One more time

Updated Set of Topline Points

As the broader guidance highlights, USAID has partnered overseas for many years with tech companies like microsoft and social media companies like Meta on a wide range of initiatives, from digital literacy and training programs that help strengthen the information ecosystem to [insert Meta health or other program here], that support development goals. Like other private sector partnerships, programming and partnerships with tech companies and social media companies is common and continues to be encouraged. That has not changed. That is business as usual. This guidance also is not about General use of USAID's social media is *not* restricted. USAID or implementing partner use of social media accounts to promote USAID activities or their own, non-USAID funded, activities also is not impacted. This guidance does not cover or impact that.
Persuasion (jawboning by government officals v. coercion (subject to strict scrutiny

**Commented [1]:** Does not fit here. Move it.

What has changed is an increase in information manipulation, such as x, in particular by foreign malign influence or non-state actors. More information manipulation is occurring on social media platforms. It has impacted USAID's work and its partners. In a subset of cases like [doxxing or otherwise harmful content] social media platforms. This has prompted more interest at USAID and within the USG in engaging social media companies and tech companies about ways to combat it. Under certain circumstances this engagement might include content moderation requests.

This is where the GC guidance fits into the larger IIR guidance. It is focused on providing guardrails for communications with social media companies that could touch on content moderation because they trigger legal concerns about the first amendment, freedom of expression, and the privacy act. Content moderation is an area of heightened legal risk as evidenced by recent Supreme Court litigation, heightened reputational risk, and high levels of congressional scrutiny and oversight.

A. USAID's longstanding commitment to protecting and promoting freedom of expression, and free and independent media consistent with the United States' responsibilities as a party to the International Covenant on Civil and Political Rights, which protects freedom of expression, and the right to freedom of speech protected by the First Amendment to the United States Constitution. In the United States, freedom of expression – whether exercised offline or online – receives strong protection. The First Amendment to the U.S. Constitution states that "Congress shall make no law ... abridging the freedom of speech." The United States Supreme Court has interpreted the right to freedom of speech broadly and has only identified a limited number of narrowly defined categories of speech that do not receive First Amendment protection.

   In carrying out its development mission overseas in partner countries, in accordance with the foreign policy objectives of the Foreign Assistance Act of 1961 (FAA), USAID

strives to amplify and extend the reach of the United States' most cherished values and beliefs: human dignity, freedom, and equality. USAID's commitment to advancing and protecting these values and beliefs, including freedom of expression, is reflected in the Agency's programs and policies. Further, it is the policy of the U.S. government to encourage social media companies to respect human rights, including freedom of expression.

The guidance is designed to help USAID continue its work to advance human rights and protect freedom of expression online, consistent with legal mandates in the Foreign Assistance Act of 1961 (FAA) and annual appropriations acts. This may include work to support information integrity, digital democracy, election security, digital security and media

The GC guidance will be most relevant to your work if you are contacting social media companies about content moderation (including removal, promotion or retention of content). It will also be relevant if you will be discussing social media companies' policies or practices and there is a possibility that those discussions might touch on content moderation.

- *Due to first amendment legal considerations, any USAID work in this space must be viewpoint neutral. USAID cannot be perceived to be policing public opinion or categorizing all negative views of USAID's work as misinformation.*
    - *What does viewpoint neutral mean? People are allowed to say bad things about USAID and its work. People are allowed to speculate about the USG's motivations even if they are wrong. USAID cannot make decisions based on viewpoints of the speaker.*
- Although the administration is forward leaning on combatting disinformation, there has been intense Hill scrutiny on work to combat disinformation or information manipulation. Some members of Congress support that work and some do not. The agency is rolling out guidance to the field, but the 2024

I want to highlight a couple general categories the guidance covers. [add the sentence below about specific scenarios]. You will find many of the situations are covered.

The guidance helps protect freedom of expression, address those concerns and keeps USAID's approach to engagements with tech companies consistent with the rest of the US government. The GC FAQS are consistent with the State cables and the White House guidance.

One question that has come up from colleagues is how USAID's guidance aligns with the rest of the interagency, especially forward leaning rhetoric that is coming from the administration. The goals are forward leaning, but how it is actually implemented is nuanced.

**Commented [2]:** might not be the best word. Take another look.

The U.S. Government is committed to engaging responsibly and prudently with technology companies, such as social media companies and file-upload platform companies, in full compliance with the U.S. Constitution and other applicable law and policy.

Commented [3]: From the White House guidance.

I want to highlight the 3 key points from the guidance.

- 
- **Two** - Disinformation, social media and the first amendment are hot issues right now. There are a couple cases before the Supreme Court (Murthy v. Missouri and NRA v. Vullo) and there is intense scrutiny from the Hill. General use of social media to further USAID's work is *not* impacted. The issues are typically arising either with content moderation or social media scraping issues.
    - For content moderation it's arising when or proposals to hide or take down content for various reasons or when staff or leadership want to sit down with the Metas of the world and ask them about how they are, for example, reacting to address criticism of their trusted partners program or combat violence online in x or y country. I helped GC draft some FAQs on content moderation based on a bunch of scenarios received from field and USAID/W staff that hyperlinks to State and White House guidance. The FAQs advise that all work with social media companies should follow the guidance and be coordinated closely with GC.
    - For social media scraping where AI or tech is used to scrape info on the internet about what people are saying about USAID and take action. The legal issue is that the privacy act prohibits the USG from collecting info about how US citizens exercise their 1st amendment rights without consent. These scraping tools typically cannot tell the difference b/x
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    - **For work Three-** As the guidance explains, Congress *directed* USAID to counter disinformation and specifically appropriated funds for it under Section 7032(g) of the FY 2023 Appropriations Act.
    - That third point is important to remember because there has been some Hill scrutiny on work to combat disinformation or information manipulation. Some members of Congress support that work and some do not.
    - USAID received a letter from Congressman Jordan, Chairman of the Judiciary Committee, requesting documents and asking questions about USAID's work on disinformation and content moderation, specifically as it relates to the civil liberties of American citizens. USAID sent a response letter explaining that the agency works exclusively overseas. There will likely be more LPA engagement with the Hill about the letter in the near future. USAID's new investigations counsel, Graham Markiewicz, who is splitting his time between GC and LPA, is helping coordinate USAID's response to the Jim Jordan letter.
    - Thanks for your time. I also dropped the link to the GC guidance in the chat for ease of reference.

      [redacted] If you have any questions about engaging with

social media companies or the GC Guidance please feel free to reach out to me or to Jahn Olsen.

Can do it. Just need to do it smartly.

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July 23 Presentation

1. Describes why it is important -reputation, operational and security risk
2. Strong partners. Need social media companies at the table with us. Need to figure out how to work with them effectively.

APPROVED - Action Memo  Agency IIR Guidance.pdf

Hello everyone

My name is Chioma Ayogu. I am the acting Assistant General Counsel for Africa. I am also the IRC's attorney

First, I want to start by thanking the IRC, which played a significant role in shaping the GC FAQs included in the guidance, for the hard and thought provoking questions you asked early on. I think you will see many of those questions reflected in the FAQs.

I will start with the bottom line up front: As this group knows better than others, there is a lot that can be done in this space and the work is important, but it is important to be aware of the sensitivities. The guidance identifies pre-cleared activities and helps set right and left bounds on activities to help ensure you and your teams avoid any redlines when communicating with tech companies.

**So, Starting with the Bottom Line Up Front:** The work is important, but the risks are real and I want anyone working in this space to feel well informed and well armed with information regarding the context and sensitivities and tools for engaging effectively.  Information manipulation and outreach to social media and tech companies remain hot topics with a lot of Hill scrutiny. There are long time supporters on the Hill but there are detractors as well as evidenced by Congressional investigations seeking USAID staff emails. We all know that a reality of working for the USG is that , particularly under FOIA, but I want you

For that reason, it is important that USAID is Intentionality -*Savvy about knowing audiences, what they care about and how this dom*
*ain has an intersection with what they care about. (Describing work in a matter that is pro development and showing how the work and disinformation intersect.) (Building plane while you are flying and getting shot at)* The Hill has expressed concern that the US government's engagements with tech companies might limit freedom of expression and infringe upon the 1st amendment rights of US citizens. The guidance helps protect freedom of expression, address those concerns and keeps USAID's approach to
engagements with tech companies consistent with the rest of the US government.

Because of these sensitivities,, it is important that USAID's work in those areas steers clear of any redlines and follows the guidance.

The guidance goes through a wide range of specific scenarios and captures many of the situations that come up. It also highlights activities that have already been pre-cleared by GC. Some of those activities include

- Connecting USAID partners to social media company contacts (e.g., Moldova),
- partnering on digital literacy (Saring Daring University Challenge) and
- providing training on digital security (e.g., Meta)

GC or the RLO for the Mission should be consulted on any activities involving social media companies to make sure

As you know, USAID cannot tell tech companies what to do or how to spend their money. Most of the redlines are triggered by content moderation related actions or advocacy situations where … to tread lightly and take additional care in particular when interacting with social media and tech companies. The guidance can help your teams do that safely and effectively.

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Other toplines?
Some have asked about the impact of the Supreme Court decision in Murthy v. Missouri. It has not changed it. The guidance still applies as is for now. ~~The recent Supreme Court decision in Murthy v. Missouri has not changed it.~~ We are still waiting to see how the other Supreme court litigation related to social media shakes out before deciding if updates are needed. You should also be aware that, as highlighted in the guidance, due to new requirements in the 2024 appropriations act programs specifically designed to address information manipulation must counter **foreign state and non-state actors abroad**; just countering information manipulation in general is not good enough.

Comms are very important
**Stop here**

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Dos and Dont's- To sum up, this is a hot issue so the best defense is to **keep it factual, follow the guidance, and loop in GC.**

**Also, please keep good doucment hygiene in mind.** Write emails and gchats as if you expect them to get FOIA'd or requested by the Hill. Remember there are some exceptions, but the default is disclosure. Most of them are likely to get turned over.

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Let me explain what I mean by that.

So, what do I mean by keep it factual? No buzzwords, especially in CNs and consult notes because It is likely to result in follow up questions and holds. Keep it factual. Keep it out of the Washington Post. At the end of the day USAID is trying to promote access to factual, trustworthy information which is essential to the health of a democracy and sustainable development outcomes across all sectors, and protect freedom of expression. Make clear USAID is doing the same bread and butter development work that Congress has been authorizing for years.

- *No DOD- style threat language that suggests ordinary citizens are a threat*
- *Due to first amendment legal considerations, any USAID work in this space must be viewpoint neutral. USAID cannot be perceived to be policing public opinion or categorizing all negative views of USAID's work as misinformation.*
    - *What does viewpoint neutral mean? People are allowed to say bad things about USAID and its work. People are allowed to speculate about the USG's motivations even if they are wrong. USAID cannot make decisions based on viewpoints of the speaker.*

**Follow the guidance**- The FAQs go through a wide range of specific scenarios and capture most of the situations that come up.

The guiding principle is that USAID cannot tell social media and tech companies what to do or how to spend their money (i.e., why aren't you allocating more money or people to the trusted partners program or other programs or activities).

**Here is where the rubber hits the road.**

**We went through all those examples of things that are easy, pre-cleared.**

**Here is where it gets more complicated.**

**Partners are asking USAID to step in and be the hero and USAID wants to be the hero. A tiny women's rights NGO**

**Here are the ones that get more complicated and frustrating. especially since the work that they are supporting is so important.**

**The Minister from your country pulls**
Other toplines?

USAID doesn't badger tech companies. If the question has been asked and answered let it go. Hypothetical example, if the working level folks, the Mission, the regional bureau, and the technical office have all called Meta to the carpet over the same trusted partners program over the past few months it helps fuel the narrative - Why is USAID still asking unless the intent is to

coerce the tech company to do something. That is, USAID says it is not coercing tech companies, but do its actions say otherwise?

Always prep talking points for any discussions with social media companies related to disinformation or information manipulation and have GC/RLO review them. This helps protect USAID and provides you all with some top cover if there are Hill inquiries or FOIA requests.

**Loop in GC -** Work on information manipulation continues to make headlines so it is important to work closely with GC which can provide guidance tailored to the specific stiuation.

**Other dos and don'ts. Practice good document hygiene**. Write emails and gchats as if you expect them to get FOIA'd or requested by the Hill. Remember there are some exceptions, but the default is disclosure. Most of them are likely to get turned over.

July 8 Presentation

Good morning/good afternoon/good evening everyone

My name is Chioma Ayogu. I am the acting Assistant General Counsel for Africa.

**Starting with the Bottom Line Up Front:** Information manipulation remains a hot topic with a lot of Hill scrutiny so it is important to tread lightly and take additional care in particular when interacting with social media and tech companies. The guidance can help your teams do that safely and effectively. The guidance still applies as is for now. The recent Supreme Court decision in Murthy v. Missouri has not changed it. We are still waiting to see how the other Supreme court litigation related to social media shakes out before deciding if updates are needed. You should also be aware that, as highlighted in the guidance, due to new requirements in the 2024 appropriations act programs specifically designed to address information manipulation must counter **foreign state and non-state actors abroad**; just countering information manipulation in general is not good enough.

Dos and Dont's- To sum up, this is a hot issue so the best defense is to **keep it factual, follow the guidance, and loop in GC.**

Let me explain what I mean by that.

So, what do I mean by keep it factual? No buzzwords, especially in CNs and consult notes because It is likely to result in follow up questions and holds. Keep it factual. Keep it out of the Washington Post. At the end of the day USAID is trying to promote access to factual, trustworthy information which is essential to the health of a democracy and sustainable development outcomes across all sectors, and protect freedom of expression. Make clear USAID is doing the same bread and butter development work that Congress has been authorizing for years.

- *No DOD- style threat language that suggests ordinary citizens are a threat*
- *Due to first amendment legal considerations, any USAID work in this space must be viewpoint neutral. USAID cannot be perceived to be policing public opinion or categorizing all negative views of USAID's work as misinformation.*
    - *What does viewpoint neutral mean? People are allowed to say bad things about USAID and its work. People are allowed to speculate about the USG's motivations even if they are wrong. USAID cannot make decisions based on viewpoints of the speaker.*

**Follow the guidance**- The FAQs go through a wide range of specific scenarios and capture most of the situations that come up.

The guiding principle is that USAID cannot tell social media and tech companies what to do or how to spend their money (i.e., why aren't you allocating more money or people to the trusted partners program or other programs or activities).

Other toplines?

USAID doesn't badger tech companies. If the question has been asked and answered let it go. Hypothetical example, if the working level folks, the Mission, the regional bureau, and the technical office have all called Meta to the carpet over the same trusted partners program over the past few months it helps fuel the narrative - Why is USAID still asking unless the intent is to coerce the tech company to do something. That is, USAID says it is not coercing tech companies, but do its actions say otherwise?

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<u>July 8 Presentation Notes</u>
This guidance is important because the USAID has legal authority to do work related to

I want to highlight the 3 key points from the guidance.

With heavy congressional scrutiny in the form of a House Judiciary Committee investigation that does not look like it is going away anytime soon and legal challenges regarding

disinformation work, including recent Supreme Court litigation in cases including Murthy v. Missouri, USAID staff have asked for guidance on whether and how to engage with technology companies.
Work on disinformation or information manipulation continues to make headlines so we wanted to provide some guardrails for working in this space, which can be found in the the IIR guidance document, which contains GC FAQs on engaging with social media companies.

One quick note folks have asked whether the GC FAQs still apply now that the Murthy v. Missouri Supreme Court case has been decided. In that case the plaintiffs were found to lack standing to bring the litigation which was about USG interactions with social media companies.

The answer? No change for now. Continue to follow the guidance. There are other cases still pending before the supreme court regarding USG interactions with social media companies. If there are any changes we will let you know.

- **Two** -USAID can continue to work with social media and tech companies. For activities that do not involve content moderation, it is largely business as usual. But for matters touching on content moderation, follow the guidance and coordinate closely with GC.
    - 
- 
- If possible, stick to flagging general issues or trends or discussion of what the platform and USAID are doing programmatically or via policy to address those issues or trends and redirect or table anything that is potentially a landmine or complicated.
- **Three-** As the guidance explains, Congress *directed* USAID to counter disinformation and specifically appropriated funds for it under Section 7032(g) of the FY 2023 Appropriations Act.
- The third point is important to remember because there has been some Hill scrutiny on work to combat disinformation (or information manipulation as I believe we are now calling it). Some members of Congress support it and some do not.
- Other dos and don'ts. Practice good document hygiene. Write your emails and gchats as if you expect them to get FOIA'd or requested by the Hill. Remember there are some exceptions, but the default is disclosure.
- With increased congressional scrutiny in the form of a House Judiciary Committee inquiry that does not look like it is going away anytime soon and legal challenges regarding this work, Mission staff in particular have asked for (1) clarification on and definitions of the terms USAID uses in this realm and (2) clarification on whether and

how to engage with technology companies. The draft guidance in Tab 1 attempts to answer these questions.

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Murthy v. Missouri, the social media censorship case that USAID was involved in back when it was captioned *Missouri v. Biden*. I**t was decided on standing (which the plaintiffs were found to lack), but still interesting in its framing of the underlying issues.**

One or two clients flagged the *Murthy v. Missouri* decision as well and already want to know what additional guidance, if any, GC has. For instance, Vera set up a couple of calls weeks ago with Bureau leadership to discuss social media contacts and disinformation so we are

On June 26, 2024 the Supreme Court issued its decision in Murthy v. Missouri, Decision about two hours ago. It was **decided on basis standing (which the plaintiffs were found to lack). Talking through next steps, likely in consultation with State/L and what additional guidance, if any, should be provided**.

As advised by our GC, there are legal considerations and sensitivities when engaging in this space lately and they are spelled out in USAID GC guidance and White House guidance (linked at the end of the USAID GC guidance). One central tenet is **USAID cannot tell the social media company what to do**. The other is that any engagements should be coordinated with GC.

USAID can educate but it can't advocate. That is, USAID can talk to social media companies to raise awareness about issues, but should not be involved in any advocacy to social media companies about specific issues or advocacy to host governments to implement certain laws.

The president's office can contact YouTube or some advocacy groups (such as Access Now) that work with YouTube directly. Some of our Implementing Partners like IREX and Internews may know such groups but I do not know if we can connect them in this context. Adding +Chioma Ayogu, our Senior Counsel for any guidance on that.

indeed, as previously discussed, experience has shown that affected individuals are often more successful than USAID in getting content removed.

<u>Updated Set of Topline Points</u>

- **One** - General use of social media is *not* restricted. USAID or implementing partner use of social media accounts to promote USAID activities or their own, non-USAID funded, activities is not impacted.
- **Two** - Disinformation, social media and the first amendment are hot issues right now. There are a couple cases before the Supreme Court (Murthy v. Missouri and NRA v. Vullo) and there is intense scrutiny from the Hill. General use of social media to further

USAID's work is *not* impacted. The issues are typically arising either with content moderation or social media scraping issues.
    - For content moderation it's arising when or proposals to hide or take down content for various reasons or when staff or leadership want to sit down with the Metas of the world and ask them about how they are, for example, reacting to address criticism of their trusted partners program or combat violence online in x or y country. I helped GC draft some FAQs on content moderation based on a bunch of scenarios received from field and USAID/W staff that hyperlinks to State and White House guidance. The FAQs advise that all work with social media companies should follow the guidance and be coordinated closely with GC.
    - For social media scraping where AI or tech is used to scrape info on the internet about what people are saying about USAID and take action. The legal issue is that the privacy act prohibits the USG from collecting info about how US citizens exercise their 1st amendment rights without consent. These scraping tools typically cannot tell the difference b/x
- Although the administration is forward leaning on combatting disinformation, there has been intense Hill scrutiny on work to combat disinformation or information manipulation. Some members of Congress support that work and some do not. The agency is rolling out guidance to the field, but the 2024
    - **For work Three-** As the guidance explains, Congress *directed* USAID to counter disinformation and specifically appropriated funds for it under Section 7032(g) of the FY 2023 Appropriations Act.
    - That third point is important to remember because there has been some Hill scrutiny on work to combat disinformation or information manipulation. Some members of Congress support that work and some do not.
    - USAID received a letter from Congressman Jordan, Chairman of the Judiciary Committee, requesting documents and asking questions about USAID's work on disinformation and content moderation, specifically as it relates to the civil liberties of American citizens. USAID sent a response letter explaining that the agency works exclusively overseas. There will likely be more LPA engagement with the Hill about the letter in the near future. USAID's new investigations counsel, Graham Markiewicz, who is splitting his time between GC and LPA, is helping coordinate USAID's response to the Jim Jordan letter.
    - Thanks for your time. I also dropped the link to the GC guidance in the chat for ease of reference.

      [redacted]If you have any questions about engaging with social media companies or the GC Guidance please feel free to reach out to me or to Jahn Olsen.

Supreme Court Notes on Murthy v. Missouri
DA Coleman's Truepoint talking points
Copy of IRC Briefer with A/AID- Highlights StartComms in a useful way

USAID Products about how it is dealing with content moderation

Tips

- No clickbait or buzzwords. Make it factual, not spicy. Describe what the activity does in plain English.
- If the language potentially veers into landmines
- Recommend adding a reference to or framing in terms of foreign malign influence or foreign state or non-state actors abroad given limitations in the FY 2024 appropriations act.
- Make sure commonly agreed upon definitions of misinformation are being used. Define misinformation in the context. For example, is it malign actor information from the Kremlin?
- Due to first amendment legal considerations, any USAID work in this space must be viewpoint neutral. USAID cannot be perceived to be policing public opinion or categorizing all negative views of USAID's work as misinformation.
    - What does viewpoint neutral mean? People are allowed to say bad things about USAID and its work. People are allowed to speculate about the USG's motivations even if they are wrong. USAID cannot make decisions based on viewpoints of the speaker.
    -

Topline Guidance for Communications with Social Media Platforms

Topline GC guidance: If the conversation veers toward discussions about having specific posts or content removed, retained, posted, or promoted, USAID should redirect the conversation. If possible, stick to flagging general issues or trends or discussion of what the platform and USAID are doing programmatically or via policy to address those issues or trends and redirect or table anything that is potentially a landmine or complicated.

**Guidance from GC**

Thank you for your patience. My understanding from your email is that Meta sent an email to your leadership, Marcela Escobari and Mileydi Guilarte, requesting that they meet with Meta's Public Policy Director for Meta in Mexico, Central America, and the Caribbean while he is in DC in early April to provide an overview of their key workstreams, including an update on Meta initiatives in the region, how they are addressing the root cause of migration, and election integrity. I think it would be fine for USAID to take this meeting.

I would recommend a couple general guardrails: Prep talking points or a briefer. If no such documents are prepared I recommend flagging one key landmine for your principals. If the conversation veers toward discussions about having specific posts or content removed, retained, posted, or promoted, redirect. If possible, stick to flagging general issues or trends or discussion of what Meta and USAID are doing programmatically or via policy to address those

issues or trends and redirect or table anything that is potentially a landmine or complicated. The applicable FAQ from the Guidance is Q#16.

Some additional detail regarding the guardrails included below.

- Given the sensitivities in this space, the fact that Meta is setting the agenda, and the fact that this discussion is taking place at the leadership rather than working level, I recommend that USAID be in listening mode where possible, avoid making any firm commitments and that any action items or next steps be determined at a fairly high level so there is an opportunity for USAID SMEs to review and discuss first.
- Talk about general issue areas/pain points or trends is ok (e.g., "Meta has noticed there is a rise in threats against politicians, especially women, in country x during election time. Meta did x in the past and is planning to do y in the future. If USAID has expertise it can share on country conditions and trends on these issues it would be helpful.").
- If your leadership prefers for concrete deliverables/decisions to come out of the meeting, then I strongly recommend additional prep on the front end, such as talking points or briefers.
- Redirect or table any conversations about specific content moderation requests (e.g., "Group x posted inflammatory language. What does USAID think should be done about it?").
- If talking points, briefers or other prep documents will be prepared for the principals in advance of this meeting I recommend sharing them with GC and RLO for awareness and a quick check for any potential landmines.

**Commented [4]:** Highlight this in the talking points

**Commented [5]:** Add to presentation

Talking Points for CPS Bureau

The Supreme Court stayed (or lifted) the injunction issued by the Fifth Circuit in Missouri v. Biden until the case is heard by the court. The injunction previously restricted communications with social media companies regarding content moderation. State and USAID GC have issued guidance on how to navigate in this space.

The GC guidance will be most relevant to your work if you are contacting social media companies about content moderation (including removal, promotion or retention of content). It will also be relevant if you will be discussing social media companies' policies or practices and there is a possibility that those discussions might touch on content moderation.

I want to highlight the 3 key points from the guidance.

- **One** - General use of social media is *not* restricted. USAID or implementing partner use of social media accounts to promote USAID activities or their own, non-USAID funded, activities is not impacted.
- **Two** -USAID can continue to work with social media companies. For activities that do not involve content moderation, it is largely business as usual. But for matters touching on content moderation, please follow the guidance and coordinate closely with GC.
- **Three-** As the guidance explains, Congress *directed* USAID to counter disinformation and specifically appropriated funds for it under Section 7032(g) of the FY 2023 Appropriations Act.
- That third point is important to remember because there has been some Hill scrutiny on work to combat disinformation or information manipulation. Some members of Congress support that work and some do not.
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- Thanks for your time. I also dropped the link to the GC guidance in the chat for ease of reference.

  [redacted] If you have any questions about engaging with social media companies or the GC Guidance please feel free to reach out to me or to Jahn Olsen.

Summary for DRG CLM

I hope you all had a nice holiday.

The Supreme Court stayed (or lifted) the injunction issued by the Fifth Circuit in Missouri v. Biden until the case is heard by the court. You might recall the injunction previously restricted communications with social media companies regarding content moderation. State and USAID GC issued guidance on how to navigate in this space.

The GC guidance will be most relevant if you are contacting social media companies about content moderation (including removal, promotion or retention of content). It will also be relevant if you will be discussing social media companies' policies or practices and there is a possibility that discussions might touch on content moderation.

I want to highlight the 3 key points from the guidance.

- **One** - General use of social media is *not* restricted. USAID or partner use of social media accounts (to promote USAID activities or their own, non-USAID funded activities) is not affected. This has nothing to do with that.
- **Two** -USAID can continue to work with social media companies. For activities that do not involve content moderation, it is largely business as usual. But for matters touching on content moderation, follow the guidance and coordinate closely with GC.
- **Three-** As the guidance explains, Congress *directed* USAID to counter disinformation and specifically appropriated funds for it under Section 7032(g) of the FY 2023 Appropriations Act.
- The third point is important to remember because there has been some Hill scrutiny on work to combat disinformation (or information manipulation as I believe we are now calling it). Some members of Congress support it and some do not.
- USAID received a letter from Congressman Jordan requesting documents and asking about work content moderation, specifically as it relates to the civil liberties of American citizens. USAID sent a letter explaining that the agency works exclusively overseas. There will likely be more LPA engagement with the Hill about the letter in the near future. There might also be more follow up from the Hill about work on information manipulation so it would be good to stay organized in case DRG needs to pull together documents on its work in that space and loop GC in on issues or activities involving social media companies.
    - and in the future GC hired a new investigations counsel, Graham Markiewicz, who will be splitting his time between GC and LPA to work on USAID's approach to these types of congressional oversight issues so you might start to see his name more often. If there are questions about whether he needs to review something you can reach out to me.
- Beyond that the guidance addresses specific questions raised by USAID staff. There were some question
- There have been some questions about the FAQ touching on communication with social media companies about "safeguarding users and promoting human rights online" or convene events discussing social media companies' approaches to it. It also recognizes, as some have flagged, that the agenda for some of these types of engagements with or regarding social media companies could touch on content moderation directly or indirectly as part of larger discussions of efforts to safeguard users and address issues like doxing or other online harassment. As noted in the FAQ, based on the Fifth Circuit's opinion, public calls for action from the USG for social media companies to endorse or adopt various industry or international principles or standards or implement certain standards or policies could be prohibited as coercion. Context matters. For that reason and others, the guidance recommends coordination with GC/RLO for navigating the issues for such events.

**Commented [6]:** Consider incorporating this

Thanks for the time.
Any questions?

If Asked
I would also note DRG would need to work closely with GC on any events that discuss how social media companies **safeguarding users, promoting human rights online, information integrity, or content moderation as well as 2) opportunities to strengthen these approaches by adopting or aligning with international standards, principles or best practices? This is because these types of events may get close to legal redlines. They may directly or indirectly touch on content moderation and protecting users by removing content or strengthening policies regarding content moderation.**

Other summary

On Friday, September 8, 2023, the Fifth Circuit issued an order significantly narrowing the scope of the preliminary injunction in *Missouri v. Biden*.

As a result, USAID is no longer prohibited from engaging in activities touching on content moderation in concert with State.
The Fifth Circuit found the injunction to be vague and overbroad, vacated the majority of it, narrowed it to apply only to the White House, the Surgeon General, CDC, and FBI and excluded all other parties, including the State Department. The Fifth Circuit determined certain White House, CDC and FBI officials' content moderation activities regarding COVID-19 disinformation might have violated the First Amendment, but did not find sufficient evidence that the other named defendants were likely to have done so.

Talking points for the committee folks
CONTENT MODERATION

**Background**: On July 4, 2024, a federal district court in Louisiana issued a preliminary injunction in Missouri v. Biden prohibiting the State Department, several other federal agencies, White House officials and anyone acting "in concert" with them from directly or indirectly (through third parties or implementing partners) urging or pressuring social media companies to remove or suppress "protected free speech." The injunction identified a few exceptions to this prohibition.

USAID was not named in the injunction, but its activities were impacted in certain circumstances, such as when USAID collaborated on activities with the State Department or

other federal agencies named in the injunction. State issued guidance regarding content moderation activities. USAID was prohibited from engaging in content moderation activities in concert with State or other parties named in the injunction. OUs were instructed to consult GC for guidance.

On July 14, 2023, the Fifth Circuit granted a temporary administrative stay of the preliminary injunction previously issued in the case of Missouri v. Biden. The stay remains in place pending further orders from the court. Oral arguments were heard on August 10, 2023. GC is closely monitoring the status of this case and will inform DRG of any changes. As a result of the stay, DRG can resume activities that involve engagement with social media companies and can coordinate with State on such matters, with some guardrails.

In short, USAID should continue to exercise appropriate caution in how it engages with tech companies. Put your FOIA+ or litigation lens on.
More detail on the guardrails is provided below:

- **Avoid "content moderation"** - My understanding is that DRG does not anticipate flagging to social media companies content for removal or increased scrutiny or attention ( (e.g., posts by certain individuals or entities), but if it does occur, DRG should only do it in the most limited and exceptional circumstances, and only in close consultation with GC.
- **Avoid or exercise significant caution regarding any discussions with social media companies of their "content moderation" policies** - Similarly, If DRG will be reaching out to any social media companies to discuss their policies or approaches to content moderation (e.g., encourage them to strengthen safeguards), please touch base with GC prior to outreach. Cleared talking points are recommended.
- **Maximize use of cleared talking points for DRG led meetings -**If DRG will be hosting meetings involving discussions with social media companies that might directly or indirectly touch on content moderation, GC recommends preparing agendas and talking points and clearing them with GC.
- **Coordination - Confirm (if possible) that State L has cleared on/is aware of any State-led joint State/USAID engagements with social media companies involving discussions of "content moderation"** - Talking points cleared by GC are recommended. GC should also be consulted on any planned strategies to promote or amplify any frameworks or documents to help reduce the risk that such efforts are misconstrued as coercive. USAID should exercise additional caution in re-engaging with State on any initiative involving "content moderation" which lacks a written roadmap or overview for social media company engagement, cleared talking points, or clearance/socialization with State L.

Carve out for doxing regarding local partners and staff - Named

-Escalation

We don't have an escalation process yet, at least not in writing. Last time we had a doxing incident, our local partner had a direct POC at Meta and resolved the issue without us.

Independent reporting

Content moderation question pushed to platform (content moderation referral) vs. content moderation direction to pull down)

Sabeen Dhanani - Relationship manager for USAID

General Tips

-Have to recognize what they already have and how we could help them strategically direct their resources

-Follow up mixed based on company priorities

-Microsoft always eager to collaborate and have a development focus and CSR push. Structurally set up to respond. Meta and Alphabet, typically easier to adjust things they are already doing.

**-Include threat reporting protocol? Ask vera**

**Latest Order**

On Friday, September 8, 2023, the Fifth Circuit issued an order significantly narrowing the scope of the preliminary injunction in *Missouri v. Biden*.
This was some good news for USAID because it meant the agency was no longer prohibited from engaging in activities touching on content moderation in concert with State.

> The Fifth Circuit found the injunction to be vague and overbroad, vacated the majority of it, narrowed it to apply only to the White House, the Surgeon General, CDC, and FBI and excluded all other parties, including the State Department. The Fifth Circuit determined certain White House, CDC and FBI officials' content moderation activities regarding COVID-19 disinformation might have violated the First Amendment, but did not find sufficient evidence that the other named defendants were likely to have done so.

In short order, On August 18, Chairman Jordan sent a letter to USAID requesting a wide range of communications related to records content moderation, dis, mis and malinformation, .
Although correlation does not equal causation and there is no explicit mention of the *Missouri v. Biden case,* the timing of the request and the nature and scope of the request suggest there

might be some correlation. This is a request that could have broad implications for the agency's work and the response to it could take up significant bandwidth. Further, other agencies have received similar letters.
The oversight request from Jordan has been picked up by the Washington Post (9/23 article) and a few other news outlets.

GC is working closely with LPA on an agency-wide approach to the letter since it affects equities agency wide. GC is also drafting guidance on content moderation. Happy to share some initial general considerations and some general tips for file hygiene moving forward.

HYGIENE

- **Only write things that pass the Washington Post Test**
- Be thoughtful about word choice. Gossip, angry comments, profanity, and other unprofessional statements generally WILL be disclosed.
- The fact that the release of a record would be personally embarrassing is not grounds to not disclose.
- Do not write, "this is too sensitive to discuss over email," "this is highly sensitive, we shouldn't put any of this in writing" or "not to be shared further." Think about the word choice. Is there another word you can use? (e.g., peer competitor)
- If in doubt, pick up the phone.
- Less than gracious comments about other components of USAID or the USG are good fodder for fire
- Keep emails professional and courteous.
- Be precise about language. Avoid language that might raise red flags (e.g., influence, change, shape)
- Terminology - peer competitors (coordinate with LPA)

Miscellaneous Text to Add to documents

- Content moderation remains a highly sensitive issue. There is ongoing Supreme Court litigation and USAID is currently responding to a Congressional oversight request from the House Judiciary Committee seeking emails from USAID leadership and staff and programmatic documents related to content moderation and disinformation. Due to these sensitivities, USAID should redirect or table any discussions of specific content moderation requests or about account suspensions or terminations.