⁷ *See infra* section II.A.

¹⁸ HJC-WFA-GARM-000054373, at -376.

¹⁹ HJC-WFA-GARM-000030950, at -951.

²⁰ HJC-WFA-GARM-000030996, at -997.

need not receive the COVID-19 vaccine.²¹ GARM even admitted it was acting outside of the scope of its work on brand safety, explaining to one of its members that “[b]rand safety is somewhat separate on Spotify versus say Facebook Newsfeed because brands aren’t being slotted into” the podcast.²² In other words, the companies could easily choose whether to advertise on or avoid Mr. Rogan’s podcast and, therefore, GARM had no business interfering in Spotify’s decision.²³ GARM even admitted the antitrust implications of getting caught, when Mr. Rakowitz told one GARM member that he “can’t publicly advise all clients to do X – that gets us into hot water by way of anticompetitive and collusive behaviors.”²⁴ To get around this problem, Mr. Rakowitz offered to “help [brands] formulate a [point of view] 1:1.”²⁵ In doing so, even as Mr. Rakowitz mistook his trade association members with “clients,” such a coordinated action implicates antitrust law.

- *Candidates, platforms, and news outlets with opposing political views:* GARM and its members discussed a strategy of blocking certain news outlets like *Fox News*, *The Daily Wire*, and *Breitbart News*. One GARM Steer Team member candidly wrote that although he “hated their ideology and bulls**t,” his company “couldn’t really justify blocking them for misguided opinion[s]” so the company “watched them very carefully and it didn’t take long for them to cross the line.”²⁶ Additionally, GARM pushes its members to use news rankings organizations, like the Global Disinformation Index (GDI) and NewsGuard, that disproportionately label right-of-center news outlets as so-called misinformation.²⁷ GARM and its Steer Team even participated in efforts to label a social media advertisement paid for by President Donald Trump as “misinformation.”²⁸ When Facebook would not label the advertisement as misinformation, Mr. Rakowitz told a colleague that it was “[h]onestly reprehensible[.]” A GARM Steer Team member expressed concern about Mr. Musk exposing the truth regarding how Twitter was previously used to censor the Hunter Biden laptop and Biden family influence peddling story, describing Mr. Musk’s position as an “overtly partisan take[.]”²⁹

GARM’s plans for the future involve pushing its framework into artificial intelligence (AI) solutions.³⁰ GARM’s partners are developing AI tools that will integrate GARM’s standards seamlessly across social media platforms.³¹ Such an automated censorship effort could result in the demonetization of any views or voices that GARM’s advertising cartel dislikes, potentially without any human involvement at all. Such concentrated market power is dangerous, and the implications of AI technology on advertising censorship are frightening.

²¹ See *infra* section II.B.

²² HJC-WFA-GARM-000025816, at -817.

²³ *Id.*

²⁴ HJC-WFA-GARM-000056644.

²⁵ *Id.*

²⁶ See *infra* section II.C. See also HJC-WFA-GARM-000022078, at -079.

²⁷ Brief: Disinformation Risk in the United States Online Media Market, October 2022, GDI (Oct. 21, 2022), <https://www.disinformationindex.org/research/2022-10-21-brief-disinformation-risk-in-the-united-states-online-media-market-october-2022/>.

²⁸ HJC-WFA-GARM-000059383, at -386.

²⁹ HJC-WFA-GARM-000054330. See *infra* section II.D.

³⁰ See *infra* section III.

³¹ *Id.*

The extent to which GARM has organized its trade association and coordinates actions that rob consumers of choices is likely illegal under the antitrust laws and threatens fundamental American freedoms. The information uncovered to date of WFA and GARM's collusive conduct to demonetize disfavored content is alarming. The Committee will continue its investigation into the companies that participate in this conduct to inform potential legislative reforms.

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I. GARM'S MARKET POWER COMES FROM GLOBAL ORGANIZATIONS THAT EMBRACE COORDINATION.

The Global Alliance for Responsible Media's (GARM) power in the advertising industry derives from the web of corporations, advertising agencies, and associations that control GARM.³² Under a call for “uncommon collaboration,” organizations came together to align nearly all advertising power under one roof and “put[] aside competitive concerns.”³³

A. Powerful international organizations created GARM.

GARM's influence derives from the interwoven global organizations that established and created the group. The World Federation of Advertisers (WFA), which oversees GARM and endorses its work, is a global association of senior marketers representing over 150 of the world's biggest brands and over 60 national advertiser associations from across the globe.³⁴ WFA claims that its members account for roughly 90% of global advertising spend, or almost one trillion dollars annually.³⁵ In June 2019, WFA and some of its members, including 17 leading advertisers, established GARM.³⁶ GARM reports into the WFA Executive Committee,³⁷ which is led by the WFA CEO, Stephan Loerke, the French advertiser association Union des Marques, Mastercard, and PepsiCo.³⁸ The WFA Executive Committee membership also includes some of the largest corporations in the world such as AB InBev, L'Oréal, Nestlé, Bank of Africa, IBM, and many more large corporations and household name brands.³⁹

When creating GARM, WFA worked with other global organizations interested in influencing the massive flow of advertising dollars around the world. The same year it was created, GARM became a flagship partner of the World Economic Forum (WEF).⁴⁰ Through the WEF partnership, GARM could “leverage” WEF's “existing network.”⁴¹ Further, the Association of National Advertisers (ANA) Growth Council, which is composed of chief marketers from the world's premier brands and has a seat on GARM's Steer Team, joined the effort with WFA to help create GARM and avoid duplicating efforts under two separate organizations.⁴² The ANA Growth Council is led by Marc Pritchard, Chief Brand Officer at P&G, and includes Raja Rajamannar of Mastercard and Jane Wakely of PepsiCo, both of whom sit on the WFA Executive

³² See *infra* section 1.A.

³³ See *infra* section 1.C.

³⁴ *Who We Are*, WFA, <https://wfanet.org/about-wfa/who-we-are>.

³⁵ *Id.*

³⁶ Press Release, GARM, Global Alliance for Responsible Media launches to address digital safety, <https://wfanet.org/knowledge/item/2019/06/18/Global-Alliance-for-Responsible-Media-launches-to-address-digital-safety> (Adidas, Bayer, BP, Danone, Diageo, General Mills, GSK Consumer Healthcare, LVMH, Mars, Mastercard, Mondelēz International, NBCUniversal, Nestlé, Procter & Gamble, Shell, Unilever and Vodafone).

³⁷ *GARM Frequently Asked Questions*, GARM, <https://wfanet.org/leadership/garm/frequently-asked-questions>.

³⁸ *Our Leadership*, WFA, <https://wfanet.org/about-wfa/our-leadership>.

³⁹ *Id.*

⁴⁰ *Global Alliance for Responsible Media*, GARM, <https://wfanet.org/leadership/garm/about-garm>.

⁴¹ *WFA-led Global Alliance for Responsible Media scales up efforts through the World Economic Forum*, WFA (Nov. 27, 2019), <https://wfanet.org/knowledge/item/2019/11/27/WFA-led-Global-Alliance-for-Responsible-Media-scales-up-efforts-through-the-World-Economic-Forum>.

⁴² Rakowitz Testimony, *supra* note 2 at 13:4-7.

Committee.⁴³ In addition, the Growth Council has representatives from Shell, Lego, AB InBev, SC Johnson, Haleon, American Express, and Hyundai.⁴⁴

GARM is led by Initiative Lead Rob Rakowitz.⁴⁵ Mr. Rakowitz co-founded GARM with WFA while “still in [his] role as the Head of Global Media at Mars Incorporated.”⁴⁶ Mr. Rakowitz is GARM’s co-founder and leader.⁴⁷ He is part of every decision made by GARM as an organization.⁴⁸ He is regularly included in conversations between platforms and brands, and often is asked for his advice by GARM members.⁴⁹ GARM, with the coordinated action of its members, can influence the monetization, and in effect demonetization, of platforms, creators, and news outlets.⁵⁰

Given GARM’s immense power to influence advertising decisions and dollars, the worldviews of GARM’s leader concerning free speech are revealing. In 2019, shortly after he co-founded GARM, Mr. Rakowitz explained his worldview pertaining to freedom of speech in an email to his WFA colleagues including WFA CEO Stephan Loerke.⁵¹ Mr. Rakowitz explained that for him, the “whole issue bubbling beneath the surface” of the advertising industry and digital platforms is the “extreme global interpretation of the US Constitution[.]”⁵² Mr. Rakowitz wrote that he did not understand why “[p]eople are advocating for freedom of speech online” with anonymity and complained about people taking a so-called “radical interpretation[.]” of freedom of speech.⁵³ He also complained about “[t]aking US norms and applying them globally.”⁵⁴ Mr. Rakowitz argued against using “‘principles for governance’ and applying them as literal law from 230 years ago (made by white men exclusively)[.]”⁵⁵

GARM is governed by its Steer Team, which acts like a board of directors and plots the overall direction of the initiative.⁵⁶ The Steer Team is composed of representatives from:

- *Four major advertisers:* Unilever, Mars, Diageo, and Procter & Gamble (including Mr. Pritchard, leader of the ANA Growth Council),⁵⁷ which together own numerous household brands that Americans purchase every day.

P&G MARS Unilever DIAGEO

⁴³ *Our Leadership*, WFA, <https://wfanet.org/about-wfa/our-leadership>.

⁴⁴ *Leadership Team*, ANA, <https://www.ana.net/content/show/id/globalcmo-leadership>.

⁴⁵ *Meet Our Team*, WFA, <https://wfanet.org/about-wfa/our-team>.

⁴⁶ HJC-WFA-GARM-000016155.

⁴⁷ See Rakowitz Testimony, *supra* note 2 at 7:1-16.

⁴⁸ See *id.* at 10:10-11:21.

⁴⁹ See, e.g., *infra* sections II.A. & B.

⁵⁰ See, e.g., *infra* section II.C.

⁵¹ HJC-WFA-GARM-000125324.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Rakowitz Testimony, *supra* note 2 at 63:5-6.

⁵⁷ *Alliance Members*, GARM, <https://wfanet.org/leadership/garm/members-governance>.

- *The world's largest media buying agency: GroupM, which owns four advertising agencies and represents some of the world's biggest companies.*⁵⁸

group^m

MINDSHARE	Wavemaker	essence	mediacom	T&P ^m
 COLGATE-PALMOLIVE				 MOËT HENNESSY · LOUIS VUITTON
				

- *Three trade associations: The American Association of Advertising Agencies (The 4A's, which represents advertising agencies), the Incorporated Society of British Advertisers (ISBA, which represents brands in the United Kingdom), and the Association of National Advertisers (ANA, which represents brands in the United States), which include the world's biggest companies among its leadership and members.*⁵⁹

4's

ANA



GARM also includes the so-called “Big Six” as members.⁶⁰ In the advertising industry, the “Big Six” refer to the “biggest ad agency holding companies around the world.”⁶¹ Together, these companies hold nearly every major advertising agency.⁶² In other words, nearly all major agencies that execute advertising campaigns for countless companies around the world fall under the GARM umbrella. With WFA accounting for roughly 90% of brand spend on advertising, and with GARM including almost every advertising agency and many of the world's biggest brands, GARM holds considerable power over the advertising market.⁶³

⁵⁸ About, GroupM, <https://www.groupm.com/about/>; Seb Joseph & Krystal Scanlon, *The world's biggest media buyer GroupM is telling advertisers that Twitter is a 'high risk' media buy*, DIGIDAY (Nov. 14, 2022).

⁵⁹ Alliance Members, GARM, <https://wfanet.org/leadership/garm/members-governance>.

⁶⁰ HJC-WFA-GARM-000016155.

⁶¹ *Agency Holding Companies: A Visual Mapping*, ESKIMI (May 15, 2024).

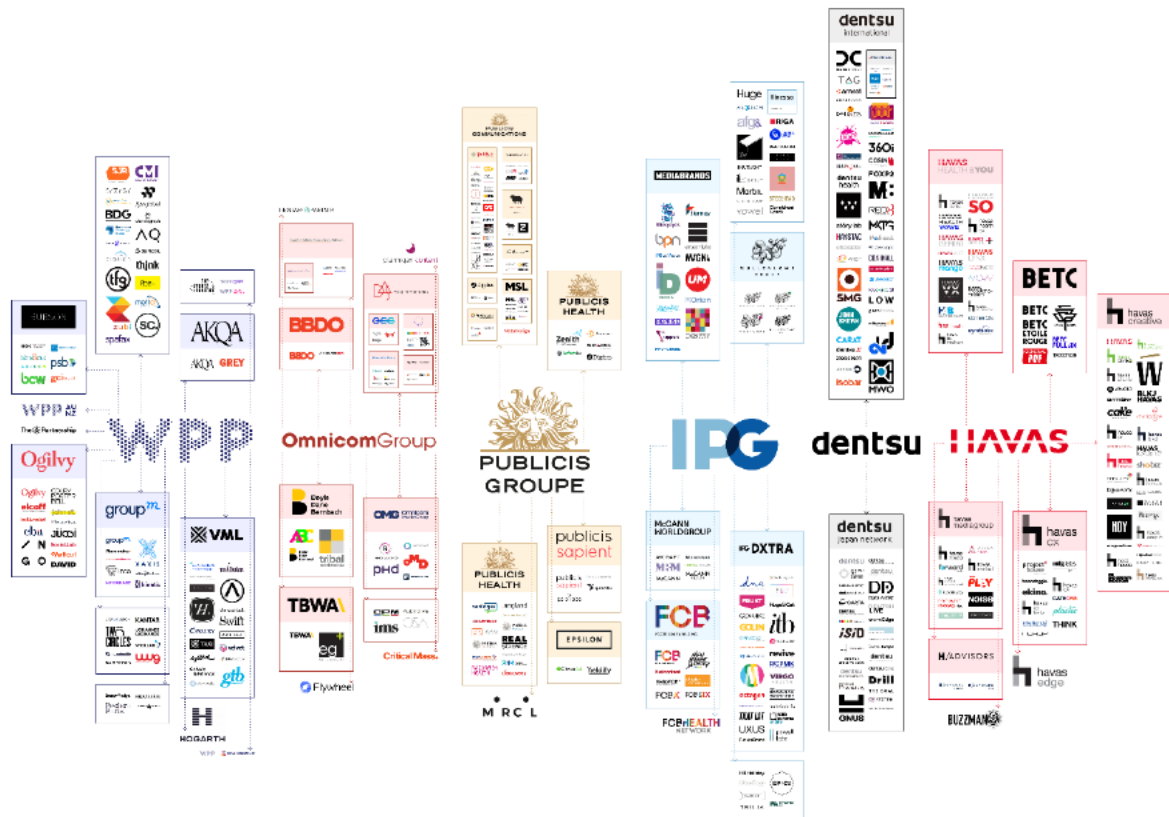
⁶² *Id.*

⁶³ See *infra* section I. B.

Agency Holding Map

Agency Holding Map is a visual representation of advertising agency groups worldwide. It shows the biggest players in advertising based on the revenue generated for member agencies. However, including the complex ecosystem of the industry is challenging, as the most influential agency groups are distributed throughout the landscape in different colored boxes.

ESKIMI



Agency Holding Companies: A Visual Mapping, ESKIMI (May 15, 2024).

B. GARM and its members embraced “uncommon collaboration” to demonetize disfavored content in the name of brand safety.

According to GARM’s charter, GARM members use “uncommon collaboration to ensure that there are more positives from digital communications and commerce, and that [they] effectively reduce the availability and monetization of harmful content.”⁶⁴ According to the charter, GARM “members acknowledge their collective power . . . and are identifying concrete initiatives, creating shared processes and common protocols for protecting people and brands.”⁶⁵ GARM is “an industry first effort that unites marketers, media agencies, media platforms, industry associations, and advertising technology solutions providers to safeguard the potential of digital media by reducing the availability and monetization of harmful content online.”⁶⁶

When announcing the creation of GARM, GARM and its founding members stated that they were establishing a means by which brands may collaborate with “platforms to do more to

⁶⁴ HJC-WFA-GARM-000001911.

⁶⁵ *Id.*

⁶⁶ HJC-WFA-GARM-000001893.

address harmful and misleading media environments.”⁶⁷ GARM and its brand members claim to collaborate on a “common understanding” of so-called “harmful and sensitive content” and identify dangerous placement on platforms “where ads should not appear.”⁶⁸ GARM promised to “adopt common definitions to ensure that the advertising industry is categorizing harmful content in the same way across the board.”⁶⁹ This promise was upheld when GARM launched its “Brand Safety Floor and Suitability Framework.”

GARM’s “Brand Safety Floor and Suitability Framework” creates a “common understanding of where ads should not appear” and “different risk levels for sensitive content[.]”⁷⁰ GARM claims that it was created to drive transparency in policies to help companies achieve “brand safety”—or, in other words, “transparency on where ads [are] placed [to] mak[e] sure that [advertisers] don’t inadvertently support” certain content on social media platforms.⁷¹ To achieve this goal, GARM claims to work in the “content monetization” space, defined as “what content ads actually support and the practice of insertion of the ads online.”⁷² Meanwhile, GARM disclaims being involved in “content moderation,” which is the “practice and determination of what content is appropriate for hosting[,] recommend[ing,] and [making] availab[le] on [a] platform.”⁷³ GARM acknowledges, however, that “[c]ontent monetization and moderation are inextricably linked and lapses in content moderation put advertising and advertisers at risk[.]”⁷⁴ In other words, GARM’s monetization work has the effect of driving content moderation policies, which determines what content appears online.

Mr. Rakowitz developed the term “uncommon collaboration,” the key term defining the priorities outlined in GARM’s charter, to drive a change in the advertising agencies’ “value chain.”⁷⁵ Prior to GARM’s creation and Mr. Rakowitz’s work pushing “uncommon collaboration,” advertisers and platforms had “point-to-point conversations” or, as Mr. Rakowitz described it in an email, “Mars having a conversation with YouTube separate from P&G; and P&G having a conversation with Facebook.”⁷⁶ Uncommon collaboration, according to Mr. Rakowitz, has “competitors working together” and “all sides of the industry working together[.]”⁷⁷ While competitors should be competing to reach customers, GARM’s express goal of uncommon collaboration is to “rise above individual commercial interest[.]”⁷⁸ Mr. Rakowitz explained that “uncommon collaboration needs to be understood as the industry coming together and putting aside competitive concerns[.]”⁷⁹

⁶⁷ Press Release, GARM, Global Alliance for Responsible Media launches to address digital safety (June 18, 2019), <https://wfanet.org/knowledge/item/2019/06/18/Global-Alliance-for-Responsible-Media-launches-to-address-digital-safety>.

⁶⁸ HJC-WFA-GARM-000001893.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Rakowitz Testimony, *supra* note 2 at 10:5-7.

⁷² Rakowitz Testimony, *supra* note 2 at 17:22-23.

⁷³ Rakowitz Testimony, *supra* note 2 at 17:19-20.

⁷⁴ HJC-WFA-GARM-000118620. *See also* Rakowitz Testimony, *supra* note 2 at 58:13-16.

⁷⁵ Rakowitz Testimony, *supra* note 2 at 16:3-4; HJC-WFA-GARM-000016155.

⁷⁶ HJC-WFA-GARM-000016155.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ HJC-WFA-GARM-000032856, at -857.

II. GARM VIOLATES ANTITRUST LAWS BY USING ITS MARKET POWER TO DEMONETIZE CERTAIN VIEWPOINTS AND THEREBY LIMIT CONSUMER CHOICE.

Colluding to suppress voices and views disfavored by the leading marketers at the world's largest companies and advertising agencies is core to GARM's founding principles. As explained in section I of this report, GARM amassed power through the amount of money its members spend on advertising.⁸⁰ In a December 2019 email, Mr. Rakowitz explained that GARM was founded to address "the 4C's . . . 1) Carriage (presence on platforms), 2) Curation (recommendation to consumers), 3) Commercialization (revenue share with creators), 4) Coordination (works by platforms across their technology, and work with regulators, and law enforcement)[.]"⁸¹ Mr. Rakowitz explained in this email that the GARM charter focuses on "ensuring that we fund the voices we want to associate with, and close down the advertising ecosystem to bad actors."⁸² In other words, what is online (carriage), how platforms show what is online to consumers (curation), and who gets money online (commercialization) were all a focus of GARM's work. To achieve these ends, GARM would collude (coordination) or work with regulators and law enforcement.

Section 1 of the Sherman Act makes unreasonable restraints of trade illegal and punishable through both civil and criminal penalties.⁸³ Federal courts have been clear that an unreasonable restraint of trade includes agreements that reduce output or limit choice.⁸⁴ Direct or circumstantial evidence can be used to prove the existence of the commitment, scheme, or agreement.⁸⁵ As the Supreme Court has explained, social justifications for an anticompetitive agreement are irrelevant.⁸⁶ In addition, actions of a trade association can satisfy the concerted action requirement of Section 1 of the Sherman Act.⁸⁷ Evidence obtained by the Committee shows that GARM and its members directly organized boycotts and used other indirect tactics to target disfavored platforms, content creators, and news organizations in an effort to demonetize and, in effect, limit certain choices for consumers.⁸⁸

Relevant case law suggests that GARM likely violated federal antitrust laws. Some of GARM's conduct would be analyzed by a court as a *per se* unlawful restraint because it involves horizontal agreements to restrict output and consumer choice, and therefore, would not require

⁸⁰ See *supra* section I.

⁸¹ HJC-WFA-GARM-000016155.

⁸² HJC-WFA-GARM-000016155, at -156.

⁸³ 15 U.S.C. § 1. Sherman Act Section 1 is a felony. Convicted individuals may be imprisoned for up to 10 years and fined \$1 million. Convicted corporations may be fined up to \$100 million. Fines often exceed the statutory maximum under the theory that defendants are liable for twice the pecuniary loss. See 18 U.S.C. § 3571(d).

⁸⁴ *NCAA v. Board of Regents*, 468 U.S. 85, 113; *FTC v. Indiana Fed'n of Dentists*, 476 U.S. 447, 459 (1986).

⁸⁵ *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752 (1984); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986).

⁸⁶ *FTC v. Superior Ct. Trial Lawyers Ass'n*, 493 U.S. 411, 424 (1990).

⁸⁷ See, e.g., *California Dental Ass'n v. FTC*, 526 U.S. 756, 780-81 (1999); *National Soc'y of Prof'l Eng'rs v. United States*, 435 U.S. 679, 692-93 (1978). *Alvord-Polk, Inc. v. F. Schumacher & Co.*, 37 F.3d 996, 1007 (3d Cir. 1994); *Weiss v. York Hosp.*, 745 F.2d 786, 815-16 (3d Cir. 1984).

⁸⁸ See *supra* section 2.A., 2.B., and 2.C.

an in-depth examination.⁸⁹ Although an in-depth rule of reason analysis is likely not required,⁹⁰ even under this more stringent review, the conduct of GARM and its members likely violates the antitrust laws.⁹¹ The high market share of GARM and its members in advertising campaigns and spending,⁹² combined with the direct evidence of demonetizing certain viewpoints to limit consumer choice, meet the initial burden of demonstrating harm to consumers.⁹³ Although GARM could attempt to rebut this showing of harm, GARM has instead chosen to disclaim the plain language of its documents in testimony and written correspondence with the Committee.⁹⁴ Additionally, despite some direct evidence of blatant agreements to restrain competitive activity, if GARM argues that there was only conscious parallelism among its members—that is, GARM members following each other’s lead with no alleged agreement—courts have explained that the involvement in a trade association where information is exchanged can serve as a plus factor in finding liability.⁹⁵

A. GARM members colluded to cut Twitter’s revenue after Elon Musk’s acquisition.

Documents obtained by the Committee show that GARM told its members to boycott advertising on Twitter⁹⁶ after Mr. Musk’s purchase of the platform on October 28, 2022.⁹⁷

According to documents provided to the Committee, Ørsted, a Danish energy company and GARM member, contacted GARM as early as November 4, 2022, to “ask [GARM] if it’s possible to arrange a meeting and hear more about [GARM’s] perspectives about the Twitter situation and a possible boycott from many companies.”⁹⁸ In a subsequent email exchange in May 2023, an employee of Ørsted discussed the company’s decision to “take off all of our paid advertisement on [Twitter] due to brand safety concerns” and asked GARM what it “would advise [Ørsted] to do. And what are other global advertisers doing – have they come back to the platform, or are they still off?”⁹⁹ Documents provided to the Committee do not reflect whether GARM replied in writing to Ørsted. On April 14, 2023, however, an Ørsted employee sent another email to WFA employees, including Mr. Rakowitz, stating: “Based on your

⁸⁹ *FTC v. Indiana Fed’n of Dentists*, 476 U.S. 447, 458 (1986); *Northwestern Wholesale Stationers v. Pacific Stationery & Printing Co.*, 472 U.S. 284 295-98 (1985); *NYNEX Corp. v. Discon, Inc.*, 525 U.S. 128, 135 (1998); *Tunica Web Adver. v. Tunica Casino Operators Ass’n*, 496 F.3d 403, 412-13 (5th Cir. 2007).

⁹⁰ *FTC v. Superior Ct. Trial Lawyers Ass’n*, 493 U.S. 411, 435-36 & n.19 (1990).

⁹¹ See generally *Texaco, Inc. v. Dagher*, 547 U.S. 1, 5 (2006); *United States v. Topco Assocs.*, 405 U.S. 596, 608 (1972).

⁹² See, e.g., *Reazin v. Blue Cross & Blue Shield*, 899 F.2d 951, 967 (10th Cir. 1990); *Wilk v. American Med. Ass’n*, 895 F.2d 352, 360 (7th Cir. 1990); *Graphics Prods. Distribs. v. Itel Corp.*, 717 F.2d 1560, 1570-71 (11th Cir. 1983).

⁹³ See *Professional Eng’rs*, 435 U.S. at 692; *Continental T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49; *Brown Univ.*, 5 F.3d 658, 672.

⁹⁴ See *supra* section 1.B.

⁹⁵ See *In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, 2015 U.S. Dist. LEXIS 121620, at *37 (E.D. Tenn. 2015); *Grasso Enters. v. Express Scripts, Inc.*, 2017 WL 365434 (E.D. Mo. 2017).

⁹⁶ The social media platform X, which was formerly called Twitter, is referred to as Twitter throughout this report because it is primarily referred to as Twitter in GARM’s documents and was named Twitter for the majority of the time period discussed in this report.

⁹⁷ Anirban Sen & Tom Hals, *Musk reverses course, again: he’s ready to buy Twitter; build ‘X’ app*, REUTERS (Oct. 4, 2022); Clare Duffy & Donie O’Sullivan, *Twitter confirms completion of Elon Musk’s \$44 billion acquisition deal*, CNN (Oct. 28, 2022).

⁹⁸ HJC-WFA-GARM-000054373, at -376.

⁹⁹ HJC-WFA-GARM-000026943, at -945.

recommendations, we have stopped all paid advertisement [on Twitter]”¹⁰⁰ This Ørsted employee explained that it is “an important platform for us to reach our audience, so we would like to consider going back”¹⁰¹ On April 18, 2023, Mr. Rakowitz replied to Ørsted denying that GARM or WFA made the recommendation to stop paid advertising on Twitter, as alleged by Ørsted, because those “are decisions that concern competitively sensitive information.”¹⁰²

From: [REDACTED]
Sent: 4. november 2022 16:48
To: Rob Rakowitz [REDACTED] <[REDACTED]@wfanet.org>
Subject: FW: WFA Insight Forum: Upcoming meetings and events

Hi Rob,

I'm reaching out to you to ask you if it's possible to arrange a meeting and hear more about your perspectives about the Twitter situation and a possible boycott from many companies.

HJC-WFA-GARM-000054373, at -376.

In a transcribed interview with the Committee, Mr. Rakowitz denied recommending that Ørsted stop advertising on Twitter and claimed to be unaware of anyone at GARM speaking to anyone at Ørsted during this period.¹⁰³ Mr. Rakowitz’s denial of any wrongdoing, in the face of clear written evidence, is not credible for many reasons. First, the Committee initially contacted GARM about potentially anticompetitive conduct on March 22, 2023, between the date of Ørsted’s initial email to GARM seeking advice on ceasing paid advertising on Twitter and the date of Mr. Rakowitz’s subsequent denial.¹⁰⁴ It is not surprising that Mr. Rakowitz sent an email disclaiming his recommendation for a boycott after being put on notice that GARM’s actions were of interest to the Committee.

In addition, Mr. Rakowitz provided the Committee with inaccurate information during his transcribed interview about his discussions with GARM members regarding Mr. Musk’s acquisition of the platform on monthly GARM “community calls” among GARM members. Specifically, during his transcribed interview, Mr. Rakowitz was asked whether “the Twitter acquisition [was] discussed on a community call?”¹⁰⁵ Mr. Rakowitz denied that it was, testifying: “No. What was discussed was Twitter’s priorities.”¹⁰⁶

However, documentary evidence provided to the Committee contradicts Mr. Rakowitz’s denial and shows that Mr. Musk’s acquisition of Twitter was discussed extensively with GARM members. In December 2022, in an email exchange with the subject line “[s]upport to Ørsted about the Twitter situation,” discussing a meeting between GARM and Mr. Musk, an employee at Ørsted asked WFA employees, including Mr. Rakowitz, for a meeting “to learn more about how the conversation went and how you see the situation now and expectations going

¹⁰⁰ *Id.*, at -944.

¹⁰¹ *Id.*

¹⁰² HJC-WFA-GARM-000026943.

¹⁰³ Rakowitz Testimony, *supra* note 2 at 26:2-11.

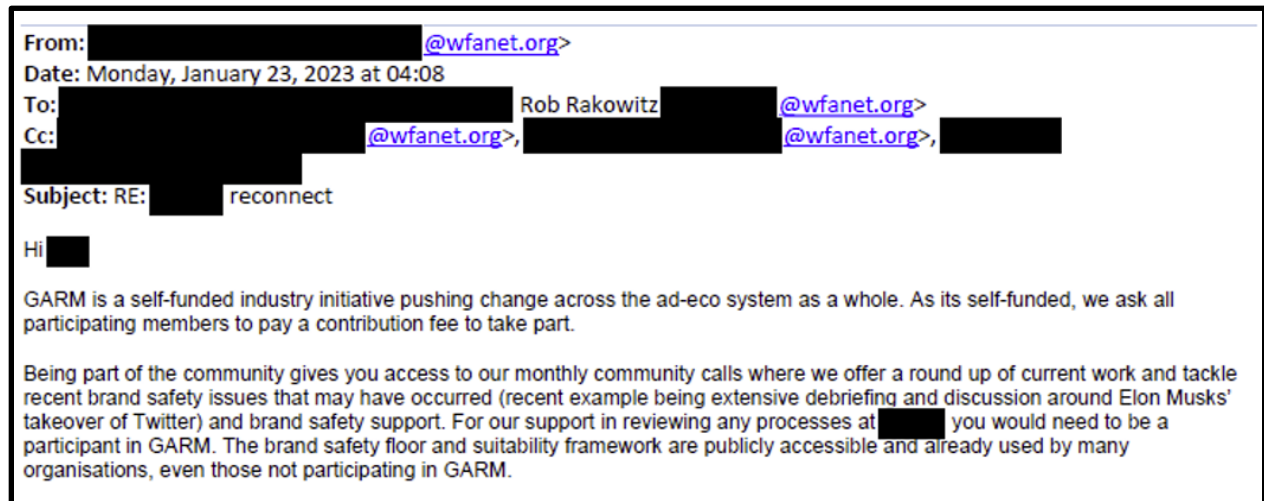
¹⁰⁴ Letter from Jim Jordan, Chair H. Comm. on the Judiciary to Robert Rakowitz, GARM (March 22, 2023).

¹⁰⁵ Rakowitz Testimony, *supra* note 2 23:16-17.

¹⁰⁶ *Id.*

forward.”¹⁰⁷ Mr. Rakowitz responded to the Ørsted employee that the meeting with Mr. Musk “is likely to come up and be discussed in the Community Call on Thursday next week. Can we discuss then and there?”¹⁰⁸

The next month, in January 2023, in an email to a company looking to join GARM, a WFA employee specifically highlighted Mr. Musk’s acquisition of Twitter as a topic of discussion among GARM members. This WFA wrote: “Being part of the community gives you access to our monthly community calls where we offer a round up of current work and tackle recent brand safety issues that may have occurred (recent example being extensive debriefing and discussion around Elon Musks’ [sic] takeover of Twitter)”¹⁰⁹ The evidence of an email by Mr. Rakowitz telling Ørsted that the “Twitter situation” would be discussed on a community call then the next month an email from a different WFA employee stating there was an “extensive debriefing and discussion around Elon Musks’ [sic] takeover of Twitter” fatally undercuts Mr. Rakowitz’s claim that the acquisition was not discussed on any community call.



HJC-WFA-GARM-000030950, at -951.

In addition to merely discussing the acquisition, in November 2022, GARM conducted a survey of its members about their views of Mr. Musk’s acquisition of Twitter and shared this information in the context of a boycott on Twitter.¹¹⁰ During a transcribed interview with the Committee, Mr. Rakowitz was asked what he did with the survey results, and he testified that he “shared them only internally within the Steer Team and then also with Twitter to just help sort of frame some of the concerns, legitimate concerns, in making sure that it was a fact based conversation.”¹¹¹ Documents received by the Committee, however, show that Mr. Rakowitz created material for the attendees of a WFA Executive Committee meeting that included some of the survey results.¹¹² In addition, an email from Ørsted dated November 14—in which Ørsted

¹⁰⁷ HJC-WFA-GARM-000051207, at -208.

¹⁰⁸ *Id.*

¹⁰⁹ HJC-WFA-GARM-000030950, at -951.

¹¹⁰ See *infra* notes 112-115.

¹¹¹ Rakowitz Testimony, *supra* note 2 22:6-8.

¹¹² HJC-WFA-GARM-000003685.

asked for a meeting to “share [GARM’s] reflections and results” of the survey¹¹³—suggests that GARM shared the survey results with Ørsted too. Documents suggest GARM and Ørsted did not discuss the survey results in this one-on-one meeting, but instead discussed “conv[ersations] [GARM] had with Twitter and details on future planning.”¹¹⁴ GARM informed Ørsted it would discuss the survey findings on a community call with all GARM members.¹¹⁵



HJC-WFA-GARM-000054373.

GARM’s documents suggest that the results of the survey—shared at least with the WFA Executive Committee, Ørsted, and on a GARM community call—would have signaled to members to pull their advertising from Twitter. In a document prepared for the WFA Executive Committee, the survey results showed that “86% of ad buyers feel that the change in [Twitter’s] ownership is a significant issue. Further, 71% of advertisers and agencies feel that change in ownership will have a negative or very negative impact on Twitter.”¹¹⁶ This type of information, coming with the imprimatur of GARM, would give advertisers the confidence to pull advertising campaigns without losing out to their competitors.

¹¹³ HJC-WFA-GARM-000051207, at -209.

¹¹⁴ HJC-WFA-GARM-000130655.

¹¹⁵ *Id.*

¹¹⁶ HJC-WFA-GARM-000003685.

In his transcribed interview, Mr. Rakowitz denied organizing a boycott or recommending that GARM members stop advertising on Twitter; however, he took credit for Twitter's revenue decline in internal GARM documents produced to the Committee. Mr. Rakowitz testified that he did not "have any role in Twitter's revenue decline" and he "did not know roughly how much [Twitter's] revenue dropped."¹¹⁷ In an internal email dated February 17, 2023, Mr. Rakowitz offered edits to an invitation for a closed-door meeting with the goal of "contextualizing who [GARM is] and what [GARM is] doing," Mr. Rakowitz joked to his colleagues that he did not include the phrase "you may recognize my name from being the idiot who challenged Musk on brand safety issues. Since then they are 80% below revenue forecasts[.]"¹¹⁸

From: Rob Rakowitz [REDACTED] <[REDACTED]@wfanet.org>
Sent: 09 February 2023 16:53
To: [REDACTED] <[REDACTED]@wfanet.org>; [REDACTED] <[REDACTED]@wfanet.org>
Subject: Re: email EXCO speakers GMW

Hi both –

This is good – I did some tweaking on the edges to help contextualize who we are and what we are doing...
I'd like to point out that nowhere in this email is the 'you may recognize my name from being the idiot who challenged Musk on brand safety issues. Since then they are 80% below revenue forecasts' 🤪

HJC-WFA-GARM-000030996, at -997.

Mr. Rakowitz testified in his transcribed interview that he was not actually taking credit for the revenue decline, but instead it was a "self-effacing joke" about a tweet he posted that "had gone sideways"—meaning, as he explained, "It had gotten visibility and . . . [that] was probably not in [Mr. Rakowitz's] best interests." Internal GARM documents, however, show that the tweet in question, posted on October 31, 2022, was not viewed by GARM as ill-advised. Instead, GARM celebrated the new coverage the next day, with Mr. Rakowitz writing, "This is awesome" and celebrating interviews with TV news stations and the *Wall Street Journal*.¹¹⁹ Mr. Rakowitz's colleague replied approvingly, writing that "this is next level."¹²⁰

From: Rob Rakowitz [REDACTED] <[REDACTED]@wfanet.org>
Sent: Tuesday, November 1, 2022 5:49:59 AM
To: Stephan Loerke [REDACTED] <[REDACTED]@wfanet.org>; [REDACTED] <[REDACTED]@wfanet.org>; [REDACTED] <[REDACTED]@wfanet.org>; [REDACTED] <[REDACTED]@raymedia.biz>; [REDACTED] <[REDACTED]@wfanet.org>
Subject: Re: myFT Daily Digest

This is awesome
I have WSJ asking to speak
TV news interview last night for a SF station 🤪

HJC-WFA-GARM-000055362, at -363.

In preparation for a meeting with Twitter after Mr. Musk's acquisition of the company, documents show that GARM planned a potential strategy to expel Twitter from GARM and

¹¹⁷ Rakowitz Testimony, *supra* note 2 at 32:10-18.

¹¹⁸ HJC-WFA-GARM-000030996, at -997.

¹¹⁹ HJC-WFA-GARM-000055362, at -363.

¹²⁰ HJC-WFA-GARM-000055362.

attack the company in the press through a “reactive comms” strategy.¹²¹ One employee of WFA working with Mr. Rakowitz to prepare for the meeting suggested that GARM “set a timeline for written confirmation [that Twitter] can stick to the demands and indicate that failure to meet these will lead to expulsion from [GARM] and a public announcement.”¹²² Stephan Loerke, the CEO of WFA, suggested that GARM set “[d]etailed demands in writing to Twitter and a timeline,”¹²³ explaining: “We send a detailed lists [*sic*] of requests and a timeline in writing to Twitter. If they don’t meet those requests in the timeline, GARM expels them[.]”¹²⁴ Despite these contemporaneous documents about strategy to expel Twitter from GARM membership, Mr. Rakowitz denied during his transcribed interview the organization had ever considered ejecting any company from GARM.¹²⁵

B. GARM went beyond brand safety to silence disfavored voices like Joe Rogan.

In response to pressure from its members over COVID-19 statements made on Joe Rogan’s podcast, GARM pressured Spotify to punish Mr. Rogan by applying GARM’s standards on Mr. Rogan’s content. In late-January 2022, Spotify met with Joe Barone, Managing Partner Brand Safety Americas, of GroupM, a Steer Team member, to discuss so-called misinformation on Spotify.¹²⁶ The alleged misinformation offered by Mr. Rogan was twofold. First, on the April 23, 2021, episode of his podcast, *The Joe Rogan Experience*, Mr. Rogan told his guest, comedian Dave Smith, his views about the COVID-19 vaccine: “You’re 21 years old and you say to me should I get vaccinated? I go, no. . . . Are you healthy? Are you a healthy person? Look, don’t do anything stupid, but you should take care of yourself.”¹²⁷ Second, on December 31, 2021, Mr. Rogan featured Dr. Robert Malone, an early mRNA researcher and COVID-19 vaccine skeptic, on his podcast.¹²⁸ While YouTube removed the episode, Spotify refused to take it down.¹²⁹ But the event that triggered GroupM’s outreach to Spotify was musician Neil Young’s decision to remove his music from the platform.¹³⁰

In an email dated January 27, 2022, GroupM accused Spotify of having a “disregard for spreading dangerous misinformation” and threatened Spotify’s “process of joining GARM” because Daniel Ek, Spotify’s CEO, commented in *The New York Times* supporting Mr. Rogan.¹³¹

¹²¹ See *infra* notes 122-125.

¹²² HJC-WFA-GARM-000051993, at -195.

¹²³ *Id.*

¹²⁴ *Id.* at -194.

¹²⁵ Rakowitz Testimony, *supra* note 2 at 51:3-4. See also *id.* at 111:3-6.

¹²⁶ HJC-WFA-GARM-000017926, at -927.

¹²⁷ #1639 – Dave Smith, THE JOE ROGAN EXPERIENCE. See also Neil Young, *Joe Rogan and Spotify's Balancing Act*, WALL ST. J. (Jan. 28, 2022).

¹²⁸ #1757 – Dr. Robert Malone, THE JOE ROGAN EXPERIENCE. See also J. Clara Chan, *Spotify to Pull Neil Young's Music After Artist's Objections to Joe Rogan*, THE HOLLYWOOD REPORTER (Jan. 26, 2022).

¹²⁹ Press Release, Joe Rogan Experience #1757 - Dr. Robert Malone, MD Full Transcript, Congressman Troy E. Nehls (Jan. 3, 2022).

¹³⁰ HJC-WFA-GARM-000056744, at -746. See also J. Clara Chan, *Spotify to Pull Neil Young's Music After Artist's Objections to Joe Rogan*, THE HOLLYWOOD REPORTER (Jan. 26, 2022); Neil Young, *Joe Rogan and Spotify's Balancing Act*, WALL ST. J. (Jan. 28, 2022).

¹³¹ HJC-WFA-GARM-000056744, at -747.

The company stood by its star podcaster, with Chief Executive Daniel Ek saying that the ambition to make Spotify the “largest audio platform in the world” involves embracing diverse voices and differing opinions as the company chases scale in podcasting.

“The most important thing for us is to have very clear policies in place,” he said in an interview a month after the town hall. “It doesn’t matter if you’re Joe Rogan or anyone else, we do apply those policies and they need to be evenly applied.”¹³²

Documents produced to the Committee show that GroupM’s concerns were not based on content monetization, where GARM asserts that its work resides, because GroupM does not place its advertisements on Mr. Rogan’s podcast.¹³³ One method in which advertisers can place their advertisements is by buying an “audience.”¹³⁴ In this method, advertisers provide a platform with certain information about the people the company hopes to target and the platform places the advertisement.¹³⁵ In buying an audience, advertisers lose some transparency around where the advertisement appears and what content is around the advertisement.¹³⁶ For example, advertisements on a Facebook, Instagram, or Twitter feed will also appear around unique content tailored to the individual using that platform.¹³⁷ It is in this “audience buying” form of advertising that brand safety concerns arise because an advertisement might appear adjacent to content of which the company does not approve. Alternatively, companies may choose to advertise on a specific show, podcast, movie, website, or other form of media.¹³⁸ It was in this context that GARM’s members were discussing Spotify and Mr. Rogan’s podcast—placement on a specific medium where brand safety concerns do not arise.

In his email on January 27, 2022, Mr. Barone informed his colleagues at GroupM that “GroupM does not buy Joe Rogan, and therefore we had no client exposure[.]”¹³⁹ Nonetheless, Mr. Barone wrote to his colleagues that he notified Spotify that even if GroupM clients do not buy advertisements on Mr. Rogan’s podcast, the podcast’s content put all of Spotify’s advertising with GroupM clients at risk.¹⁴⁰ Mr. Barone also told his colleagues that he warned Spotify that it would “conduct a complete Trust & Safety review of the Spotify platform and policies” and that GroupM “will begin that process immediately[.]”¹⁴¹ In other words, GroupM knew there was no brand safety concern because it did not buy advertisements on Mr. Rogan’s podcast, but it still sought to silence Mr. Rogan’s views anyway. On January 28, 2022, Mr. Barone forwarded this

¹³² Anne Steele & Gareth Vipers, *Neil Young Demands Spotify Remove His Music Over Joe Rogan’s Vaccine Comments*, N.Y. TIMES (Jan. 25, 2022).

¹³³ See *infra* notes 139-142.

¹³⁴ Rakowitz Testimony, *supra* note 2 at 44:14-45:7.

¹³⁵ *Id.*

¹³⁶ *Id.* at 44:14-45:7 & 58:25-60:3.

¹³⁷ *Id.*

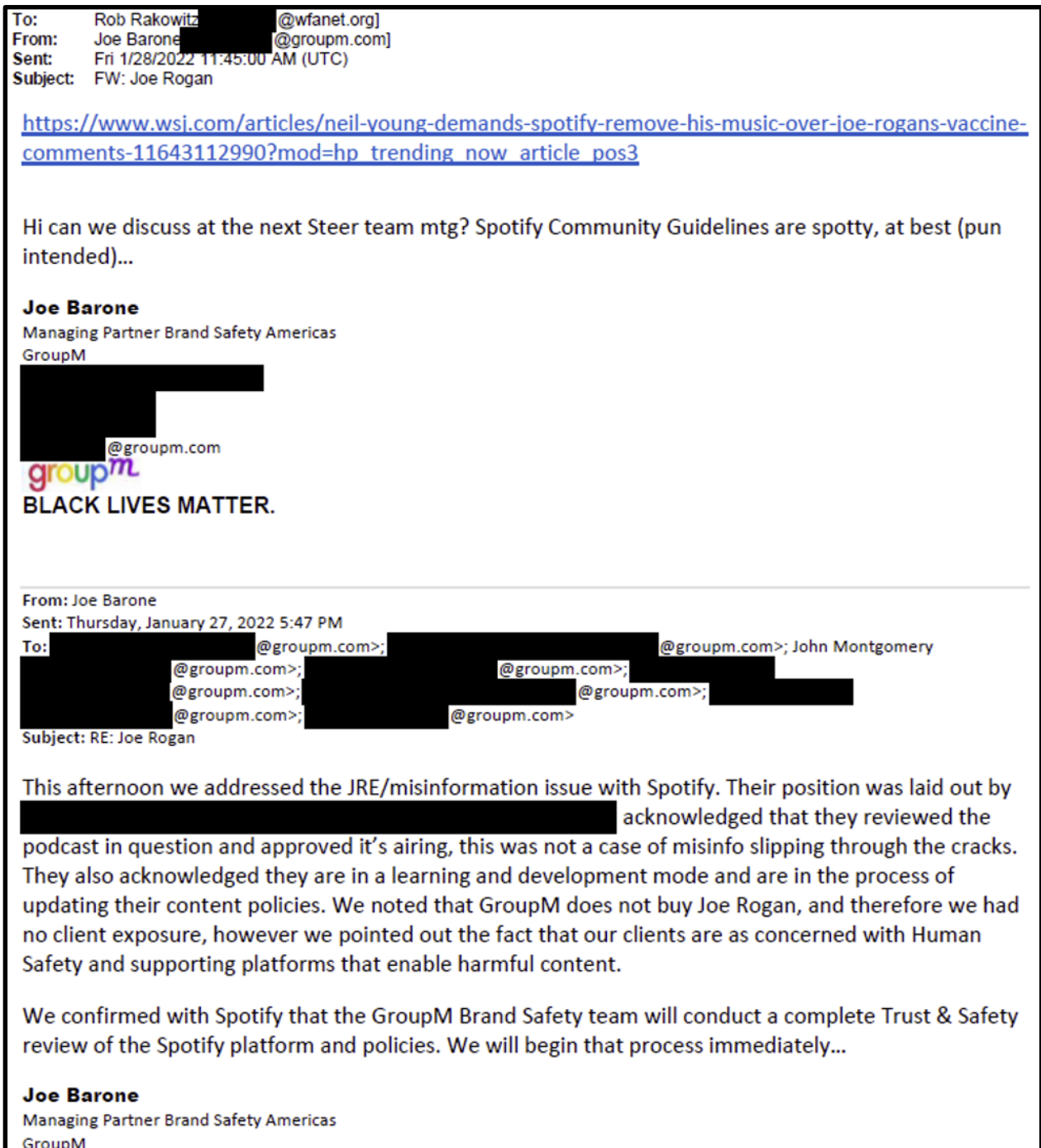
¹³⁸ *Id.*

¹³⁹ HJC-WFA-GARM-000056744, at – 745.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

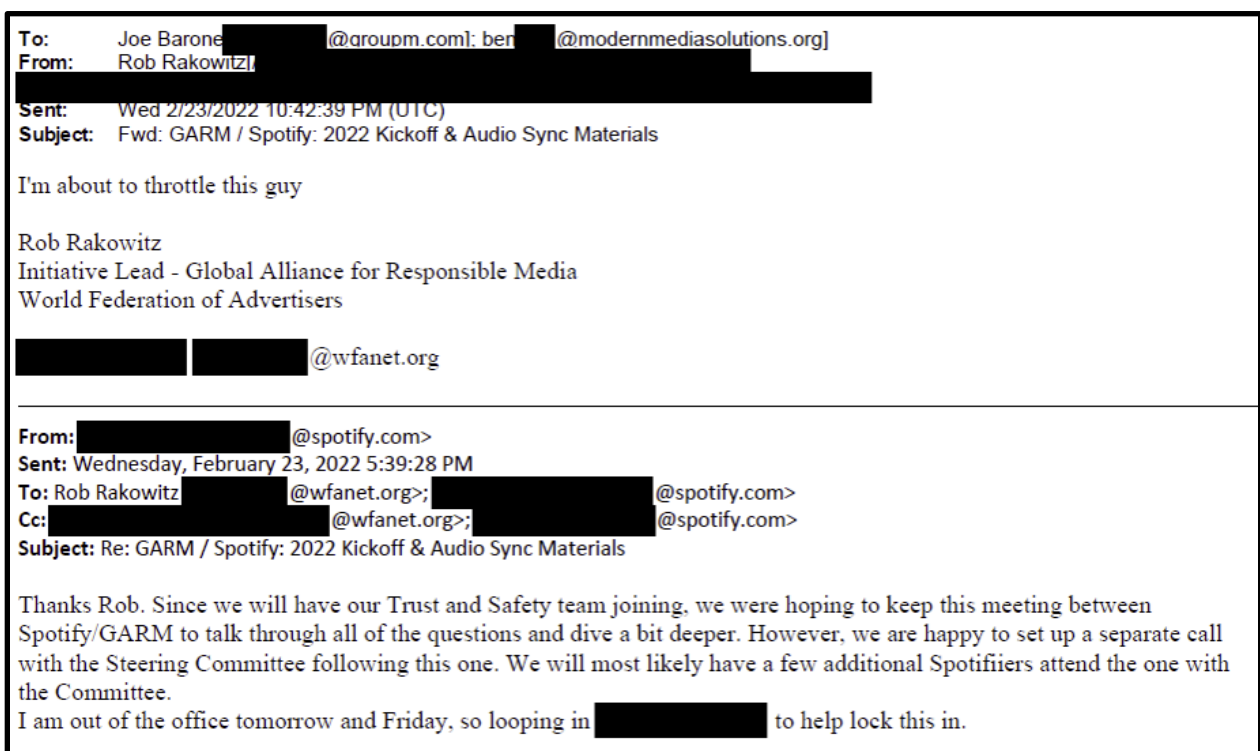
email chain to Mr. Rakowitz and asked to discuss the issue with the entire Steer Team, to which Mr. Rakowitz agreed.¹⁴²



HJC-WFA-GARM-000056744-745.

¹⁴² HJC-WFA-GARM-000056744.

On February 7, 2022, Mr. Rakowitz and Mr. Barone had a meeting with Spotify.¹⁴³ On February 10, 2022, Mr. Rakowitz emailed Spotify that he had debriefed the GARM Steer Team and requested another meeting to address outstanding questions.¹⁴⁴ Spotify repeatedly attempted to schedule the meeting.¹⁴⁵ The sole sticking point for Spotify was that it wanted the meeting to be between Spotify and GARM, while Mr. Rakowitz wanted to invite the entire Steer Team.¹⁴⁶ Eventually, Mr. Rakowitz told Spotify “this isn’t working,”¹⁴⁷ complaining about Spotify’s “lack of seriousness” in scheduling the meeting.¹⁴⁸ Mr. Rakowitz threatened to publicly criticize Spotify, writing that GARM had “held back on press commentary on this incident” but if “we’re unable to connect and discuss the issues we’ll only be able to comment with what we’re able to glean.”¹⁴⁹ Mr. Rakowitz warned Spotify: “This is a statement backed by the Steer Team – which you will recall functions as a board of directors and brings together P&G, Unilever, Mars, Diageo, 4As, GroupM, ISBA, ANA[.]”¹⁵⁰



HJC-WFA-GARM-000021654.

In an apparent celebration of his threatening email, Mr. Rakowitz forwarded the email to Ben Jankowski, an advertising consultant formerly at Mastercard, and to Mr. Barone at GroupM, commenting simply: “Throttled[.]” Mr. Jankowski replied, commenting about the Spotify

¹⁴³ HJC-WFA-GARM-000017651, at -657.

¹⁴⁴ HJC-WFA-GARM-000017651, at -656.

¹⁴⁵ HJC-WFA-GARM-000017651, at -653.

¹⁴⁶ HJC-WFA-GARM-000017651, at -652.

¹⁴⁷ HJC-WFA-GARM-000017651.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

employee, “[T]his man needs a smack.”¹⁵¹ Mr. Rakowitz testified during his transcribed interview that when he wrote “throttled,” he really meant “frustrated” and that his email was related to the difficulty in scheduling the meeting.¹⁵² This after-the-fact rationalization defies common sense, as one definition of throttled is “to defeat,” which comports with the threatening nature of Mr. Rakowitz’s email.¹⁵³ Mr. Rakowitz’s claim is especially incredible because he had earlier emailed Mr. Barone, writing “I’m about to throttle this guy[.]”¹⁵⁴



HJC-WFA-GARM-000017651.

¹⁵¹ *Id.*

¹⁵² Rakowitz Testimony, *supra* note 2 at 65:11-13.

¹⁵³ *Throttled*, MERRIAN WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/comports>

¹⁵⁴ HJC-WFA-GARM-000021654.

Mr. Rakowitz also claimed during his transcribed interview that the concerns with Mr. Rogan were about “hate speech” and that an “advertiser would take issue with their ads appearing next to said content, because that would create an issue for them from a reputation perspective.”¹⁵⁵ Hate speech, however, is never raised in the documents produced to the Committee about Mr. Rogan, and GroupM specifically informed Mr. Rakowitz that they do not buy advertising on Mr. Rogan so advertisements would not appear “next to said content.”¹⁵⁶ In other words, the issue was not alleged hate speech or concerns about brand safety, but instead the desire of powerful corporations using their marketing dollars to silence certain disfavored views.

GroupM was not the only GARM member to push for pressure on Spotify and Mr. Rogan. On February 10, 2022, Coca-Cola emailed Mr. Rakowitz regarding “evaluating Spotify to better access the Joe Rogan Experience” and noting that the “particular issue (misinformation) does not exactly fit cleanly into [Coca-Cola’s] policy.”¹⁵⁷ On the same day, Mr. Rakowitz replied to Coca-Cola stating that Mr. Rogan and Spotify are “a major area of concern” for GARM but that “[b]rand safety is somewhat separate because brands aren’t being slotted into [Mr. Rogan’s podcast] by accident per say [*sic*].”¹⁵⁸ As he explained to another Coca-Cola employee in a separate email on February 18, 2022, Mr. Rakowitz indicated that “[b]rand safety is somewhat separate on Spotify versus say Facebook Newsfeed because brands aren’t being slotted into” Mr. Rogan’s podcast.¹⁵⁹ These emails provide compelling evidence of Mr. Rakowitz again admitting that GARM’s concerns about Mr. Rogan’s podcast do not amount to a brand safety issue, where GARM’s work resides, because advertisers may easily choose whether or not to advertise on Mr. Rogan’s podcast.

Mr. Rakowitz advised Coca-Cola on how to best direct the company regarding its advertising spend and pressure on Spotify. Mr. Rakowitz wrote to Coca-Cola that he “can’t publicly advise all clients to do X – that gets us into hot water by way of anticompetitive and collusive behaviors.”¹⁶⁰ Instead, Mr. Rakowitz offered to “help [Coca-Cola] formulate a [point of view one-on-one].”¹⁶¹ In other words, Mr. Rakowitz indicated he could not collectively tell every GARM member what to do; instead, he advised GARM members individually what to do, effectively aligning all GARM members. Mr. Rakowitz mistakenly referred to GARM members as his “clients” that he could “advise.”¹⁶² But GARM members are not his clients; they are members of his trade association, and the antitrust laws still apply. Collusive behavior—whether directing concerted action publicly as a group or privately on an individualized basis—is still violative of antitrust laws.

¹⁵⁵ Rakowitz Testimony, *supra* note 2 at 59:1-7.

¹⁵⁶ *Id.*

¹⁵⁷ HJC-WFA-GARM-000056644, at -645.

¹⁵⁸ HJC-WFA-GARM-000056644.

¹⁵⁹ HJC-WFA-GARM-000025816, at -817.

¹⁶⁰ HJC-WFA-GARM-000056644.

¹⁶¹ *Id.*

¹⁶² *Id.*

To: [REDACTED]@coca-cola.com
From: Rob Rakowitz [REDACTED]
Sent: Thur 2/10/2022 10:24:04 PM (UTC)
Subject: Re: Hello

HEY [REDACTED]

It is SO great to hear from you!

Yes – so JRE x Spotify is a major area of concern...

Fundamentally there's an issue with content safety x monetization and their distribution deal; Spotify pay for the rights to distribute and then look the other way on content safety. Brand safety is somewhat separate because brands aren't being slotted into JRE by accident per say. However this goes back to someone at Spotify saying that misogynistic content and misinformation is safe for consumers, suitable for advertisers. I have a hard time on decisions to carry and monetize.

We are in a space of what I would call 'remedial interventions' with Spotify – not entirely dissimilar to FB in summer 2020. In essence – do you have policies, are they transparent, are they consistently enforced?

As it relates to Misinformation we are at the cusp of publishing this but we've gotten roped into the European Commission Code of Practice on Misinformation – so we have delayed external publication of this standard. That is likely in April.

Happy to help you formulate a PoV 1:1

As I am sure you can imagine we can't publicly advise all clients to do X – that gets us into hot water by way of anticompetitive and collusive behaviors.

Please feel free to call if you want to discuss.

And YES – we are LONG overdue a catch-up – I truly miss you!

Rob Rakowitz

Initiative Lead - Global Alliance for Responsible Media

WFA - World Federation of Advertisers

Brussels • London • New York • Singapore

HJC-WFA-GARM-000056644.

C. GARM attacked disfavored news sites to limit consumer choice.

Internal GARM documents produced to the Committee show a clear bias that infiltrates GARM's work and favors left-leaning news sources. For example, in October 2021, when Mr. Rakowitz received a question about *The Daily Wire*, a conservative news organization and media company founded by commentator Ben Shapiro, he contacted two individuals from GroupM: Joe Barone, Managing Partner of Brand Safety Americas, and John Montgomery, Executive Vice of Global Brand Safety. Mr. Rakowitz asked about GroupM's position on *The Daily Wire*.¹⁶³ Mr. Rakowitz told the two men that GARM is "explicitly nonpartisan" and will not deplatform people that might be counter to GARM's world view.¹⁶⁴ Mr. Montgomery, however, explained to Mr. Rakowitz how GroupM monitors media it does not support, like *The Daily Wire*, to find something wrong.¹⁶⁵ Specifically, Mr. Montgomery wrote to Mr. Rakowitz about how GroupM approaches disfavored news sources:

¹⁶³ HJC-WFA-GARM-000022078, at -079.

¹⁶⁴ *Id.* at -080.

¹⁶⁵ *Id.* at -079.

There is an interesting parallel here with Breitbart. Before Breitbart crossed the line and started spouting blatant misinformation, we had long discussions about whether we should include them on our exclusion lists. As much as we hated their ideology and bullshit, we couldn't really justify blocking them for misguided opinion. We watched them very carefully and it didn't take long for them to cross the line[.]¹⁶⁶

In other words, GroupM's strategy when it comes to news outlets offering disfavored views, even before the outlet might somehow "cross[] the line," is to closely monitor the outlets until it finds something to justify placing the entire outlet on a list of websites on which GroupM clients cannot advertise, called an exclusion list.¹⁶⁷



HJC-WFA-GARM-000022078, at -079.

Mr. Montgomery then went on to explain to Mr. Rakowitz his suggested strategy for *The Daily Wire*: "I don't know Daily Wire that well . . . but we should watch them carefully to make sure they don't stoop below the GARM floor."¹⁶⁸ He also suggested expanding the exclusion of disfavored new sources to also include *Fox News*: "If we block [*The Daily Wire*] – why wouldn't we be blocking Fox News?"¹⁶⁹ Mr. Barone ultimately weighed in to explain action GroupM had already taken, "[W]e have Daily Wire on our Global High Risk exclusion list, categorized as Conspiracy Theories."¹⁷⁰ However, when Mr. Rakowitz was asked by the Committee during his transcribed interview whether he discusses with GroupM its list of news outlets that are worthy of monetization, he denied doing so, claiming: "No. The only discussions is about how

¹⁶⁶ *Id.*

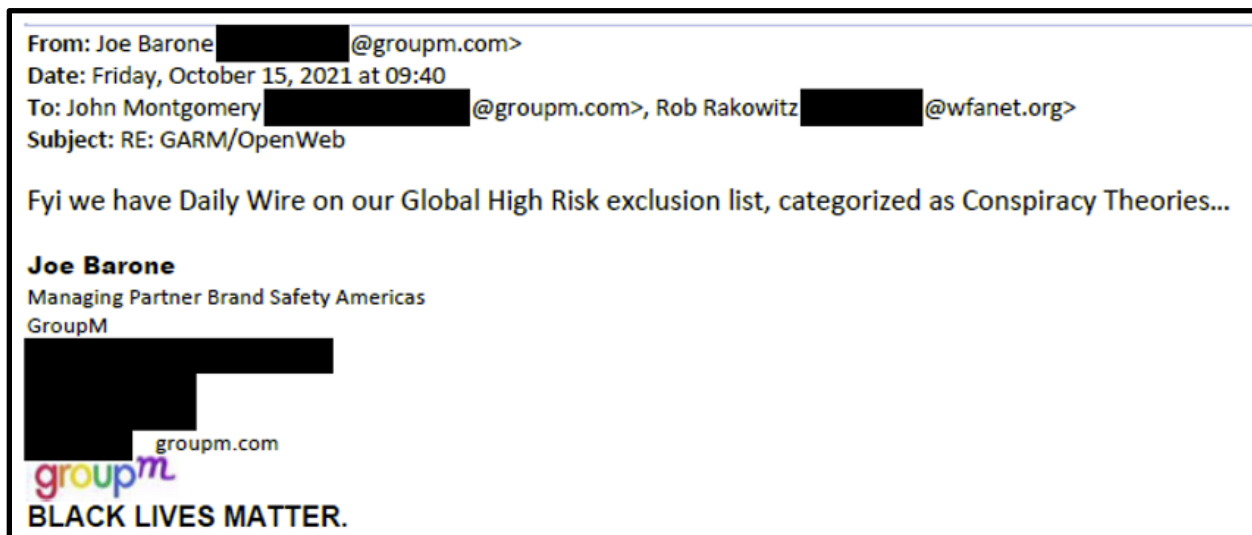
¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ HJC-WFA-GARM-000022078.

frequently they're refreshed. . . . I won't get into those conversations to keep myself compliant with our competition law policy.”¹⁷¹



HJC-WFA-GARM-000022078.

One of GARM’s proposed solutions to control advertising on news outlets was to create a system in which only “legitimate news” received funding, and all advertising revenue was steered away from so-called “disinformation sites.”¹⁷² To classify “legitimate news,” GARM stepped outside the Steer Team and approached outside organizations such as the Global Disinformation Index (GDI) and NewsGuard.¹⁷³ GDI is a British non-profit whose “core output” is its “Dynamic Exclusion List.”¹⁷⁴ This GDI exclusion list can be used by platforms, brands, agencies, and others to inform their own exclusion lists. GDI’s website claims that it is neutral and independent, but documents reviewed by the Committee suggest otherwise. Based on a 2022 study conducted by GDI, the group identified the “Riskiest Sites,” or those that showed the “greatest level of disinformation risk.”¹⁷⁵ Those ten sites included the *New York Post*, *Reason Magazine*, *RealClearPolitics*, *The Daily Wire*, *TheBlaze*, *The American Conservative*, *The Federalist*, and *The American Spectator*.¹⁷⁶ On the contrary, the list of “Least risky sites” included left-leaning news sources such *BuzzFeed News* and *HuffPost*.¹⁷⁷ NewsGuard has also come under scrutiny for using incorrect fact checking in its work—for example, flagging accurate stories about the COVID-19 lab leak theory and a Gaza hospital explosion from a

¹⁷¹ Rakowitz Testimony, *supra* note 2 at 103:20.

¹⁷² HJC-WFA-GARM-000100343, at -348.

¹⁷³ *Id.*

¹⁷⁴ *What We Do*, GDI, <https://www.disinformationindex.org/product/>.

¹⁷⁵ *Brief: Disinformation Risk in the United States Online Media Market, October 2022*, GDI (Oct. 21, 2022), <https://www.disinformationindex.org/research/2022-10-21-brief-disinformation-risk-in-the-united-states-online-media-market-october-2022/>.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

misfired Hamas rocket as misinformation.¹⁷⁸ NewsGuard regularly targets conservative media outlets with the alleged goal of limiting advertising revenue.¹⁷⁹

Documents show that GARM recommends that its members work with organizations such as GDI and NewsGuard. In April 2020, GARM attempted to create a system for grading news content with “white lists” and “black lists.”¹⁸⁰ GARM’s solution would “include GDI [or] similar classification data” to determine if news content was not safe.¹⁸¹ GARM appears to have not gone forward with this project, and in testimony to the Committee Mr. Rakowitz stated he does not work with GDI other than “in the Code of Practice for Disinformation with the European Commission[.]”¹⁸²

When asked if GARM members work with GDI, Mr. Rakowitz testified that he made “made sure that we steer clear of those discussions.”¹⁸³ According to documents reviewed by the Committee, however, Mr. Rakowitz’s testimony is not accurate. For example, one document shows that a GARM member contacted Mr. Rakowitz after reading the 2022 GDI study and claimed, “I’m also digging into this GDI report on US media, which has somehow placed the NYPost as ‘at most risk’ paper in the USA for disinformation. It’s bewildering and GDI is not responding to our emails.”¹⁸⁴ Mr. Rakowitz then responded to the GARM member stating, “Yes, we know GDI . . . we do advise that platforms, ad-tech, agencies, use independent fact checkers to weed out mis-and-disinfo from supply chain and ad buys. GDI is one of many – NewsGuard, IFCN, etc.”¹⁸⁵

Additional internal GARM documents suggests that Mr. Rakowitz promotes GDI and NewsGuard to GARM members over other “independent fact checkers.” In an email to all GARM members providing best brand safety advertising practices related to the Ukraine war, Mr. Rakowitz wrote, “Also ensure you’re working with an inclusion and exclusion list that is informed by trusted partners such as NewsGuard and GDI – both partners to GARM and many of our members.”¹⁸⁶ Further, documents show Mr. Rakowitz set up a meeting with GARM members and GDI in hopes that “GARM members (platforms) are provoked to work with you [GDI], and marketers and agencies map to partnerships you have[.]”¹⁸⁷

The push to have members work with GDI and NewsGuard, combined with the bias driven by these organizations, deprives news outlets that GARM dislikes of the ability to make money. Mr. Rakowitz was aware that GARM’s power could have a negative effect on the revenue of news outlets.¹⁸⁸ GARM’s power—whether derived from its brand members, WFA’s

¹⁷⁸ Brent Scher, *NewsGuard Runs Cover For Terrorists In ‘Fact-Check’ Of Ben Shapiro*, THE DAILY WIRE (Oct. 27, 2023).

¹⁷⁹ Luke Rosiak, *Federal Judge Slaps Down Biden Administration’s Attempt To Dismiss Daily Wire Censorship Lawsuit*, THE DAILY WIRE (May 7, 2024).

¹⁸⁰ HJC-WFA-GARM-000100343 at -348.

¹⁸¹ *Id.* at -344.

¹⁸² *Id.*

¹⁸³ Rakowitz Testimony, *supra* note 2 at 103:6-8.

¹⁸⁴ HJC-WFA-GARM-000058931.

¹⁸⁵ *Id.*

¹⁸⁶ HJC-WFA-GARM-000079936, at -940.

¹⁸⁷ HJC-WFA-GARM-000119679.

¹⁸⁸ HJC-WF A-GARM-000007480 at -481.

90% of global advertising spend, or its relationship with all major advertising agency holding companies—has the ability to put specific news outlets out of business or greatly reduce the amount of content these outlets can create. The end result deprives consumers of a diverse choice of news outlets and viewpoints.

Finally, the demonetization of news sites that conflict with GARM’s purported worldview does not stop only at digital platforms or online news websites but also extends to television. One example included the case of Kyle Rittenhouse, who went to Kenosha, Wisconsin, “on a night of unrest in Kenosha sparked by the police shooting of Jacob Blake,” and shot and killed two people.¹⁸⁹ Mr. Rittenhouse testified that he was chased and feared for his life when he fired his gun.¹⁹⁰ The jury found Mr. Rittenhouse not guilty on all charges.¹⁹¹

Documents suggest that GARM members and even people inside WFA pushed to attack Fox News for stating that Mr. Rittenhouse was not guilty of murder. GARM received outreach from one of its members asking WFA to condemn *Fox News’s* coverage.¹⁹² The member stated: “[W]e can have all the diversity initiatives in the world, but we are fatally undermined if we do not call these narratives on ‘mainstream’ broadcast media as well as on the platforms.”¹⁹³ A consultant for WFA described *Fox News* in the email chain as “praising or calling for the murder of protestors,”¹⁹⁴ even though Kyle Rittenhouse was found not guilty. Stephan Loerke, CEO of WFA, responded by stating, “From a brand-owner perspective, the reasoning which has led us to put pressure and hold to account platforms on hate speech and harmful content should also apply to a media owner. We’ve always made it clear that the standards which we (GARM) want to see platforms enforce should be valid irrespective of media (even if [the media] has widespread popular support).”¹⁹⁵ Mr. Loerke agreed to discuss the issue—that is, condemning *Fox News’s* news gathering and reporting—with GARM’s Steer Team.¹⁹⁶

D. GARM focused on political ads and alleged misinformation to influence elections.

Documents also suggest that GARM and its members weaponized claims of misinformation to influence the 2020 presidential election. On October 6, 2020, Mr. Rakowitz emailed Stephan Loerke, WFA CEO, to prepare for a broad policy call with Facebook.¹⁹⁷ Mr. Rakowitz suggested that Mr. Loerke tell Facebook it was “at a crossroads for the platform and fence sitting on content curation and moderation” and that it was “holding back from better safety and authoritative content – we felt you got this right for COVID – this playbook should be the North Star[.]”¹⁹⁸ Mr. Rakowitz wrote that “this is a dress rehearsal for the electorals –

¹⁸⁹ Beck Sullivan, *Kyle Rittenhouse is acquitted of all charges in the trial over killing 2 in Kenosha*, AP (Nov. 19, 2021).

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² HJC-WFA-GARM-000044897 at -898.

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ HJC-WFA-GARM-000044897.

¹⁹⁶ *Id.*

¹⁹⁷ HJC-WFA-GARM-000022821.

¹⁹⁸ *Id.*

COVID to BLM”¹⁹⁹ Mr. Rakowitz also noted “that each of the platforms operate independently . . . but we saw some harmonized responses for COVID” and suggested that Mr. Loerke ask, “Are you considering a coordinated response for BLM and/or elections?”²⁰⁰ In other words, GARM pushed Facebook for coordinated action around the upcoming elections similar to the actions the platform took during the COVID-19 pandemic to censor speech.

One method by which GARM and its members weaponize their power to influence elections is through pressuring platforms to label content as misinformation. GARM added a definition of misinformation to its framework for brands and platforms to use in 2022.²⁰¹ According to GARM, misinformation “is defined as the presence of verifiably false or willfully misleading content that is directly connected to user or societal harm[.]”²⁰² GARM partnered with the European Union to develop this definition.²⁰³ GARM delayed launching its misinformation definition to align with the definition put out by European officials, and the definitions are currently identical.²⁰⁴

Internal GARM documents demonstrate the vagueness of the definition and the ability for it to be weaponized against disfavored parties. For example, according to GARM, “medium risk” misinformation is a “[d]ramatic depiction of misinformation presented in the context of entertainment[.]” When developing this definition, an internal GARM document listed one possible example as “a sketch comedy show[.]”²⁰⁵ Mr. Rakowitz admitted during his transcribed interview that this was “a suggestion from one of the working group members” and “the reaction from the community call. . . [was] that that was a horrible example.”²⁰⁶ Although that example was eventually deleted, the medium risk definition remained the same, along with the possibility of “horrible” and broad claims by GARM members of what constitutes misinformation.

i. GARM and Unilever fought to label a 2020 Trump campaign advertisement as misinformation.

One example of how GARM and its members weaponized their influence and GARM’s guidelines regarding so-called misinformation to influence elections was by flagging a campaign advertisement paid for by President Trump’s campaign to check for possible policy violations.²⁰⁷ In an email on October 3, 2020, one month before the presidential election, Rob Master, Vice President of Media and Digital Engagement at Unilever, sent an email to Facebook employees asking whether a President Trump “paid ad violated any [Facebook] policies.”²⁰⁸ The advertisement in question was paid for by President Trump’s campaign and stated: “Joe’s

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ Press Release, GARM, GARM announces guidelines on misinformation, standards on ad placements, and expansion to cover the metaverse, <https://wfanet.org/knowledge/item/2022/06/21/GARM-announces-guidelines-on-misinformation-standards-on-ad-placements-and-expansion-to-cover-the-metaverse>.

²⁰² <https://wfanet.org/knowledge/item/2022/06/21/GARM-announces-guidelines-on-misinformation-standards-on-ad-placements-and-expansion-to-cover-the-metaverse>. See also HJC-WFA-GARM-000001893.

²⁰³ *Id.*

²⁰⁴ Rakowitz Testimony, *supra* note 2 at 71:22-72:23.

²⁰⁵ HJC-WFA-GARM-000022092.

²⁰⁶ Rakowitz Testimony, *supra* note 2 at 136:19-137:5.

²⁰⁷ HJC-WFA-GARM-000059383.

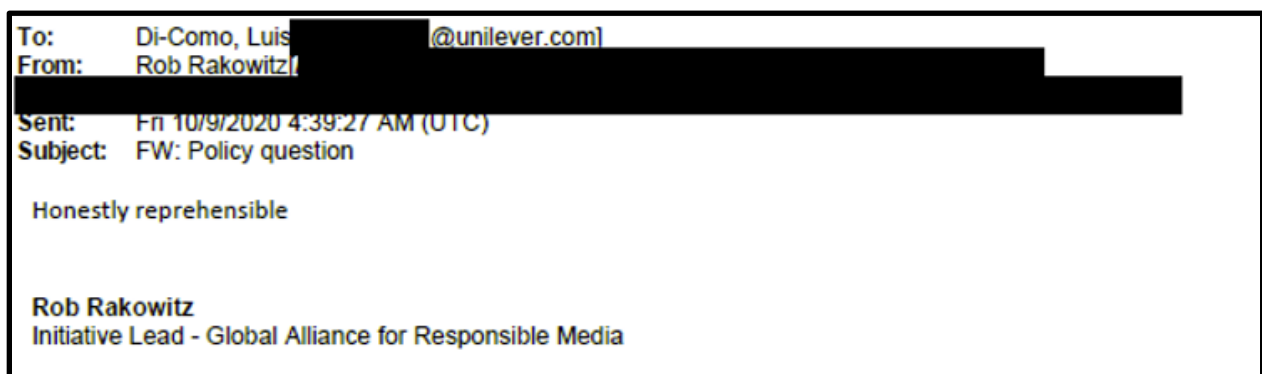
²⁰⁸ *Id.* at -386.

BEGGING for breaks during the debate! CHECK JOE’s EARS! HE REFUSED drug test & DECLINED an earpiece inspection! . . . STOP SLEEPY JOE[.] WHY WON’T SLEEPY JOE COMMIT TO AN EAR PIECE INSPECTION?”²⁰⁹ A Facebook employee explained to Unilever that Facebook had “reviewed this ad and it does not violate our ads policies. In addition, given this ad is from President Trump, it is considered candidate speech and is therefore not eligible for fact checking.”²¹⁰ Luis Di Como, Executive Vice President of Global Media at Unilever, then added Mr. Rakowitz to the email chain and quoted a Facebook misinformation policy that stated, “[m]isinformation in ads results in a rejection of an ad—we prohibit ads that include claims debunked by third-party fact-checkers or, in certain circumstances, claims debunked by organizations with particular expertise.”²¹¹ Facebook replied:

While some may find the Biden [earpiece and drug test] ad objectionable, it doesn’t violate any of these stated Advertising Policies, which are heavily weighted to protecting people from real world harm. I want to emphasize that our Advertising Policies apply to everyone, including politicians. We have and we continue to remove ads that violate these policies, including ads from both presidential candidates.

It’s also important to note that this ad is from a presidential candidate, and therefore it is not eligible to be factchecked. We believe people should be able to see what politicians are saying so that they can hold their elected officials accountable and make informed decisions about who will lead them. Political ads from presidential candidates receive intense public scrutiny and are placed in our public Ad Library for seven years.²¹²

Apparently unhappy with the policy, Mr. Rakowitz then wrote separately to Mr. Di Como, “Honestly reprehensible[.]”²¹³



HJC-WFA-GARM-000059383.

²⁰⁹ *Id.*

²¹⁰ *Id.* at -385.

²¹¹ *Id.* at -384.

²¹² *Id.* at -383.

²¹³ *Id.*

When asked during his transcribed interview if “people should be able to see what politicians are saying so that they can hold their elected officials accountable and make informed decisions about who will lead them,” Mr. Rakowitz refused to directly answer and replied, “It’s not my position to take a stance on individual member policies.”²¹⁴ When asked why he wrote “honestly reprehensible” in response to Facebook’s response, Mr. Rakowitz testified that he was concerned about a lack of consistency on policies” and “having different policies and not having a clear line[.]”²¹⁵ Mr. Rakowitz explained the “lack of consistency” as “having a separate set of policies and separate enforcement ” and “[i]t’s having different policies and not having a clear line that is, you know, consistent.”²¹⁶ Mr. Rakowitz explained there are “multiple levels or layers of policies, and it creates confusion” and that he didn’t “think that this [policy] is simple, and that’s, honestly, what my reaction is.”²¹⁷ Facebook’s policy on political advertisements, however, seems perfectly clear: Facebook does not fact check advertisements by political candidates because “people should be able to see what politicians are saying so that they can hold their elected officials accountable and make informed decisions about who will lead them.”²¹⁸ Mr. Rakowitz’s response, “Honestly reprehensible,” also seems perfectly clear: Mr. Rakowitz thought that Facebook should have labeled President Trump’s campaign advertisement as misinformation.

ii. *GARM and Unilever took issue with Elon Musk exposing the truth about Twitter censoring the Hunter Biden laptop story.*

Unilever, through GARM, also expressed issues with Mr. Musk exposing the truth about how Twitter, prior to Mr. Musk’s acquisition, censored the Hunter Biden laptop story. The story, first reported in the *New York Post* just a few weeks before the 2020 presidential election, reported that incriminating evidence about the Biden family’s influence peddling was found on Hunter Biden’s laptop.²¹⁹ The story was initially rejected by mainstream media,²²⁰ and Twitter suppressed the story on its platform.²²¹ The laptop and much of its contents have since been authenticated, and Twitter eventually admitted its treatment of the story was a mistake.²²² After Mr. Musk bought Twitter, internal Twitter documents were released to journalists which exposed how and why Twitter suppressed the story.²²³

On December 3, 2022, Mr. Rakowitz sent an email to his colleagues at WFA, including WFA CEO Stephan Loerke.²²⁴ Mr. Rakowitz was reporting to his colleagues about a meeting WFA held with Twitter following Mr. Musk’s acquisition of the company.²²⁵ Mr. Rakowitz

²¹⁴ Rakowitz Testimony, supra note 2 at 76:24-77:3.

²¹⁵ Rakowitz Testimony, supra note 2 at 77:9-12 & 16-18.

²¹⁶ Rakowitz Testimony, supra note 2 at 77:16-18.

²¹⁷ Rakowitz Testimony, supra note 2 at 77:23-24-77:1-3.

²¹⁸ HJC-WFA-GARM-000059383 at -383.

²¹⁹ Brian Flood, Nikolas Lanum & Joseph A. Wulfsohn, *Hunter Biden laptop re-emerges as media embarrassment as it becomes key evidence at gun trial*, FOX NEWS (June 7, 2024).

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ Matt Taibi, *The Twitter Files*, SUBSTACK (Dec. 2, 2022).

²²⁴ HJC-WFA-GARM-000054330.

²²⁵ *Id.*

shared a press release and plan to comment on the meeting.²²⁶ Mr. Rakowitz also wrote that he had “connected with” members of GARM’s Steer Team about Mr. Musk’s leadership of Twitter and Unilever has “issues with overtly partisan takes (e.g., Hunter Biden laptop exposé.)”²²⁷

Unilever’s comments to Mr. Rakowitz demonstrate the partisan nature of GARM and how far GARM has drifted from brand safety and content monetization. Given the opportunity to discuss actual brand safety and monetization policies, Unilever instead chose to express “issues” with Mr. Musk’s handling of the Hunter Biden laptop story.²²⁸ If Unilever believed that Mr. Musk was mishandling Twitter or that the platform was unsafe, Unilever was free to unilaterally stop spending its advertising money on the platform. Alternatively, Unilever could have made unilateral demands to Twitter about where and how Unilever’s advertisements would appear on the platform. Instead, Unilever chose to backchannel through Mr. Rakowitz concerns about Mr. Musk exposing the truth regarding the Hunter Biden laptop story. Unilever, through its seat on the Steer Team, knows the influence and power Mr. Rakowitz wields with his ability to speak with the backing of the full Steer Team and other GARM members. The threat Mr. Rakowitz can pose to an entire platform is enormous, evidenced by his taking credit for Twitter’s revenue decline.²²⁹

Mr. Rakowitz’s power comes from the members of GARM and their advertising dollars. Because power lies with the members, when members communicate an opinion to Mr. Rakowitz, he is likely to communicate that opinion on to the platforms. Ultimately, when platforms receive the message from Mr. Rakowitz, the companies have the choice to cede to his demands or risk losing their advertising revenue.

iii. *GARM and Unilever wield the power of misinformation to censor negative product reviews.*

Unilever did not only use the sword of “misinformation” for partisan political purposes, but also to make money by attacking product reviews. Unilever, GARM, and GroupM participated in a discussion with representatives from TikTok about misinformation on the platform.²³⁰ The example that Unilever flagged to discuss with TikTok was a video in which a haircare influencer gave Unilever a negative product review.²³¹ Specifically, the influencer claimed that Unilever’s Suave brand shampoo “is straight dish soap[.]”²³² GARM, GroupM, and Unilever then had discussions with TikTok about misinformation and discussed the video.²³³

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ See HJC-WFA-GARM-000030996, at -997.

²³⁰ HJC-WFA-GARM-000092398, at -399.

²³¹ HJC-WFA-GARM-000092398.

²³² HJC-WFA-GARM-000092401.

²³³ *Id.*



HJC-WFA-GARM-000092401.

This example shows the extent to which an allegation of misinformation can be weaponized by GARM and its members to harm consumers. Although foreign corporations like Unilever using the power of GARM to influence policies around political advertising should be of universal concern, the harm to consumers from using the power of GARM to silence product reviews is equally concerning from an antitrust perspective. If discussions among representatives of GARM, Unilever, GroupM, and social media platforms result in product reviews, even if exaggerated, being labeled as misinformation and disappearing from social media, consumers will be less informed about their purchases. The result, if GARM and its members are able to influence broad swaths of so-called misinformation policy across digital platforms, will be more control by corporations of what consumers can say about products, less-informed consumers, and reduced competition for customers.

III. THE PLANNED WORK OF GARM AND ITS MEMBERS EXTENDS INTO GOVERNMENT CENSORSHIP AND ARTIFICIAL INTELLIGENCE.

GARM works with advertising technology companies to seamlessly integrate GARM's solutions, and consequently its biases, into advanced tools meant to deliver and monitor advertising on digital platforms. Known within GARM as its "ad-tech partners," this group of companies offers solutions that help companies understand where their advertisements appear and around what content those advertisements appear, and aids brands in avoiding the placement of their advertisements near content that they do not want to support.²³⁴

Documents reviewed by the Committee suggest that membership in GARM was conditioned on the fact that these ad-tech partners would "[a]gree[] to make commensurate changes to business operations in pursuit of GARM's goals."²³⁵ As seen throughout this report, GARM's "goals" amount to attacking disfavored viewpoints under the guise of brand safety.²³⁶ In effect, GARM's biases are baked directly into the solutions, allowing brands to seamlessly integrate GARM's censorship. Further, documents reviewed by the Committee show that a GARM ad-tech partner assisted the Department of Homeland Security (DHS) and its Cybersecurity Infrastructure Security Agency (CISA) in the creation of tools to aid in the identification of dis- and misinformation.²³⁷

A. GARM's expanded initiatives will bring its biases and censorship to artificial intelligence.

In an effort to more efficiently and consistently integrate GARM's solutions into industry operations, GARM targeted a large group of brand safety providers to join its community.²³⁸ This partnership was designed to help GARM "enable the industry as a whole to drive GARM's work forward."²³⁹ Eleven ad-tech service providers (i.e., tools and software to deliver and measure digital advertising) were initially invited to join the GARM community.²⁴⁰ The providers invited were Double Verify (DV), Integral Ad Science (IAS), Oracle Data Cloud/Moat, Peer39, Channel Factory, Pixability, Zefr, OpenSlate, Grapeshot, The Hive, and Ebiquity.²⁴¹ According to GARM, these providers were chosen due to these firms being "engaged with the following function: content detection and classification for the purposes of content moderation and/or monetization, content targeting for the purposes of media planning and buying, campaign reporting for the purposes of media buying."²⁴²

²³⁴ Amy Fox, *Pre-bid/Post-bid Verification: What are your options?*, <https://blis.com/pre-bid-post-bid-verification-options-location-based-campaigns/>. See also, David Simutis, *Contextual Advertising: What it is, how it works, and why to use it*, <https://www.peer39.com/blog/contextual-advertising>.

²³⁵ HJC-WFA-GARM-000023619.

²³⁶ See *infra* section II.

²³⁷ HJC-WFA-GARM-000076675. See also HJC-WFA-GARM-000076674.

²³⁸ HJC-WFA-GARM-000057766.

²³⁹ HJC-WFA-GARM-000007848.

²⁴⁰ HJC-WFA-GARM-000057768.

²⁴¹ HJC-WFA-GARM-000057768-769.

²⁴² *Id.*

Content detection and classification uses artificial intelligence (AI) or machine learning (ML) to detect and classify pieces of online content into specific risk-level categories.²⁴³ The pieces of content analyzed could be news articles, user-generated content (UGC) such as Tweets or posts, or even YouTube videos.²⁴⁴ This process of classifying content and then blocking ads from appearing near so-called “risky” content is known as pre-bid verification.²⁴⁵ For example, GARM ad-tech partner Peer39 offers brand suitability and safety solutions for advertisers that allow those advertisers to select a GARM risk tier, and the companies’ advertisements will automatically follow GARM’s framework.²⁴⁶

Documents produced to the Committee suggest that GARM leadership intended to dictate the product offerings of these technology companies by “building [GARM solutions] into [the technology company’s] final product.”²⁴⁷ For example, GARM invited these companies into the community because, in the words of Mr. Rakowitz, “[h]aving these companies in GARM will help to ensure that GARM standards are acknowledged and implemented as part of these company solutions.”²⁴⁸ Further, documents outline GARM’s desire to oversee and dictate the work product of these companies. In notes created to brief GARM’s Steer Team, Mr. Rakowitz wrote, “After review by the GARM Steer Team, we feel that the timing of having these companies join GARM is critical, as independent targeting and reporting company work requires some level of oversight to ensure consistency in application.”²⁴⁹

Members of the GARM Steer Team viewed these companies as the means to achieving GARM’s censorship. The Steer Team representative from ISBA, Phil Smith, forwarded an email from GARM ad-tech partner IAS, to Mr. Rakowitz and GroupM’s Mr. Barone asking, “[W]hen do we expect to see the verification companies echoing and amplifying GARM work?”²⁵⁰ In response, Mr. Barone outlined the progress of the ad-tech partners in creating products that incorporate the GARM solutions, detailing how many ad-tech partners had aligned their solutions with GARM’s safety floor and suitability framework.²⁵¹ These documents suggest that GARM was actively incorporating its framework into a large group of technology companies’ products. By placing GARM’s standards in a large number of ad-tech companies, GARM created an illusion of choice—although it appears there are many different ad-tech companies competing, they are all implementing GARM’s framework.

Zefr, for example, is a GARM ad-tech partner that utilizes ML to uphold the GARM brand safety standards, such as the Brand Safety Floor and Suitability Framework.²⁵² According to the Zefr website, Zefr’s brand suitability product offering provides advertisers and platforms

²⁴³ Amy Fox, *Pre-bid/Post-bid Verification: What are your options?*, <https://blis.com/pre-bid-post-bid-verification-options-location-based-campaigns/>. See also David Simutis, *Contextual Advertising: What it is, how it works, and why to use it*, <https://www.peer39.com/blog/contextual-advertising>.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Advanced Contextual*, Peer39, <https://www.peer39.com/product>.

²⁴⁷ HJC-WFA-GARM-000057768.

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ HJC-WFA-GARM-000092365, at -368.

²⁵¹ *Id.*

²⁵² *Brand Suitability*, Zefr, <https://zefr.com/brandsuitability>.

with “GARM standard brand suitability for complex environments.”²⁵³ Zefr accomplishes this goal by incorporating GARM standards directly into its AI products, going as far as to claim that its “proprietary discriminative AI is powered by years of training data on platforms, and goes beyond keyword and text-based analyses, combining AI and ground truth data from global fact checking organizations that is mapped to the industry standards set by the Global Alliance for Responsible Media (GARM).”²⁵⁴

Zefr openly acknowledges its close adherence to GARM in internal documents obtained by the Committee. In an email with the subject “GARM Misinformation Policy,” Senior Director of Content Policy at Zefr, Cameron Cramer, wrote to GARM: “I just wanted to say how insightful being on these GARM calls the last few months have been. It’s been so helpful in orchestrating our policies over here [Zefr].”²⁵⁵ In November 2022, Zefr announced its new product, Atrium, which can report back to advertisers with information that highlights where ads appeared on digital platforms.²⁵⁶ According to Zefr’s description of Atrium, the product was built “with full mapping to the GARM industry framework.”²⁵⁷

YouTube incorporates Zefr-powered solutions that prevent advertisements from appearing next to content that violates GARM’s standards.²⁵⁸ Internal documents show that Mr. Rakowitz referred to this solution as “closed loop” due to its ability to both block certain content from advertising revenue by controlling where advertisements are placed and also allow advertisers to see the content around their advertisements.²⁵⁹ The reaction from GARM to this information can only be described as elation. Rakowitz responded to Zefr representatives stating, “OK dude – the story is CLOSED LOOP. F YEAH... I NEED SCREEN SHOTS FOR TRAINING – this is best-in-class execution.”²⁶⁰

This “best-in-class execution” is subject to abuse by GARM and its ad-tech partners. For example, the GARM framework publicly claims that only two types of content related to guns and ammunition should be high risk: (1) the “glamorization” or “gratuitous depiction of illegal sale or possession of arms” or (2) “depictions of sale/use/distribution of illegal arms for inappropriate uses” or “harmful acts.”²⁶¹ But GARM’s documents show that Zefr’s technology flagged as high-risk a YouTube video by a user that explained the history of the ten best lever action rifles ever made.²⁶² The video did not include any content that should result in a categorization of the video as high risk. By combining GARM’s framework with secretive ad-tech solutions, however, this video would lose the opportunity to receive most advertising revenue, and the video creator would have no transparency as to why his revenue disappeared.

²⁵³ *Id.*

²⁵⁴ *Zefr AI for Misinformation*, Zefr, <https://zefr.com/misinformation>.

²⁵⁵ HJC-WFA-GARM-000008325.

²⁵⁶ *Atrium*, Zefr, <https://zefr.com/atrium>.

²⁵⁷ *Id.*

²⁵⁸ HJC-WFA-GARM-000055220.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ HJC-WFA-GARM-000001893.

²⁶² HJC-WFA-GARM-000113035 at -036.

GARM was influential in bringing together Zefr and Meta, the parent company of Facebook and Instagram. In an email exchange between Mr. Rakowitz and WFA CEO Stephan Loerke, Mr. Rakowitz outlined forthcoming news that Zefr and Meta will be partnering to provide advertisers with “post-campaign transparency that will give brands and agencies reporting on where ads show up.”²⁶³ In the very next sentence, Rakowitz stated: “This is a big first step for [Meta] and should be acknowledged as a significant win [WFA/GARM] forced.”²⁶⁴ Mr. Loerke responded to Mr. Rakowitz’s email writing, “Good news. Makes sense to highlight the role that GARM played [in bringing the two together].”²⁶⁵ Mr. Rakowitz replied, “The stakeholder messaging from Meta is – ‘without GARM we wouldn’t have been able to make these moves’... This should be a message to the [WFA Executive Committee] . . . our demands are being met.”²⁶⁶ Rakowitz ended by comparing himself to President Theodore Roosevelt: “We need to get the [Executive Committee] to understand that we’re operating with a Roosevelt doctrine of ‘speaking softly and carrying a big stick’[.]”²⁶⁷

GARM’s work with its ad-tech partners does not stop at forcing its framework into the solutions of ad-tech companies and then pressuring platforms to adopt those solutions. GARM also utilized its network to collaborate on GARM’s Shared Source Program, which is a collection of content that would be scored for brand safety by GARM members.²⁶⁸ That collection of content would then be used to train AI and ML tools to detect and score similar pieces of content.²⁶⁹ In GARM’s own words, the Shared Source Program will “create a shared dataset that will inform technologies which categorize content suitable for monetization that can be used by members involved in content categorization, content targeting, and content measurement/reporting.”²⁷⁰ The program was designed to more consistently and holistically incorporate GARM solutions across the platforms and ad-tech partners.²⁷¹ The dataset would be made available to all via the Interactive Advertising Bureau’s IAB TechLab.²⁷²

Repeatedly, Mr. Rakowitz testified to the Committee that the classification of content is a decision that is left to the platforms.²⁷³ He also testified that he could not identify misinformation because that is the role of the platforms; however, internal documents suggest GARM has every intention of standardizing how content is classified across the advertising industry, based entirely on GARM’s own biases and notions.²⁷⁴ And GARM has no intention of limiting its censorship to existing technologies. Products and technologies in their infancy such as generative AI and the metaverse have already received attention from GARM.²⁷⁵ Documents reviewed by the

²⁶³ HJC-WFA-GARM-000042863 at -864.

²⁶⁴ HJC-WFA-GARM-000042863.

²⁶⁵ *Id.*

²⁶⁶ *Id.*

²⁶⁷ *Id.*

²⁶⁸ HJC-WFA-GARM-000005465.

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ Rakowitz Testimony, *supra* note 2 at 37:1-6.

²⁷⁴ Rakowitz Testimony, *supra* note 2 at 65:18-66:10 & 79:25-81:17; HJC-WFA-GARM-000005465.

²⁷⁵ *GARM launches Generative AI and Metaverse brand safety playbook*, GARM, <https://wfanet.org/knowledge/item/2023/06/22/GARM-launches-Generative-AI-and-Metaverse-brand-safety-playbook-3>.

Committee show that GARM intends to “help the industry understand safety requirements before commercialization begins in the metaverse.”²⁷⁶

B. GARM’s partners are tied to CISA’s government censorship.

The Committee and the Select Subcommittee on the Weaponization of the Federal Government have shown how the federal government, through the Department of Homeland Security’s (DHS) Cybersecurity and Infrastructure Security Agency (CISA), coerced and colluded with companies and other intermediaries to censor Americans’ speech.²⁷⁷ To the detriment of the American consumer, CISA’s censorship efforts relate to GARM and its ad-tech partners. CISA utilized GARM ad-tech partner Channel Factory to collaborate on a “common lexicon” to help discuss so-called mis- and disinformation.²⁷⁸ Although GARM documents are unclear as to whether GARM utilized Channel Factory’s lexicon, what is clear is that the Channel Factory lexicon was developed in conjunction with CISA.²⁷⁹ Global Chief Strategy Officer of Channel Factory, Phil Cowdell, shared the lexicon with Mr. Rakowitz, and wrote, “The industry will need a common lexicon and detailed definitions in order to make progress as an industry. Attached is the lexicon we developed with CISA/DHS... which may provide e [sic] useful start point.”²⁸⁰

The lexicon shared by Cowdell detailed a series of definitions that contribute to or cause mis- or dis-information.²⁸¹ For example, alleged “cheap fakes” or “malicious doctored videos where content is selectively or deceptively edited” is listed as a contributing force to the spread of mis- or dis-information.²⁸² The methods by which these definitions can be abused, especially through GARM and its ad-tech partners, are clear. The Biden-Harris Administration, for example, has made unsupported claims that certain embarrassing videos of President Biden are so-called “cheap fakes.”²⁸³

The tentacles of GARM’s ad-tech partners spread throughout online platforms. For example, Channel Factory is a member of YouTube’s YouTube Measurement Program or the YTMP.²⁸⁴ This program is a collection of companies that are “carefully vetted and meet[]

²⁷⁶ *GARM announces guidelines on misinformation, standards on ad placements, and expansion to cover the metaverse*, GARM, <https://wfanet.org/knowledge/item/2022/06/21/GARM-announces-guidelines-on-misinformation-standards-on-ad-placements-and-expansion-to-cover-the-metaverse>.

²⁷⁷ *See, e.g.*, STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FED. GOV’T OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., *THE WEAPONIZATION OF ‘DISINFORMATION’ PSEUDO-EXPERTS AND BUREAUCRATS: HOW THE FEDERAL GOVERNMENT PARTNERED WITH UNIVERSITIES TO CENSOR AMERICANS’ POLITICAL SPEECH* (2023); STAFF OF THE H. COMM. ON THE JUDICIARY AND THE SELECT SUBCOMM. ON THE WEAPONIZATION OF THE FEDERAL GOVERNMENT OF THE H. COMM. ON THE JUDICIARY, 118TH CONG., *THE WEAPONIZATION OF CISA: HOW A “CYBERSECURITY” AGENCY COLLUDED WITH BIG TECH AND “DISINFORMATION” PARTNERS TO CENSOR AMERICANS* (2023).

²⁷⁸ HJC-WFA-GARM-000076774.

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ HJC-WFA-GARM-000076675.

²⁸² HJC-WFA-GARM-000076675, at -678.

²⁸³ Hannah Panreck, Karine Jean-Pierre Doubles Down on 'Cheap Fake' Biden videos: 'So Much Misinformation', Fox News (12:23 PM EDT Jun. 19, 2024), <https://www.foxnews.com/media/karine-jean-pierre-doubles-down-cheap-fake-biden-videos-so-much-misinformation>.

²⁸⁴ *YouTube Measurement Program*, YouTube, <https://www.youtube.com/measurementprogram/>.

[YouTube's] standards. It also means [YouTube] consider [YTMP members] to be a trusted business partner in providing the capabilities you need to better drive and understand your marketing performance, inclusive of Google media.”²⁸⁵ YouTube is one of the largest and most powerful social media platforms, yet it includes in its highly selective YTMP program a provider that collaborates with GARM and CISA on so-called misinformation.

CONCLUSION

Unilateral actions are not illegal under Section 1 of the Sherman Act. Although many liberal corporations have never hidden their bias against conservative Americans, these corporations are often unable to successfully silence conservative views. But what these corporations could not achieve unilaterally, they have worked extensively since 2019 to achieve by coordinating through GARM.

While each of these companies could legally choose to independently withhold advertising from any platform or news outlet it chooses, the power and purpose of collusion is obvious. In asking Mr. Rakowitz when the group boycott would end, Ørsted explained that Twitter “is an important platform for us to reach our audience, so we would like to consider going back”²⁸⁶ In other words, no single company can unilaterally pull its advertising dollars off of a platform or news outlet over the longer term because that company’s competitors will advertise and reach the audience. Collusion in the advertising space is therefore the only way to guarantee that no individual conspirator takes advantage of the artificial changes in what would otherwise be a free market for advertising space to reach consumers.

Twenty years ago, the Supreme Court described collusion as “the supreme evil of antitrust[.]”²⁸⁷ Today, this description remains true. If collusion among powerful corporations capable of collectively demonetizing, and in effect eliminating, certain views and voices is allowed to continue, the ability of countless American consumers to choose what to read and listen to, or even have their speech or writing reach other Americans, will be destroyed. Federal antitrust laws do not diminish because GARM or its members claim to have good intentions.²⁸⁸ And the antitrust laws are still enforceable even if GARM denies the plain language of it contemporaneous documents in testimony to Congress. The Committee will continue its oversight of GARM and the adequacy of existing antitrust laws to determine whether legislative reforms are necessary to address this dangerous, anticompetitive behavior.

²⁸⁵ *Id.*

²⁸⁶ HJC-WFA-GARM-000056445, at -446.

²⁸⁷ *Verizon Commc’ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 408 (2004).

²⁸⁸ *FTC v. Superior Ct. Trial Laws. Ass’n*, 493 U.S. 411, 424 (1990).