

InternetLab's comment on Oversight Board case 2022-009-IG-UA & 2022-010-IG-UA

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The internet has historically been part of trans expression, constitution of community and political engagement. [In Brazil, the transmasculine movement, e.g., originated in Facebook groups](#). The appropriation of digital spaces in order to tell one's stories and circulate information allows the trans community to educate others, create connections, organize care and activism. Hence, the content moderation policies should be sensitive to this history and collective production, to avoid cases of censorship and limitation of trans and non binary content, which deprive the trans community of one of the spaces that has been systematically serving as a kind of refuge.

Our submission intends to address the questions raised by the Board, so that Meta's policies guarantee trans and non-binary rights. We argue that the Nudity and Sexual Solicitation policies should consider:

1. The interpretation of Meta policies cannot presuppose the sexualization of trans and non-binary bodies. The [Sexual Solicitation policy](#) wording itself does not violate the rights of trans and non-binary people. However, there were repeated cases of photos of trans and non-binary people removed based on this policy; yet, similar images of cisgender bodies were not removed. [The difference in the way content is moderated in similar photos of trans people and cisgender people was the object of protest from the trans community on Instagram, through #DeserveToBeHere](#). These cases may indicate a tendency toward sexualization of non-cisgender bodies. [There is, among certain instances of medical knowledge and the media, a historically reiterated idea that gender transition would function primarily as a means of attaining sexual encounters and pleasure](#). This sexualization invalidates non-binary and transgender identities by reducing them to a sexual drive. It also reinforces violence against them, by assuming that certain exposures of their bodies necessarily convey sexual availability and therefore must be inhibited. **It is necessary to review the way in which the Sexual Solicitation policy is interpreted, so that there is no exaggerated and prior sexualization of trans and non-binary bodies.**

2. Trans and non-binary people who have not undergone gender-affirming medical procedures should also be considered. [Meta's Nudity policy](#) establishes as an exception to the ban on the dissemination of images containing body parts photos regarding gender-affirming surgery. If this exception is extremely important so that people who wish to have these medical procedures can share their experiences with images on Facebook and Instagram; on the other



hand, trans and non-binary experiences do not necessarily involve gender-affirming surgery. The specific mention of the exception of surgery cases opens space for an interpretation that trans and non-binary people who have not undergone medical procedures cannot express themselves in certain contexts. This understanding goes against the medical and legal acknowledgment of trans identities, in Brazil and in the USA. In 2013, [APA reversed the understanding of transgender subjectivity as a mental disorder and began to differentiate trans identity from the need or desire for body changes](#). In 2019, [WHO removed transsexuality from the list of mental disorders in the International Classification of Diseases](#). In Brazil, [the Federal Supreme Court recognized in 2018 the right of trans people to rectify name and sex in identification documents without the need to carry out medical procedures, privileging the right to self-determination](#). Thus, the understanding that there is no direct relation between medical procedures and non-cisgender identities is consolidated. Furthermore, access to body alteration procedures faces great difficulties in many countries. The fact that both photos in the case in question deal with fundraisers for top surgery illustrates the difficulty of accessing such procedures and the harmful aspect of removing such content – one of the limited ways to raise funds for these costly interventions. **It is recommended that the exception for gender affirmation surgeries be reconsidered, including trans and non-binary identities who do not want to or who have not yet performed such procedures in cases of affirmation of trans or non-binary identity.**

3. Hate motivated reports against trans and non-binary people. The alarming growth of an anti-trans movement can be identified in many contexts like the USA and Brazil. [In 2021, more than 140 anti-trans bills were introduced across the USA](#). [In 2022, 162 new bills have already been introduced](#). In Brazil, trans politicians, especially Black trans women, have been harassed and threatened: [17 of 24 trans legislators reported transphobic political violence and 11 suffered death threats](#). [In addition, more than 30 bills were presented in Brazilian legislative houses, aiming to ban non-binary language](#). This anti-trans movement is reflected in the way content by trans people is policed on digital platforms. [GLAAD has been highlighting the importance of analysis and mitigation of possible hate-motivated reports in reference to posts and accounts of trans users](#). Thus, there are indications that the reporting tools are being used by anti-trans groups, in order to censor trans and non-binary people. **It is recommended that internal systems be put in place to protect against this kind of instrumentalization of reporting tools against trans and non-binary people.**

4. Considering the promotion of equity value related to non-binary and transgender people, as well as the structural impact that binary language has on their existences, it is recommended that Meta use this opportunity to reconsider the way to refer to the bodies and anatomies. This review can be carried out progressively and structurally. One of the examples would be the Nudity policy that mentions "female nipples": this expression may be framed as binary and transphobic, which has a negative impact on these groups.

