

THE ROLE OF QUASI-JUDICIAL OVERSIGHT IN GLOBAL
TECH PLATFORM GOVERNANCE: A COMPARATIVE
ANALYSIS OF THE META OVERSIGHT BOARD AND EU
DIGITAL SERVICES ACT

Heidi Chu*

Abstract

This Note examines the role of quasi-judicial oversight in global tech platform governance by comparing Meta’s privately created Oversight Board (OB) with the European Union’s Digital Services Act (DSA) framework for certified out-of-court dispute settlement (ODS) bodies. Both models aim to expand user remedies and enhance accountability in content moderation, yet they diverge in their approaches to decision-making frameworks, redress mechanisms, and their overall legitimacy. While the OB has increased transparency, influenced Meta’s policies, and fostered public participation, it is weakened by its limited independence, selective application of international human rights law, and narrow jurisdiction. In contrast, ODS bodies benefit from formal certification requirements. Through a comparative analysis of their decision-making frameworks, redress mechanisms, and legitimacy claims, this paper argues that the DSA offers a stronger foundation for legitimate platform governance. At the same time, lessons from the OB—such as its transparent publication practices, civil society engagement, and systemic policy recommendations—can inform and strengthen DSA implementation. Ultimately, this Note contends that while private oversight models like the OB can make meaningful contributions, enduring legitimacy in platform governance requires structures that balance independence, transparency, public participation, and accountability.

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INTRODUCTION

Free speech is increasingly subject to the discretionary power of private online platforms. Every day, private online platforms make thousands of content moderation decisions about who gets to say what online.¹ With the broad immunity granted by Section 230 of the U.S. Communications Decency Act, platforms enjoy wide discretion to remove content and enforce their own rules, often with minimal transparency or accountability.² As private platforms have become the primary gatekeepers of online expression, public distrust has grown around the legitimacy of these platforms' decisions and the opaque systems behind these decisions.³ People do not trust platforms to make the right decisions about content moderation.⁴ In response to growing public distrust, a range of oversight approaches have emerged globally. Among these are Meta's Oversight Board (OB) and the European Union's Digital Services Act (DSA).

While both the OB and the DSA models seek to enhance platform accountability and expand user redress, they differ in decision-making frameworks, procedural designs, and degrees of

¹ See Paul Barrett, *Meta's Oversight Board and the Need for a New Theory of Online Speech*, LAWFARE (Nov. 9, 2023), <https://www.lawfaremedia.org/article/meta-s-oversight-board-and-the-need-for-a-new-theory-of-online-speech> [<https://perma.cc/Z74J-J2UW>]; 47 U.S.C. § 230 (2012).

² See Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1602 (2018) [hereinafter Klonick, *The New Governors*]; Kate Klonick, *The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression*, 129 YALE L.J. 2418, 2435 (2020) [hereinafter Klonick, *The Facebook Oversight Board*].

³ See *The Future of Tech Policy: American Views*, KNIGHT FOUND. (June 16, 2020), <https://knightfoundation.org/reports/the-future-of-tech-policy-american-views/> [<https://perma.cc/KL4G-JL5Y>]. But see Evelyn Douek, *The Meta Oversight Board and the Empty Promise of Legitimacy*, 37 HARV. J.L. & TECH. 373, 379 (2018), <https://jolt.law.harvard.edu/assets/articlePDFs/v372/3-The-Meta-Oversight-Board-and-the-Empty-Promise-of-Legitimacy.pdf> [<https://perma.cc/W8CF-MKC7>].

⁴ See Evelyn Douek, *Content Moderation as Systems Thinking*, 136 HARV. L. REV. 526, 587 (2022); KNIGHT FOUND., *supra* note 3; *Techlash? America's Growing Concern with Major Technology Companies*, KNIGHT FOUND. (Mar. 11, 2020), <https://knightfoundation.org/reports/techlash-americas-growing-concern-with-major-technology-companies> [<https://perma.cc/LQ42-V5KB>]; Darrell M. West, *Techlash Continues to Batter Technology Sector*, THE BROOKINGS INST. (Apr. 2, 2021), <https://www.brookings.edu/articles/techlash-continues-to-batter-technology-sector/> [<https://perma.cc/5L28-WXM3>].

legitimacy. The OB is a private, quasi-judicial body created by Meta to review content moderation decisions and issue policy recommendations.⁵ It applies Meta's Community Standards and values—along with international human rights law (IHRL) principles—to select high-impact cases.⁶ In contrast, the DSA is a public regulatory framework that requires platforms operating in the EU to establish internal complaint-handling (ICH) mechanisms and member states to establish government-certified out-of-court settlement (ODS) bodies to resolve user disputes.⁷ DSA-mandated ODS bodies review content moderation determinations and issue decisions.⁸ Together, these two models represent divergent approaches to platform oversight: one private and the other public.

This Note examines a case study of the OB to examine whether a privately created oversight mechanism can enforce normative standards, provide effective user remedies, and ensure platform accountability as well as—or better than—the public frameworks under the DSA. In doing so, it considers whether the OB's structural and procedural strengths and shortcomings can inform the design and implementation of ODS bodies. Scholars have credited the OB with improving transparency and influencing Meta's content policies, but it has also faced criticism for its inconsistent application of IHRL, limited accessibility, lack of independence, and failure to track the impact of its recommendations.⁹ These shortcomings raise critical questions

⁵ See *Oversight Board Charter*, OVERSIGHT BD. (June 2025), <https://www.oversightboard.com/wp-content/uploads/2025/07/Oversight-Board-Charter-June-2025.pdf> [<https://perma.cc/8HAL-ZSL8>]. Quasi-judicial describes an entity that possesses the right to interpret rules and make decisions regarding alleged infractions of rules but is not constitutionally defined as judicial. See *Quasi-Judicial*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/quasi-judicial#:~:text=2025%20Because%20before%20a%20vote,See%20More> [<https://perma.cc/99JN-ZHGQ>] (last visited Oct. 16, 2025).

⁶ See *Oversight Board Charter*, *supra* note 5; *Announcing the Oversight Board's First Case Decisions*, OVERSIGHT BD. (Jan. 28, 2021), <https://www.oversightboard.com/news/165523235084273-announcing-the-oversight-board-s-first-case-decisions/> [<https://perma.cc/F4E3-C7AE>].

⁷ See David Inserra, *Meta Set Up Its Own Oversight Board. Three Years Later, How Effective Has It Been?*, CATO INST. (Oct. 4, 2023), <https://www.cato.org/blog/meta-set-its-own-oversight-board-three-years-later-how-effective-has-it-been> [<https://perma.cc/8VKG-ZLT5>].

⁸ See *Out-of-Court Dispute Settlement Bodies*, COIMISIÚN NA MEÁN, <https://www.cnam.ie/industry-and-professionals/online-safety-framework/certifications-schemes/out-of-court-dispute-settlement-bodies/> [<https://perma.cc/46D4-5UQX>] (last visited Oct. 16, 2025).

⁹ See Douek, *supra* note 3, at 375, 378, 425, 426; Brenda Dvoskin, *Expertise and Participation in the Facebook Oversight Board: From*

about whether the OB offers meaningful standards, remedies, and accountability or merely the appearance of them. Reliance on oversight models like the OB that lack transparency and consistency can compound existing public distrust of private platforms. As platforms increasingly replace traditional public forums, perceptions of inconsistency can feed narratives of political bias, allow misinformation to spread, chill expression, and weaken democratic discourse as users may believe that the marketplace of ideas is now governed by corporate rules rather than democratic norms.

Through a comparative analysis, this Note argues that the OB is less effective and legitimate than ODS bodies. First, the OB applies its decision-making framework inconsistently and fails to assess whether its decisions lead to meaningful changes, undermining its efficacy and legitimacy. Second, the OB's inability to provide user redress weakens its efficacy. Finally, the OB's lack of independence from platform influence—given its numerous ties to Meta and limited jurisdiction—weakens its legitimacy. In contrast, ODS bodies are more likely to fulfill the criteria of a legitimate governance framework due to their external certification requirements. However, ODS bodies can strengthen their legitimacy by applying a uniform decision-making framework.

Nevertheless, the OB offers valuable lessons for ODS bodies. The OB's strengths—such as its transparent publication practices, collaboration with civil society, and role in systemic policy reform—provide a useful institutional model. ODS bodies can strengthen their legitimacy by adopting similar practices and filling the gaps in the OB model: enhancing procedural transparency, promoting public participation, issuing policy recommendations on systemic issues, and evaluating the real-world impact of their decisions. While neither the OB nor ODS bodies are perfect, the design choices made in implementing ODS bodies will be crucial in determining whether they can evolve into legitimate institutions of platform governance. By embedding consistency and independence into their design, ODS bodies can foster greater public confidence in platforms to make the right decisions about content and to function as democratic marketplaces of ideas. At a time when trust in platforms is low, these governance bodies have the power to rebuild credibility and sustain democratic discourse online.¹⁰

Reason to Will, 47 TELECOMM. POL'Y 1, 4–5 (2023), <https://www.sciencedirect.com/science/article/abs/pii/S0308596122001653> [<https://perma.cc/35XY-3MTD>].

¹⁰ See Claudia Deane, *Americans' Deepening Mistrust of Institutions*, PEW CHARITABLE TRS. (Oct. 17, 2024),

Part I introduces the OB and DSA as distinct models of platform oversight. Part II analyzes the OB's and ODS bodies' decision-making frameworks. Part III evaluates the OB and ODS bodies' redress mechanisms and processes, offering guidance for strengthening the efficacy of ODS bodies. Part IV applies a legitimacy framework to assess both models and draws lessons for improving ODS bodies.

I. TWO GOVERNANCE EXPERIMENTS: THE OVERSIGHT BOARD AND THE DIGITAL SERVICES ACT

The OB and DSA are two models of platform oversight. This Part discusses the OB's internal composition, general purpose, and organization within the larger scope of Meta, in addition to introducing the idea of a potentially beneficial comparison with ODS bodies.

The OB represents one of the most high-profile experiments in platform self-regulation. Voluntarily created in 2018 by Meta, the OB functions as a quasi-judicial body tasked with reviewing select content moderation decisions on Facebook and Instagram and issuing policy advisory opinions on Meta's content policies.¹¹ It is composed of a global group of experts—including legal scholars, journalists, and human rights advocates—tasked with evaluating whether Meta's content decisions align with Meta's Community Standards, values, and IHRL principles.¹² The OB selects a limited number of high-impact cases and publishes reasoned decisions using a standardized framework. While its decisions to leave up or remove the content are binding on Meta, its policy recommendations are not.¹³

The OB is formally independent yet embedded within Meta's governance ecosystem, operating without public accountability. Although funded through a separate trust, the OB operates atop a broader structure of platform-defined rules and procedures,

<https://www.pew.org/en/trend/archive/fall-2024/americans-deepening-mistrust-of-institutions> [<https://perma.cc/BKF5-WXG4>].

¹¹ See Douek, *supra* note 3, at 377; *Oversight Board Charter*, *supra* note 5, art. 1, § 4.

¹² Members must be globally diverse and possess a broad range of knowledge, competencies, and expertise in digital content and governance. See *Oversight Board Charter*, *supra* note 5, art. 1, § 2; *Oversight Board Charter*, *supra* note 5, art. 2, § 2. OB members have included former judges, human rights experts, law professors, political leaders, journalists, and a Nobel Peace Prize laureate. See Ben Smith, *Trump Wants Back on Facebook. This Star-Studded Jury Might Let Him*, N.Y. TIMES (Jan. 24, 2021).

¹³ See *Oversight Board Charter*, *supra* note 5, art. 4, art. 2, §§ 2, 3.

functioning as the external interface to Meta's internal system of content regulation. While the OB draws on IHRL principles to guide its decisions, it operates independently of national legal systems and lacks public regulatory oversight.¹⁴ In this way, the OB reflects a voluntary, corporate-led model of oversight, offering transparency and external review while remaining outside of national legal systems and regulations.

By contrast, the DSA is a public, legally mandated framework designed to regulate platform accountability across EU member states.¹⁵ Having entered into force in November 2022 and been fully applied as of February 2024, the DSA has become one of the most globally influential pieces of legislation regarding content moderation.¹⁶ It requires every online platform to have an ICH mechanism and each member state to certify an ODS body to review content moderation disputes.¹⁷

The goals and characteristics of ODS bodies are similar to the OB, and in many ways, the OB is a precursor to the mechanisms required by the DSA. Both models are quasi-judicial and aim to give users effective remedies when challenging platform decisions. However, in comparing how the DSA requirements align with the structural and procedural mandates of the OB, shortcomings in the OB emerge: the inconsistent application of a decision-making framework, weaknesses in its procedure, and a lack of legitimacy as a governance body. These shortcomings may also arise in the

¹⁴ See Rishi Gulati, *Meta's Oversight Board and Transnational Hybrid Adjudication—What Consequences for International Law?*, 24 GERMAN L.J. 473, 485 (2023) (stating that the OB's application of core values and Community Standards are "non-state law" and the application of IHRL is "public international law."); see Evelyn Douek, *What Kind of Oversight Board Have You Given Us?*, U. CHI. L. REV. ONLINE (May 11, 2020), <https://lawreview.uchicago.edu/online-archive/what-kind-oversight-board-have-you-given-us> [<https://perma.cc/H7L2-W73D>]. See generally *Oversight Board Charter*, *supra* note 5, art. 2, § 2 (noting national legal systems and public regulatory oversight are not mentioned in the OB's basis for decision-making).

¹⁵ See *The Digital Services Act*, EUR. COMM'N, [hereinafter *DSA*], https://www.eu-digital-services-act.com/Digital_Services_Act_Articles.html [<https://perma.cc/CJA4-6VDC>] (last visited Apr. 15, 2025).

¹⁶ See Andrea Palumbo, *A Medley of Public and Private Power in DSA Content Moderation for Harmful but Legal Content: An Account of Transparency, Accountability and Redress Challenges*, JIPITEC (Dec. 13, 2024), <https://dx.doi.org/10.2139/ssrn.5127251>; Douek, *supra* note 3, at 436.

¹⁷ As of February 2024, the DSA rules apply to all online service providers that act as online intermediaries in the EU, including Meta. See Inserra, *supra* note 7; *DSA*, *supra* note 15, art. 20, 21.

performance of the ODS bodies required under the DSA. Ultimately, a comparative analysis of the OB and the DSA reveals several insights that can inform the development and implementation of ODS bodies to ensure that they will effectively provide clear standards, effective user remedies, and platform accountability. The following Parts compare the two models' approaches to decision making, processes, and legitimacy.

II. DECISION-MAKING FRAMEWORKS

A key point of divergence between the OB and ODS bodies lies in their underlying decision-making frameworks. As there are no preexisting norms that address how to make content moderation decisions, platform oversight models have had to adapt and create normative frameworks to guide their reasoning.¹⁸ This discretion has led to significant variation: while the OB has leaned on IHRL principles alongside platform-defined Community Standards and core values, ODS bodies have applied national legal systems and platform policies.

A. COMMUNITY STANDARDS AND CORE VALUES

The OB reviews decisions against three standards: Meta's Community Standards, Meta's core values, and IHRL.¹⁹ During decision making, the OB applies a body of rules from Meta called Community Standards that dictate what users can say on Facebook and Instagram.²⁰ Developed with input from its stakeholders and experts in technology, public safety, and human rights, Meta's Community Standards are organized into 27 sections that cover several key speech areas: violence and crime (Violence and Incitement, Coordinating Harm and Promoting Crime, Dangerous Organizations and Individuals, Fraud, Scams, and Deceptive Practices, etc.); safety (Bullying and Harassment, Adult Sexual Exploitation, etc.); objectionable content (Hateful Conduct, Adult Nudity and Sexual Activity, etc.); and authenticity (Misinformation, Account Integrity, etc.).²¹

¹⁸ See Douek, *supra* note 3, at 419.

¹⁹ The Facebook Oversight Charter provides that the Board will rely on Facebook's values as a normative framework. See Tao Huang, *Mapping the Jurisprudence of the Facebook Court*, 72 BUFF. L. REV. 109, 124 (2024); *Oversight Board Charter*, *supra* note 5, art. 2, § 2.

²⁰ See *Oversight Board Charter*, *supra* note 5, art. 1, § 4. Though the Community Standards are publicly available now, Meta did not publish details about how it internally enforced the Standards until April 2018. See Klonick, *The Facebook Oversight Board*, *supra* note 2, at 2438.

²¹ See *Community Standards*, META,

Underpinning these Standards are Meta’s core values, which guide content moderation decisions: Voice, Authenticity, Safety, Privacy, and Dignity.²² Voice emphasizes the importance of free expression, allowing users to share diverse perspectives.²³ Authenticity encourages genuine interactions by requiring users to represent themselves truthfully.²⁴ Safety prioritizes user well-being by removing content that could harm the physical security of persons or has the potential to silence, intimidate, or exclude persons.²⁵ Privacy requires that personal privacy and information be protected, giving users the freedom to choose how and when to share on the platform.²⁶ Dignity upholds the belief that all individuals are equal in dignity and rights, expecting users to respect others and avoid content that harasses or degrades.²⁷

B. IHRL AND ITS APPLICATION

In addition to Community Standards and values, the OB applies the IHRL norm of protecting free expression to its decisions.²⁸ IHRL comprises several treaties, instruments, and authoritative interpretations, but Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides the right to freedom of expression, is the main foundation of the OB’s decision making. Article 19’s three-part test to evaluate restrictions on freedom of expression states that rules must: (1) be prescribed by law that is precise and accessible (legality), (2) have a legitimate aim listed in section 3 of Article 19 (legitimacy), and (3) be necessary for that aim and be the least intrusive means to achieving such purpose (necessity).²⁹ On the first prong of legality,

<https://transparency.meta.com/policies/community-standards/>
[<https://perma.cc/WK4B-98BP>] (last visited Oct. 29, 2025).

²² Voice is the primary goal of Meta’s Community Standards. The four core values—Authenticity, Safety, Privacy, and Dignity—support the goal of promoting Voice. *See id.*

²³ In particular, Meta notes that there are some circumstances where content will be allowed to remain up, even if it violates Community Standards, if it is newsworthy or in the public interest. *See id.*

²⁴ *See id.*

²⁵ *See id.*

²⁶ *See id.*

²⁷ *See id.*

²⁸ The first page of the Charter states that freedom of expression is a fundamental right, and that the OB’s purpose is to uphold that right. *See Oversight Board Charter, supra* note 5, at 3.

²⁹ *See* Human Rights Committee, General Comment No. 34, ¶¶ 24–36, U.N. Doc.

restrictions on speech must be provided by law enacted within a country's domestic legal system and clear and precise enough to give appropriate notice to the public of what speech is not allowed.³⁰ On the second prong of legitimacy, any restriction on speech must have one of the public interest aims enumerated in Article 19(3): the protection of the rights or reputations of others, national security, public order, public health, or morals.³¹ This concept of legitimacy is different from the topic of legitimacy in Part IV, as this concept is limited to the legitimate aims listed in Article 19(3). Lastly, in order to satisfy the necessity prong, restrictions must be proportional to the interest they are designed to protect.³² In addition to the ICCPR, the OB also considers reports from the United Nations (UN) Special Rapporteur, international treaties and conventions, and widely recognized standards such as the Rabat Plan of Action.³³

CCPR/C/GC/34 (Sept. 12, 2011); Brenda Dvoskin, *Expert Governance of Online Speech*, 64 HARV. INT'L L.J. 85, 93 (2023); Huang, *supra* note 19, at 125.

³⁰ See Dvoskin, *supra* note 29, at 93.

³¹ G.A. Res. 2200A (XXI), annex, International Covenant on Civil and Political Rights, OHCHR, art. 19(3) (Dec. 16, 1966), <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> [<https://perma.cc/T2YQ-X283>].

³² See Huang, *supra* note 19, at 125.

³³ See Joan Barata, *The Decisions of the Oversight Board from the Perspective of International Human Rights Law*, in SPECIAL COLLECTION OF THE CASE LAW ON FREEDOM OF EXPRESSION 1, 10 (Oct. 9, 2022), <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/10/The-Decisions-of-the-OSB-from-the-Perspective-of-Intl-Human-Rights-Law-Joan-Barata-.pdf> [<https://perma.cc/W8BJ-AME4>]. While serving as UN Special Rapporteur in 2018, David Kaye urged governments and tech companies to apply IHRL throughout every stage of online content regulation, including setting content removal rules, assessing the human rights impact of platform changes, and offering remedies to individuals affected by moderation decisions. See Evelyn Douek, *U.N. Special Rapporteur's Latest Report on Online Content Regulation Calls for 'Human Rights by Default'*, LAWFARE (June 6, 2018), <https://www.lawfaremedia.org/article/un-special-rapporteurs-latest-report-online-content-regulation-calls-human-rights-default> [<https://perma.cc/6KCG-2UJC>]. The Rabat Plan of Action is a UN document that provides guidance regarding how to address incitement to discrimination, hostility, or violence. It provides a high threshold for limitations on incitement and puts forth six criteria to determine where expression creates such a danger of harm to justify prohibitions on expression. See *The Rabat Plan of Action*, U.N., <https://www.ohchr.org/en/freedom-of-expression> (last visited Oct. 16, 2025).

The OB's Charter (Charter) does not mandate the application of IHRL but suggests that decisions should consider human rights principles related to freedom of expression and balance them against Meta's Community Standards and values.³⁴ In practice, the OB references IHRL in every decision, largely due to Meta's voluntary commitment to the UN Guiding Principles on Business and Human Rights (UNGPs) and based on recommendations from scholars.³⁵ Yet the OB's rulings reveal an IHRL-lite approach: Meta has a tendency of selectively applying IHRL when it aligns with Meta's interests or values and deferring to Community Standards when it does not. In this way, the OB's application of IHRL is inconsistent and superficial.

1. Legality

The OB's application of the legality test is inconsistent, as it sometimes applies IHRL when it conflicts with Community Standards and values but does not in other cases.³⁶ The legality test requires that a rule be: (1) "provided by law" and (2) "precise and

³⁴ The Board's Charter only requires the Board to "pay particular attention" to "human rights norms protecting free expression," and does not reference IHRL directly at all. See *Oversight Board Charter*, *supra* note 5, art. 2, § 2, art. 3. Bylaws reference "international human rights standards" but do not require the Board to apply IHRL directly. See *Oversight Board Bylaws*, OVERSIGHT BD. art. 1, § 1.4.4 (Mar. 2024), <https://www.oversightboard.com/wp-content/uploads/2024/03/Oversight-Board-Bylaws.pdf> [<https://perma.cc/J3E8-H9NP>].

³⁵ See Dvoskin, *supra* note 29, at 88; Douek, *supra* note 3, at 416–17. The Board states in every decision that it applies international law per the UNGPs. The UNGPs provides the expectation that businesses will respect human rights wherever they conduct their operations. See Dvoskin, *supra* note 29, at 99. In addition to Meta's commitment to the UNGPs, the OB also considers IHRL because of pressure from scholars. As discussed above, Kaye, as UN Special Rapporteur, recommended that platforms adopt IHRL as the default rules to moderate content. See Douek, *supra* note 33. However, there is minimal basis for claiming that states are obligated to ensure all forms of expression protected under IHRL are upheld on private platforms. In this way, the OB misinterprets the UNGPs by suggesting that companies should provide a higher level of protection for freedom of expression than what international law demands of states. See Brenda Dvoskin, *What the United Nations Guiding Principles for Business and Human Rights (Don't) Say About Content Moderation*, LAWFARE (Oct. 31, 2022), <https://www.lawfaremedia.org/article/what-united-nations-guiding-principles-business-and-human-rights-dont-say-about-content-moderation> [<https://perma.cc/BTQ2-GBD6>].

³⁶ See Barata, *supra* note 33, at 13.

accessible.”³⁷ The OB’s application of IHRL fails this test, because it is not precise or clear on why IHRL is applied in some cases but not in others. In some cases, the OB applies existing IHRL to its decision making, even if it conflicts with Community Standards. In decision 2021-004, the OB overturned Meta’s decision to remove political content that contained an insult because it violated IHRL, even though Meta’s decision was supported by the Bullying and Harassment Community Standard.³⁸ Similarly, in a case involving Meta’s removal of two posts depicting a bare-chested couple that did not violate the Adult Nudity Community Standard, the OB overturned Meta’s decision, finding that the Community Standard itself violated the IHRL-based right to freedom of expression without discrimination as to sex.³⁹ To further the legality principle, the OB commonly recommends that Meta clarify its Community Standards and provide more information to users regarding how Standards are interpreted and enforced.⁴⁰ For example, in decision 2020-005, the OB found that the Dangerous Individuals and Organizations Community Standard failed the legality test because Meta failed to provide a list of dangerous individuals in its content policy, recommending that Meta provide a list.⁴¹ Similarly, in decision 2020-06 regarding a post criticizing the lack of health strategy in France, the OB recommended that Meta clarify its Misinformation and Imminent Harm Community Standard because it is “inappropriately vague and inconsistent with international human rights standards.”⁴² Likewise, in decision 2022-001, the OB overturned Meta’s decision to leave up a post depicting ethnic Serbs as rats because Meta’s Hate Speech Community Standard was insufficiently clear, recommending that Meta clarify this Standard to protect against implicit references to protected groups.⁴³

³⁷ See General Comment No. 34, UN Doc. CCPR/C/GC/34 (2011), *supra* note 29, at ¶¶ 24–25; see Huang, *supra* note 19, at 125.

³⁸ The OB found that the Standard was an unnecessary and disproportionate restriction on free expression under IHRL. See *Cowardly Bot Case*, OVERSIGHT BD. (May 26, 2021), <https://oversightboard.com/decision/FB-6YHRXHZR> [<https://perma.cc/GHF8-3TNV>].

³⁹ See 2023 ANNUAL REPORT, OVERSIGHT BD. 12 (June 2024), <https://www.oversightboard.com/wp-content/uploads/2024/06/Oversight-Board-2023-Annual-Report.pdf> [<https://perma.cc/GNP2-JWB7>].

⁴⁰ See Barata, *supra* note 33, at 20; Douek, *supra* note 3, at 402.

⁴¹ See Huang, *supra* note 19, at 157.

⁴² See Barata, *supra* note 33, at 13.

⁴³ See Barata, *supra* note 33, at 16.

However, in other cases, the OB favors “rules” in the place of “laws,” applying Community Standards instead of IHRL.⁴⁴ In decision 2021-011, the OB upheld Facebook’s decision to remove a post containing a racial slur in violation of its Hate Speech Community Standard, even though general bans on racial slurs are incompatible with IHRL.⁴⁵ Similarly, in decision 2021-002, the OB upheld Facebook’s decision to remove content depicting people in blackface in violation of the Hate Speech Community Standard, even though general prohibitions on blackface are not allowed under IHRL.⁴⁶ The OB has reasoned that the context of hateful expression on social media allows Meta, unlike states, to restrict such expressions.⁴⁷ This inconsistent application of IHRL is contradictory to the OB’s purported conviction that it consistently uses IHRL as a basis for decision making.

2. Legitimacy

In evaluating the legitimacy prong, the OB generally defers to Meta’s claims of legitimate aims and bases decisions on elements outside of Article 19(3), rendering the legitimacy requirement superficial.⁴⁸ In decision 2020-005, the OB held that legitimacy was

⁴⁴ See Huang, *supra* note 19, at 156; *Former President Trump’s Suspension Case*, OVERSIGHT BD. (May 5, 2021), <https://www.oversightboard.com/decision/fb-691qamhj/> [<https://perma.cc/MLG7-P79G>].

⁴⁵ See Dvoskin, *supra* note 9, at 4, 5; *South Africa Slurs Case*, OVERSIGHT BD. (Sept. 28, 2021), <https://www.oversightboard.com/news/404712621226343-oversight-board-upholds-facebook-decision-case-2021-011-fb-ua/> [<https://perma.cc/6H8N-Z9JG>].

⁴⁶ The case originated with a video featuring two adults representing Zwarte Piet (or “Black Pete”), the companion of Saint Nicholas in Dutch folklore. Zwarte Piet has been widely reported as racist because people have traditionally portrayed it by putting on blackface. In August 2020, Facebook prohibited “caricatures of Black people in the form of blackface.” Facebook deleted the post for violating that rule. See Dvoskin, *supra* note 29, at 86; *Zwarte Piet Case*, OVERSIGHT BD. (Apr. 13, 2021), <https://www.oversightboard.com/decision/fb-s6nrtdaj/> [<https://perma.cc/YGF2-BT8C>].

⁴⁷ See Dvoskin, *supra* note 9, at 5.

⁴⁸ See Huang, *supra* note 19, at 159; see, e.g. *Nazi Quote Case*, OVERSIGHT BD. (Jan. 28, 2021), <https://www.oversightboard.com/decision/fb-2rdrcavq/> [<https://perma.cc/RE22-XVWU>]; *Alleged Crimes in Raya Kobo Case*, OVERSIGHT BD. (Dec. 14, 2021), <https://www.oversightboard.com/news/927673894608838-oversight-board-upholds-meta-s-original-decision-case-2021-014-fb-ua/> [<https://perma.cc/RL54-8DWE>]; *Oversight Board Overturns Meta’s*

satisfied because Meta's Dangerous Individuals and Organizations Community Standard was adequately aimed at protecting individuals from discrimination and attacks, mirroring Meta's proposed rationale. In addition to IHRL criteria, the OB has also made decisions based on scale, complexity, and long-term challenges that certain speech presents on platforms "even if it is not clearly linked to adverse outcomes."⁴⁹ In this way, bases for legitimacy exist outside of the Article 19(3) enumerated categories. For instance, in decision 2020-003, the OB upheld Facebook's decision to remove a slur even though it did not qualify as incitement because hateful language in the context of armed conflict can undermine the freedom of others to express themselves.⁵⁰ By generally deferring to Meta's claims of legitimacy and relying on elements outside of Article 19(3), the OB avoids defining what public interests are and undermines the substance of the legitimacy requirement.⁵¹

3. *Necessity*

Lastly, in assessing necessity, the OB generally finds that necessity is satisfied under IHRL but does not clearly articulate how it is applied. In decision 2020-005, the OB reversed Facebook's removal of a post quoting Nazi Germany's Minister of Propaganda, finding that removal was not necessary and violated freedom of expression about public figures given the context of the quote, user's location, and timing during an election campaign.⁵² In contrast, in decision 2023-003, the OB overturned Meta's decision *not* to remove a video of the then-Prime Minister of Cambodia threatening his political opponents with violence, finding that removal of the content was a necessary and proportionate limit on

Original Decision in Colombian Police Cartoon Case, OVERSIGHT BD. (Sept. 15, 2022), <https://www.oversightboard.com/news/1246659912546375-oversight-board-overturns-meta-s-original-decision-in-colombian-police-cartoon-case-2022-004-fb-ua/> [<https://perma.cc/GX8X-NHEF>].

⁴⁹ See *Nazi Quote Case*, *supra* note 48; Barata, *supra* note 33, at 21.

⁵⁰ See Barata, *supra* note 33, at 17; *Oversight Board Upholds Facebook Decision in Armenians in Azerbaijan Case*, OVERSIGHT BD. (Jan. 28, 2021), <https://www.oversightboard.com/decision/fb-qbjdascv/> [<https://perma.cc/KA8M-T9RM>].

⁵¹ See Huang, *supra* note 19, at 159. Critics have asserted that the OB is not capable of determining whether national security is a legitimate aim, because these decisions are typically made by states rather than public bodies. See Huang, *supra* note 19, at 155.

⁵² See Barata, *supra* note 33, at 18; *Nazi Quote Case*, *supra* note 48.

expression under the Rabat Plan of Action to protect opposition members' safety.⁵³

C. OB IHRL APPLICATION SUMMARY

Overall, the OB's application of IHRL is inconsistent and superficial because it does not provide clear justifications when applying one standard over another or indicate which prong or source of authority is dispositive.⁵⁴ Rather, the OB presents its conclusions as compelled by IHRL, using general and passive language like "restrictions on freedom of expression must [meet IHRL criteria]" without any additional explanations for what IHRL criteria it is referring to.⁵⁵ In decision 2021-002, the OB justified its decision with IHRL but acknowledged that the exact opposite conclusion was also possible.⁵⁶ As a result of these inconsistencies, Meta and users are left uncertain about which part of the test is fatal and what policies and behaviors they should change in response.⁵⁷ Additionally, the OB will cite precedent from prior decisions but ignore inconvenient tensions.⁵⁸ In decision 2022-002, the OB upheld Meta's decision to restore a graphic video depicting a wounded body in Sudan with a warning screen, reasoning that the warning screen did not place an undue burden on viewers and adequately protected the victim's dignity.⁵⁹ In contrast, in decision 2022-008, the OB overturned Meta's decision to apply a warning

⁵³ See *Cambodian Prime Minister Case*, OVERSIGHT BD. (June 29, 2023), <https://www.oversightboard.com/decision/fb-6okjpn3/> [<https://perma.cc/4NNE-2YK9>].

⁵⁴ See e.g., *Nazi Quotes Case*, *supra* note 48; *Oversight Board Overturns Facebook Decision in Claimed COVID Cure Case*, OVERSIGHT BD. (Jan. 28, 2021), <https://www.oversightboard.com/news/325131635492891-oversight-board-overturns-facebook-decision-case-2020-006-fb-fbr/> [<https://perma.cc/69CD-YX3C>]; *Ayahuasca Brew Case*, OVERSIGHT BD. (Dec. 9, 2021), <https://www.oversightboard.com/decision/ig-0u6fla5b/> [<https://perma.cc/V3WP-AG4X>].

⁵⁵ See Douek, *supra* note 3, at 420.

⁵⁶ See Dvoskin, *supra* note 29, at 89.

⁵⁷ See Huang, *supra* note 19, at 129.

⁵⁸ For instance, in the policy advisory opinion in which the Board concluded that Meta should continue to remove COVID-19 misinformation, the OB did not even mention that in one of its first decisions it had overturned Meta's decision to take down a post containing misinformation because the harm it could cause was not sufficiently "imminent." See Douek, *supra* note 3, at 422. See also *Claimed COVID Cure Case*, *supra* note 54.

⁵⁹ See *Sudan Graphic Video Case*, OVERSIGHT BD. (June 13, 2022), <https://www.oversightboard.com/decision/FB-AP0NSBVC> [<https://perma.cc/6HSK-9C56>].

screen to an image of a dead body in Ukraine, saying that “the use of a warning screen inhibits freedom of expression and is not a necessary response in this instance.”⁶⁰ The OB cited decision 2022-002 in this case as a “source of authority” but did not attempt to resolve the inconsistencies.⁶¹ The OB’s inconsistent and superficial application of IHRL functions as a shield that legitimizes the OB’s decision making based on underlying interests without imposing severe constraints.⁶²

Given that IHRL does not provide clear answers and normative conflicts are inherent, the OB’s superficial application of IHRL-lite is not surprising.⁶³ However, rather than addressing these normative conflicts, the OB treats its conclusions as if they were mandated by IHRL, even though the obligations of IHRL in most content moderation decision contexts remain vague and uncertain.⁶⁴ By providing only a superficial application of IHRL to its decisions, the OB undermines its own legitimacy as a governance body, limits the effectiveness of user remedies, and fails to hold Meta accountable to clear content moderation rules.⁶⁵

D. INTEGRATING IHRL INTO DSA PRACTICES

Like the OB, the DSA requires ODS bodies to align their decisions with platforms’ content policies.⁶⁶ However, unlike the OB, the DSA does not explicitly require its ODS bodies to apply IHRL.⁶⁷ Rather, ODS bodies apply a platform’s terms of service and national laws.⁶⁸ Although Article 14(4) of the DSA requires

⁶⁰ *Russian Poem Case*, OVERSIGHT BD. (Nov. 16, 2022), [https://www.oversightboard.com/decision/FB-MBGOTVN8/\[https://perma.cc/GN4L-QWBR\]](https://www.oversightboard.com/decision/FB-MBGOTVN8/[https://perma.cc/GN4L-QWBR]); see Douek, *supra* note 3, at 423.

⁶¹ See *Russian Poem Case*, *supra* note 60.

⁶² See Dvoskin, *supra* note 29, at 130; Douek, *supra* note 3, at 419.

⁶³ See Dvoskin, *supra* note 9, at 4.

⁶⁴ See Douek, *supra* note 3, at 440.

⁶⁵ See Douek, *supra* note 3, at 424–25. Rather than relying on IHRL, the OB could have grounded its reasoning in the principle of public participation. For instance, the OB could have emphasized that the key justification for the decision was the strong support the prohibition received from consulted stakeholders. See Dvoskin, *supra* note 29, at 134.

⁶⁶ See *Statements from the Oversight Board Trust and Oversight Board Members on the Announcement of the Appeals Centre Europe*, OVERSIGHT BD. (Oct. 8, 2024), <https://www.oversightboard.com/news/statements-from-the-oversight-board-trust-and-oversight-board-members-on-the-announcement-of-the-appeals-centre-europe/> [https://perma.cc/5BQP-KMCY].

⁶⁷ There is no mention of IHRL as a basis for decision making. See generally *DSA*, *supra* note 15, art. 21.

⁶⁸ See Niklas Eder & Giovanni De Gregorio, *A New Animal Joins the Circus: On the Nature and Value of Out-of-Court Dispute Settlement Under*

ODS bodies to consider the EU Charter of Fundamental Rights, which reflects IHRL, its practical application remains unclear.⁶⁹ For instance, some ODS bodies are only empowered to base decisions on a platform's terms of service.⁷⁰ Because ODS bodies operate across EU member states with varying national laws, ODS decisions are more likely to be fragmented. To combat this fragmentation, ODS bodies should apply IHRL to its decisions.

Unlike the OB, which is not subject to national laws, ODS bodies can make decisions in accordance with national laws.⁷¹ Because ODS bodies operate across 27 EU member states, each with their own legal traditions and speech regulations, this national law-based approach can lead to fragmentation and inconsistent outcomes—just as OB decisions can be inconsistent.⁷² In response to this fragmentation, IHRL can function as a set of legitimate norms reflecting the interests and preferences of society on a global scale.⁷³ IHRL is widely respected as a neutral and universal governing standard that is unbiased.⁷⁴ In this way, IHRL can function as a normative agreement among multiple states and serve as a starting point for designing content moderation.⁷⁵

While this Note asserts that the OB's application of IHRL is inconsistent and superficial, there is value in applying IHRL. The OB's use of IHRL—though flawed in execution—offers a more harmonized and universal framework for evaluating content decisions across jurisdictions. The application of IHRL to govern content moderation is useful because it offers well-respected, exogenous, and universal norms and procedures that center on

the DSA, TECH POL'Y PRESS (June 1, 2024), <https://www.techpolicy.press/a-new-animal-joins-the-circus-on-the-nature-and-value-of-outofcourt-dispute-settlement-under-the-dsa/> [<https://perma.cc/YJ6S-KJ94>]; Daniel Holznagel, *Art. 21 DSA Has Come to Life*, VERFASSUNGSBLOG (Nov. 5, 2024), <https://verfassungsblog.de/art-21-dsa-fundamental-rights-certification/> [<https://perma.cc/S6UZ-QWMX>].

⁶⁹ See *DSA*, *supra* note 15, art. 14(4); Niklas Eder, *Making Systemic Risk Assessments Work: How the DSA Creates a Virtuous Loop to Address the Societal Harms of Content Moderation*, 25 GERMAN L.J. 1197, 1206 (Oct. 18, 2024), <https://doi.org/10.1017/glj.2024.24>.

⁷⁰ See *Rules of Procedure*, APPEALS CTR. EU, <https://www.appealscentre.eu/rules-of-procedure> [<https://perma.cc/H59R-B3GC>] (last visited Mar. 21, 2025).

⁷¹ See Eder & Gregorio, *supra* note 68.

⁷² See Barrett, *supra* note 1.

⁷³ See Dvoskin, *supra* note 29, at 87, 92, 93, 98.

⁷⁴ As former ACLU president Nadine Strossen puts it, “almost every single country in the world is a party to the ICCPR.” See *id.* at 95, 108.

⁷⁵ See *id.* at 94.

public interest to guide content moderation decisions.⁷⁶ By providing a starting point, the application of IHRL to content moderation can lead to a greater harmonization of norms across platforms and member states.⁷⁷

Furthermore, there are ways in which the OB can change its actions to legitimize its use of IHRL, such as addressing inconsistencies between its decisions.⁷⁸ If ODS bodies choose to incorporate IHRL standards, they should ensure that inconsistencies between decisions are reconciled so as not to replicate the OB's application of IHRL-lite. If ODS bodies choose not to incorporate IHRL, ODS bodies should develop an alternative substantive framework. Academic advisory boards, like those established by Germany's User Rights body, offer one model for determining a substantive decision-making framework.⁷⁹

In sum, while the OB's use of IHRL is inconsistent and superficial, its use of a universal normative framework highlights the potential value of IHRL as a harmonized source of authority in platform governance. For ODS bodies, the risk of fragmentation is more pronounced, as delegating decisions to national bodies across diverse legal and cultural contexts can lead to divergent outcomes and legal uncertainty.⁸⁰ In this environment, IHRL offers a unifying

⁷⁶ See *id.* at 87, 97.

⁷⁷ See Douek, *supra* note 33.

⁷⁸ See Douek, *supra* note 3, at 423.

⁷⁹ User Rights is the second ODS body to be certified in Europe. It created an Article 21 Academic Advisory Board to provide guidance on what standards User Rights should follow through Discussion Reports. For instance, the Advisory Board provided guidance to ODS bodies when reviewing content concerning false information, stating that if platforms maintain fact-checking systems that “meet recognized standards and disclose relevant partnerships,” ODS bodies should treat them as reasonable efforts to balance freedom of expression with the reliability of the online information environments. See *Article 21 Academic Advisory Board*, USER RTS., <https://www.user-rights.org/en/advisory-board> [<https://perma.cc/K92Y-T38Y>] (last visited Oct. 30, 2025); Hannah Ruschemeier, João Pedro Quintais, Iva Nenadić, Giovanni De Gregorio & Niklas Eder, *Brave New World: Out-Of-Court Dispute Settlement Bodies and the Struggle to Adjudicate Platforms in Europe*, VERFASSUNGSBLOG (Sept. 10, 2024), <https://verfassungsblog.de/ods-dsa-user-rights-content-moderatin-out-of-court-dispute-settlement/> [<https://perma.cc/X8WR-BLEP>].

⁸⁰ For instance, EU member states' national laws differ in criminalization of hate speech. Germany criminalizes speech related to the denial of the Holocaust and crimes committed under Nazi rule, whereas Italy and Hungary do not. Italy criminalizes speech that denies “genocide crimes, war crimes, and crimes against humanity” and Hungary criminalizes “the use of symbols of totalitarianism.” See *Responding to*

standard that can guide consistent decision making across member states.

III. REDRESS MECHANISMS AND PROCEDURAL DESIGN

A key component of both the OB and DSA governance models is the ability for users to seek redress against platform decisions. While the OB and ODS bodies aim to provide users with remedies, they vary in their processes. In particular, the OB and DSA differ in their approaches to accessibility, public participation, reasoning, transparency, systemic policy recommendations, and additional redress mechanisms.

A. ACCESSIBILITY: COMPARING THE OB WITH ARTICLE 20 AND 21 REDRESS MECHANISMS

The DSA issues redress mandates for platforms (Article 20 ICH bodies) and member states (Article 21 ODS bodies), and the OB does not satisfy either requirement. Article 20 of the DSA establishes a foundational layer of redress by requiring platforms to implement ICH bodies that allow any user to contest content moderation actions, including the removal or disabling of content.⁸¹ Platforms are given broad discretion in the design and operation of ICH bodies as long as they are user-friendly, non-discriminatory, and enable the submission of sufficiently precise and substantiated complaints.⁸² Article 20 does not establish a standard of review but requires providers to reverse their decisions when a complaint demonstrates that the initial action was unfounded—because either the content is lawful, compatible with the platform’s terms, or the user’s conduct does not justify the measure taken.⁸³ Additionally, Article 20 explicitly requires providers to issue a reasoned decision

‘Hate Speech’: Comparative Overview of Six EU Countries, ARTICLE 19 (2018), https://www.article19.org/wp-content/uploads/2018/03/ECA-hate-speech-compilation-report_March-2018.pdf [<https://perma.cc/9D4K-SDGD>].

⁸¹ See DSA, *supra* note 15, art. 20(1).

⁸² See Dorina Gyetván, *The Role of the DSA and the Facebook Oversight Board in the Provision of Effective Remedy on Social Media*, 12 IN MEDIAS RES 190, 196 (2023); DSA, *supra* note 15, art. 20(3)–(4).

⁸³ See DSA, *supra* note 15, art. 20(4); Catalina Goanta & Pietro Ortolani, *Unpacking Content Moderation: The Rise of Social Media Platforms as Online Civil Courts* 1, 22 (Nov. 22, 2021), <http://dx.doi.org/10.2139/ssrn.3969360>.

for each complaint outcome, facilitating access to further redress through Article 21 ODS bodies.⁸⁴

The OB does not function as an ICH body within the meaning of Article 20 because it is structurally external to Meta. While Meta has its own internal appeals process, that process also falls short of the Article 20 requirements. Under Meta's internal appeals process, any user whose content has been removed or covered with a warning is notified and given the option to accept the decision or disagree and request another review.⁸⁵ During that review, a Meta reviewer from the content policy team determines whether the content follows Community Standards.⁸⁶ If the reviewer finds that it does not, the content remains removed.⁸⁷ However, if the reviewer disagrees with the initial review, the content will go to another reviewer whose decision will determine whether the content should remain removed or not.⁸⁸ Like ICH bodies, Meta's internal system allows reversal of mistaken decisions. However, unlike Article 20 bodies, Meta's internal appeals process does not require reasoned decisions for each complaint outcome and only provides a binary notification of whether the removal was upheld or reversed.⁸⁹ In sum, neither the OB—an external body to Meta—nor Meta's internal appeals process—which lacks the transparency and reasoning that the DSA demands—fulfills the requirements of Article 20 ICH bodies.

Rather than resembling an Article 20 ICH body, the OB operates more like an Article 21 ODS body. Both are external mechanisms designed to enhance user redress and transparency in platform governance. However, ODS bodies provide greater accessibility than the OB. Article 21 allows users to bring complaints to any certified ODS body if a dispute remains

⁸⁴ See *DSA*, *supra* note 15, art. 20(5). This system must be provided electronically, free of charge, and available for a period of at least six months following the contested decision. See *id.*, art. 20, § 1.

⁸⁵ See Meta Transparency Center, *Appealed Content*, META, <https://transparency.meta.com/policies/improving/appealed-content-metric/> [https://perma.cc/D5BL-N45T] (last updated Nov. 18, 2022); Meta Transparency Center, *How Review Teams Work*, META, <https://transparency.meta.com/enforcement/detecting-violations/how-review-teams-work/> [https://perma.cc/32KV-4TR9] (last updated Nov. 12, 2024).

⁸⁶ See *Publishing Our Internal Enforcement Guidelines and Expanding Our Appeals Process*, META, <https://about.fb.com/news/2018/04/comprehensive-community-standards/> [https://perma.cc/ENV6-C3BV] (last updated Apr. 24, 2018).

⁸⁷ See *Appealed Content*, *supra* note 85.

⁸⁸ See *id.*

⁸⁹ See META, *supra* note 86.

unresolved through the platform's ICH mechanism.⁹⁰ These ODS bodies must review all eligible complaints.⁹¹ In contrast, while the OB allows users to submit appeals of Meta's content decisions, it does not guarantee review of all appeals. Rather, the OB exercises broad discretion in case selection, reviewing only a small fraction of cases that are most likely to affect the greatest number of users globally.⁹² Furthermore, the OB model is more limited and inaccessible, as users can only appeal cases to the OB after internal processes are exhausted.⁹³ In this way, the OB provides low public participation in appeals and functions more as a last resort for select, high-impact cases than as an accessible, routine forum for user redress.⁹⁴ Unlike the OB, which provides a limited number of decisions regarding Meta, the DSA sets up a multilayered redress framework capable of handling a larger volume of user appeals across platforms.⁹⁵ For instance, the Appeals Centre Europe decides disputes in the EU on Facebook, TikTok, and YouTube.⁹⁶ Given its multiple redress systems and expanded jurisdiction, the DSA affords greater accessibility to user redress than the OB.

B. LEGAL AUTHORITIES

In addition to differences in accessibility, the OB and DSA take fundamentally different approaches to legal authorities: the former grounded in global norms, the latter grounded in national law. Both models distinguish between moderation based on illegality and

⁹⁰ *DSA*, *supra* note 15, art. 21(1).

⁹¹ See OVERSIGHT BD., *supra* note 66.

⁹² See Gyetván, *supra* note 82, at 202; *Oversight Board Charter*, *supra* note 5, art. 2, § 1.

⁹³ See *How to Appeal to the Oversight Board*, META, <https://transparency.meta.com/oversight/appealing-to-oversight-board/> [<https://perma.cc/4VAH-36SX>] (last updated Apr. 3, 2024).

⁹⁴ See Ján Mazur & Barbora Grambličková, *New Regulatory Force of Cyberspace: The Case of Meta's Oversight Board*, 17 MASARYK U. J. L. & TECH. 3, 26, 28–29 (2023), <https://doi.org/10.5817/MUJLT2023-1-1>.

⁹⁵ The DSA establishes a three-tiered redress system for users who disagree with a platform's content decision: (1) an internal complaint mechanism within the platform, (2) an external out-of-court dispute settlement body certified by the state, and (3) the option to file suit in court. See Laurence R. Helfer & Molly K. Land, *The Meta Oversight Board's Human Rights Future*, 44 CARDOZO L. REV. 2233, 2235 (2023); OVERSIGHT BD., *supra* note 66.

⁹⁶ See OVERSIGHT BD., *supra* note 66. However, the Appeals Centre cannot decide disputes on Instagram or Threads. See Tim Bernard, *Oversight Board Trust Launches EU Out-of-Court Dispute Settlement Service*, TECH. POL'Y PRESS (Oct. 10, 2024), <https://www.techpolicy.press/oversight-board-launches-eu-outofcourt-dispute-settlement-service/> [<https://perma.cc/J3G7-S72J>].

moderation based on a platform's terms and conditions. However, while the DSA requires platforms to ground their reasoning in *either* legal or contractual authority, the OB's approach is layered, interpreting content against *both* Meta's internal norms and IHRL.⁹⁷ The DSA requires platforms to interpret and apply the terms of service as a contract governed by national law, which may vary depending on the user's place of habitual residence.⁹⁸ In contrast, the OB's decisions are not anchored in national legal systems, which can provide clarity on how illegal content is defined in a specific region.⁹⁹ Rather, the OB applies Meta's Community Standards as a global regulatory instrument, to be interpreted and applied to all users, irrespective of geographical location.¹⁰⁰ As a result, the OB's decisions lack the regional specificity that ODS bodies can provide. At the same time, the OB's global approach reflects the pressures of globalization on digital governance, where content often circulates across jurisdictions and platforms operate at a global scale. Applying national laws to global platforms can result in regulatory fragmentation and conflicting obligations across the EU's 27 member states.¹⁰¹ The OB aspires to provide a harmonized baseline by relying on IHRL, despite its inconsistencies.¹⁰² This global framing may be especially valuable in cases where no single national law applies or coordinated standards are needed to address systemic harms.

C. PUBLIC PARTICIPATION

The OB also facilitates greater public participation in its decision-making processes than the DSA. Once a case is selected, the OB will notify the submitting user, the person who originally posted the content, and the platform.¹⁰³ Any Facebook or Instagram

⁹⁷ See *DSA*, *supra* note 15, art. 17, §§ 3(d)–(e); *Oversight Board Charter*, *supra* note 5, at art. 2, § 2.

⁹⁸ See *DSA*, *supra* note 15, art. 3(h).

⁹⁹ See Riku Neuvonen & Esa Sirkkunen, *Outsourced Justice: The Case of the Facebook Oversight Board*, 16 J. DIGIT. MEDIA & POL'Y. 7, 8–9 (2025); Barata, *supra* note 33, at 12.

¹⁰⁰ See Goanta & Ortolani, *supra* note 83, at 16.

¹⁰¹ See DIGITAL INITIATIVE SOCIETY, TOWARDS A GLOBAL APPROACH TO DIGITAL PLATFORM REGULATION, CHATHAM HOUSE 2 (Jan. 2024). <https://www.chathamhouse.org/sites/default/files/2024-01/2024-01-08-towards-global-approach-digital-platform-regulation-afina-et-al.pdf> [<https://perma.cc/M264-BH3T>].

¹⁰² See *id.*

¹⁰³ Each case is assigned to a five-Member panel, which includes at least one Member from the region implicated in the content and a mix of gender representation. See *Oversight Board Charter*, *supra* note 5, art. 3, §

user can appeal the platform's decision to remove their content to the OB after they have exhausted the appeals process with Meta.¹⁰⁴ If the appeal is accepted by the OB, the appealing user and the platform can submit written arguments.¹⁰⁵ During its deliberations, the OB accepts comments from the public, similar to *amici curiae*.¹⁰⁶ Through these comments, users are able to share their explanations of local idioms and standards, languages, cultures, and politics.¹⁰⁷ Additionally, the OB frequently engages with researchers and civil society groups, often referencing those consultations in its reasoning.¹⁰⁸ Engagement with civil society organizations is crucial because they function as a bridge between IHRL and platform governance, facilitating the emergence and dissemination of a set of shared principles.¹⁰⁹ By creating a new way for the public to express opinions about Meta's rules, the OB has facilitated public participation in the decision-making process and "altered" the power dynamics of decision making between Meta and its users.¹¹⁰ In comparison, the DSA does not establish any explicit procedures for public comment or third-party participation in ODS proceedings.¹¹¹ While the appealing user can submit information to support the case, there is no indication that broader public input—such as comments from external experts, civil society groups, or affected communities—is solicited or incorporated into the final decision.¹¹² Moreover, because ODS

2, art. 2, § 1; *Announcing the Oversight Board's First Case Decisions*, *supra* note 6.

¹⁰⁴ See *Oversight Board Charter*, *supra* note 5, at art. 2, § 1; *Oversight Board Bylaws*, *supra* note 34, art. 3, § 1.

¹⁰⁵ See *Oversight Board Charter*, *supra* note 5, at art. 3, § 3; Klonick, *The Facebook Oversight Board*, *supra* note 2, at 2476.

¹⁰⁶ See Dvoskin, *supra* note 29, at 126.

¹⁰⁷ See Marie-Andrée Weiss, *New Research Project Comparing How EU Digital Service Act and Facebook Oversight Board Empower Users*, MAWLAW (Apr. 30, 2021), <https://www.maw-law.com/blog-of-marie-andree-weiss-ip-attorney-in-new-york/> [<https://perma.cc/PX9L-49GB>]; *Public Comments*, OVERSIGHT BD., <https://www.oversightboard.com/public-comments/> [<https://perma.cc/LM9U-PAK8>].

¹⁰⁸ See e.g., *South Africa Slurs Case*, *supra* note 45; *Zwarte Piet Case*, *supra* note 46.

¹⁰⁹ See Nicola Palladino, Dennis Redeker & Edoardo Celeste, *Civil Society's Role in Constitutionalising Global Content Governance*, 14 INTERNET POL'Y REV. 1, 4 (2025), <https://doi.org/10.14763/2025.1.1830>.

¹¹⁰ See Douek, *supra* note 3, at 411.

¹¹¹ See generally DSA, *supra* note 15, art. 21.

¹¹² See *Case Management Portal*, APPEALS CTR. EU, <https://www.appealscentre.eu/case-management/> [<https://perma.cc/9PN3-YHKG>] (last visited Apr. 15, 2025); *How it Works*, USER RTS. GMBH,

body decisions are not publicly available, it is difficult to assess whether informal collaboration with external stakeholders occurs or has any influence on outcomes.¹¹³ As a result, the DSA's model currently lacks the participatory channels that the OB offers, limiting broader public engagement in the decision-making process.

D. CLEAR REASONING

While the OB and DSA differ in approaches to public participation, both governance models provide clear reasoning. Under the Charter, the OB must provide public and plain language explanations of its rationale with every decision.¹¹⁴ Each decision adheres to an IRAC (Issue, Rule, Analysis, Conclusion) structure, making findings, citing sources of authority, addressing party submissions and public comments, and applying Meta's Community Standards, values, and IHRL.¹¹⁵ Similar to the OB's public rationale, the DSA requires platforms to provide users with clear reasoning for content moderation decisions.¹¹⁶ Article 17 of the DSA requires providers to issue clear and specific statements of reasons for any restrictions imposed on a user's expression, including removal, disabling access, demotion, suspension of monetization, or other measures.¹¹⁷ These statements must include the facts and circumstances of the decision, the legal or contractual basis relied upon, and the source of the information used.¹¹⁸ If the action is based on illegality, the platform must cite the applicable law and explain how the content violates it.¹¹⁹ If the action is based on terms of service, the platform must identify the contractual provision and explain the incompatibility.¹²⁰

E. TRANSPARENCY

While the OB and ODS bodies both provide clear reasoning to the public, the OB provides a higher level of transparency. Every OB decision and policy recommendation is published on the OB's website and archived in a database of case decisions.¹²¹ Meta must respond to all OB decisions publicly through its newsroom and

<https://www.user-rights.org/en/how-it-works> [https://perma.cc/MZX5-3NRQ] (last visited Apr. 15, 2025).

¹¹³ See *DSA*, *supra* note 15, art. 21.

¹¹⁴ See *Oversight Board Charter*, *supra* note 5, art. 3, §§ 4, 6, art. 4; Douek, *supra* note 3, at 389, 406.

¹¹⁵ See Douek, *supra* note 3, at 390.

¹¹⁶ See *DSA*, *supra* note 15, art. 17, § 3(a).

¹¹⁷ See *id.*

¹¹⁸ See *id.* art. 17, § 3(b).

¹¹⁹ See *id.* art. 17, § 3(d).

¹²⁰ See *id.* art. 17, § 3(e).

¹²¹ See *Oversight Board Charter*, *supra* note 5, art. 3, § 6.

provide a statement documenting its implementation of each of the OB's decisions within 60 days of the decision's publication.¹²² These practices enhance transparency by making the content moderation process more accessible and accountable to the public. The OB's requirement that Meta publicly respond to its policy recommendations shines light on what changes the company will (or will not) make. Furthermore, the OB's decisions often expose inconsistencies in Meta's rules, allowing the public to access these decisions and put pressure on Meta to develop clearer policies. In addition to promoting accountability, by publishing its opinions, the OB informs and sets global content governance standards. Public access to OB decisions enables other actors—such as civil society groups, researchers, governments, and DSA-certified ODS bodies—to study, critique, and build upon the OB's reasoning.¹²³ In this way, the OB contributes to a growing body of global content governance jurisprudence that can guide both platform policies and public regulatory approaches.

In contrast, the DSA does not require ODS bodies to make their decisions publicly available.¹²⁴ Rather, ODS bodies are only required to make their decisions available to parties to the dispute.¹²⁵ As a result, the reasoning behind these decisions remains opaque to the broader public, civil society, and other regulatory actors. This lack of transparency stands in stark contrast to the OB's practice of publishing full decisions and policy recommendations. The opacity of DSA body decisions is especially concerning given the risk of fragmentation across the EU's 27 member states, each applying its own national laws and standards.¹²⁶ Without public access to decisions, it becomes more difficult to identify inconsistencies or build a coherent approach to content moderation across jurisdictions. In a global digital environment where platform behavior in one region can affect users on a global scale, the absence of accessible decision making

¹²² Meta can choose to implement decisions to allow content to remain up with a warning screen (when available) or to remove the content. Once implemented, Meta will also notify the posting person and the reporting person in that person's preferred language. See *Oversight Board Bylaws*, *supra* note 34, art. 2, § 2.3.2.

¹²³ See, e.g., Lee C. Bollinger & Catalina Botero-Marino, *Meta's Oversight Board Cases*, COLUM. GLOB. FREEDOM OF EXPRESSION (Juan Manuel Ospina & Irene Parra eds., 2022), <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2022/12/Oversight-Board-FINAL-10-10-22.pdf> [https://perma.cc/N822-9268].

¹²⁴ See *DSA*, *supra* note 15, art. 21, § 4(e).

¹²⁵ See *id.*

¹²⁶ See Barrett, *supra* note 1, at 7–8.

undermines cross-border learning. To counter this risk of regulatory fragmentation, ODS bodies should adopt the OB's model of mandatory publication.

F. POLICY RECOMMENDATIONS AND ADDITIONAL REDRESS MECHANISMS

Unlike the OB, ODS body decisions do not include policy recommendations. The OB not only adjudicates individual disputes but also issues broader guidance aimed at reforming Meta's systemic content governance practices. These policy recommendations have led to improvements in areas such as transparency reporting, appeals processes, and user notification systems.¹²⁷ By publishing its recommendations, the OB provides a roadmap for platform reform and invites ongoing public dialogue about best practices in content moderation. This dual role—case resolution and policy development—allows the OB to exert influence beyond the individual cases it decides. In contrast, ODS bodies are limited to resolving specific disputes and are not mandated to issue forward-looking policy guidance. To support more coherent platform governance, ODS bodies should consider adopting this feature of the OB model by providing recommendations on systemic issues when appropriate. Doing so would not only clarify expectations for platforms but also contribute to the evolving landscape of digital rights in the EU.¹²⁸

Lastly, the OB and ODS bodies differ in their provision of additional redress mechanisms. Article 17 of the DSA requires platforms to provide user-friendly information on available redress mechanisms: ICH bodies, ODS bodies, and judicial remedies.¹²⁹ In contrast, the OB does not provide such multi-layered recourse. Its review function, while independent and impactful within Meta's ecosystem, is limited to the platform's internal appeals process and the OB.

In sum, while both the OB and the DSA aim to provide users with meaningful redress against platform decisions, they diverge in their approaches. The DSA establishes a redress framework that ensures greater accessibility through ICH bodies. However, the OB's redress framework emphasizes public participation, transparency, and systemic policy reform. In this way, ODS bodies could strengthen their redress mechanisms by adopting the OB's opportunities for public participation, transparent practices, and policy-oriented approach.

¹²⁷ See Dvoskin, *supra* note 9, at 3.

¹²⁸ See Barrett, *supra* note 1, at 7–8.

¹²⁹ See DSA, *supra* note 15, art. 17, § 3(f).

IV. LEGITIMACY

Legitimacy is crucial for global platform governance bodies like the OB and ODS bodies, because it underpins the public's trust in a body's decisions.¹³⁰ An entity has legitimacy when others feel obligated to defer to it.¹³¹ Given that platforms aspire to be “the new governors” of digital speech, a legitimacy framework normally applied to states should be applied to these global platform governance bodies.¹³² The concept of legitimacy can be divided into three parts: (1) input legitimacy, (2) throughput legitimacy, and (3) output legitimacy.¹³³ Overall, while the OB exhibits some features of legitimate global platform governance, its legitimacy remains limited. In comparison, ODS bodies have a stronger claim to legitimacy because they benefit from structural safeguards against platform influence. However, ODS bodies' legitimacy is weakened by the lack of transparency, limited non-binding authority, and lack of engagement with civil society.

A. INPUT LEGITIMACY

First, in order to have input legitimacy, a governance body must allow citizens to control the structure of the governance body.¹³⁴ The OB has a weak claim to input legitimacy because it

¹³⁰ See Blayne Haggart & Clara Iglesias Keller, *Democratic Legitimacy in Global Platform Governance*, 45 TELECOMM. POL'Y 1, 16 (2021), <https://www.sciencedirect.com/science/article/pii/S0308596121000562?via%3Dihub> [<https://perma.cc/X5KK-N9MX>] (stating that legitimate platform governance models will be accepted by people who rely on these platforms in their daily lives).

¹³¹ See Tom R. Tyler, *Psychological Perspectives on Legitimacy and Legitimation*, 57 ANN. REV. PSYCH. 375, 375 (2006), <http://doi.org/10.1146/annurev.psych.57.102904.190038>. Most scholars addressing the issue of “legitimacy” consistently point to the complications of defining this term. See, e.g., DAVID BEETHAM, *THE LEGITIMATION OF POWER* 1, 3–4 (1991) (“[I]n addition to the inherent difficulty of deciding what makes power legitimate, there is the extra complication of divergent definitions offered by different groups of professionals.”). Some scholars have asserted that legitimacy has three distinct criteria: legal, social, and moral. Legal legitimacy is determined by legal norms, sociological legitimacy is the generalized perception that the actions of an entity are deserving of respect or obedience, and moral legitimacy is determined by the entity's alignment with moral justifications. See Richard H. Fallon, *Legitimacy and the Constitution*, 118 HARV. L. REV. 1787, 1790–91 (2005). The OB faces a legitimacy deficit, because it is not established by law. See Chinmayi Arun, *Facebook's Faces*, 135 HARV. L. REV. 236, 245 (2022).

¹³² See Klonick, *The New Governors*, *supra* note 2, at 1664.

¹³³ See Haggart & Keller, *supra* note 130, at 2.

¹³⁴ See *id.* at 6.

was unilaterally created and funded by a private company with no democratic oversight from its users. Although the OB included some public consultation in its creation, the number of people consulted was only a small fraction of Meta's users and thus was not sufficiently representative to secure input legitimacy.¹³⁵ Similarly, Community Standards are drafted and maintained by Meta, often with selective and informal stakeholder engagement.¹³⁶

In contrast, ODS bodies are rooted in a public legislative process. Although there is limited documentation on user involvement in the creation of specific ODS bodies, the DSA itself was developed through the EU's legislative process, which included public consultations and impact assessments to gather input from experts, society, and the public.¹³⁷ This process allows EU users to influence the broader structure of ODS bodies through participation in elections and civic engagement. As a result, ODS bodies, which derive their mandate from publicly debated and democratically adopted legislation, enjoy a stronger claim to input legitimacy than the privately created OB.

B. THROUGHPUT LEGITIMACY

Second, a body will have throughput legitimacy if it has transparency, accountability, openness to interest intermediation, due process, and efficacy.¹³⁸ Transparency refers to whether citizens have access to information about their content moderation decision process and whether decisions and decision-making processes are public.¹³⁹ Accountability refers to the extent to which actors are judged on their responsiveness to participatory input and can be held accountable for their output decisions.¹⁴⁰ Openness refers to the receptivity of institutional processes to civil society

¹³⁵ See *id.* at 8.

¹³⁶ See *id.* at 8; *Sharing Our Content Distribution Guidelines*, META (Sept. 23, 2021), <https://about.fb.com/news/2021/09/content-distribution-guidelines/> [<https://perma.cc/2BSS-3R4X>].

¹³⁷ See *Consultations*, EUR. COMM'N, https://commission.europa.eu/about/service-standards-and-principles/transparency/consultations_en [<https://perma.cc/7745-ADMR>] (last visited Apr. 15, 2025); Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 Oct. 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC, 2022 O.J. (L 277) 1.

¹³⁸ See Vivien Schmidt, *Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'*, 61 POL. STUD. 2, 6–7 (2013), <https://doi.org/10.1111/j.1467-9248.2012.00962.x>; Haggart & Keller, *supra* note 130, at 7.

¹³⁹ See Schmidt, *supra* note 138, at 5.

¹⁴⁰ See *id.*

participation in the policymaking process.¹⁴¹ Due process refers to the ability to have a dispute examined by an independent body.¹⁴² Finally, efficacy refers to whether the process actually achieves its intended outcome in an efficient manner.¹⁴³

1. OB Throughput Legitimacy: Transparency; Accountability; Openness to Interest Intermediation; and Efficacy

The OB exhibits some features of throughput legitimacy. The OB provides robust transparency, accountability, openness to interest intermediation, and some efficacy. The OB provides a transparent decision-making process by providing clear reasoning for its decisions and making its decisions publicly available. The OB also has accountability because it exercises binding authority over Meta regarding decisions to remove or leave up content. Unless it would violate the law, Meta must implement every such decision within seven days of publication and should implement the same changes for any identical content with parallel context.¹⁴⁴ In this way, OB decisions are binding on Meta and have precedential effect.¹⁴⁵ The OB also demonstrates openness to interest intermediation by collaborating with researchers and civil society groups and referencing engagement with external stakeholders in its decisions.¹⁴⁶

In addition to the other throughput legitimacy factors, the OB has demonstrated efficacy by facilitating meaningful reforms to Meta's policies and garnering institutional authority. In this way, the OB has had a broader impact on Meta's policies beyond deciding individual cases.¹⁴⁷ The OB's policy recommendations have included: improving the internal reporting and appeals process, increasing engagement with civil society, informing users when automation is used to take enforcement action, requiring independent scrutiny and assessment, and providing transparency on how Meta receives and responds to government requests for removal.¹⁴⁸ For instance, in decision 2021-006, Meta implemented an OB recommendation that it notify users if their content is removed due to an extralegal request from a government actor and include information in its transparency reporting about how many

¹⁴¹ *See id.*

¹⁴² *See Haggart & Keller, supra note 130, at 8.*

¹⁴³ *See id.*

¹⁴⁴ *See Oversight Board Bylaws, supra note 34, art. 2, § 2.3.1.*

¹⁴⁵ *See Oversight Board Charter, supra note 5, art. 4, art. 2, § 2.*

¹⁴⁶ *See e.g., South Africa Slurs Case, supra note 45; Zwarte Piet Case, supra note 46.*

¹⁴⁷ *See Douek, supra note 3, at 378.*

¹⁴⁸ *See Dvoskin, supra note 9, at 3.*

requests it receives.¹⁴⁹ Civil society had been advocating in this area for years without success, demonstrating that the OB has meaningful authority to influence Meta in ways that other actors lack.¹⁵⁰ Moreover, the OB has become an accepted feature of public discourse about content moderation among reporters, academics, government actors, and civil society groups.¹⁵¹ Some scholars have compared the OB to an international human rights tribunal and argued that it has “serve[d] as an important check on Meta and ... significantly advance[d] the promotion and protection of rights online.”¹⁵²

However, the OB’s authority and impact are limited, weakening its claims to accountability and efficacy. While the OB’s decisions are binding, its policy recommendations are not, and Meta’s only obligation is to publicly respond.¹⁵³ In this way, OB policy recommendations only have force insofar as Meta agrees they do.¹⁵⁴ Therefore, the OB’s impact has been limited. In some major cases, Meta has either declined to implement its decisions or delayed taking action.¹⁵⁵ From January 2021 to May 2023, only 75 of the 266 recommendations showed any implementation according to the OB’s annual reporting.¹⁵⁶ While the OB tracks whether Meta implements its decisions, it does not track the effects of

¹⁴⁹ See generally *Öcalan’s Isolation Case*, OVERSIGHT BD. (July 8, 2021),

<https://www.oversightboard.com/decision/ig-i9dp23ib/> [https://perma.cc/7P5C-V7RU] (adopting Oversight Board Recommendation 9).

¹⁵⁰ See Douek, *supra* note 3, at 403.

¹⁵¹ Civil society groups include the ACLU, the United Nations Special Rapporteur on Minority Issues, International Commission of Jurists, and the Electronic Frontier Foundation. See *id.* at 373, 377.

¹⁵² See Helfer & Land, *supra* note 95, at 2299; Douek, *supra* note 3, at 413, 403. For instance, in response to concerns about Meta’s disparate enforcement practices in Israel and Palestine, the OB ordered Meta to engage an independent entity to review its operations in the region, leading to a human rights impact assessment (which concluded that unintentional bias had led to adverse impacts on Palestinian and Arabic speaking users). See Dunstan Allison-Hope, Jenny Vaughan & Lindsey Andersen, *Human Rights Due Diligence of Meta’s Impacts in Israel and Palestine in May 2021*, BSR (Sept. 22, 2022), <https://www.bsr.org/en/blog/human-rights-due-diligence-of-meta-impacts-in-israel-and-palestine-may-2021> [https://perma.cc/2U65-T9BR].

¹⁵³ See *Oversight Board Bylaws*, *supra* note 34, art. 2, § 2.3.2; *Oversight Board Charter*, *supra* note 5, art. 4.

¹⁵⁴ See Douek, *supra* note 3, at 375.

¹⁵⁵ See Barrett, *supra* note 1.

¹⁵⁶ See 2023 ANNUAL REPORT, *supra* note 39.

implementation.¹⁵⁷ Of the decisions that Meta did reverse, reversals were often based on mistakes that Meta made initially.¹⁵⁸ However, identifying mistakes does not have the same impact as forcing Meta to change its normative judgments.

2. *OB Throughput Legitimacy: Due Process Concerns*

While the OB exhibits some features of throughput legitimacy, its throughput legitimacy is weakened by its lack of due process, primarily due to its insufficient independence from Meta. A legitimate governance body requires financial, intellectual, and jurisdictional independence to ensure impartiality and accountability.¹⁵⁹ While the OB is nominally financially independent—supported by an irrevocable trust funded with \$130 million in 2019 and \$150 million in 2022—the trust is funded exclusively by Meta, leaving the OB vulnerable to financial dependence on the very entity it is tasked with overseeing.¹⁶⁰ The OB’s sole dependence on Meta for funding undermines its claim to financial independence.

The OB is also not intellectually independent, as members are appointed, removed, and compensated by Meta-appointed trustees.¹⁶¹ While the OB’s internal selection committee vets and recommends candidates—considering qualifications and input from the public and Meta—the final power of appointment rests solely with Meta-appointed trustees who may reject recommended candidates without explanation.¹⁶² Overall, the OB’s selection process lacks independence because it allows Meta—through its appointed trustees—to selectively choose members that align with their goals.¹⁶³ For example, Meta reportedly declined to select

¹⁵⁷ See Douek, *supra* note 3, at 426.

¹⁵⁸ See Douek, *supra* note 3, at 396.

¹⁵⁹ See Klonick, *The Facebook Oversight Board*, *supra* note 2, at 2427.

¹⁶⁰ See *Oversight Board Trust*, FACEBOOK (Oct. 16, 2019), <https://about.fb.com/wp-content/uploads/2019/12/Trust-Agreement.pdf> [<https://perma.cc/H8FY-EPFZ>]; Brent Harris, *An Update on Building a Global Oversight Board*, META (Dec. 12, 2019), <https://about.fb.com/news/2019/12/oversight-board-update/> [<https://perma.cc/H8FY-EPFZ>]; *Securing Ongoing Funding for the Oversight Board*, OVERSIGHT BD. (July 22, 2022), <https://oversightboard.com/news/1111826643064185-securing-ongoing-funding-for-the-oversight-board/> [<https://perma.cc/ZL5R-GCBR>].

¹⁶¹ See *Oversight Board Bylaws*, *supra* note 34, art. 1, § 2; Klonick, *The Facebook Oversight Board*, *supra* note 2, at 2482.

¹⁶² See *Oversight Board Bylaws*, *supra* note 34, art. 1, § 1.22.

¹⁶³ DiResta was qualified for the role and would have filled a gap in the Board’s expertise given her technical background. She was effectively penalized for having previously called Meta out for inadequate content

Renée DiResta, a respected researcher and outspoken critic of Meta, to serve on the board, underscoring the risks of undue influence in membership decisions.¹⁶⁴ Trustees not only control the appointment process but also compensation and removal.¹⁶⁵

In addition to a lack of independence regarding membership, the OB lacks complete intellectual independence from Meta concerning its docket. The OB selects some cases based on (1) their potential to affect users around the world, (2) their critical importance to public discourse, and (3) their relation to Facebook's policies.¹⁶⁶ However, Meta can also take a case to the OB for expedited review or decide that a case cannot be reviewed by the OB when it might involve a legal obligation.¹⁶⁷ Furthermore, the OB is dependent on Meta for its operations. In order to submit a complaint, a user can only submit a form containing a predefined set of questions with a maximum of 1000-2000 characters and no attachments.¹⁶⁸ These limitations are particularly restrictive, considering that all additional information required must be obtained exclusively from Meta. In this way, Meta holds a monopoly over the formation of facts.¹⁶⁹ The OB can only request that Meta "provide information reasonably required for board deliberations in a timely and transparent matter."¹⁷⁰ Additionally, the OB relies on Meta for personnel, information, and technical assistance.¹⁷¹

Lastly, the OB lacks jurisdictional independence from Meta. The OB's jurisdiction is extremely limited and does not cover some of the most problematic parts of the company's operations, such as Meta's ads, platform design, data collection practices, recommendation algorithm, or the grueling working conditions of its content moderators.¹⁷² The fact that none of the members had

moderation practices. See Steven Levy, *Inside Meta's Oversight Board: 2 Years of Pushing Limits*, WIRED (Nov. 8, 2022), <https://www.wired.com/story/inside-metas-oversight-board-two-years-of-pushing-limits/> [<https://perma.cc/75K5-Q5YP>].

¹⁶⁴ See *id.*

¹⁶⁵ See *Oversight Board Charter*, *supra* note 5, art. 1, §§ 5, 8.

¹⁶⁶ See *Announcing the Oversight Board's First Case Decisions*, *supra* note 6.

¹⁶⁷ See *Oversight Board Charter*, *supra* note 5, art. 3, § 7; *Oversight Board Bylaws*, *supra* note 34, art. 2, § 1.2.2, 2.1.2.

¹⁶⁸ See Gyetván, *supra* note 82, at 205.

¹⁶⁹ See *id.*

¹⁷⁰ See *Oversight Board Charter*, *supra* note 5, art. 4, § 4.1.

¹⁷¹ See Huang, *supra* note 19, at 173.

¹⁷² See *Oversight Board Charter*, *supra* note 5, art. 2, §§ 1.2.1; Dvoskin, *supra* note 9, at 3; Mazur & Grambličková, *supra* note 94, at 38; Vittoria Elliott & Tekendra Parmar, "The Despair and Darkness of People

technical expertise further undermines the OB's legitimacy.¹⁷³ The lack of engineers on the OB demonstrates that substantive decision making regarding Meta's automated content moderation tools is a minor part of the Board's intended purposes.¹⁷⁴ Because the OB lacks independence from Meta, it has a weak claim to due process.

3. *OB and ODS Throughput Legitimacy: Comparison and Recommendations*

ODS bodies have stronger claims to throughput legitimacy than the OB. However, ODS bodies have weaker transparency and openness than the OB. To strengthen ODS bodies' claims to throughput legitimacy, ODS bodies should publish their decisions, invite input from civil society, provide clear procedural guidelines for platform compliance, establish safeguards against platform influence, and implement mechanisms for tracking and reporting compliance outcomes.

Compared to the OB, ODS bodies have weaker transparency and openness, as they do not publish their decisions or consult civil society and the public at large. However, ODS bodies provide more robust due process. Unlike the OB—which does not undergo external certification—ODS bodies under the DSA are subject to certification by EU member states to ensure independence. ODS bodies must meet strict certification criteria to ensure impartiality and competence, including institutional and financial independence, expertise in relevant legal and platform-specific issues, and transparent procedural rules.¹⁷⁵ Certification is granted for five years, subject to renewal and potential revocation by national Digital Services Coordinators if the body no longer meets the statutory requirements.¹⁷⁶ In this way, ODS bodies have a stronger claim to due process guarantees. If ODS bodies want to strengthen

Will Get to You,” REST OF WORLD (July 22, 2020), <https://restofworld.org/2020/facebook-international-content-moderators/> [<https://perma.cc/BHA6-3J62>].

¹⁷³ See Kevin Frazier, *Learning from Mistakes: A Guide to Expanding the Oversight Board*, 31 CATH. U. J.L. & TECH. 51, 60 (2023).

¹⁷⁴ See Douek, *supra* note 3, at 384.

¹⁷⁵ An ODS body will only be certified if it is (a) impartial and independent, including financially, (b) has the necessary expertise in relation to issues arising in one or more areas of illegal content or application of terms and conditions of one or more types of online platform, (c) its members are remunerated in a way that is not linked to the outcome of the procedure, (d) the settlement is easily accessible through electronic communications technology, (e) capable of settling disputes swiftly and efficiently, and (f) takes place with clear and fair rules of procedure that are easily and publicly accessible. See *DSA*, *supra* note 15, art. 21(3)(a)–(f).

¹⁷⁶ See *DSA*, *supra* note 15, art. 21(3), 21(7).

their claims to throughput legitimacy, they should make their decisions publicly available and provide opportunities to collaborate with civil society—akin to the OB model—and offer broader public engagement in the decision-making process. In doing so, ODS bodies can strengthen the perception that their authority derives from the political community, thereby reinforcing the legitimacy of their decisions.¹⁷⁷

Unlike the OB's binding authority, ODS body decisions are not binding, weakening its claims to efficacy and accountability.¹⁷⁸ While platforms are expected to engage "in good faith" with ODS bodies to resolve disputes and will be fined if they do not cooperate, they can refuse to engage if the dispute concerns the same content and legal grounds as a previously resolved case.¹⁷⁹ Given the novelty of ODS bodies, their long-term impact remains uncertain. However, in order to strengthen their throughput legitimacy, ODS bodies should provide clear procedural guidelines defining what constitutes "good faith" engagement, such as time-bound obligations for responding to information requests and a duty to provide reasoned justifications for noncompliance.

One other core lesson from OB, in addition to increasing transparency, openness, and compliance tracking, is the importance of structuring oversight bodies to ensure both real and perceived independence, which are necessary to provide due process. In doing so, ODS bodies can strengthen their claims to throughput legitimacy. Although the OB was designed to be independent with its own trust, its ties to Meta—including Meta's funding, role in selecting initial members and control over operational resources—weakens its legitimacy.¹⁸⁰ DSA-certified ODS bodies now face the same threats to independence. The Appeals Centre Europe—a certified ODS body set up to decide disputes in the EU on Facebook, TikTok, and YouTube—was established by a one-time fund by the Oversight Board Trust, its CEO is the former OB Chief,

¹⁷⁷ See Gilad Abiri & Sebastian Guidi, *From a Network to a Dilemma: The Legitimacy of Social Media*, 26 STAN. TECH. L. REV. 92, 136 (Jan. 21, 2023), <https://law.stanford.edu/publications/from-a-network-to-a-dilemma-the-legitimacy-of-social-media/> [<https://perma.cc/X2Z2-5X7Q>].

¹⁷⁸ See Mazur & Grambličková, *supra* note 94, at 28; *DSA*, *supra* note 15, art. 21(2).

¹⁷⁹ See *id.* art. 21(2).

¹⁸⁰ See *Oversight Board Charter*, *supra* note 5, art. 5, § 2; *Oversight Board Bylaws*, *supra* note 34, art. 2, § 1.1. The OB relies on Meta for its technical systems. Furthermore, most of the information available in OB cases also comes from Meta. See *Oversight Board Bylaws*, *supra* note 34, art. 1.

and three of its non-executive directors are trustees of the OB.¹⁸¹ Similarly, the User Rights-certified ODS body in Germany was cofounded by a previous OB member.¹⁸² Critics have expressed concern that allowing the OB to influence the creation of ODS bodies leads all platforms to converge on a similar set of “Meta-trained” rules.¹⁸³ This convergence could lead to what Evelyn Douek refers to as the “cartelization of content decisions,” where platforms work together to remove content or actors from their services without adequate oversight and industry consistency dilutes public criticism.¹⁸⁴ While there is a valid concern that Meta’s influence will infiltrate the Appeals Centre Europe and User Rights, other certified ODS bodies do not have the same ties to the OB.¹⁸⁵ Moreover, ODS bodies are subject to oversight and certification from Digital Services Coordinators (“DSCs”), a layer of accountability that the OB model lacks.¹⁸⁶ The OB has expressed support for ODS bodies and has stated that it intends to play an independent but complementary role to ODS bodies, further demonstrating that independence is possible.¹⁸⁷ In order to maintain

¹⁸¹ See OVERSIGHT BD., *supra* note 66; Le Monde with AFP, *EU Creates 'Appeals Centre' to Referee Disputes with Social Media Giants*, LE MONDE (Oct. 8, 2024), https://www.lemonde.fr/en/european-union/article/2024/10/08/eu-creates-appeals-centre-to-referee-disputes-with-social-media-giants_6728583_156.html# [<https://perma.cc/FN6L-7WKK>]; John Burns, *Media Regulator Insists Appeals Body with Links to Meta is 'Independent'*, IRISH INDEP. (Oct. 11, 2024), <https://www.independent.ie/business/media/media-regulator-insists-appeals-body-with-links-to-meta-is-independent/a62276200.html> [<https://perma.cc/5P8P-DXX6>].

¹⁸² See Bernard, *supra* note 96.

¹⁸³ See Daphne Keller (@daphnek), BLUESKY (Oct. 18, 2024, 1:42 PM), <https://bsky.app/profile/daphnek.bsky.social/post/315zentarkp2o> [<https://perma.cc/K6XT-CGXN>].

¹⁸⁴ See Evelyn Douek, *The Rise of Content Cartels*, KNIGHT FIRST AMEND. INST. COLUM. U. (Feb. 11, 2020) <https://knightcolumbia.org/content/the-rise-of-content-cartels> [<https://perma.cc/S7EY-H7NP>].

¹⁸⁵ See Bernard, *supra* note 96.

¹⁸⁶ See ISABEL EBERT, MARIAM SHAKIL, ISABELLE WILDHABER & ANDREIA DE OLIVEIRA, *THE BUSINESS & HUMAN RIGHTS DIMENSION OF THE DIGITAL SERVICES ACT 37* (2023), <https://freiheitsrechte.org/uploads/publications/Digital/Grundrechte-im-Digitalen/The-Business-Human-Rights-Dimension-of-the-Digital-Services-Act.pdf> [<https://perma.cc/CWK8-Q2SM>].

¹⁸⁷ See OVERSIGHT BD., *supra* note 66. In its most recent Transparency report, Meta appears to view ODS and OB as separate solutions: they state that a user that is unhappy with a decision may appeal to the OB or, as ODS bodies become certified, Meta will take steps to engage in this process. See

independence, ODS bodies should avoid revolving-door relationships with platform-affiliated institutions and clearly separate governance functions from private actors. EU-level guidance should establish robust independence criteria that include transparent funding and protection from platform influence.¹⁸⁸ Instead of relying on private sources of funding, EU member states could provide funding for ODS bodies. The EU has sufficient resources to fund ODS bodies given that it charges platforms a fee for DSA implementation, which amounts to 0.05% of the EU's global annual net income.¹⁸⁹ While there are still ways for platforms to steer users to ODS bodies that they prefer—such as by accepting more of their determinations or making the process easier for these bodies—the DSA empowers users who are unhappy with a platform's refusal to comply with an ODS decision to pursue judicial redress in their national courts.¹⁹⁰

In addition, ODS bodies should adopt robust mechanisms to monitor, assess, and publicly report on the implementation and real-world effects of their decisions. Even if decisions are formally non-binding, such transparency can create reputational pressure and signal to users that ODS bodies have authority. Platforms have greater pressure to comply with ODS decisions as more users turn to ODS bodies.¹⁹¹ To reinforce the importance of compliance, ODS bodies should systematically document and publish instances of partial or full noncompliance and highlight recurring patterns of platform resistance, thereby increasing transparency and enabling regulatory oversight. Moreover, ODS bodies can strengthen their authority by working closely with DSCs, who are empowered to impose fines on platforms. Establishing formal channels of communication and escalation between ODS bodies and DSCs would reinforce DSCs' role in the enforcement ecosystem. By proactively tracking the downstream effects of their recommendations and promoting public accountability, ODS bodies can move beyond individual dispute resolution and foster more meaningful structural changes in platform governance.

META, FACEBOOK DSA TRANSPARENCY REPORT 12 (2023), <https://transparency.fb.com/sr/dsa-transparency-report-oct2023-facebook/> [<https://perma.cc/U8CF-32PV>].

¹⁸⁸ This EU-level guidance could come from academic advisory boards, like the one established by Germany's User Rights body. See Ruschemeier et al., *supra* note 79.

¹⁸⁹ See Eder, *supra* note 69, at 1217.

¹⁹⁰ See Bernard, *supra* note 96.

¹⁹¹ See Ruschemeier et al., *supra* note 79.

C. OUTPUT LEGITIMACY

Lastly, a body's output legitimacy is informed by whether the body's actions enhance the lives of the people affected by it.¹⁹² The OB has an unclear claim to output legitimacy because it does not track or seek feedback regarding whether and how recommended changes to Community Standards actually improve people's lived experiences and the exercise of their rights.¹⁹³ As a result, it remains unclear whether the OB's decisions and recommendations are producing meaningful, measurable improvements in platform governance, weakening its efficacy. In order to establish output legitimacy, ODS bodies should track more than whether a platform restores a piece of content that the body has examined directly or whether the platform ticks the box on procedural reforms. They should develop metrics that evaluate whether their decisions and policy guidance lead to tangible improvements in user outcomes—such as increased clarity in content rules, fewer wrongful removals, better appeal outcomes, or improved treatment of vulnerable groups. Additionally, ODS bodies should regularly solicit user feedback and publish evaluations of whether recommended changes have been meaningfully implemented. In doing so, ODS bodies can strengthen their output legitimacy and efficacy by demonstrating their value to users and ensuring that their work translates into real improvements in how fundamental rights are protected online.

Overall, while the OB demonstrates some elements of legitimacy, its weak due process guarantees undermine its legitimacy. In contrast, ODS bodies, subject to formal independence requirements, hold stronger claims to legitimacy. However, to fully realize their potential, ODS bodies should improve transparency, foster civil society engagement, and strengthen mechanisms for tracking and publicizing the real-world impacts of their decisions, ensuring they deliver meaningful accountability and protection of rights for users.

CONCLUSION

The rise of private platforms as powerful arbiters of online speech has necessitated new models of oversight. As platforms become indispensable forums for public discussion and interpersonal connection, perceptions of inconsistent moderation can exacerbate distrust in platforms, allow misinformation to spread, chill expression, and diminish democratic discourse. The OB represents one of the most ambitious attempts at platform self-regulation, improving Meta's procedural transparency, promoting

¹⁹² See Haggart & Keller, *supra* note 130, at 7.

¹⁹³ See Douek, *supra* note 3, at 387, 430.

public participation in decision making, and encouraging policy reforms within Meta. Yet, despite its positive impacts, the OB has been perceived as more legitimate than it deserves, as it lacks meaningful independence from Meta and applies an inconsistent normative framework.¹⁹⁴ By outsourcing hard decisions and wrapping them in the language of IHRL and procedural fairness, Meta has used the OB to deflect criticism and provide assurance that the decisions are based on exogenous principles with global legitimacy, rather than Meta's commercial interests.¹⁹⁵ However, this is extremely difficult to achieve, as the OB is not independent from Meta and thus, there will always be a conflict of interest between the corporate interest in maximizing profit and protecting freedom of expression.¹⁹⁶ In this way, the OB risks legitimizing a governance model that lacks independence and public accountability, while projecting the appearance of legitimate decision making and influencing the design of other oversight bodies.¹⁹⁷ Furthermore, when platform decisions are given the appearance of legitimacy but are shaped by corporate interests, they risk deepening public distrust in platforms as democratic marketplaces of ideas. These shortcomings reveal the limits and risks of a privately created oversight mechanism.

In contrast, the DSA offers a more robust foundation for legitimate platform governance. Although still in its early stages, the DSA creates public, enforceable mechanisms that are accountable to regulators. Its certification process and grounding in national laws establish a stronger framework for input and throughput legitimacy. While ODS bodies face challenges—such as

¹⁹⁴ See Douek, *supra* note 3, at 384 (creating the perception that Meta's content moderation decisions are "justified, appropriate, or otherwise deserving of support for reasons beyond fear of sanctions or mere hope for personal reward").

¹⁹⁵ See Dvoskin, *supra* note 35; *Mark Zuckerberg Stands for Voice and Free Expression*, META (Oct. 17, 2019), <https://about.fb.com/news/2019/10/mark-zuckerberg-stands-for-voice-and-free-expression/> [<https://perma.cc/7BFJ-G7Z2>]. "Meta's creation of the Board resembles authoritarian governments' use of courts. Authoritarian rulers maintain courts because courts can provide a patina of legitimacy, they can provide a measure of predictability which can be useful for attracting commercial investment in particular, and they allow for the deflection of controversy away from the ruling regime." See Douek, *supra* note 3, at 387.

¹⁹⁶ See Mazur & Grambličková, *supra* note 94, at 29; Douek, *supra* note 3, at 437.

¹⁹⁷ See Douek, *supra* note 3, at 381. Scholars have suggested that OB decisions could directly influence the jurisprudence of human rights bodies through "norm diffusion." See Helfer & Land, *supra* note 95, at 2285–86.

risks of fragmentation across member states, the need to develop consistent normative standards, and the lack of civil society involvement—they are more promising as legitimate instruments of user redress, as they have opportunities to address these legitimacy shortcomings.

Nonetheless, the OB offers important lessons. Its model of transparent reasoning, public participation, and policy reform can strengthen the design and operation of ODS bodies. As regulators refine the implementation of the DSA, they should adopt what works from the OB—such as publishing decisions, facilitating public participation, and encouraging policy reforms—while rejecting the structural flaws that undermine the OB’s legitimacy, particularly its ties to a private platform.

Ultimately, platform governance cannot be left to private actors alone. While the OB cannot meet the standards of legitimacy required for independent oversight, it demonstrates the potential for privately created quasi-judicial oversight models to contribute meaningfully to platform accountability. As ODS bodies take shape, they must build transparent and accountable systems to safeguard fundamental rights consistently and ensure that platforms do not act as law unto themselves. By learning from both the successes and failures of the OB, EU regulators have the opportunity to build stronger, more legitimate quasi-judicial oversight mechanisms for tech platform governance.