

InternetLab's comment on Oversight Board case 2020-004-IG-UA

Artur Pericles Lima Monteiro, head of research, freedom of expression
Fernanda K. Martins, head of research, inequalities and identities
Juliana Fonteles, researcher
Catharina Pereira, research intern

Facebook policy “default[s] to removing sexual imagery”, and also nudity more broadly, with few accommodations. One of those accommodations should have applied in this case, which would fall under the “health-related situations” exception of “breast cancer awareness”. As we learned from Facebook Stakeholder Engagement, the content has been reinstated as a result of Facebook acknowledging it as a mistake under its own rules. **Yet this case is not an isolated incident:** it shows how Facebook policy fails to stand by Facebook’s own values and how its implementation in moderation processes and decisions disparately impacts users. InternetLab calls on the Oversight Board to take this opportunity to issue a policy advisory statement addressing those issues (Bylaws, 3.1.7).

How the female body is read, historically and politically, has been a prominent issue in Brazil. Feminist movements, starting at the late 1960s and throughout the 1970s — as Brazil still experienced a military dictatorship —, have insisted female bodies should be regarded as free. That meant not only the freedom to dress as women prefer, but also their sexual and reproductive rights. In the 1980s, black and lesbian perspectives in feminism also reshaped “women” as a political subject category. And, as of the 2000s onwards, queer and trans women also redefine how feminisms approach the body. In short, the female body, what counts as a female body, and how non-binary bodies are seen are all controversial topics in Brazil, and questions around those topics have long been debated, thanks to feminist organising and protest.

While Facebook’s “Adult Nudity and Sexual Activity” policy includes accommodations for images containing female breasts “as a form of protest, to raise awareness about a cause, or for educational or medical reasons”, it establishes that as an exception to the general rule, and so still chooses a side in those debates in Brazilian society and enforces one side of that debate, to the detriment of the “commitment to expression” underscored in the Community Standards. Crucially, it does so in a manner that **targets female bodies specifically, while omitting the male body.**

Such a gendered policy means women and other people who are seen as having “female breasts” are barred from expressing themselves on Instagram and Facebook according to how they are seen and relate to their bodies. **The policy imposes upon those users a sexualised representation of their breasts and nipples, even when they themselves do not see those parts of their bodies as sexual.**



It also creates problems particularly for trans people, as well as for non-binary individuals. When someone identifies as a man and hasn't yet undergone, or won't undergo, gender confirmation surgery, the policy on breasts and nipples might mean not only is Facebook barring legitimate expression, but is also deciding what the gender identity of that user is — even against the user's own image of themselves. This is of special concern in Brazil, where, according to a study by the public defenders' office in São Paulo, the wait time for gender confirmation surgery can take up to 18 years. Removal of photos posted by trans men who have anatomically female breasts adds to their suffering and stigmatisation. In fact, **it could be in conflict with how the individual is legally identified in official civil registration and government IDs, given that the Brazilian Supreme Court held in 2018** that trans individuals are allowed to have their names and gender amended in civil registration, regardless of whether they have undergone gender confirmation surgery.

If the implementation of Facebook's "Adult Nudity and Sexual Activity" policy could not perceive how the images in this case – which made explicit references to breast cancer – fell under its own educational and medical accommodations, **it is hard to imagine it will be attuned to the much more subtle questions surrounding photos posted by trans and non-binary people.** That is even more problematic as more content has been removed for nudity violations with the use of automation, as Instagram's Community Standards Enforcement Reports for Q3 2020 suggest, given that 93.5% of content removed under that heading was found proactively. In fact, if we compare how much content actioned was restored in Q2 2020 (3,300 pieces) and Q3 2020 (3,200), when user appeals were not available owing to Covid-19 repercussions in content moderation, with Q1 2020 (108,300), we see around 100.000 pieces of content are likely to have been erroneously actioned. And even for actioned content later restored, negative consequences resulting from the removal might be irreversible, just as this case shows: the post, part of a breast cancer awareness campaign in October 2020, was only restored in early December, after the Oversight Board announced its cases.

It seems clear the policy is flawed and should be amended. In its policy rationale, Facebook cites "sexual activity" as a concern. Female breasts are not inherently sexual; different policies for female and male nipples are. The concern with sexual imagery should be addressed by policy that targets sexual activity itself, instead of sexualising parts of the female body. It might be said that adjudicating what is and isn't sexual presents implementation challenges. Yet Facebook's current policy presents clear implementation challenges, as this case shows, as well as disparate impacts on marginalised population. At any rate, if Facebook deems those challenges make a policy that is based on sexual content untenable, it should alternatively consider amending its guidelines to disallow images of nipples regardless of gender, instead enforcing a policy based on a distinction between normalised male and sexualised female nipples.

