

NIH HID PUBLIC COMMENTS ABOUT WUHAN AND IVERMECTIN

Internal records reveal how the agency curated public discussion of controversial COVID-19 issues

The documents expose a broader federal effort to control the public conversation surrounding COVID-19. Although these records were created during litigation concerning the National Institutes of Health's (NIH) treatment of animal-rights comments, the internal communications show that NIH's suppression practices extended to other contested subjects. NIH officials acknowledged hiding comments concerning the Wuhan Institute of Virology (WIV) and ivermectin, collected examples involving Dr. Anthony Fauci and alleged vaccine misinformation, and discussed preserving the agency's ability to filter or manually hide public comments in the future.

WHAT THE DOCUMENTS SHOW

- 01 NIH hid comments about the WIV and ivermectin.** An NIH official expressly acknowledged that comments referencing the WIV and ivermectin had been hidden as "off topic" beneath an NIH post concerning its initiative to end structural racism.
- 02 The agency's moderation reached the central COVID debates.** NIH identified and collected comments about Dr. Fauci and alleged vaccine misinformation, including comments reading "ARREST ANTHONY FAUCI!!!!" and "#firefauci," as part of the example set it assembled of "inappropriate" and "off topic" content on its pages.
- 03 NIH used both automated filters and human judgment to restrict public comments.** The records describe NIH's reliance on keyword filters and confirm that agency personnel also manually hid comments before the litigation began. NIH paused that manual process after the lawsuit was filed but drafted language stating that it intended to resume manual moderation after the summary-judgment ruling, if permitted by the court.
- 04 Officials discussed expanding future suppression tools.** NIH and Justice Department attorneys considered the agency's ability to add new and supposedly "neutral" keyword filters. Their communications expressly recognized that such filters could prevent discussion of entire subjects, including COVID vaccinations.
- 05 NIH understood the First Amendment implications.** Government attorneys warned that a court could determine NIH's Facebook and Instagram pages were public forums and prohibit content-based restrictions. Even with that risk, the internal discussions focused on preserving NIH's discretion to remove speech it considered unrelated to its chosen message.

Event: PETA Lawsuit Update and Requests for Information

Start Date: 2021-12-09 12:30:00 -0500

End Date: 2021-12-09 13:00:00 -0500

Organizer: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>

Location: Microsoft Teams Meeting

Class: X-PERSONAL

Date Created: 2022-12-12 18:53:51 -0500

Date Modified: 2022-12-12 18:53:52 -0500

Priority: 5

DTSTAMP: 2021-12-08 23:32:56 -0500

Attendee: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <a[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

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From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 8, 2021 11:24 PM

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

I apologize for the confusion- my comments about the effect of losing the lawsuit – specifically the last two sentences of my prior email- need to be modified after further discussion with DOJ (yes at 11pm). I struck these sentences out below.

The effect of NIH losing the lawsuit depends on how the Judge ultimately chooses to frame the injunction. It is more likely than not that the injunction would specifically target (i) the animal-testing filters and/or (ii) all efforts to target animal testing comments. Of course, there's always a chance that a Judge can issue a broad injunction that, say, concludes that the NIH social media pages are public forums, and that no "content-based restrictions" are allowed, i.e. moderating any comments based on subject matter.

I hope this helps clarify that there are multiple options of how a judge could rule if NIH loses. Happy to discuss further on the call.

Thanks again,

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Thank you very much. I'm not sure we can get through everything in 30 minutes, but we can try. Lets tentatively set from 12:30-1pm.

As to your comment that you haven't stopped the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals yet, can you please double check to confirm these are still on the list? I just checked NIH's most recent Instagram posts from my own personal Instagram account and I see #stoptestingonanimals and #stopanimaltesting comments. If this is still on the filter list, then this adds confusion as to why these comments are not hidden. For example, I see a #stoptestingonanimals on the December 3rd post about the POTUS briefing and on the December 3rd post about the placenta image. I also see a #stopanimaltesting on the November 19th post on Marsha's Alzheimer's Caregiver story.

Essentially, your statement about the lawsuit is accurate, ~~but only for moderating off topic animal testing comments.~~ The lawsuit is about the animal-related keyword filters. To not fight the lawsuit, NIH would have to stop all animal-related

Released by Chairman Rand Paul

keyword filters to appease the plaintiffs to drop the suit. Since manual hiding is not at issue in the lawsuit, NIH would have full discretion to do manual hiding. However, if NIH instead of using the keyword filters manually hid comments each day, it is likely plaintiffs would pick up on their comments being hidden and file another lawsuit about the hiding. So, in my opinion, I don't see the benefit of attempting to moderate the animal testing comments through another hiding mechanism, since it will likely just end up in another lawsuit as soon as plaintiffs notice their comments are hidden. If you see any other angle of how off-topic animal testing comments could be moderated without alarming the plaintiffs to want to file another lawsuit, then I'm happy to discuss.

Therefore, for NIH to continue moderating off-topic animal testing relating comments, it seems the only option is to defend NIH's practices through the lawsuit, and if NIH wins then it can continue as-is and have discretion to filter viewpoint-neutral animal-related keywords and conduct manual hiding, etc. If NIH doesn't win, then NIH would not be able to moderate off-topic animal testing comments. ~~The scope of an injunction would only apply to the animal testing keyword filters at issue. NIH would be able to continue to moderate off topic comments for subject matters outside of animals.~~

Thank you,

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

So sorry for writing late. Crazy week for us! A call would be great, but we have another crazy day tomorrow and the best time that will work is 12:30-1pm. Will that work for you all as well?

I'm attaching our responses to your comments in the stipulations document. I've included the answers to your questions below (highlighted). To answer your question about the key policy decision maker: that would be Renate. In terms of who has the most information to talk through the stipulation—that would be all of the OCPL people on this email. We each have different pieces of the information.

My take away from the below explanation is that if we want to continue to moderate off topic comments on Facebook and Instagram, then we must decide to fight the lawsuit, and only if we win, then we could continue to do so. Is that accurate?

Looking forward to the call.

Thanks,
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 8, 2021 6:32 PM
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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi,

I want to clarify my answer below to #1. I just heard from DOJ that they'd prefer holding on adding any new keywords to the filter list for right now. It would be easier to just litigate with the universe we have, rather than change the facts at a later stage. However, our fact stipulation will expressly reserve the right for NIH to add content neutral keyword filters to capture posts that violate the comment guidelines in the future.

Please let me know if you have any further questions about this point.

Thank you,

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi team,

I also reviewed the document you sent over and have a few follow-up responses/questions:

1. For the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals, NIH chose option #1- . Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work. You asked "Can we add filters in the future as long as they're neutral?" **Answer- As things currently stand with our litigation strategy, NIH can add neutral filters now and in the future. If the court issues an injunction based on a ruling that NIH's social media pages are designated public forums, it is possible NIH would not be able to include neutral filters to prevent discussion about a broad topic, such as animal testing generally or COVID vaccinations generally.**

Released by Chairman Rand Paul

Question- What date did NIH remove the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals? We have not done that yet, but can be done immediately.

2. To follow-up on the inquiry about pro-animal testing comments, the DOJ would like to make the argument that the NIH doesn't have a policy of targeting anti-animal testing posts. Posts defending animal testing, as much as posts critical of animal testing, would not be permitted if they are off-topic, inflammatory, etc. I know you said you don't have any examples of hiding pro-animal testing comments, but again, if we can include examples of where the filters caught some of those posts, whether separate posts or posts in response to an anti-animal testing post, that would help. If there are any issues where there might have been more debate that you could browse through to double check, such as maybe the beagle uproar, that would be helpful.

We'll continue to look, but this is not a scenario that happens because people aren't really posting pro-animal testing. However we do have examples of other instances where we have hidden comments that were off topic. For example we posted about NIH's ending structural racism effort, and there were comments about Wuhan Institute of Virology and Ivermectin that were hidden for being off topic.

Thank you,

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Subject: RE: PETA Lawsuit Update and Requests for Information
Importance: High

Hi Anna and team,

Thank you so much! This is extremely helpful. I will work with DOJ on incorporating this information into the facts. Please see my responses below in red.

After all your work, I already have a request for follow-up. The draft stipulation of facts we received from the Plaintiffs included a number of examples of specific comments that were hidden from NIH's Facebook and Instagram. They attribute these hidden comments to NIH's Facebook and Instagram filter lists. Interestingly, we have discovered that the HHS Facebook comments plaintiffs mention were likely filtered through Facebook's own spam filter, as HHS does not filter "monkey" from its Facebook comments (as a reminder, Plaintiffs only claimed HHS' Facebook blocked the word monkey and only gave a few examples). Due to this, DOJ is currently discussing removing HHS from the lawsuit with Plaintiffs, so then the only defendant would be NIH. Therefore, we'd like to confirm that these hidden comments were actually based on NIH's own filters and not some other mechanism.

I have attached a document of all of the examples Plaintiffs included. Could you please investigate the following:

1. **Check each example on Facebook and Instagram, to the extent possible, to confirm that NIH's filters did indeed hide these comments.** I reviewed all of the examples myself against the Facebook/Instagram filter lists to ensure at least one word in each example is on the filter lists, and inserted a comment where there are discrepancies.
2. **Where I inserted a comment where there are discrepancies, please respond to the comments to let me know whether you think the filters did capture these terms, whether they were manually hidden by NIH or whether you think Facebook or Instagram's own filters may have been in effect.**

As far as timing, the DOJ wants to submit our edits to the proposed stipulation of facts on Wednesday or Thursday at the latest to allow time for some back and forth with the plaintiffs before the deadline. Please let me know if you can get back to me on this by COB tomorrow. I apologize for the continued short turn around time. The stipulation is likely our only opportunity to get the facts in the record.

I'd also like to schedule a quick call with the key decision maker and the person who has the most comprehensive knowledge of the facts to review the facts presented and ensure there are no other key facts that might be useful to include. I can provide a copy of the draft fact stipulation in advance, or review a summary of the facts with you during the call.

Thank you,

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Since there were quite a few questions and requests for screenshots, we have compiled our responses in the attached word doc. Our answers to your questions are highlighted in yellow. Please let us know if you have any questions regarding the responses. We have two main questions for you and DOJ:

1. **Can the chief policy maker just be NIH or do we have to name a specific person? We'd prefer to not name a specific person given the history of PETA sharing people's personal information with their supporters.**

OGC- David Lankford and I- would like to know the ultimate NIH decision-maker for this lawsuit. The person's name will not be given to Plaintiffs and is for our own internal coordination purposes only.

Released by Chairman Rand Paul

2. Our desired outcome is to still be able to moderate comments, specifically those comments that are off topic to the posts. Based on this desired outcome, which path would OGC recommend we take with this lawsuit?

I will get back to you on this shortly after further discussion.

Thank you,

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
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Subject: RE: PETA Lawsuit Update and Requests for Information

Great, thanks so much Anna!

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

We don't have a decision on those quite yet, we just removed "peta" and "petalatino" for now. Hoping to have a decision on Monday.

Thanks!
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
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David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Thanks so much for the update. To clarify, what was your group's decision on the Instagram filters #stopanimaltesting; #stoptesting; and #stoptestingonanimals? If you don't have a decision on those filters yet, that is fine.

Thank you,

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Thanks so much for the extension. We did want to update and let you know that we have removed the filters you mentioned below on Facebook and Instagram today, so you can give the date of 12/3/21 to DOJ as when the filters were removed.

Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Thursday, December 2, 2021 12:42 PM

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

Plaintiffs agreed to an extension, so COB Monday works well for getting the additional information back to us.

Thanks so much,

Sarah J. Imhoff, JD, MHSA

Released by Chairman Rand Paul

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks Sarah! Much much appreciated.

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Wow of course! I'll check with DOJ on timeline. I know they thought if we were going to make the deadline we'd need to get a draft back to PETA by the weekend... but they were already thinking we wouldn't make it since PETA got us their draft later than they promised....I know its super short notice. I'll touch base with them to see if they can get started on an extension request today to get us some additional time.

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 1, 2021 11:46 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia

Released by Chairman Rand Paul

(NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks, Sarah! We'll take a look and try to get you answers. I'm out tomorrow and Friday, and we're handling the POTUS visit tomorrow, so we're completely underwater. Is there any possibility for us to get back to you by COB Monday? I know it's longer than ideal, but just want to make sure we are able to give this the attention it needs.

Thanks!

Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 1, 2021 11:43 AM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Importance: High

Hi everyone,

I had a call with DOJ yesterday and am writing to answer questions from the last call, provide an update as to next steps and ask for some additional information. I thought it would be helpful to have this all in writing, but if you would like to have a call to discuss please let me know. The DOJ unfortunately needs the additional information ASAP, so if you could provide it by tomorrow that would be very helpful.

As a first matter, **we'd like to know who is the ultimate decision-maker for the team.** There is a policy decision to be made, as described below, and we want to ensure the appropriate person is looped in and making the decision.

Questions from Last Call

1. Should NIH should stop its blocking non-viewpoint neutral keywords? NIH should stop blocking the following keywords immediately:

Facebook

- Peta
- Petalatino

Instagram

- Peta

When this is done, please let me know so I can give the date these keywords were no longer blocked to the DOJ.

In terms of the following Instagram filters:

- #stopanimaltesting
- #stoptesting
- #stoptestingonanimals

The DOJ is leaving this as a policy decision for NIH. The ideal solution would be for NIH to still achieve its desired goals without having these one-sided keywords blocked. For example, if the hashtag #testing is blocked, will that also block

#stopanimaltesting, #stoptesting, and #stoptestingonanimals? Or, does the entire phrase need to be blocked for it to work? I do see “testing” is a manual filter, but not hashtag #testing- does this make a difference?

The options are: 1. Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work, 2. Keep the above filters but add a hashtag representing the pro-animal testing side to achieve neutrality, if there are any commonly used pro-animal testing words or hashtags such as #keepanimaltesting, 3. Remove the filters without additional changes if it isn't making much of a difference, or 4. Keep the filters without additional changes if options #1 and #2 are not feasible and these filters are key to stopping harassment from PETA.

If you are considering option #4, while a court may find that these keywords are not viewpoint neutral, the DOJ said the worst that would happen is a court would order NIH to stop filtering these terms as part of its ruling. But, ideally we'd prefer options #1-3 for a stronger case.

2. What are the ramifications if NIH does not win the lawsuit? What does that mean NIH will and will not be able to moderate on its Facebook and Instagram pages?

The DOJ explained that if NIH fully loses the case and the judge deems NIH's Facebook and Instagram as public forums and grants an injunction, NIH would still be able to moderate the platforms for the categories of speech that are not protected by the First Amendment, such as obscenity, fighting words, defamation, incitement to induce imminent lawless action, true threats, and solicitations to commit crimes. The DOJ did say that the NIH would not be able to moderate off-topic comments if the injunction is granted.

If the NIH only lost on the viewpoint discrimination argument, but the platforms were not viewed as public forums, the DOJ's preliminary opinion is that the comment guidelines would only need a slight modification to clarify that animal testing as a general topic is off limits.

Overall, the DOJ's opinion is that even if NIH fully lost the lawsuit, NIH would not be in a worse position than if it did not fight the lawsuit. Essentially, losing the lawsuit would only allow NIH to moderate the areas of speech that are not protected by the First Amendment and to not have any discretion outside of these areas. It appears that NIH not fighting the lawsuit and removing all animal-related filters would have a similar effect, although by not being under a court order NIH would still have discretion to moderate as it pleases, which would include off topic comments. However, if NIH removes all of the animal related filters to get PETA to drop the lawsuit and then manually moderates PETA's off topic comments, PETA may file another lawsuit about the manual moderation so it may not get us very far.

Please let us know your thoughts on if you are in agreement with the DOJ's assessment that losing the case versus not fighting it would have a similar effect.

Next Steps and Additional Requests for Information

-
The DOJ and PETA have agreed to file a stipulation of facts to avoid discovery, and then the briefs for summary judgement will be drafted based on these facts. Summary judgement means the judge will make a decision on the injunction based on the briefs without holding a full trial. The deadline for the stipulation of facts is next Wednesday, December 8th but this may be pushed back a few days. The DOJ seeks some additional information from the NIH to fill in the facts, outlined below:

1. Manual Moderation of Comments
 - a. What was the exact date NIH stopped manually moderating comments? I know it was after the lawsuit was filed, but can you give us the date?
 - b. When NIH was manually moderating comments, what was the frequency? For example, was the manual hiding of comments weekly? daily? every 4 hours Monday-Friday? constantly?
2. Comment Guidelines- In its complaint, PETA states NIH's Facebook was created on October 14, 2008 (and Instagram created in 2018). From our emails, you stated OGC approved the Comment Guidelines in January 2015.

- a. Do you know the exact date the Comment Guidelines become in effect?
- b. Before these Comment Guidelines, were any other comment policy or guidelines in place from 2008-2015 for Facebook commenting?

3. Pro-Animal Testing Comments

- a. Is there any way you could find examples of pro-animal testing comments that were hidden? This can either be the comment itself, or a comment thread where there was an anti-animal testing comment and a pro animal testing advocate replied to that comment, but the entire comment thread with replies to the original comment was hidden? It would be very helpful if you could find 2-3 examples of this and provide us with screenshots. If the comment was manually hidden, that is fine. It would be preferable if you could find this during the time frame of the complaint, which is between September 2020 to September 2021.

4. PETA' effect on NIH Goals- The DOJ would like to include an argument showing how PETA's spamming of off topic comments inhibits NIH's mission. As the keyword blocking does target animal testing and PETA as we've discussed, the DOJ wants to justify this targeting to state that the case isn't a debate about animal testing but about harassment from PETA.

- a. Do you have any statistics about how often PETA comments compared to other comments? Or statistics about how many comments are about animal testing? If there is any way DOJ could state animal testing comments are 50% of the comments received but the NIH has only posted about animal testing for 5% of its posts, that would be helpful.
- b. Could you find specific examples of how PETA stands out among all other groups and comments? We are looking for some extreme examples of PETA's comments where they go over the top to highlight 2-3 examples with screenshots.
- c. In addition, extreme examples of PETA's past actions not involving the social media platforms will help as well. On our last call you mentioned a campaign against Elisabeth Murray. 1-2 examples with screenshots or other documentation would be helpful.

Thank you very much, and happy to have a call to review all of this.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]f@nih.gov>
Sent: Wednesday, November 10, 2021 3:30 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [C] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: Call Regarding Update on NIH Facebook/Instagram Lawsuit

Hi everyone,

David Lankford and I would like to schedule a call with you to give an update on our discussions with the DOJ this week, some additional questions we have and your initial thoughts on DOJ's current proposed next steps. We haven't received

Released by Chairman Rand Paul

any firm advice on what NIH should do moving forward yet, but wanted to get your opinion on DOJ's current next steps to see whether we should have further discussions with them about their proposed strategy.

Can you please let me know when your team is available for a discussion this Friday, 11/12? We are open except from 3-4pm.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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Stipulation of Facts for *People for the Ethical Treatment of Animals et al. v. Collins et al.*, U.S. District Court for District of Columbia, Case No. 1:21-cv-2380-BAH

Examples of Posts

PETA

51. As a result of the keyword filtering used by the NIH on its Facebook page, certain comments made by multiple PETA employees in response to Facebook Live videos and Facebook posts did not appear on the NIH Facebook page.

52. On September 24, 2020, PETA employee [REDACTED] was prevented from posting three comments on a Facebook Live video on the NIH Facebook page about COVID-19 vaccine research. One read, "Francis Collins, we appreciate all your hard work to search for a COVID vaccine, but why is NIH still wasting money on cruel and ineffective monkey fright experiments?" [REDACTED] was unable to post these comments at all, because they violated the NIH's content moderation settings for Live videos. [REDACTED] saw that the comment had not been posted because it was bordered by a red box, and text below the comment read "Unable to post comment. Try again." A copy of [REDACTED] attempted comments is attached hereto as Exhibit [X].

53. On October 8, 2020, [REDACTED] again tried to comment on an NIH Facebook Live video about gene editing, but several of her comments were blocked due to the NIH's keyword filters for Live Videos, including: "Congratulations, Dr. Doudna! Francis Collins, please end NIH's fright experiments on primates;" and "CRISPR can be used for advanced, non-animal experiments. In light of the many non-animal technologies that are developing, how can NIH continue to conduct experiments on macaques and other primates?" [REDACTED] saw that the comments had not been posted because they were bordered by a red box, and text below the comments read "Unable to post comment. Try again." A copy of [REDACTED] attempted comments is attached hereto as Exhibit [X].

54. On May 27, 2021, [REDACTED] attempted to post several comments to an NIH Live video featuring Dr. Kizzmekia Corbett, including: "Thank you, Dr. Corbett and Dr. Collins, for your hard work on the COVID vaccines! Why is the NIH still wasting funds on Elisabeth Murray's monkey fright experiments instead of investing more in important clinical research about COVID-19?" The comments were hidden from public view and were only viewable by [REDACTED] and [REDACTED] Facebook friends. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

55. On June 4, 2021, PETA employee [REDACTED], using a pseudonymous account, posted a series of comments to an NIH Facebook post about social deprivation and adoption. [REDACTED] posted the following words: "monkey," "cruel," "PETA," "TORTURE," "TORTURING," "TORMENT," "ANIMALS," "NON-ANIMAL," "primates," "tests," "fake spider," "fake snake," "fright," "experiments," "vacuum," and "burn." Due to the NIH's keyword filters, the comments containing the words "monkey," "cruel," "PETA," "TORTURE," "TORTURING," "TORMENT," "ANIMALS," and "NON-ANIMALS" were all hidden from public view. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

56. On July 2, 2021, PETA employee [REDACTED] posted a series of one-word comments to an NIH Facebook post about cancer research. [REDACTED] posted the following words: "experiments," "fright," "fake snake," "fake spider," "tests," "cruel," "primates," "primate," "non-animal," "animals," "torture," "torture," "PETA," "monkeys," and "monkey." Due to the NIH's keyword filters, comments

Commented [OGC1]: I have checked each post example to confirm each example contains at least one word on the NIH keyword filter lists, except where indicated in comments below. The fact stipulation currently attributes these hidden comments to the filters. Please confirm to the best of your ability that each example was hidden due to the filters and not some other mechanism, such as through manually hiding a comment or Facebook/Instagram's own filters.

OGC

2021-12-06 18:28:00

Commented [OGC2]: "Non-animals" is not a filtered term. Please investigate whether the NIH Facebook filter "animals" hid this or whether this may have been hidden through some other mechanism, i.e. Facebook's own anti-spam filters.

OGC

2021-12-06 18:12:00

Commented [FA]([3R2]): It is possible this was filtered because it used the term "animals," or Facebook may have a mechanism that hides comments when they are posted repeatedly in short succession (this would be to block bots and stop spamming). We think it is likely the latter since we have tried posting a comment "non-animals" on an NIH post and it was not blocked.

Fine, Amanda (NIH/OD) [E]

2021-12-07 12:18:00

containing the words "cruel," "primates," "primate," "non-animal," "animals," "torment," "torture," "PETA," "monkeys," and "monkey" were all hidden from public view. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

57. Despite the NIH's use of keyword blocking, PETA employees have occasionally advocated for animal rights in comments posted to the NIH Facebook page by modifying the spelling of certain words or by replacing filtered words with words conveying similar meanings. For example, on October 16, 2020, [REDACTED] wrote comments on an NIH Facebook Live video about COVID-19 treatment, including: "Francis Collins, thank you for your hard work finding a vaccine for COVID-19. In light of the urgency of devoting resources to find a vaccine and the ineffectiveness of experiments on animals, will you please end the fright expts on macaques of Elisabeth Murray?" and "Francis Collins, please end Elisabeth Murray's fright expts on macaques. People with mental health disorders deserve better, actually effective research." These comments were not hidden or filtered, and were viewable by the public. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

62. On April 29, 2021, [REDACTED] commented on an NIH Instagram post about a study on Alzheimer's disease treatment that was conducted on mice. [REDACTED] wrote, "It's pretty messed up that you block conversation about animal testing." This comment was hidden from public view due to the NIH's keyword filters. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

63. On May 3, 2021, [REDACTED] commented on an NIH Instagram post of a cell infected with COVID-19, "It's time we had an open conversation about all the animal testing you fund. What a waste of life and resources." This comment was hidden from public view due to NIH's keyword filters. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

64. On May 5, 2021, [REDACTED] commented on an NIH Instagram post about Public Service Recognition Week 2021, saying "If you're wanted to actually extend life and reduce illness and disability, you'd directly put funding in the hands of those who need it now and stop wasting billions of dollars torturing animals in labs throughout the US like @uwmadison." This post was hidden due to NIH's keyword filters. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

65. On May 6, 2021, [REDACTED] posted substantially the same comment on a similar NIH Facebook post about Public Service Recognition Week 2021. She wrote: "@National Institutes of Health (NIH), If you actually wanted to extend life and reduce illness and disability, you'd directly put funding in the hands of those who need it now and stop wasting billions of dollars torturing animals in labs throughout the US like @University of Wisconsin-Madison." The comment was hidden from the NIH's Facebook page due to NIH's keyword filters, and only [REDACTED] and her Facebook friends could view the comment. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

66. On May 29, 2021, [REDACTED] commented on an NIH Instagram post about diversity in science. [REDACTED] wrote: "How about the victims of 'science'? Going to highlight them too? Why are you still funneling billions of dollars into animal testing? Its archaic, unsuccessful, and cruel. @nihgov." The comment was hidden due to NIH's keyword filters. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

67. On June 13, 2021, [REDACTED] commented on the NIH's Facebook page, writing: "I was diagnosed with PTSD after working at @University of Wisconsin-Madison's Harlow Primate Lab which

Commented [OGC4]: "Non-animals" is not a filtered term. Please investigate whether the NIH Facebook filter "animal" hid this or whether this may have been hidden through some other mechanism, i.e. Facebook's own anti-spam filters.

OGC
2021-12-06 18:14:00

Commented [FA([5R4]): See above. Likely anti-spam filter.

Fine, Amanda (NIH/OD) [E]
2021-12-07 12:21:00

Commented [OGC6]: I will recommend deleting this from the stipulation. "Experiment" is not on NIH's Facebook filters and no other word in this sentence appears on the filter list. If this quote included the word "experiments" instead of "expts" it still would have not been hidden.

OGC
2021-12-06 18:15:00

Commented [FA([7R6]): Okay.

Fine, Amanda (NIH/OD) [E]
2021-12-07 12:22:00

receives funding from you, the @National Institutes of Health (NIH), to torture animals in the name of science. Its despicable that you continue to harm animals and call it progress when so many people are without the means to access mental healthcare, general healthcare, and medication that already exists." The comment was hidden due to NIH's keyword filters. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

68. Despite the NIH's use of keyword filters, [REDACTED] has occasionally advocated for animal rights in comments replying to the NIH's Instagram posts by modifying the spelling and spacing of certain words. For example, on April 29, 2021, [REDACTED] commented, "Ok let me try again. It's pretty messed up that you block any conversation about a n l m a l t e s t l n g." This comment was not hidden from view, and a copy of the comment is attached hereto as Exhibit [X].

Ryan Hartkopf

71. On April 24, 2021, [REDACTED] commented on an April 23, 2021 @nihgov Instagram post about "National DNA Day" by stating, "The Wisconsin NPRC is a disgrace. I personally know 2 former employees who were traumatized by their experience as primate caretakers. There is no humane way to keep 1,650 primates in small steel cages for decades without inflicting massive psychological damage. On top of that, the University of Wisconsin has banned any keywords regarding primate testing on their social media pages, meaning any opposition on social media is automatically silenced. They also delete the testimonials of former employees. Why go to all that trouble to silence their own alumni if everything is above-board? We need to reinvest in human-relevant, modern research instead of this barbaric and archaic practice, which does not yield cures to our most deadly diseases!" After checking the post using a different Instagram account and confirming that the comment post was not publicly viewable, [REDACTED] deleted this comment.

72. [REDACTED] then wrote a series of one-word comments on an NIH Instagram post, dated January 28, 2021. Mr. Hartkopf posted: "test," "monkeys," "experiments," "peta," "experimenting," "torture," and "testing." None of [REDACTED] comments were publicly viewable due to the NIH's use of keyword filters, although the comments containing the words "experiments" and "experimenting" could be viewed by an Instagram user who selected "view hidden comments" on the NIH's Instagram post. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

73. [REDACTED] next wrote a series of one-word comments to an NIH Facebook post on IVF conception. [REDACTED] wrote, "peta," "primate," "primates," "monkey," "monkeys," "torture," "torturing," "tortures." These comments were hidden from public view, and were only visible to [REDACTED] and [REDACTED] Facebook friends, due to the NIH's use of keyword filters. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

74. On April 29, 2021, [REDACTED] posted substantially the same comment he wrote on April 24, 2021 to an NIH Instagram post about treatment for antibiotic-resistant infections. He commented, "The Wisconsin NPRC is a disgrace. I personally know 2 former employees who were traumatized by their experience as primate caretakers. There is no humane way to keep 1,650 primates in small steel cages for decades without inflicting massive psychological damage. On top of that, the University of Wisconsin has banned any keywords regarding primate testing on their social media pages, meaning any discourse on social media is automatically silenced. They also delete the testimonials of former employees. Why go to all that trouble to silence their own alumni if everything is above-board? We need to reinvest in

Commented [OGC8]: The NIH Instagram filter list includes "experiment." However, it does not include "experiments" or "experimenting." Please investigate whether the filter "experiment" could have also filtered "experiments" and "experimenting." Or, whether some other mechanism may have hidden "experiments" and "experimenting," such as whether these terms were hidden manually or whether Instagram's spam filter may have removed these words. Also, please comment on why only "experiments" and "experimenting" may have been viewable under "view hidden comments."

OGC

2021-12-06 18:17:00

Commented [FA([9R8]): On Instagram it has to be the exact word or phrase. We were not manually hiding Instagram comments at that time, so we think it would be an Instagram filter.

Fine, Amanda (NIH/OD) [E]

2021-12-07 15:36:00

human-relevant, modern research instead of this barbaric and archaic practice, which does not yield cures to our most deadly diseases!" This comment was also hidden due to the NIH's use of keyword filters. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

75. To confirm that the NIH was hiding comments with certain keywords from public view, [REDACTED] filed Freedom of Information Act ("FOIA") requests with the NIH on April 24, 2021, seeking "a screenshot of all keywords that are blocked" on the NIH's Facebook page and the NIH's Instagram account. On April 29, 2021, [REDACTED] received the records responsive to [REDACTED] FOIA request.

76. Despite the NIH's use of keyword filters, [REDACTED] has occasionally advocated for animal rights in comments by modifying the spelling and spacing of certain words. For example, on June 17, 2021, [REDACTED] commented on an NIH Facebook post, "it's ironic that this Facebook page is full of spam and porn links, but the admin only uses keyword blocking to hide comments about testing on a n i m a l s." This comment remains publicly viewable, and a copy of the comment is attached hereto as Exhibit [X].

DRAFT

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS,

[REDACTED], and [REDACTED],

Plaintiffs,

v.

FRANCIS M. COLLINS, in his official
capacity as Director of the National Institutes
of Health, and XAVIER BECERRA, in his
official capacity as Secretary of the U.S.
Department of Health and Human Services,

Defendants.

Civil Action No. 21-2380 (BAH)

JOINT STIPULATION OF FACTS

The parties in the above-captioned matter hereby stipulate to the following facts for the purposes of this litigation.

PARTIES

1. Plaintiff People for the Ethical Treatment of Animals (“PETA”) is a nonprofit animal rights organization based in Norfolk, Virginia. Founded in 1980, PETA is dedicated to establishing and defending the rights of all animals. PETA’s public education and campaign activities have a particular focus on animal mistreatment in laboratories, the food industry, the clothing trade, and the entertainment industry, as well as other issues including cruelty to domesticated animals and animals who are often considered “pests.” PETA frequently launch social media campaigns in order to pressure public and private entities to change their animal treatment practices. One of PETA’s current campaigns targets the NIH and the National Institute of Mental Health (NIMH) for its funding of primate testing, including monkey experiments

Commented [A1]: We weren’t sure which affiliates this was referring to.
Author

DRAFT

conducted by NIMH scientist Elisabeth Murray. As part of this campaign, PETA employees and members have sought to advocate for the end of primate testing on the NIH's social media pages.

2. Plaintiff [REDACTED], who resides in Oakland, California, is a former animal research technician turned animal rights advocate. [REDACTED] operates an Instagram account under the handle @[REDACTED], and [REDACTED] maintains a Facebook profile under the name [REDACTED]. [REDACTED] has long advocated for the end of animal testing in laboratories. As a student at the University of Wisconsin, [REDACTED] studied zoology and worked as a student primate caretaker at the Harlow Center for Biological Psychology. [REDACTED] firsthand experience with primate testing led [REDACTED] to conclude that animal testing is immoral and compelled [REDACTED] to publicly share the details of her experiences. [REDACTED] seeks to contribute to the public discourse on animal testing in part by drawing attention to the NIH's funding of National Primate Research Centers. One way [REDACTED] seeks to bring attention to the NIH's involvement in animal testing is by commenting on the NIH's social media posts.

3. Plaintiff [REDACTED], who resides in Madison, Wisconsin, is an engineer in the digital health field. [REDACTED] operates an Instagram account under the handle @[REDACTED], and [REDACTED] maintains a Facebook profile under the name [REDACTED]. [REDACTED] opposition to animal testing stems from 2018. That year, [REDACTED] moved to Madison and started passing the Wisconsin National Primate Research Center ("WNPRC") on [REDACTED] way to work. [REDACTED] began to learn more about the WNPRC through videos on Facebook and PETA campaigns. At one point, [REDACTED] saw a video [REDACTED] posted describing her past work at the Harlow Center and [REDACTED] goal of shutting down the lab. [REDACTED] reached out to [REDACTED] to connect and offer his assistance.

4. Defendant Francis S. Collins is the Director of the National Institutes of Health ("NIH"). The NIH is a medical research center and is one of the eight health agencies of the Public

DRAFT

Health Service. The Public Health Service is part of U.S. Department of Health and Human Services (“HHS”).

5. Defendant Xavier Becerra is the Secretary of HHS. HHS is a cabinet-level department and federal agency that oversees the government’s public, social services, medical, and scientific efforts.

THE FACEBOOK PLATFORM¹

6. Facebook, a subsidiary of parent company Meta, operates a social media platform. The Facebook platform allows users to post content, including writings, links, photographs, and videos, for other Facebook users to see. The public may also see user posted content to the limited extent content displays without a Facebook account. Individuals and organizations who create Facebook accounts can communicate with other users on the platform.

7. **Users.** Any individual or organization that has created an account on the platform is a Facebook “user.” Individual Facebook users can connect with other users by “friending” them; these connected users are called Facebook “friends.” When users post content on the Facebook platform, they have the option of making their posts visible to the public (potentially including non-Facebook users), to their friends only, or to a subset of their friends.

8. **Pages.** Users who want to create Facebook accounts for “businesses, brands, organizations, [or] public figures” can create Facebook “pages.” Facebook pages include the title of the business or organization, and an “About” section where the administrator of the page can provide information concerning the business or organization. Part of the NIH page recently looked like this:

¹ The parties agree that the Court may take judicial notice of the information published in the “Using Facebook” and “Policies and Reporting” guides available on Facebook’s website, <https://www.facebook.com/help>.

DRAFT



9. All internet users in the United States can generally access a portion of all public Facebook pages, but only Facebook users can see all of the previous posts on the page. Facebook users can also “like” a page in order to get updates from that page in their “News Feed”—a personalized, constantly updating stream of content posted on the platform by others.

10. **Posts.** A Facebook “post” is any combination of text, images, videos, audio, or Internet hyperlinks published by a Facebook user on the user’s Facebook page. Users who visit or follow a Facebook page can see all of the posts published by the administrator of the page. Posts on the NIH page include agency-related news updates and public health information. This is a recent post on the NIH page.

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11. **Facebook Live.** Facebook users can also share content with others by going “Live” through the Facebook Live feature. Facebook Live allows users or pages to stream video in real-time for viewing by other users. After they first air, the videos remain viewable on the posting user’s page or profile. All Live videos are visible to Facebook users by default, although page administrators may also choose to broadcast only to a specific subset of their page’s followers.

12. **Comments and comment threads.** Facebook users can respond to others’ posts—including Live videos—by commenting on them. Facebook comments can include the same type of content as Facebook posts, including text, images, and hyperlinks. Facebook users may also reply to other comments appended to a post or to replies that have been posted by others. The collection of replies and replies-to-replies is sometimes referred to as a “comment thread.” Any Facebook user can comment on a post made viewable to the public. Those without a Facebook

Commented [A2]: We aren’t sure if the comments always appear “beneath” the post (e.g., it may not on certain handheld devices).
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account cannot comment on any Facebook content, and can only view a limited selection of comments on any viewable Facebook posts.

13. **Likes and reactions.** Users can also “react” to others’ posts by clicking the “Like” button and selecting emojis corresponding to “Like,” “Love,” “Care,” “Haha,” “Wow,” “Sad,” and “Angry.” When a user reacts to a post, other users will be able to see the user’s reaction in a list of reactions on the post. The total number of reactions and shares are listed on each post. This is a recent post from the NIH’s Facebook page, displaying the associated comments and reactions.



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14. **Sharing.** In addition to commenting on and reacting to posts, users can also choose to “share” them. “Sharing” a post causes it to appear on an individual user’s own Facebook profile page and increases the likelihood that a user’s friends will see it in their News Feeds. When users share posts, they can add text that appears above the shared posts. Users can employ this feature to provide commentary on the posts they are sharing.

15. **Comment filtering.** The Facebook Community Standards outline what is and is not allowed on Facebook. Facebook automatically filters certain content from its platform on its own accord. Examples of information that Facebook itself may remove include content regarding violence and incitement, coordinating harm and publicizing crime, hate speech, spam, and violent and graphic content.²

16. Administrators of Facebook pages can limit comments that appear on their posts by using Facebook’s opt-in moderation tools, including comment filtering. Page administrators may, for example, filter all comments that contain profanity by turning on Facebook’s built-in “profanity filter.” Administrators may also input their own lists of words or phrases that they wish to filter from other users’ comments on their posts. When a page administrator adds a word to this list, any past or future comments from users containing the word should automatically be hidden from public view. Although a hidden comment remains visible to the user who posted it and to the user’s friends, other Facebook users viewing the page are unable to read or engage with the comment.

17. Page administrators may also filter individual comments either by manually “hiding” them, or by deleting them from the comment threads associated with their posts. When a comment is deleted, it is erased from the page altogether, and neither the Facebook user who posted

² See Meta, Facebook Community Standards, at <https://transparency.fb.com/policies/community-standards/?from=https%3A%2F%2Fwww.facebook.com%2Fcommunitystandards%2F%3Frefsrc%3Dabout.facebook.com%252Factions%252Fpromoting-safety-and-expression%252F> (last accessed December 7, 2021). The parties agree that the Court may take judicial notice of the information published as part of these standards.

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the comment nor the user's Facebook friends may view it. Manually hidden comments remain visible to the user who posted the comment and that user's friends, but other individuals viewing the page are unable to read or engage with the comment.

18. Typically, the user whose comment has been hidden or deleted does not receive notice of these moderation actions.

19. **Banning and blocking.** Page administrators may "ban" or "block" individual users from their pages. Banning a user prevents the user from commenting on or liking any content from the page, but it does not foreclose the user from continuing to access the page and its posts. Blocking a user, by contrast, prevents the user from accessing the page altogether while they are logged into Facebook: the user is no longer able to view the content posted to the page or even locate the page using Facebook's search function.

THE INSTAGRAM PLATFORM³

20. Instagram, a subsidiary of parent company Meta, is a social media platform for visual content, allowing users to share photos and videos and respond to posts through likes or comments.

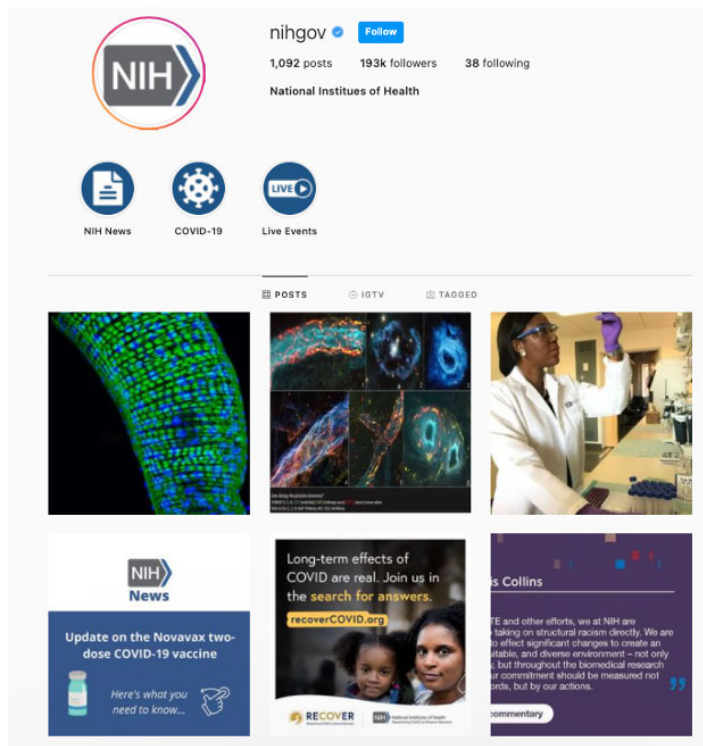
21. **Users.** An Instagram "user" is an individual or organization that has created an account on the platform. Each Instagram user creates a unique username, such as "@nihgov." Other Instagram users can locate an account by searching for the account's username on Instagram's website or mobile application to access the user's profile page.

22. **Profiles.** Each Instagram user has a unique webpage or "profile." Each user's profile displays the associated username as well as other information about the account, including

³ The parties agree that the Court may take judicial notice of the information published in the "Instagram Features," "Privacy, Safety, and Security," and "Policies and Reporting" guides available on Instagram's website, <https://help.instagram.com/>.

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the profile photo associated with the user, the account's followers, and the accounts the user is following. If a user's profile is open for public view, any Instagram user who navigates to the user's profile can view all of the user's posts. Members of the public may view some posts and comments of users' profiles open for the public view, but after some time Instagram will no longer allow viewing without signing into an account or creating an account. If a user's profile is private, only approved followers of the user may view the user's posts. Below is a screenshot of the NIH Instagram profile page.



23. **Followers.** Instagram users may “follow” the profiles of other users by clicking on the “Follow” button that appears at the top of an account’s profile. Following an account means

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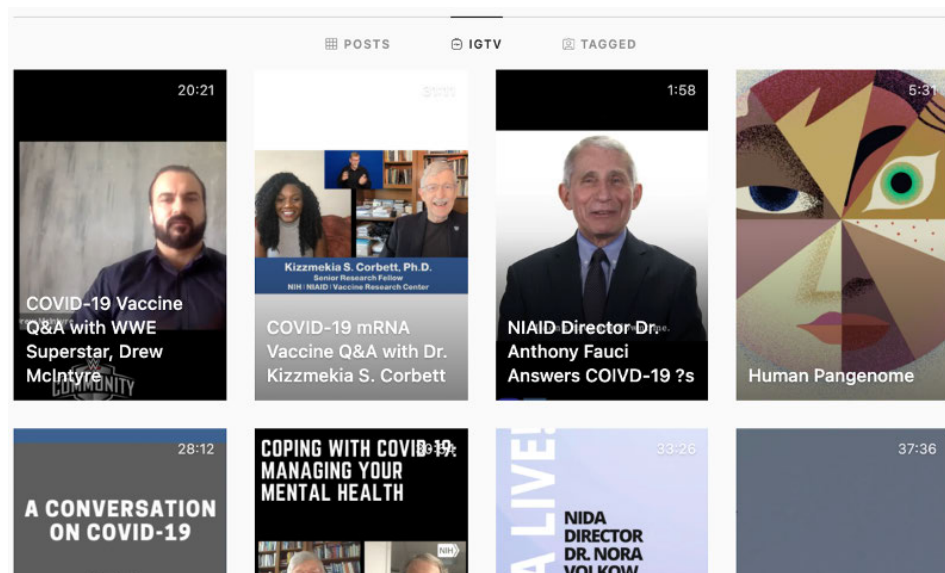
subscribing to it—the followed account’s posts may appear in the user’s “Instagram feed,” a personalized, constantly updating page on the Instagram platform that displays content shared by the accounts that a user follows.

24. **Posts.** An Instagram post is a discrete piece of content that a user shares to the user’s profile page. A post on Instagram can be an image, a video, or a collection of images or videos. When a user shares an image or video, the user can include a text-based caption that will be displayed alongside or underneath the post.

25. **Instagram Stories.** In addition to standard Instagram posts, users may also share content via the platform’s “Instagram Story” feature. The Instagram Story is a slideshow-like presentation that displays all content—images, videos, and text—users share to their Stories. Unlike an Instagram post, content shared to a Story remains visible to other users for only 24 hours after it is shared. Instagram Stories can be accessed by clicking on the profile image of an Instagram user when it is circled by a multi-colored ring—the indicator that the user has posted a story. Although Instagram stories are normally visible for only 24 hours, users can save stories to their profiles indefinitely by making them “highlights.” Rather than being accessed by clicking on the profile image, highlights remain saved just below the profile image and are accessible by default to Instagram users. For example, the top of the NIH profile page recently looked like this, indicating that the NIH had posted at least one Instagram story in the preceding 24 hours and had saved and highlighted previous stories relating to COVID-19 updates, past live events, and NIH news:

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26. **IGTV.** Instagram also permits users to upload long-form video content using a feature called “IGTV.” Videos uploaded to this feature are accessible from a user’s profile by clicking on a tab labeled “IGTV.” Recent content uploaded to the NIH’s IGTV page can be seen below.

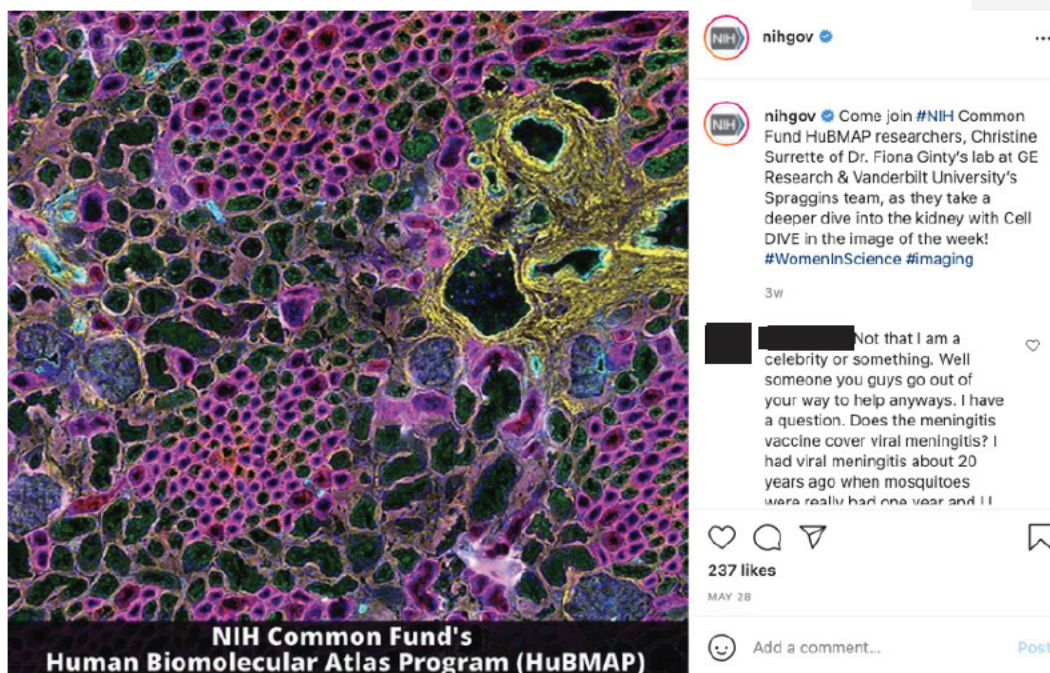


27. **Comments and comment threads.** Instagram users can comment on posts and IGTV videos and reply to other comments. The author of a post may also comment or respond to comments in the comment thread. By default, the Instagram platform makes all comments and

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replies to posts from a public profile visible to all Instagram users, and the public at large until Instagram requires a log-in to continue viewing.

28. **Likes.** In addition to commenting on posts, users may “like” posts by clicking on the heart-shaped button next to the image. Liking a post may indicate approval or acknowledgment of the content. This is a recent post from @nihgov with comments and total number of likes shown.



29. **Comment filtering.** The Instagram Community Guidelines outline what is and is not allowed on Instagram. Instagram filters comments that violate its Community Guidelines from its platform on its own. See Instagram, Kicking off National Bullying Prevention Month with New Anti-Bullying Features, October 6, 2020, available at <https://about.instagram.com/blog/announcements/national-bullying-prevention-month> (last accessed December 8, 2021). Examples of information that Instagram itself may remove include

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content regarding credible threats, hate speech, serious threats of harm, and spam.⁴ These comments are automatically removed by Instagram and are not viewable by users. In October 2020, Instagram also began automatically hiding comments similar to others that have been reported in the past via an artificial intelligence algorithm. *See* Instagram, Kicking off National Bullying Prevention Month with New Anti-Bullying Features, October 6, 2020, *available at* <https://about.instagram.com/blog/announcements/national-bullying-prevention-month> (last accessed December 8, 2021). This is an automatic Instagram feature and Instagram account administrators cannot turn this feature off. *Id.* The comments hidden via this mechanism can be viewed by a user by choosing to “view hidden comments.” *Id.*

30. Instagram provides account holders with a variety of tools to moderate the conversations on their posts. Account holders may, for example, use manual keyword filtering to hide all comments containing specified words or phrases. Thus, if an account holder designates the word “testing” as a manual filtered keyword on the account holder’s page, any comment containing that word should automatically be hidden from public view as soon as it is posted. The filtered comment will be visible only to the user who posted it and to the account holder if they choose to “view hidden comments.” No other user, including users who follow the comment author, will be able to see, reply to, or engage with the hidden comment.

31. Account holders may also hide comments that contain any keyword in a list of “Default Keywords” created and maintained by Instagram. Enabling the “Use Default Keywords” setting automatically hides comments containing keywords that are commonly found in posts reported as violating Instagram’s terms of service. Unlike manual keyword-filtered comments,

⁴ See Instagram, Community Guidelines, at https://help.instagram.com/477434105621119/?refsrc=about_facebook.com%2Factions%2Fpromoting-safety-and-expression%2F (last accessed December 7, 2021).

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comments automatically hidden under this setting do not disappear completely for all users. Rather, any user can view these comments by scrolling to the bottom of a post's comments section and clicking on a "view hidden comments" button.

32. **Restricting comments.** Instagram account holders may also moderate the comments on their posts by "restricting" another user's comments. This option automatically hides all comments posted by a particular user from members of the public, but gives the restricting account holder the option to pre-screen the comments and decide whether to allow certain comments to be seen. This feature allows a given user prior review over each comment that appears on their profile.

33. **Blocking a user's comments.** Account holders may also "block" other users from commenting on any of their posts by using the platform's "block comments" function. The blocked user's comments and replies are then automatically rendered invisible to all other users. In addition to blocking a user's comments, account holders may block the user from viewing the account holder's profile or any of their posts.

THE NIH'S SOCIAL MEDIA ACCOUNTS

The NIH's Facebook page

34. NIH uses social media accounts, including Facebook, to provide the public with agency-related updates and public health news. See <https://www.nih.gov/web-policies-notice>. NIH's goals of using Facebook are to communicate important public health information, be the voice of factual information in a world of misinformation, and engage the public for educational purposes about public health. "NIH Facebook pages are managed by NIH staff members who post news and other items of interest to be consumed by the public." *Id.* NIH has stated that "as a

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practice, comment moderator policy requires the removal from NIH Facebook pages of any comments that contain spam or are improper, inflammatory, off-topic or offensive.” *Id.*

35. The NIH established the Facebook page “@nih.gov” on October 14, 2008. The page is registered as a “Government Organization” page, and the page’s profile photo is the NIH logo. The page includes links to the official public NIH website, www.nih.gov, and the phone number listed in the “About” section is the phone number for the main operator for the NIH. The “Intro” section on the NIH Facebook page reads “NIH...Turning Discovery Into Health ®. Read our Privacy Policy: <http://www.nih.gov/about/privacy.htm>. Visit <http://www.nih.gov> for more information.”

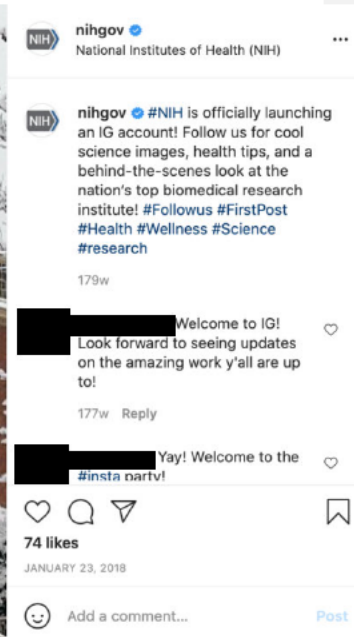
36. The NIH Facebook page is viewable by the public, meaning that a portion of its page is generally accessible to those with internet access (unless the website has been blocked). Any member of the public with a Facebook account can view the entirety of the page, including prior posts and comments to those posts. The NIH uses the account to post agency-related information and public health updates, including updates regarding the ongoing COVID-19 pandemic.

37. Facebook users can comment on the posts, “react” to the NIH’s posts through the “reaction” options Facebook offers, and share the NIH’s posts to their own Facebook profile pages. Commenters often comment on the information in the posts.

The NIH’s Instagram account

38. The NIH launched the Instagram account “@nihgov” on January 23, 2018. In the first post on the account, the NIH urged Instagram users to “Follow us for cool science images, health tips, and a behind-the-scenes look at the nation’s top biomedical research institute! #Followus #FirstPost #Health #Wellness #Science #research.”

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39. The Instagram page is registered as belonging to a “Government Organization” and the page’s profile photo is the NIH logo. The account features a blue checkmark, indicating that it is a verified Instagram account.

40. The NIH Instagram page is generally viewable by the public (unless the Instagram website has been blocked), meaning that a portion of the page is accessible to anyone with Internet access. Any Instagram user can see all of the previous posts and comments on the page.

41. The NIH uses the account to post content about the agency’s work, including interviews with NIH experts and news about numerous NIH health campaigns, and public health updates, including updates on the ongoing COVID-19 pandemic. NIH’s goals of using Instagram

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are to communicate important public health information, be the voice of factual information in a world of misinformation, and engage the public for educational purposes about public health.

42. Instagram users can comment on or “like” NIH’s posts on the page.

The NIH’s social media comment moderation practices

43. Although many persons and entities have made comments on posts on NIH’s Facebook and Instagram pages that are relevant to the topic of the posts, many other persons and entities have posted off-topic and/or inflammatory comments that bear no meaningful relationship to the topic of the posts. For example, NIH posted, on its Instagram account, an “immunofluorescence microscopy image of a human retina from Dr. Angela Kruse at Vanderbilt University,” with a few concluding notes, such as “#WomenInScience.” Ex. [REDACTED]. In response, multiple users—including Plaintiff [REDACTED]—made a number of unrelated comments concerning animals. For example, Plaintiff [REDACTED] commented: “No longer use T A X \$\$ to cut vocal cords of d o g s and k I l l them.” Other users posted similar comments, such as “PUPPY KILLERS,” and “Sham [sic] on you killers.” *Id.*

44. Similarly, NIH made a post on its Instagram account conveying a woman’s story concerning her mother’s experience with Alzheimer’s disease. For example, the woman stated, “if I had to tell anyone [on] this journey, the biggest piece is just preparing yourself emotionally to lose that person a little bit every single day. Because that’s what happens. In six months, something else is different about them. And that’s extremely challenging.” Ex. [REDACTED]. NIH again received a number of unrelated comments concerning animals, such as “stopanimalabuse” and “FREE THE BEAGLES!!!!!!” *Id.*

45. Another Instagram post by NIH referenced a “biomedical engineering professor” who “helped develop a portable diagnostic device to detect sickle cell disease in newborns” which

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could “save lives in remove, underserved areas of the world.” Ex. [REDACTED]. Multiple users commented, “#animalabuser.” *Id.* One commenter noted: “burn in hell elizabeth #animalabuser.” *Id.* Given other comments made in response to the post, the commenter was likely referencing Dr. Elisabeth Murray, an NIH Senior Investigator in the Laboratory of Neuropsychology who has been the target of PETA’s advocacy efforts. *See* <https://investigations.peta.org/nih-monkey-torture/>.

46. NIH made a post on its Facebook page concerning gene therapies for rare diseases. *See* Ex. [REDACTED]. In particular, NIH posted: “#RareDiseases affect about 30 million Americans, but of the approximately 7,000 rare diseases identified, only two heritable diseases currently have [FDA-approved] #GeneTherparies. That’s why #NIH . . . teamed up” with other entities “to launch the Bespoke Gene Therapy Consortium.” *Id.* Again, in response, NIH received a number of comments concerning animals. One commenter noted: “Absolutely disgusted with you. Feeding puppies to hungry sand flies? . . . Idea, lets try it on you instead.” *Id.* Another commenter noted, “You deserve a fate in prison. You donate money to create unnecessary suffering, you are part of the murders, you are THE very conspirator.” *Id.*

47. NIH believes that off-topic and inflammatory comments undermine the purpose of its social media pages. NIH believes that permitting any and all comments on its social media pages, regardless of content, would clutter those pages (any live events) and ultimately dissuade interested citizens from visiting the pages and retrieving helpful public health information. NIH also believes that comments of this nature disrupt NIH’s goals of social media use—e.g., disseminating factual information about a topic—and disrupt NIH’s live question and answer events.

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48. NIH, like many other public entities both at the federal and state levels,⁵ publishes guidelines for commenting on its social media accounts. NIH has had guidelines in place for moderating content on its social media pages since as early as November 2012.

49. NIH's current, operative comment guidelines—which were posted online on March 30, 2015—“encourage” members of the public “to share [their] thoughts and ideas [on] any other website owned or administered by the National Institutes of Health (NIH) where commenting is supported.” <https://www.nih.gov/news-events/social-media-outreach/nih-comment-guidelines>. However, the guidelines state that those pages “are not intended to serve as public forums.” *Id.* The guidelines further state that since “NIH utilizes moderated blogs, comments submitted for consideration are not immediately visible” and “are reviewed before they can be posted to ensure compliance with the[] guidelines.” *Id.* The guidelines impose a number of restrictions on user comments to “encourage respectful and constructive dialogue.” *Id.* The guidelines thus prohibit comments that include, among other things, “[v]ulgar, obscene, profane, threatening, or abusive language,” “[d]iscriminatory language,” “[e]ndorsements of commercial products,” “[r]epetitive posts,” “[s]pam,” and “[o]ff-topic” content. *Id.* A copy of the comment guidelines is attached hereto as Exhibit [X].

⁵ See, e.g., <https://oklahoma.gov/omes/services/information-services/social-media-networking-policy-and-standards.html>; <https://www.mass.gov/social-media-policy>; <https://www.doh.wa.gov/Newsroom/SocialMedia#commenting>; <https://www.oregon.gov/odot/Pages/Social-Media-Comment-Policy.aspx>; <https://hcpf.colorado.gov/social>; <https://doa.alaska.gov/resources/socialMediaPolicy.html>; <https://www.insurance.nd.gov/social-media-policy>; <https://www.iowa.gov/policies#social>; <https://www.lexingtonky.gov/social-media-public-comment-policy>; <https://mn.gov/dhs/general-public/policies/social-media.jsp>; <https://www.slideshare.net/USArmySocialMedia/social-media-policy-draft-for-us-army-units>; <https://www.epa.gov/web-policies-and-procedures/epa-comment-policy>; <https://response.restoration.noaa.gov/social-media-comment-policy>; <https://www.commerce.gov/about/policies/comments>; https://blog.dol.gov/comment-policy?_ga=2.39562787.1629666848.1639021870-935653092.1639021870; <https://www.blm.gov/media/social-media/commenting-policy>; <https://www.usda.gov/media/blog/usda-comment-policy>.

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50. NIH's comment moderation guidelines apply only to social media accounts and any other pages administered by NIH. They do not prevent any party from posting any content in other forums, including other forums on Facebook and Instagram (*e.g.*, on Facebook or Instagram pages operated by PETA). Indeed, PETA operates its own Facebook Page through which it can post comments concerning animal testing. See <https://www.facebook.com/official.peta/>.

NIH's' use of keyword filtering on its social media accounts

51. NIH, through individuals acting as administrator(s) and/or account manager(s), have enabled the "Profanity Filter" to apply to NIH's Facebook account. Facebook itself determines what to filter by using the most commonly reported words and phrases marked offensive by the community. See Meta, *Moderate Your Facebook*, December 7, 2015, <https://www.facebook.com/formedia/blog/moderating-your-facebook-page> (last accessed December 8, 2021).

52. The NIH, through individual acting as administrators and/or account managers(s), have enabled the "Default Keywords" filter to apply to NIH's Instagram account. Instagram itself determines which comments to hide that may be offensive.

53. The NIH, through individuals acting as administrator(s) and/or account manager(s), uses manual keyword filters on its Facebook and Instagram pages to hide comments that violate NIH's comment moderation guidelines. The NIH filters the following words on its Instagram and Facebook pages that are calculated to target comments that violate NIH's comment moderation guidelines:

Facebook

Instagram

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Suomi,⁶ Harlow⁷
 Animal(s), animales, animalitos
 Cats, gatos
 Chimpanzee(s), chimp(s)
 Hamster(s)
 Marmoset(s)
 Monkey(s), monkies
 Mouse, mice
 Primate(s)
 Sex experiments
 Cruel, cruelty
 Revolting
 Torment(ing)
 Torture(s), torturing

Animal(s)
 Chimpanzee(s), chimps
 Monkey(s)⁸
 Experiment
 Hurt(ing)
 Kill
 Stop
 Test(ing), testing facility
 Tortur(ing)

54. The NIH also uses manual keyword filters for certain other terms, including profane and racist terms. NIH has periodically updated its keyword filters to capture additional comments that violates its comment moderation policies. NIH reserves the right to continue to add keyword filters that are calculated to capture comments that violate NIH's comment moderation guidelines.

55. NIH reserves the right to manually review any and all comments before and after they are posted to the NIH's social media accounts. However, only comments containing filtered keywords are automatically hidden from users' public view.

⁶ Stephen J. Suomi is currently the Chief of the Laboratory of Comparative Ethology at the Eunice Kennedy Shriver National Institute of Child Health and Human Development. He has conducted extensive research on behavioral development by researching monkeys and other nonhuman primates.

⁷ Harry Harlow was an American psychologist known for studying how early environment shapes behavior in monkeys. The Harlow Center on Biological Psychology, named for Mr. Harlow, is affiliated with the Wisconsin National Primate Research Center and houses the monkeys and nonhuman primates used in experiments. *Harlow Center for Biological Psychology*, University of Wisconsin Madison, <https://perma.cc/N9B7-RENQ>. After Dr. Harlow died in 1981, PETA campaigned against the NIH's continuation of his work and frequently mentions Dr. Harlow in its advocacy against animal testing. *Psychological Torture Experiments at NIH Must Stop*, PETA, <https://perma.cc/956S-ZKQS>.

⁸ The NIH also blocks the use of two emojis depicting monkeys and an emoji with an expletive face.

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PLAINTIFFS' COMMENTS ON NIH'S SOCIAL MEDIA PAGES

PETA

56. Certain comments made by multiple PETA employees in response to Facebook Live videos and Facebook posts—and which contained one or more terms on NIH's keyword filter list—did not appear on the NIH Facebook page.

57. On September 24, 2020, PETA employee [REDACTED] was prevented from posting three comments on a Facebook Live video on the NIH Facebook page about COVID-19 vaccine research. One read, "Francis Collins, we appreciate all your hard work to search for a COVID vaccine, but why is NIH still wasting money on cruel and ineffective monkey fright experiments?" [REDACTED] was unable to post these comments at all. [REDACTED] comment contains the words "cruel" and "monkey," which are on NIH's Facebook keyword filtering list. [REDACTED] saw that the comment had not been posted because it was bordered by a red box, and text below the comment read "Unable to post comment. Try again." A copy of [REDACTED] attempted comments is attached hereto as Exhibit [X].

58. On October 8, 2020, [REDACTED] again tried to comment on an NIH Facebook Live video about gene editing, but several of her comments were hidden, including: "Congratulations, Dr. Doudna! Francis Collins, please end NIH's fright experiments on primates;" and "CRISPR can be used for advanced, non-animal experiments. In light of the many non-animal technologies that are developing, how can NIH continue to conduct experiments on macaques and other primates?" [REDACTED] comments contain the word "primates," which is on NIH's Facebook keyword filtering list. [REDACTED] saw that the comments had not been posted because they were bordered by a red box, and text below the comments read "Unable to post comment. Try again." A copy of [REDACTED] attempted comments is attached hereto as Exhibit [X].

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59. On May 27, 2021, ██████████ attempted to post several comments to an NIH Live video featuring Dr. Kizzmekia Corbett, including: “Thank you, Dr. Corbett and Dr. Collins, for your hard work on the COVID vaccines! Why is the NIH still wasting funds on Elisabeth Murray’s monkey fright experiments instead of investing more in important clinical research about COVID-19?” This comment contains the word “monkey,” which is on NIH’s Facebook keyword filter list. The comments were hidden from public view and were only viewable by ██████████ and ██████████ Facebook friends. A copy of ██████████ comments is attached hereto as Exhibit [X].

60. On June 4, 2021, PETA employee ██████████, using a pseudonymous account, posted a series of comments to an NIH Facebook post about social deprivation and adoption. ██████████ posted comments containing the following words: “monkey,” “cruel,” “PETA,” “TORTURE,” “TORTURING,” “TORMENT,” “ANIMALS,” “NON-ANIMAL,” “primates,” “tests,” “fake spider,” “fake snake,” “fright,” “experiments,” “vacuum,” and “burn.” The comments containing the words “monkey,” “cruel,” “PETA,” “TORTURE,” “TORTURING,” “TORMENT,” and “ANIMALS”—which were on NIH’s Facebook keyword filter list at the time of these comments—were all hidden from users’ public view. However, “PETA” is no longer an NIH Facebook keyword filter as of December 3, 2021. A copy of ██████████ comments is attached hereto as Exhibit [X].

61. On July 2, 2021, PETA employee ██████████ posted a series of one-word comments to an NIH Facebook post about cancer research. ██████████ posted the following words: “experiments,” “fright,” “fake snake,” “fake spider,” “tests,” “cruel,” “primates,” “primate,” “non-animal,” “animals,” “torment,” “torture,” “PETA,” “monkeys,” and “monkey.” The comments containing the words “cruel,” “primates,” “primate,” “animals,” “torment,” “torture,” “PETA,” “monkeys,” and “monkey” were all hidden from users’ public view. However,

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“PETA” is no longer an NIH Facebook keyword filter as of December 3, 2021. A copy of [REDACTED] [REDACTED] comments is attached hereto as Exhibit [X].

62. PETA employees have occasionally advocated for animal rights in comments posted to the NIH Facebook page by modifying the spelling of certain words or by replacing filtered words with words conveying similar meanings. For example, on October 16, 2020, [REDACTED] [REDACTED] wrote comments on an NIH Facebook Live video about COVID-19 treatment, including: “Francis Collins, thank you for your hard work finding a vaccine for COVID-19. In light of the urgency of devoting resources to find a vaccine and the ineffectiveness of experiments on animals, will you please end the fright expts on macaques of Elisabeth Murray?” and “Francis Collins, please end Elisabeth Murray’s fright expts on macaques. People with mental health disorders deserve better, actually effective research.” These comments were not hidden or filtered, and were viewable by the public. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

Commented [A3]: Note that “experiments” is not a filtered keyword.
Author

63. PETA employees wish to continue posting comments about animal testing on the NIH’s Facebook page that may contain terms subject to NIH’s current Facebook keyword filters.

64. Plaintiff PETA also wishes to engage with and read the comments of other animal rights advocates on the NIH Facebook page. PETA, by and through several of its employees, follows the NIH Facebook page.

[REDACTED]

65. On April 29, 2021, [REDACTED] commented on an NIH Instagram post about a study on Alzheimer’s disease treatment that was conducted on mice. [REDACTED] wrote, “It’s pretty messed up that you block conversation about animal testing.” This comment contains NIH

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Instagram keyword filters “animal” and “testing.” This comment was hidden from users’ public view. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

66. On May 3, 2021, [REDACTED] commented on an NIH Instagram post of a cell infected with COVID-19, “It’s time we had an open conversation about all the animal testing you fund. What a waste of life and resources.” This comment contains NIH Instagram keyword filters “animal” and “testing.” This comment was hidden from users’ public view. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

67. On May 5, 2021, [REDACTED] commented on an NIH Instagram post about Public Service Recognition Week 2021, saying “If you’re wanted to actually extend life and reduce illness and disability, you’d directly put funding in the hands of those who need it now and stop wasting billions of dollars torturing animals in labs throughout the US like @uwmadison.” This post contains NIH Instagram filters “torturing” and “animals” and was hidden. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

68. On May 6, 2021, [REDACTED] posted substantially the same comment on a similar NIH Facebook post about Public Service Recognition Week 2021. She wrote: “@National Institutes of Health (NIH), If you actually wanted to extend life and reduce illness and disability, you’d directly put funding in the hands of those who need it now and stop wasting billions of dollars torturing animals in labs throughout the US like @University of Wisconsin-Madison.” The comment includes the NIH Facebook keyword filters “torturing” and “animals.” The comment was hidden from the NIH’s Facebook page, and only [REDACTED] and her Facebook friends could view the comment. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

69. On May 29, 2021, [REDACTED] commented on an NIH Instagram post about diversity in science. [REDACTED] wrote: “How about the victims of ‘science’? Going to highlight them too?”

DRAFT

Why are you still funneling billions of dollars into animal testing? Its archaic, unsuccessful, and cruel. @nihgov.” The comment contained the NIH Instagram keyword filters “animal” and “testing” and was hidden. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

70. On June 13, 2021, [REDACTED] commented on the NIH’s Facebook page, writing: “I was diagnosed with PTSD after working at @University of Wisconsin-Madison's Harlow Primate Lab which receives funding from you, the @National Institutes of Health (NIH), to torture animals in the name of science. Its despicable that you continue to harm animals and call it progress when so many people are without the means to access mental healthcare, general healthcare, and medication that already exists.” The comment contains the NIH Facebook keyword filters “torture,” “animals,” and “Harlow” and was hidden. A copy of [REDACTED] comment is attached hereto as Exhibit [X].

71. [REDACTED] has occasionally advocated for animal rights in comments replying to the NIH’s Instagram posts by modifying the spelling and spacing of certain words. For example, on April 29, 2021, [REDACTED] commented, “Ok let me try again. It’s pretty messed up that you block any conversation about a n I m a l t e s t I n g.” This comment was not hidden from view, and a copy of the comment is attached hereto as Exhibit [X].

72. [REDACTED] wishes to engage with and read the comments of other animal rights advocates on Defendants’ social media pages. She follows the NIH on Instagram and Facebook.

[REDACTED]

73. On April 24, 2021, [REDACTED] commented on an April 23, 2021 @nihgov Instagram post about “National DNA Day” by stating, “The Wisconsin NPRC is a disgrace. I personally know 2 former employees who were traumatized by their experience as primate caretakers. There is no humane way to keep 1,650 primates in small steel cages for decades without

[REDACTED]

DRAFT

inflicting massive psychological damage. On top of that, the University of Wisconsin has banned any keywords regarding primate testing on their social media pages, meaning any opposition on social media is automatically silenced. They also delete the testimonials of former employees. Why go to all that trouble to silence their own alumni if everything is above-board? We need to reinvest in human-relevant, modern research instead of this barbaric and archaic practice, which does not yield cures to our most deadly diseases!" After checking the post using a different Instagram account and confirming that the comment post was not publicly viewable by users, [REDACTED] deleted this comment.

74. [REDACTED] then wrote a series of one-word comments on an NIH Instagram post, dated January 28, 2021. [REDACTED] posted: "test," "monkeys," "experiments," "peta," "experimenting," "torture," and "testing." All of these terms except "experiments" and "experimenting" were on NIH's Instagram keyword filtering list at the time of the comments. None of [REDACTED] comments were publicly viewable by users, however, the comments containing the words "experiments" and "experimenting" could be viewed by an Instagram user who selected "view hidden comments" on the NIH's Instagram post. However, "peta" was removed from NIH's Instagram keyword filter list on December 3, 2021. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

75. [REDACTED] next wrote a series of one-word comments to an NIH Facebook post on IVF conception. [REDACTED] wrote, "peta," "primate," "primates," "monkey," "monkeys," "torture," "torturing," "tortures." All of these comments contained terms on NIH's Facebook keyword filtering list at the time of the comment. However, "peta" was removed from NIH's Facebook keyword filtering list on December 3, 2021. These comments were hidden from users'

DRAFT

public view, and were only visible to [REDACTED] and his Facebook friends. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

76. On April 29, 2021, [REDACTED] posted substantially the same comment he wrote on April 24, 2021 to an NIH Instagram post about treatment for antibiotic-resistant infections. He commented, “The Wisconsin NPRC is a disgrace. I personally know 2 former employees who were traumatized by their experience as primate caretakers. There is no humane way to keep 1,650 primates in small steel cages for decades without inflicting massive psychological damage. On top of that, the University of Wisconsin has banned any keywords regarding primate testing on their social media pages, meaning any discourse on social media is automatically silenced. They also delete the testimonials of former employees. Why go to all that trouble to silence their own alumni if everything is above-board? We need to reinvest in human-relevant, modern research instead of this barbaric and archaic practice, which does not yield cures to our most deadly diseases!” This comment, which contains a word on NIH’s Instagram keyword filter list (“testing”), was also hidden. A copy of [REDACTED] comments is attached hereto as Exhibit [X].

77. To confirm that the NIH was filtering comments with certain keywords from being viewed publicly by users, [REDACTED] filed Freedom of Information Act (“FOIA”) requests with the NIH on April 24, 2021, seeking “a screenshot of all keywords that are blocked” on the NIH’s Facebook page and the NIH’s Instagram account. On April 29, 2021, [REDACTED] received the records responsive to his FOIA request.

78. [REDACTED] has occasionally advocated for animal rights in comments by modifying the spelling and spacing of certain words. For example, on June 17, 2021, [REDACTED] commented on an NIH Facebook post, “it’s ironic that this Facebook page is full of spam and porn links, but the admin only uses keyword blocking to hide comments about testing on a n i m a l s.”

DRAFT

This comment remains publicly viewable by users, and a copy of the comment is attached hereto as Exhibit [X].

79. [REDACTED] wishes to engage with and read the comments of other animal rights advocates on Defendants' social media pages. He follows the NIH on Instagram and Facebook.

Dated: December 16, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

ERIC BECKENHAUER
Assistant Director, Federal Programs Branch

/s/ DRAFT

KUNTAL CHOLERA
Trial Attorney
U.S. Department of Justice
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[REDACTED]@usdoj.gov

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Counsel for Plaintiffs [REDACTED] and
[REDACTED]

/s/

Asher Smith, *pro hac vice*
People for the Ethical Treatment of Animals

DRAFT

[REDACTED]
[REDACTED]
[REDACTED]@petaf.org

*Counsel for Plaintiff People for the Ethical
Treatment of Animals*

**Not yet admitted to practice law*

From: "Fine, Amanda (NIH/OD) [E]" <[REDACTED]@nih.gov>

To: "Myles, Renate (NIH/OD) [E]" <[REDACTED]@mail.nih.gov>, "Kern, Anna (NIH/OD) [E]" <[REDACTED]@nih.gov>

Cc: "Polimeni, Lydia (NIH/OD) [E]" <[REDACTED]@nih.gov>, "Haley Spencer" <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Date: Wed, 26 Jan 2022 11:39:34 -0500

Importance: Normal

Inline-Images: image001.png

A couple of additional suggested edits on top of Renate's.

Thanks,
Amanda

From: Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Sent: Wednesday, January 26, 2022 11:31 AM

To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna:

I updated the response to the first Q based on our discussion.

Thanks,
Renate

From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, January 26, 2022 9:55 AM

To: Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: FW: PETA Lawsuit Update and Requests for Information

Bumping!

From: Kern, Anna (NIH/OD) [E]

Sent: Tuesday, January 25, 2022 3:53 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; [REDACTED] <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda and Renate,

Below is a draft response (#1) back to Sarah regarding a question about the Twitter chat. I thought that the paragraph they drafted about the manual moderation of comments looked good. Please let us know if you have additional thoughts by COB tomorrow. Thank you!

Office of the General Counsel
Public Health Division, NIH Branch

(direct)

[@nih.gov](#)

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From: Kern, Anna (NIH/OD) [E] <[@nih.gov](#)>

Sent: Wednesday, January 19, 2022 10:00 AM

To: Imhoff, Sarah (NIH/OD) [E] <[@nih.gov](#)>

Cc: Spruill, Crystal (NIH/OD) [C] <[@nih.gov](#)>; Prince, Scott (NIH/OD) [E] <[@nih.gov](#)>; Lankford, David (NIH/OD) [E] <[@od31tm1.od.nih.gov](#)>; Myles, Renate (NIH/OD) [E] <[@mail.nih.gov](#)>; Polimeni, Lydia (NIH/OD) [E] <[@nih.gov](#)>; Fine, Amanda (NIH/OD) [E] <[@nih.gov](#)>; Haley Spencer <[@palladianpartners.com](#)>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Please see the answers to your questions below:

- 1. Were the twitter posts on the 10/3/14 discussion on brain health linked below posted directly on NIH's Twitter account main page? Or was there a separate "chat" where these were posted? Plaintiffs want to know if anyone that went to the NIH's twitter account during that time would have seen those posts.**

You cannot post to someone's page on Twitter in the same way you can on Facebook. On Twitter, you can either reply to someone's tweet (aka tweet thread) or tweet under an established hashtag. The hashtag is a way to filter and organize tweets across Twitter by creating a feed with only those tweets using the same hashtag. It's a way to create a conversation on the platform. The hashtag for the chat was established by the NIH so that all chat participants could see the conversation around brain health.

PETA posted both to NIH tweets and used the hashtag in this scenario. Participants would be looking at the tweets appearing on the hashtag (i.e. the conversation) and would have seen PETA's posts, and those following the tweet thread would have also seen PETA's posts. This means there would be no way to follow the information on the Twitter chat without being disrupted by the posts and being forced to work around them to get the relevant health information.

- 2. Are you aware of complaints we've received against other types of posts, unrelated to animal testing? E.g., posts concerning Dr. Fauci, or posts concerning vaccine misinformation? I know I've asked this before, but Plaintiffs specifically want to know if the complaints NIH receives are really focused on PETA, or if NIH received complaints about inflammatory posts on a variety of subjects. I think Plaintiffs want to make the argument that NIH is targeted animal rights posts over other inflammatory posts when they are equally inappropriate. Since Plaintiffs want this answer as part of our fact stipulation negotiations, I think we have to provide it.**

Yes – we've received complaints about other inappropriate and/or off topic content that is not related to animal testing. Please see the screenshots and links to posts below.

- <https://www.facebook.com/43331696829/posts/10159317371801830/?d=n>
- <https://www.facebook.com/43331696829/posts/10159342469336830/?d=n>
- <https://www.facebook.com/100064843296393/posts/239873164850792/?d=n>
- <https://www.facebook.com/100064843296393/posts/251454613692647/?d=n>
- <https://www.facebook.com/100064843296393/posts/255266059978169/?d=n>
- <https://www.facebook.com/100064843296393/posts/255956623242446/?d=n>

Released by Chairman Rand Paul

- <https://www.facebook.com/nih.gov/posts/255820046589437>
- https://www.instagram.com/p/CT2N82Jlcui/?utm_medium=copy_link

Let us know if you any additional questions.

Thanks!

Anna

From: Kern, Anna (NIH/OD) [E]

Sent: Tuesday, January 18, 2022 3:25 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

You're correct – we did not delete these comments. I imagine since she made several comments in a row with no time in between the comments it violated FB's community standards and they were removed. See FB's policy regarding spam here: <https://transparency.fb.com/policies/community-standards/spam/>

Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Tuesday, January 18, 2022 2:13 PM

To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks, Anna. So sorry but another question came in. Plaintiffs are claiming comments that showed up for them are no longer showing up and are asking if we deleted them. In the attached first document, the post shows 20 comments and Brittany Hopwood's comments containing words show. This is what she saw in July and she took screenshots at that time. In the attached second document, the post shows 7 comments, with only one comment viewable and none of Brittany Hopwood's comments. I looked on my personal account myself and confirmed I only see one viewable comment and none from Brittany Hopwood.

Plaintiffs' question is: Ms. Hopwood has confirmed that she did not delete these comments. Can you ask the NIH if they removed the comments at some point after they were initially posted?

I assume the answer is no, NIH did not delete these comments, but I wanted to double check with you.

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch

(direct)

[@nih.gov](#)

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From: Kern, Anna (NIH/OD) [E] <[@nih.gov](#)>

Sent: Tuesday, January 18, 2022 11:44 AM

To: Imhoff, Sarah (NIH/OD) [E] <[@nih.gov](#)>

Cc: Spruill, Crystal (NIH/OD) [C] <[@nih.gov](#)>; Prince, Scott (NIH/OD) [E] <[@nih.gov](#)>; Lankford, David (NIH/OD) [E] <[@od31tm1.od.nih.gov](#)>; Myles, Renate (NIH/OD) [E] <[@mail.nih.gov](#)>; Polimeni, Lydia (NIH/OD) [E] <[@nih.gov](#)>; Fine, Amanda (NIH/OD) [E] <[@nih.gov](#)>; Haley Spencer <[@palladianpartners.com](#)>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Yes – we'll get you those answers by COB. We'll elaborate in our response, but yes – while those activists posted from their own Twitter accounts, they tagged @NIH and used the NIH designated hashtag for the chat #NIHChat to ensure their responses appeared in the chat feed, so those comments did take place on a hashtag that NIH created. In addition to the activists, PETA tagged NIH and used the hashtag as well.

Thanks,
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[@nih.gov](#)>

Sent: Tuesday, January 18, 2022 11:32 AM

To: Kern, Anna (NIH/OD) [E] <[@nih.gov](#)>

Cc: Spruill, Crystal (NIH/OD) [C] <[@nih.gov](#)>; Prince, Scott (NIH/OD) [E] <[@nih.gov](#)>; Lankford, David (NIH/OD) [E] <[@od31tm1.od.nih.gov](#)>; Myles, Renate (NIH/OD) [E] <[@mail.nih.gov](#)>; Polimeni, Lydia (NIH/OD) [E] <[@nih.gov](#)>; Fine, Amanda (NIH/OD) [E] <[@nih.gov](#)>; Haley Spencer <[@palladianpartners.com](#)>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Is there any way you could get these answers to me by COB today? Thanks. I received a little more information on the Twitter question:

Plaintiffs are arguing that the relevant Twitter posts took place on the animal rights activists' own Twitter accounts; according to Plaintiffs, those Twitter posts did not take place on NIH's page. My understanding is that, perhaps, those activists "tagged" NIH's Twitter handle, which caused their comments to appear on NIH's Twitter page. Is that correct?

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
(direct)
[@nih.gov](#)

Released by Chairman Rand Paul

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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, January 14, 2022 12:56 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Sure – we can get those answers to you by COB today. Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, January 14, 2022 9:22 AM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

I have two additional follow-up questions from the DOJ:

1. Were the twitter posts on the 10/3/14 discussion on brain health linked below posted directly on NIH's Twitter account main page? Or was there a separate "chat" where these were posted? Plaintiffs want to know if anyone that went to the NIH's twitter account during that time would have seen those posts.
2. Are you aware of complaints we've received against other types of posts, unrelated to animal testing? E.g., posts concerning Dr. Fauci, or posts concerning vaccine misinformation? I know I've asked this before, but Plaintiffs specifically want to know if the complaints NIH receives are really focused on PETA, or if NIH received complaints about inflammatory posts on a variety of subjects. I think Plaintiffs want to make the argument that NIH is targeted animal rights posts over other inflammatory posts when they are equally inappropriate. Since Plaintiffs want this answer as part of our fact stipulation negotiations, I think we have to provide it.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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information. If you are not the intended recipient, any dissemination, distribution, or copying is strictly prohibited. If you think you have received this e-mail message in error, please notify the sender immediately.

From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Monday, January 3, 2022 6:14 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Thanks for your patience on these! Still trying to track down number 3 – will have an update for you tomorrow. Thanks!

1. The NIH Facebook and Instagram pages currently link to the privacy policy, <https://www.nih.gov/about/privacy.htm>. Would you have any concerns about adding a link on both pages to the comment moderation guidelines in addition to the privacy policy? ***This is not a request yet, the DOJ is just weighing options.***

Not at all, this would be ok with us.

2. To prove the point that inflammatory comments may dissuade interested citizens from visiting the social media pages: Has the NIH received any complaints about animal rights comments on its social media pages? Has it received complaints about other comments that it considers to be “off-topic” or “inflammatory”? If so, do you have any specific proof or examples?

Please see examples below and screenshots attached.

[Full Twitter chat thread from 10/3/14 on brain health that was disrupted \(Animal testing focused\):](#)

Specific examples of participants complaining of disruption:

- <https://twitter.com/MarieAnneLeCler/status/518098761617506304>
- <https://twitter.com/CreativeSage/status/518098626456088578>
- <https://twitter.com/CreativeSage/status/518170943727095809>
- <https://twitter.com/CreativeSage/status/518098132589371392>
- <https://twitter.com/tdverstynen/status/518108160880828416>
- <https://twitter.com/CreativeSage/status/518096043297488896>

Examples of other off-topic disrupting comments from Facebook and Instagram (mostly COVID misinformation):

- <https://www.facebook.com/43331696829/posts/10159317371801830/?d=n>
- <https://www.facebook.com/43331696829/posts/10159342469336830/?d=n>
- <https://www.facebook.com/100064843296393/posts/239873164850792/?d=n>
- <https://www.facebook.com/100064843296393/posts/251454613692647/?d=n>
- <https://www.facebook.com/100064843296393/posts/255266059978169/?d=n>
- <https://www.facebook.com/100064843296393/posts/255956623242446/?d=n>

- https://www.instagram.com/p/CT2N82Jlcui/?utm_medium=copy_link

3. In your last response, you mentioned NIH has had some form of guidelines for moderating content since November 2012. Can you provide the guidance used prior to the March 30, 2015 guidelines were posted?

We are still trying to locate this – the person who would know is out sick. Can we have until tomorrow on this?

4. The Plaintiffs believe Facebook account holders can set the “level” of the profanity filter (weak/strong/etc.). What level has the NIH selected for its Facebook profanity filter?

NIH has the “strong” profanity filter in place. This has been in place prior to Sep 2020 and continues to be in place.

5. During the relevant time period (Sep 2020 to now), has the NIH set any Facebook Live video-specific filtering?

No, but the general filters in place from Sep 2020 to now apply to Facebook Lives as well. Also, the platform attempts to prioritize most relevant comments on Facebook Lives, but off-topic comments still come through due to the volume of the comments coming through.

6. On Facebook, is it possible that “non-animal” would be hidden because it contains the filtered word “animal”?

No, the word has to match the keyword filters in order to be hidden. The phrase “non-animal” would not be hidden since it doesn’t match “animal.”

From: Kern, Anna (NIH/OD) [E]

Sent: Monday, January 3, 2022 12:57 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Most of us are back in the office, so we will aim to have these answers to you by COB today.

Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 29, 2021 11:47 AM

To: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Lydia,

Thanks for your response. We need to get a draft back to the Plaintiffs early next week, so that is fine but if there is any way I could have the answers back Monday COB or Tuesday am that would be ideal.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
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Public Health Division, NIH Branch
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Sent: Wednesday, December 29, 2021 11:16 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,
Sorry for the delay, I was off yesterday
Amanda and Anna are out this week but I can work on getting you answers to some of these; may not have it all until next week when I can consult with them however. Want to make sure the info is accurate!
I hope that works.
Thanks!

Lydia Polimeni
Office of Communications and Public Liaison
Office of the Director, National Institutes of Health
[REDACTED] | [REDACTED]@nih.gov



From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Monday, December 27, 2021 5:52 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi team,

I know some of you are out but I figured I would email the whole group the questions to see who is around and can answer a few questions this week. We are working on the next round of edits to the fact stipulation. Thank you very

much for your help!

1. The NIH Facebook and Instagram pages currently link to the privacy policy, <https://www.nih.gov/about/privacy.htm>. Would you have any concerns about adding a link on both pages to the comment moderation guidelines in addition to the privacy policy? ***This is not a request yet, the DOJ is just weighing options.***
2. To prove the point that inflammatory comments may dissuade interested citizens from visiting the social media pages: Has the NIH received any complaints about animal rights comments on its social media pages? Has it received complaints about other comments that it considers to be "off-topic" or "inflammatory"? If so, do you have any specific proof or examples?
3. In your last response, you mentioned NIH has had some form of guidelines for moderating content since November 2012. Can you provide the guidance used prior to the March 30, 2015 guidelines were posted?
4. The Plaintiffs believe Facebook account holders can set the "level" of the profanity filter (weak/strong/etc.). What level has the NIH selected for its Facebook profanity filter?
5. During the relevant time period (Sep 2020 to now), has the NIH set any Facebook Live video-specific filtering?
6. On Facebook, is it possible that "non-animal" would be hidden because it contains the filtered word "animal"?

Thank you,

Sarah J. Imhoff, JD, MHSA
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Sent: Wednesday, December 22, 2021 7:43 PM
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

Thanks for the update! I'm out next week, but Renate will be in. Good news on the extended deadline!

Have a great holiday season and a happy new year!
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 22, 2021 6:52 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

Happy holidays! I am following up from our last call. As an update, we just received another draft of the fact stipulation back from the Plaintiffs. It is now due to the court January 14, 2022 due to an extension request and we will be continuing to negotiate the facts with them over the next 3 weeks. I expect to have a few additional factual questions for you next week. In the meantime, I wanted to send you an answer to your question from our last call:

Question: Could a decision in this case impact other NIH ICO social media accounts?

Answer: It will likely not, because the case is limited to NIH's main Facebook and Instagram accounts. However, there is a small risk that a court may apply it more broadly if they rule for PETA. It is likely Plaintiffs will use broad wording in their briefs in order to have a wide scope to attack any policy that might apply NIH's main Facebook and Instagram pages. If a court rules for PETA, they may be ruling with that broad scope in mind and apply it to all of NIH and not the two specific accounts at issue. The DOJ has seen the court apply the decision more broadly than they should before. However, the DOJ has this scope on their radar and they will be sure to be extremely clear with the court that this concerns only the two social media pages, and if there was a ruling adverse to NIH it should be limited to these two pages only. This is why the DOJ sees a broader application to other NIH social media accounts as a small risk.

Please let me know if you have any questions.

Thank you,

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Sent: Wednesday, December 8, 2021 11:28 PM

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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

Thank you for responding at such a late hour! Looking forward to talking through this tomorrow.

Speak tomorrow,
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 8, 2021 11:24 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

I apologize for the confusion- my comments about the effect of losing the lawsuit – specifically the last two sentences of my prior email- need to be modified after further discussion with DOJ (yes at 11pm). I struck these sentences out below.

The effect of NIH losing the lawsuit depends on how the Judge ultimately chooses to frame the injunction. It is more likely than not that the injunction would specifically target (i) the animal-testing filters and/or (ii) all efforts to target animal testing comments. Of course, there's always a chance that a Judge can issue a broad injunction that, say, concludes that the NIH social media pages are public forums, and that no "content-based restrictions" are allowed, i.e. moderating any comments based on subject matter.

I hope this helps clarify that there are multiple options of how a judge could rule if NIH loses. Happy to discuss further on the call.

Thanks again,

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To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Thank you very much. I'm not sure we can get through everything in 30 minutes, but we can try. Lets tentatively set from 12:30-1pm.

As to your comment that you haven't stopped the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals yet, can you please double check to confirm these are still on the list? I just checked NIH's most recent Instagram posts from my own personal Instagram account and I see #stoptestingonanimals and #stopanimaltesting comments. If this is still on the filter list, then this adds confusion as to why these comments are not hidden. For example,

Released by Chairman Rand Paul

I see a #stoptestingonanimals on the December 3rd post about the POTUS briefing and on the December 3rd post about the placenta image. I also see a #stopanimaltesting on the November 19th post on Marsha's Alzheimer's Caregiver story.

Essentially, your statement about the lawsuit is accurate, ~~but only for moderating off topic animal testing comments~~. The lawsuit is about the animal-related keyword filters. To not fight the lawsuit, NIH would have to stop all animal-related keyword filters to appease the plaintiffs to drop the suit. Since manual hiding is not at issue in the lawsuit, NIH would have full discretion to do manual hiding. However, if NIH instead of using the keyword filters manually hid comments each day, it is likely plaintiffs would pick up on their comments being hidden and file another lawsuit about the hiding. So, in my opinion, I don't see the benefit of attempting to moderate the animal testing comments through another hiding mechanism, since it will likely just end up in another lawsuit as soon as plaintiffs notice their comments are hidden. If you see any other angle of how off-topic animal testing comments could be moderated without alarming the plaintiffs to want to file another lawsuit, then I'm happy to discuss.

Therefore, for NIH to continue moderating off-topic animal testing relating comments, it seems the only option is to defend NIH's practices through the lawsuit, and if NIH wins then it can continue as-is and have discretion to filter viewpoint-neutral animal-related keywords and conduct manual hiding, etc. If NIH doesn't win, then NIH would not be able to moderate off-topic animal testing comments. ~~The scope of an injunction would only apply to the animal testing keyword filters at issue. NIH would be able to continue to moderate off topic comments for subject matters outside of animals.~~

Thank you,

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

So sorry for writing late. Crazy week for us! A call would be great, but we have another crazy day tomorrow and the best time that will work is 12:30-1pm. Will that work for you all as well?

I'm attaching our responses to your comments in the stipulations document. I've included the answers to your questions below (highlighted). To answer your question about the key policy decision maker: that would be Renate. In terms of who has the most information to talk through the stipulation—that would be all of the OCPL people on this email. We each have different pieces of the information.

My take away from the below explanation is that if we want to continue to moderate off topic comments on Facebook and Instagram, then we must decide to fight the lawsuit, and only if we win, then we could continue to do so. Is that accurate?

Looking forward to the call.

Thanks,
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 8, 2021 6:32 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
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Subject: RE: PETA Lawsuit Update and Requests for Information

Hi,

I want to clarify my answer below to #1. I just heard from DOJ that they'd prefer holding on adding any new keywords to the filter list for right now. It would be easier to just litigate with the universe we have, rather than change the facts at a later stage. However, our fact stipulation will expressly reserve the right for NIH to add content neutral keyword filters to capture posts that violate the comment guidelines in the future.

Please let me know if you have any further questions about this point.

Thank you,

Sarah J. Imhoff, JD, MHSA
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi team,

I also reviewed the document you sent over and have a few follow-up responses/questions:

1. For the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals, NIH chose option #1- . Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work. You asked "Can we add filters in the future as long as they're neutral?" **Answer- As things currently stand with our litigation strategy, NIH can add neutral filters now and in the future. If the court issues an injunction based on a ruling that NIH's social media**

Released by Chairman Rand Paul

pages are designated public forums, it is possible NIH would not be able to include neutral filters to prevent discussion about a broad topic, such as animal testing generally or COVID vaccinations generally.

Question- What date did NIH remove the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals? We have not done that yet, but can be done immediately.

2. To follow-up on the inquiry about pro-animal testing comments, the DOJ would like to make the argument that the NIH doesn't have a policy of targeting anti-animal testing posts. Posts defending animal testing, as much as posts critical of animal testing, would not be permitted if they are off-topic, inflammatory, etc. I know you said you don't have any examples of hiding pro-animal testing comments, but again, if we can include examples of where the filters caught some of those posts, whether separate posts or posts in response to an anti-animal testing post, that would help. If there are any issues where there might have been more debate that you could browse through to double check, such as maybe the beagle uproar, that would be helpful.

We'll continue to look, but this is not a scenario that happens because people aren't really posting pro-animal testing. However we do have examples of other instances where we have hidden comments that were off topic. For example we posted about NIH's ending structural racism effort, and there were comments about Wuhan Institute of Virology and Ivermectin that were hidden for being off topic.

Thank you,

Sarah J. Imhoff, JD, MHSA
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information
Importance: High

Hi Anna and team,

Thank you so much! This is extremely helpful. I will work with DOJ on incorporating this information into the facts. Please see my responses below in red.

After all your work, I already have a request for follow-up. The draft stipulation of facts we received from the Plaintiffs included a number of examples of specific comments that were hidden from NIH's Facebook and Instagram. They attribute these hidden comments to NIH's Facebook and Instagram filter lists. Interestingly, we have discovered that the HHS Facebook comments plaintiffs mention were likely filtered through Facebook's own spam filter, as HHS does not filter "monkey" from its Facebook comments (as a reminder, Plaintiffs only claimed HHS' Facebook blocked the word monkey and only gave a few examples). Due to this, DOJ is currently discussing removing HHS from the lawsuit with Plaintiffs, so then the only defendant would be NIH. Therefore, we'd like to confirm that these hidden comments were actually based on NIH's own filters and not some other mechanism.

I have attached a document of all of the examples Plaintiffs included. Could you please investigate the following:

1. **Check each example on Facebook and Instagram, to the extent possible, to confirm that NIH's filters did indeed hide these comments.** I reviewed all of the examples myself against the Facebook/Instagram filter lists to ensure at least one word in each example is on the filter lists, and inserted a comment where there are discrepancies.
2. **Where I inserted a comment where there are discrepancies, please respond to the comments to let me know whether you think the filters did capture these terms, whether they were manually hidden by NIH or whether you think Facebook or Instagram's own filters may have been in effect.**

As far as timing, the DOJ wants to submit our edits to the proposed stipulation of facts on Wednesday or Thursday at the latest to allow time for some back and forth with the plaintiffs before the deadline. Please let me know if you can get back to me on this by COB tomorrow. I apologize for the continued short turn around time. The stipulation is likely our only opportunity to get the facts in the record.

I'd also like to schedule a quick call with the key decision maker and the person who has the most comprehensive knowledge of the facts to review the facts presented and ensure there are no other key facts that might be useful to include. I can provide a copy of the draft fact stipulation in advance, or review a summary of the facts with you during the call.

Thank you,

Sarah J. Imhoff, JD, MHSA
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Since there were quite a few questions and requests for screenshots, we have compiled our responses in the attached word doc. Our answers to your questions are highlighted in yellow. Please let us know if you have any questions regarding the responses. We have two main questions for you and DOJ:

1. **Can the chief policy maker just be NIH or do we have to name a specific person? We'd prefer to not name a specific person given the history of PETA sharing people's personal information with their supporters.**

OGC- David Lankford and I- would like to know the ultimate NIH decision-maker for this lawsuit. The person's name will not be given to Plaintiffs and is for our own internal coordination purposes only.

2. Our desired outcome is to still be able to moderate comments, specifically those comments that are off topic to the posts. Based on this desired outcome, which path would OGC recommend we take with this lawsuit?

I will get back to you on this shortly after further discussion.

Thank you,

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, December 3, 2021 1:16 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Great, thanks so much Anna!

Sarah J. Imhoff, JD, MHSA
Senior Attorney
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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, December 3, 2021 1:14 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

We don't have a decision on those quite yet, we just removed "peta" and "petalatino" for now. Hoping to have a decision on Monday.

Thanks!
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, December 3, 2021 1:10 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford,

Released by Chairman Rand Paul

David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Thanks so much for the update. To clarify, what was your group's decision on the Instagram filters #stopanimaltesting; #stoptesting; and #stoptestingonanimals? If you don't have a decision on those filters yet, that is fine.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
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[REDACTED]@nih.gov

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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Friday, December 3, 2021 12:36 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Thanks so much for the extension. We did want to update and let you know that we have removed the filters you mentioned below on Facebook and Instagram today, so you can give the date of 12/3/21 to DOJ as when the filters were removed.

Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Thursday, December 2, 2021 12:42 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

Plaintiffs agreed to an extension, so COB Monday works well for getting the additional information back to us.

Thanks so much,

Sarah J. Imhoff, JD, MHSA
Senior Attorney

Released by Chairman Rand Paul

Office of the General Counsel
Public Health Division, NIH Branch
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[REDACTED]@nih.gov

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Sent: Wednesday, December 1, 2021 11:59 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks Sarah! Much much appreciated.

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 1, 2021 11:55 AM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Wow of course! I'll check with DOJ on timeline. I know they thought if we were going to make the deadline we'd need to get a draft back to PETA by the weekend... but they were already thinking we wouldn't make it since PETA got us their draft later than they promised....I know its super short notice. I'll touch base with them to see if they can get started on an extension request today to get us some additional time.

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
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Sent: Wednesday, December 1, 2021 11:46 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks, Sarah! We'll take a look and try to get you answers. I'm out tomorrow and Friday, and we're handling the POTUS visit tomorrow, so we're completely underwater. Is there any possibility for us to get back to you by COB Monday? I know it's longer than ideal, but just want to make sure we are able to give this the attention it needs.

Thanks!
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 1, 2021 11:43 AM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information
Importance: High

Hi everyone,

I had a call with DOJ yesterday and am writing to answer questions from the last call, provide an update as to next steps and ask for some additional information. I thought it would be helpful to have this all in writing, but if you would like to have a call to discuss please let me know. The DOJ unfortunately needs the additional information ASAP, so if you could provide it by tomorrow that would be very helpful.

As a first matter, **we'd like to know who is the ultimate decision-maker for the team.** There is a policy decision to be made, as described below, and we want to ensure the appropriate person is looped in and making the decision.

Questions from Last Call

1. **Should NIH should stop its blocking non-viewpoint neutral keywords? NIH should stop blocking the following keywords immediately:**

Facebook

- Peta
- Petalatino

Instagram

- Peta

When this is done, please let me know so I can give the date these keywords were no longer blocked to the DOJ.

In terms of the following Instagram filters:

- #stopanimaltesting
- #stoptesting
- #stoptestingonanimals

The DOJ is leaving this as a policy decision for NIH. The ideal solution would be for NIH to still achieve its desired goals without having these one-sided keywords blocked. For example, if the hashtag #testing is blocked, will that also block #stopanimaltesting, #stoptesting, and #stoptestingonanimals? Or, does the entire phrase need to be blocked for it to work? I do see "testing" is a manual filter, but not hashtag #testing- does this make a difference?

The options are: 1. Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work, 2. Keep the above filters but add a hashtag representing the pro-animal testing side to achieve neutrality, if there are any commonly used pro-animal testing words or hashtags such as #keepanimaltesting, 3. Remove the filters without additional changes if it isn't making much of a difference, or 4. Keep the filters without additional changes if options #1 and #2 are not feasible and these filters are key to stopping harassment from PETA.

If you are considering option #4, while a court may find that these keywords are not viewpoint neutral, the DOJ said the worst that would happen is a court would order NIH to stop filtering these terms as part of its ruling. But, ideally we'd prefer options #1-3 for a stronger case.

2. What are the ramifications if NIH does not win the lawsuit? What does that mean NIH will and will not be able to moderate on its Facebook and Instagram pages?

The DOJ explained that if NIH fully loses the case and the judge deems NIH's Facebook and Instagram as public forums and grants an injunction, NIH would still be able to moderate the platforms for the categories of speech that are not protected by the First Amendment, such as obscenity, fighting words, defamation, incitement to induce imminent lawless action, true threats, and solicitations to commit crimes. The DOJ did say that the NIH would not be able to moderate off-topic comments if the injunction is granted.

If the NIH only lost on the viewpoint discrimination argument, but the platforms were not viewed as public forums, the DOJ's preliminary opinion is that the comment guidelines would only need a slight modification to clarify that animal testing as a general topic is off limits.

Overall, the DOJ's opinion is that even if NIH fully lost the lawsuit, NIH would not be in a worse position than if it did not fight the lawsuit. Essentially, losing the lawsuit would only allow NIH to moderate the areas of speech that are not protected by the First Amendment and to not have any discretion outside of these areas. It appears that NIH not fighting the lawsuit and removing all animal-related filters would have a similar effect, although by not being under a court order NIH would still have discretion to moderate as it pleases, which would include off topic comments. However, if NIH removes all of the animal related filters to get PETA to drop the lawsuit and then manually moderates PETA's off topic comments, PETA may file another lawsuit about the manual moderation so it may not get us very far.

Please let us know your thoughts on if you are in agreement with the DOJ's assessment that losing the case versus not fighting it would have a similar effect.

Next Steps and Additional Requests for Information

The DOJ and PETA have agreed to file a stipulation of facts to avoid discovery, and then the briefs for summary judgement will be drafted based on these facts. Summary judgement means the judge will make a decision on the injunction based on the briefs without holding a full trial. The deadline for the stipulation of facts is next Wednesday, December 8th but this may be pushed back a few days. The DOJ seeks some additional information from the NIH to fill in the facts, outlined below:

1. Manual Moderation of Comments
 - a. What was the exact date NIH stopped manually moderating comments? I know it was after the lawsuit was filed, but can you give us the date?
 - b. When NIH was manually moderating comments, what was the frequency? For example, was the manual hiding of comments weekly? daily? every 4 hours Monday-Friday? constantly?
2. Comment Guidelines- In its complaint, PETA states NIH's Facebook was created on October 14, 2008 (and Instagram created in 2018). From our emails, you stated OGC approved the Comment Guidelines in January 2015.
 - a. Do you know the exact date the Comment Guidelines become in effect?
 - b. Before these Comment Guidelines, were any other comment policy or guidelines in place from 2008-2015 for Facebook commenting?

3. Pro-Animal Testing Comments

- a. Is there any way you could find examples of pro-animal testing comments that were hidden? This can either be the comment itself, or a comment thread where there was an anti-animal testing comment and a pro animal testing advocate replied to that comment, but the entire comment thread with replies to the original comment was hidden? It would be very helpful if you could find 2-3 examples of this and provide us with screenshots. If the comment was manually hidden, that is fine. It would be preferable if you could find this during the time frame of the complaint, which is between September 2020 to September 2021.

4. PETA's effect on NIH Goals- The DOJ would like to include an argument showing how PETA's spamming of off topic comments inhibits NIH's mission. As the keyword blocking does target animal testing and PETA as we've discussed, the DOJ wants to justify this targeting to state that the case isn't a debate about animal testing but about harassment from PETA.

- a. Do you have any statistics about how often PETA comments compared to other comments? Or statistics about how many comments are about animal testing? If there is any way DOJ could state animal testing comments are 50% of the comments received but the NIH has only posted about animal testing for 5% of its posts, that would be helpful.
- b. Could you find specific examples of how PETA stands out among all other groups and comments? We are looking for some extreme examples of PETA's comments where they go over the top to highlight 2-3 examples with screenshots.
- c. In addition, extreme examples of PETA's past actions not involving the social media platforms will help as well. On our last call you mentioned a campaign against Elisabeth Murray. 1-2 examples with screenshots or other documentation would be helpful.

Thank you very much, and happy to have a call to review all of this.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, November 10, 2021 3:30 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [C] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: Call Regarding Update on NIH Facebook/Instagram Lawsuit

Hi everyone,

David Lankford and I would like to schedule a call with you to give an update on our discussions with the DOJ this week, some additional questions we have and your initial thoughts on DOJ's current proposed next steps. We haven't received any firm advice on what NIH should do moving forward yet, but wanted to get your opinion on DOJ's current next steps to see whether we should have further discussions with them about their proposed strategy.

Released by Chairman Rand Paul

Can you please let me know when your team is available for a discussion this Friday, 11/12? We are open except from 3-4pm.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: "Myles, Renate (NIH/OD) [E]" <[REDACTED]@mail.nih.gov>
To: "Kern, Anna (NIH/OD) [E]" <[REDACTED]@nih.gov>, "Fine, Amanda (NIH/OD) [E]" <[REDACTED]@nih.gov>
Cc: "Polimeni, Lydia (NIH/OD) [E]" <[REDACTED]@nih.gov>, Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Date: Wed, 26 Jan 2022 11:30:51 -0500

Importance: Normal

Inline-Images: image001.png

Hi Anna:

I updated the response to the first Q based on our discussion.

Thanks,
Renate

From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, January 26, 2022 9:55 AM
To: Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: FW: PETA Lawsuit Update and Requests for Information

Bumping!

From: Kern, Anna (NIH/OD) [E]
Sent: Tuesday, January 25, 2022 3:53 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; [REDACTED] <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda and Renate,

Below is a draft response (#1) back to Sarah regarding a question about the Twitter chat. I thought that the paragraph they drafted about the manual moderation of comments looked good. Please let us know if you have additional thoughts by COB tomorrow. Thank you!

1. **Re: PETA on the NIH Twitter chat—can users see that whole Twitter chat? Plaintiffs claimed they may want context for the complaints, but asserted they couldn't necessarily view the whole chat. Is that true? .**

Yes, for the most part. Tweets from users whose accounts are private would not be seen. However, all of the complaints and PETA's tweets direct at NIH are public. You can see the chat tweets from users who have a public Twitter profile. Here's the link to the chat with those publicly available tweets: [Full Twitter chat thread from 10/3/14 on brain health that was disrupted](#).

2. **Please let me know your feedback and if you have any edits on the following paragraph concerning NIH's manual moderation:**

Released by Chairman Rand Paul

Once Plaintiffs' complaint was filed, NIH paused its efforts to manually hide comments consistent with its comment moderation guidelines. Prior to this litigation, NIH did engage in manual comment hiding—however, due to resource constraints of the COVID-19 pandemic, these efforts were limited—although it principally relied upon its keyword filters to ensure compliance with its comment moderation guidelines. If NIH had the resources to manually moderate its social media accounts on a more consistent basis, it would have done so. NIH intends to resume manual comment moderation following a resolution of the parties summary judgment motions, if consistent with the Court's order resolving those motions.

From: Kern, Anna (NIH/OD) [E]
Sent: Tuesday, January 25, 2022 11:53 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Just confirming receipt and that we are working on these responses. Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Monday, January 24, 2022 5:09 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Thanks so much! We are getting close to finalizing the fact stipulation. Hopefully by Friday but possibly next week if necessary. I have one needed clarification about Twitter, and would like your team to review some language about manual moderation to see if you have any feedback or edits.

We initially did not want to include any detail about manual moderation, but this seems to be a sticking point for Plaintiffs. We think they want to focus on non-animal rights comments that violate NIH's comment guidelines and argue that NIH is only targeting animal rights comments, and will use the presence of these other extreme comments as their argument. The DOJ and I are starting to be ok with including a statement about manual moderation because we can easily explain why these other off topic comments exist- we can say that we didn't catch them because of lack of resources, and that we may hide those comments and look into adopting new filters to catch similar comments for in the future if the court's decision permits.

If you could get back to me on the below by Wednesday COB if possible that would be great, or Thursday morning I think would be ok too. Thank you!

1. Re: PETA on the NIH Twitter chat—can users see that whole Twitter chat? Plaintiffs claimed they may want context for the complaints, but asserted they couldn't necessarily view the whole chat. Is that true?

2. Please let me know your feedback and if you have any edits on the following paragraph concerning NIH's manual moderation:

Once Plaintiffs' complaint was filed, NIH paused its efforts to manually hide comments consistent with its comment moderation guidelines. Prior to this litigation, NIH did engage in manual comment hiding—however, due to resource constraints, these efforts were limited—although it principally relied upon its keyword filters to ensure compliance with its comment moderation guidelines. If NIH had the resources to manually moderate its social media accounts on a more consistent basis, it would have done so. NIH intends to resume manual comment moderation following a resolution of the parties summary judgment motions, if consistent with the Court's order resolving those motions.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
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[REDACTED]@nih.gov

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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, January 19, 2022 10:00 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Please see the answers to your questions below:

1. **Were the twitter posts on the 10/3/14 discussion on brain health linked below posted directly on NIH's Twitter account main page? Or was there a separate "chat" where these were posted? Plaintiffs want to know if anyone that went to the NIH's twitter account during that time would have seen those posts.**

You cannot post to someone's page on Twitter in the same way you can on Facebook. On Twitter, you can either reply to someone's tweet (aka tweet thread) or tweet under an established hashtag. The hashtag is a way to filter and organize tweets across Twitter by creating a feed with only those tweets using the same hashtag. It's a way to create a conversation on the platform. The hashtag for the chat was established by the NIH so that all chat participants could see the conversation around brain health.

PETA posted both to NIH tweets and used the hashtag in this scenario. Participants would be looking at the tweets appearing on the hashtag (i.e. the conversation) and would have seen PETA's posts, and those following the tweet thread would have also seen PETA's posts. This means there would be no way to follow the information on the Twitter chat without being disrupted by the posts and being forced to work around them to get the relevant health information.

Released by Chairman Rand Paul

2. Are you aware of complaints we've received against other types of posts, unrelated to animal testing? E.g., posts concerning Dr. Fauci, or posts concerning vaccine misinformation? I know I've asked this before, but Plaintiffs specifically want to know if the complaints NIH receives are really focused on PETA, or if NIH received complaints about inflammatory posts on a variety of subjects. I think Plaintiffs want to make the argument that NIH is targeted animal rights posts over other inflammatory posts when they are equally inappropriate. Since Plaintiffs want this answer as part of our fact stipulation negotiations, I think we have to provide it.

Yes – we've received complaints about other inappropriate and/or off topic content that is not related to animal testing. Please see the screenshots and links to posts below.

- <https://www.facebook.com/43331696829/posts/10159317371801830/?d=n>
- <https://www.facebook.com/43331696829/posts/10159342469336830/?d=n>
- <https://www.facebook.com/100064843296393/posts/239873164850792/?d=n>
- <https://www.facebook.com/100064843296393/posts/251454613692647/?d=n>
- <https://www.facebook.com/100064843296393/posts/255266059978169/?d=n>
- <https://www.facebook.com/100064843296393/posts/255956623242446/?d=n>
- <https://www.facebook.com/nih.gov/posts/255820046589437>
- https://www.instagram.com/p/CT2N82Jlcui/?utm_medium=copy_link

Let us know if you any additional questions.

Thanks!
Anna

From: Kern, Anna (NIH/OD) [E]
Sent: Tuesday, January 18, 2022 3:25 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

You're correct – we did not delete these comments. I imagine since she made several comments in a row with no time in between the comments it violated FB's community standards and they were removed. See FB's policy regarding spam here: <https://transparency.fb.com/policies/community-standards/spam/>

Thanks!
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Tuesday, January 18, 2022 2:13 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeri, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Released by Chairman Rand Paul

Thanks, Anna. So sorry but another question came in. Plaintiffs are claiming comments that showed up for them are no longer showing up and are asking if we deleted them. In the attached first document, the post shows 20 comments and Brittany Hopwood's comments containing words show. This is what she saw in July and she took screenshots at that time. In the attached second document, the post shows 7 comments, with only one comment viewable and none of Brittany Hopwood's comments. I looked on my personal account myself and confirmed I only see one viewable comment and none from Brittany Hopwood.

Plaintiffs' question is: Ms. Hopwood has confirmed that she did not delete these comments. Can you ask the NIH if they removed the comments at some point after they were initially posted?

I assume the answer is no, NIH did not delete these comments, but I wanted to double check with you.

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Tuesday, January 18, 2022 11:44 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Yes – we'll get you those answers by COB. We'll elaborate in our response, but yes – while those activists posted from their own Twitter accounts, they tagged @NIH and used the NIH designated hashtag for the chat #NIHChat to ensure their responses appeared in the chat feed, so those comments did take place on a hashtag that NIH created. In addition to the activists, PETA tagged NIH and used the hashtag as well.

Thanks,
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Tuesday, January 18, 2022 11:32 AM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Is there any way you could get these answers to me by COB today? Thanks. I received a little more information on the Twitter question:

Plaintiffs are arguing that the relevant Twitter posts took place on the animal rights activists' own Twitter accounts; according to Plaintiffs, those Twitter posts did not take place on NIH's page. My understanding is that, perhaps, those activists "tagged" NIH's Twitter handle, which caused their comments to appear on NIH's Twitter page. Is that correct?

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, January 14, 2022 12:56 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Sure – we can get those answers to you by COB today. Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, January 14, 2022 9:22 AM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

I have two additional follow-up questions from the DOJ:

1. Were the twitter posts on the 10/3/14 discussion on brain health linked below posted directly on NIH's Twitter account main page? Or was there a separate "chat" where these were posted? Plaintiffs want to know if anyone that went to the NIH's twitter account during that time would have seen those posts.

2. Are you aware of complaints we've received against other types of posts, unrelated to animal testing? E.g., posts concerning Dr. Fauci, or posts concerning vaccine misinformation? I know I've asked this before, but Plaintiffs specifically want to know if the complaints NIH receives are really focused on PETA, or if NIH received complaints about inflammatory posts on a variety of subjects. I think Plaintiffs want to make the argument that NIH is targeted animal rights posts over other inflammatory posts when they are equally inappropriate. Since Plaintiffs want this answer as part of our fact stipulation negotiations, I think we have to provide it.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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Sent: Monday, January 3, 2022 6:14 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Thanks for your patience on these! Still trying to track down number 3 – will have an update for you tomorrow. Thanks!

1. The NIH Facebook and Instagram pages currently link to the privacy policy, <https://www.nih.gov/about/privacy.htm>. Would you have any concerns about adding a link on both pages to the comment moderation guidelines in addition to the privacy policy? ***This is not a request yet, the DOJ is just weighing options.***

Not at all, this would be ok with us.

2. To prove the point that inflammatory comments may dissuade interested citizens from visiting the social media pages: Has the NIH received any complaints about animal rights comments on its social media pages? Has it received complaints about other comments that it considers to be "off-topic" or "inflammatory"? If so, do you have any specific proof or examples?

Please see examples below and screenshots attached.

[Full Twitter chat thread from 10/3/14 on brain health that was disrupted \(Animal testing focused\):](#)

Specific examples of participants complaining of disruption:

- <https://twitter.com/MarieAnneLeCler/status/518098761617506304>
- <https://twitter.com/CreativeSage/status/518098626456088578>

- <https://twitter.com/CreativeSage/status/518170943727095809>
- <https://twitter.com/CreativeSage/status/518098132589371392>
- <https://twitter.com/tdverstynen/status/518108160880828416>
- <https://twitter.com/CreativeSage/status/518096043297488896>

Examples of other off-topic disrupting comments from Facebook and Instagram (mostly COVID misinformation):

- <https://www.facebook.com/43331696829/posts/10159317371801830/?d=n>
- <https://www.facebook.com/43331696829/posts/10159342469336830/?d=n>
- <https://www.facebook.com/100064843296393/posts/239873164850792/?d=n>
- <https://www.facebook.com/100064843296393/posts/251454613692647/?d=n>
- <https://www.facebook.com/100064843296393/posts/255266059978169/?d=n>
- <https://www.facebook.com/100064843296393/posts/255956623242446/?d=n>
- https://www.instagram.com/p/CT2N82Jlcui/?utm_medium=copy_link

3. In your last response, you mentioned NIH has had some form of guidelines for moderating content since November 2012. Can you provide the guidance used prior to the March 30, 2015 guidelines were posted?

We are still trying to locate this – the person who would know is out sick. Can we have until tomorrow on this?

4. The Plaintiffs believe Facebook account holders can set the “level” of the profanity filter (weak/strong/etc.). What level has the NIH selected for its Facebook profanity filter?

NIH has the “strong” profanity filter in place. This has been in place prior to Sep 2020 and continues to be in place.

5. During the relevant time period (Sep 2020 to now), has the NIH set any Facebook Live video-specific filtering?

No, but the general filters in place from Sep 2020 to now apply to Facebook Lives as well. Also, the platform attempts to prioritize most relevant comments on Facebook Lives, but off-topic comments still come through due to the volume of the comments coming through.

6. On Facebook, is it possible that “non-animal” would be hidden because it contains the filtered word “animal”?

No, the word has to match the keyword filters in order to be hidden. The phrase “non-animal” would not be hidden since it doesn’t match “animal.”

From: Kern, Anna (NIH/OD) [E]

Sent: Monday, January 3, 2022 12:57 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford,

Released by Chairman Rand Paul

David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Most of us are back in the office, so we will aim to have these answers to you by COB today.

Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 29, 2021 11:47 AM

To: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Lydia,

Thanks for your response. We need to get a draft back to the Plaintiffs early next week, so that is fine but if there is any way I could have the answers back Monday COB or Tuesday am that would be ideal.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 29, 2021 11:16 AM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Sorry for the delay, I was off yesterday

Amanda and Anna are out this week but I can work on getting you answers to some of these; may not have it all until next week when I can consult with them however. Want to make sure the info is accurate!

I hope that works.

Thanks!

Lydia Polimeni

Office of Communications and Public Liaison
Office of the Director, National Institutes of Health

[REDACTED] | [REDACTED]@nih.gov



From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Monday, December 27, 2021 5:52 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi team,

I know some of you are out but I figured I would email the whole group the questions to see who is around and can answer a few questions this week. We are working on the next round of edits to the fact stipulation. Thank you very much for your help!

1. The NIH Facebook and Instagram pages currently link to the privacy policy, <https://www.nih.gov/about/privacy.htm>. Would you have any concerns about adding a link on both pages to the comment moderation guidelines in addition to the privacy policy? ***This is not a request yet, the DOJ is just weighing options.***
2. To prove the point that inflammatory comments may dissuade interested citizens from visiting the social media pages: Has the NIH received any complaints about animal rights comments on its social media pages? Has it received complaints about other comments that it considers to be "off-topic" or "inflammatory"? If so, do you have any specific proof or examples?
3. In your last response, you mentioned NIH has had some form of guidelines for moderating content since November 2012. Can you provide the guidance used prior to the March 30, 2015 guidelines were posted?
4. The Plaintiffs believe Facebook account holders can set the "level" of the profanity filter (weak/strong/etc.). What level has the NIH selected for its Facebook profanity filter?
5. During the relevant time period (Sep 2020 to now), has the NIH set any Facebook Live video-specific filtering?
6. On Facebook, is it possible that "non-animal" would be hidden because it contains the filtered word "animal"?

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 22, 2021 7:43 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

Thanks for the update! I'm out next week, but Renate will be in. Good news on the extended deadline!

Have a great holiday season and a happy new year!

Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 22, 2021 6:52 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

Happy holidays! I am following up from our last call. As an update, we just received another draft of the fact stipulation back from the Plaintiffs. It is now due to the court January 14, 2022 due to an extension request and we will be continuing to negotiate the facts with them over the next 3 weeks. I expect to have a few additional factual questions for you next week. In the meantime, I wanted to send you an answer to your question from our last call:

Question: Could a decision in this case impact other NIH ICO social media accounts?

Answer: It will likely not, because the case is limited to NIH's main Facebook and Instagram accounts. However, there is a small risk that a court may apply it more broadly if they rule for PETA. It is likely Plaintiffs will use broad wording in their briefs in order to have a wide scope to attack any policy that might apply NIH's main Facebook and Instagram pages. If a court rules for PETA, they may be ruling with that broad scope in mind and apply it to all of NIH and not the two specific accounts at issue. The DOJ has seen the court apply the decision more broadly than they should before. However, the DOJ has this scope on their radar and they will be sure to be extremely clear with the court that this concerns only the two social media pages, and if there was a ruling adverse to NIH it should be limited to these two pages only. This is why the DOJ sees a broader application to other NIH social media accounts as a small risk.

Please let me know if you have any questions.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch

[REDACTED] (direct)
[REDACTED]@nih.gov

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

Thank you for responding at such a late hour! Looking forward to talking through this tomorrow.

Speak tomorrow,
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 8, 2021 11:24 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

I apologize for the confusion- my comments about the effect of losing the lawsuit – specifically the last two sentences of my prior email- need to be modified after further discussion with DOJ (yes at 11pm). I struck these sentences out below.

The effect of NIH losing the lawsuit depends on how the Judge ultimately chooses to frame the injunction. It is more likely than not that the injunction would specifically target (i) the animal-testing filters and/or (ii) all efforts to target animal testing comments. Of course, there's always a chance that a Judge can issue a broad injunction that, say, concludes that the NIH social media pages are public forums, and that no "content-based restrictions" are allowed, i.e. moderating any comments based on subject matter.

I hope this helps clarify that there are multiple options of how a judge could rule if NIH loses. Happy to discuss further on the call.

Thanks again,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Imhoff, Sarah (NIH/OD) [E]
Sent: Wednesday, December 8, 2021 10:57 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Thank you very much. I'm not sure we can get through everything in 30 minutes, but we can try. Lets tentatively set from 12:30-1pm.

As to your comment that you haven't stopped the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals yet, can you please double check to confirm these are still on the list? I just checked NIH's most recent Instagram posts from my own personal Instagram account and I see #stoptestingonanimals and #stopanimaltesting comments. If this is still on the filter list, then this adds confusion as to why these comments are not hidden. For example, I see a #stoptestingonanimals on the December 3rd post about the POTUS briefing and on the December 3rd post about the placenta image. I also see a #stopanimaltesting on the November 19th post on Marsha's Alzheimer's Caregiver story.

Essentially, your statement about the lawsuit is accurate, ~~but only for moderating off topic animal testing comments.~~ The lawsuit is about the animal-related keyword filters. To not fight the lawsuit, NIH would have to stop all animal-related keyword filters to appease the plaintiffs to drop the suit. Since manual hiding is not at issue in the lawsuit, NIH would have full discretion to do manual hiding. However, if NIH instead of using the keyword filters manually hid comments each day, it is likely plaintiffs would pick up on their comments being hidden and file another lawsuit about the hiding. So, in my opinion, I don't see the benefit of attempting to moderate the animal testing comments through another hiding mechanism, since it will likely just end up in another lawsuit as soon as plaintiffs notice their comments are hidden. If you see any other angle of how off-topic animal testing comments could be moderated without alarming the plaintiffs to want to file another lawsuit, then I'm happy to discuss.

Therefore, for NIH to continue moderating off-topic animal testing relating comments, it seems the only option is to defend NIH's practices through the lawsuit, and if NIH wins then it can continue as-is and have discretion to filter viewpoint-neutral animal-related keywords and conduct manual hiding, etc. If NIH doesn't win, then NIH would not be able to moderate off-topic animal testing comments. ~~The scope of an injunction would only apply to the animal testing keyword filters at issue. NIH would be able to continue to moderate off topic comments for subject matters outside of animals.~~

Thank you,

Sarah J. Imhoff, JD, MHSA
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Sent: Wednesday, December 8, 2021 8:57 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford,

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David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

So sorry for writing late. Crazy week for us! A call would be great, but we have another crazy day tomorrow and the best time that will work is 12:30-1pm. Will that work for you all as well?

I'm attaching our responses to your comments in the stipulations document. I've included the answers to your questions below (highlighted). To answer your question about the key policy decision maker: that would be Renate. In terms of who has the most information to talk through the stipulation—that would be all of the OCPL people on this email. We each have different pieces of the information.

My take away from the below explanation is that if we want to continue to moderate off topic comments on Facebook and Instagram, then we must decide to fight the lawsuit, and only if we win, then we could continue to do so. Is that accurate?

Looking forward to the call.

Thanks,
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 8, 2021 6:32 PM

To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi,

I want to clarify my answer below to #1. I just heard from DOJ that they'd prefer holding on adding any new keywords to the filter list for right now. It would be easier to just litigate with the universe we have, rather than change the facts at a later stage. However, our fact stipulation will expressly reserve the right for NIH to add content neutral keyword filters to capture posts that violate the comment guidelines in the future.

Please let me know if you have any further questions about this point.

Thank you,

Sarah J. Imhoff, JD, MHSA
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From: Imhoff, Sarah (NIH/OD) [E]
Sent: Monday, December 6, 2021 9:52 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi team,

I also reviewed the document you sent over and have a few follow-up responses/questions:

1. For the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals, NIH chose option #1- . Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work. You asked "Can we add filters in the future as long as they're neutral?" **Answer- As things currently stand with our litigation strategy, NIH can add neutral filters now and in the future. If the court issues an injunction based on a ruling that NIH's social media pages are designated public forums, it is possible NIH would not be able to include neutral filters to prevent discussion about a broad topic, such as animal testing generally or COVID vaccinations generally.**

Question- What date did NIH remove the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals? We have not done that yet, but can be done immediately.

2. To follow-up on the inquiry about pro-animal testing comments, the DOJ would like to make the argument that the NIH doesn't have a policy of targeting anti-animal testing posts. Posts defending animal testing, as much as posts critical of animal testing, would not be permitted if they are off-topic, inflammatory, etc. I know you said you don't have any examples of hiding pro-animal testing comments, but again, if we can include examples of where the filters caught some of those posts, whether separate posts or posts in response to an anti-animal testing post, that would help. If there are any issues where there might have been more debate that you could browse through to double check, such as maybe the beagle uproar, that would be helpful.

We'll continue to look, but this is not a scenario that happens because people aren't really posting pro-animal testing. However we do have examples of other instances where we have hidden comments that were off topic. For example we posted about NIH's ending structural racism effort, and there were comments about Wuhan Institute of Virology and Ivermectin that were hidden for being off topic.

Thank you,

Sarah J. Imhoff, JD, MHSA
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Sent: Monday, December 6, 2021 7:07 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda

(NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Importance: High

Hi Anna and team,

Thank you so much! This is extremely helpful. I will work with DOJ on incorporating this information into the facts. Please see my responses below in red.

After all your work, I already have a request for follow-up. The draft stipulation of facts we received from the Plaintiffs included a number of examples of specific comments that were hidden from NIH's Facebook and Instagram. They attribute these hidden comments to NIH's Facebook and Instagram filter lists. Interestingly, we have discovered that the HHS Facebook comments plaintiffs mention were likely filtered through Facebook's own spam filter, as HHS does not filter "monkey" from its Facebook comments (as a reminder, Plaintiffs only claimed HHS' Facebook blocked the word monkey and only gave a few examples). Due to this, DOJ is currently discussing removing HHS from the lawsuit with Plaintiffs, so then the only defendant would be NIH. Therefore, we'd like to confirm that these hidden comments were actually based on NIH's own filters and not some other mechanism.

I have attached a document of all of the examples Plaintiffs included. Could you please investigate the following:

- 1. Check each example on Facebook and Instagram, to the extent possible, to confirm that NIH's filters did indeed hide these comments.** I reviewed all of the examples myself against the Facebook/Instagram filter lists to ensure at least one word in each example is on the filter lists, and inserted a comment where there are discrepancies.
- 2. Where I inserted a comment where there are discrepancies, please respond to the comments to let me know whether you think the filters did capture these terms, whether they were manually hidden by NIH or whether you think Facebook or Instagram's own filters may have been in effect.**

As far as timing, the DOJ wants to submit our edits to the proposed stipulation of facts on Wednesday or Thursday at the latest to allow time for some back and forth with the plaintiffs before the deadline. Please let me know if you can get back to me on this by COB tomorrow. I apologize for the continued short turn around time. The stipulation is likely our only opportunity to get the facts in the record.

I'd also like to schedule a quick call with the key decision maker and the person who has the most comprehensive knowledge of the facts to review the facts presented and ensure there are no other key facts that might be useful to include. I can provide a copy of the draft fact stipulation in advance, or review a summary of the facts with you during the call.

Thank you,

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Sent: Monday, December 6, 2021 6:31 PM

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To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Since there were quite a few questions and requests for screenshots, we have compiled our responses in the attached word doc. Our answers to your questions are highlighted in yellow. Please let us know if you have any questions regarding the responses. We have two main questions for you and DOJ:

1. Can the chief policy maker just be NIH or do we have to name a specific person? We'd prefer to not name a specific person given the history of PETA sharing people's personal information with their supporters.

OGC- David Lankford and I- would like to know the ultimate NIH decision-maker for this lawsuit. The person's name will not be given to Plaintiffs and is for our own internal coordination purposes only.

2. Our desired outcome is to still be able to moderate comments, specifically those comments that are off topic to the posts. Based on this desired outcome, which path would OGC recommend we take with this lawsuit?

I will get back to you on this shortly after further discussion.

Thank you,

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, December 3, 2021 1:16 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Great, thanks so much Anna!

Sarah J. Imhoff, JD, MHSA
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To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford,

Released by Chairman Rand Paul

David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

We don't have a decision on those quite yet, we just removed "peta" and "petalatino" for now. Hoping to have a decision on Monday.

Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Friday, December 3, 2021 1:10 PM

To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Thanks so much for the update. To clarify, what was your group's decision on the Instagram filters #stopanimaltesting; #stoptesting; and #stoptestingonanimals? If you don't have a decision on those filters yet, that is fine.

Thank you,

Sarah J. Imhoff, JD, MHSA
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Sent: Friday, December 3, 2021 12:36 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Thanks so much for the extension. We did want to update and let you know that we have removed the filters you mentioned below on Facebook and Instagram today, so you can give the date of 12/3/21 to DOJ as when the filters were removed.

Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Thursday, December 2, 2021 12:42 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

Plaintiffs agreed to an extension, so COB Monday works well for getting the additional information back to us.

Thanks so much,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
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Sent: Wednesday, December 1, 2021 11:59 AM

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks Sarah! Much much appreciated.

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 1, 2021 11:55 AM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Wow of course! I'll check with DOJ on timeline. I know they thought if we were going to make the deadline we'd need to get a draft back to PETA by the weekend... but they were already thinking we wouldn't make it since PETA got us their draft later than they promised....I know its super short notice. I'll touch base with them to see if they can get started on an extension request today to get us some additional time.

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks, Sarah! We'll take a look and try to get you answers. I'm out tomorrow and Friday, and we're handling the POTUS visit tomorrow, so we're completely underwater. Is there any possibility for us to get back to you by COB Monday? I know it's longer than ideal, but just want to make sure we are able to give this the attention it needs.

Thanks!
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 1, 2021 11:43 AM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information
Importance: High

Hi everyone,

I had a call with DOJ yesterday and am writing to answer questions from the last call, provide an update as to next steps and ask for some additional information. I thought it would be helpful to have this all in writing, but if you would like to have a call to discuss please let me know. The DOJ unfortunately needs the additional information ASAP, so if you could provide it by tomorrow that would be very helpful.

As a first matter, **we'd like to know who is the ultimate decision-maker for the team.** There is a policy decision to be made, as described below, and we want to ensure the appropriate person is looped in and making the decision.

Questions from Last Call

1. **Should NIH should stop its blocking non-viewpoint neutral keywords? NIH should stop blocking the following keywords immediately:**

Facebook

- Peta
- Petalantino

Instagram

- Peta

When this is done, please let me know so I can give the date these keywords were no longer blocked to the DOJ.

In terms of the following Instagram filters:

- #stopanimaltesting
- #stoptesting
- #stoptestingonanimals

The DOJ is leaving this as a policy decision for NIH. The ideal solution would be for NIH to still achieve its desired goals without having these one-sided keywords blocked. For example, if the hashtag #testing is blocked, will that also block #stopanimaltesting, #stoptesting, and #stoptestingonanimals? Or, does the entire phrase need to be blocked for it to work? I do see “testing” is a manual filter, but not hashtag #testing- does this make a difference?

The options are: 1. Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work, 2. Keep the above filters but add a hashtag representing the pro-animal testing side to achieve neutrality, if there are any commonly used pro-animal testing words or hashtags such as #keepanimaltesting, 3. Remove the filters without additional changes if it isn't making much of a difference, or 4. Keep the filters without additional changes if options #1 and #2 are not feasible and these filters are key to stopping harassment from PETA.

If you are considering option #4, while a court may find that these keywords are not viewpoint neutral, the DOJ said the worst that would happen is a court would order NIH to stop filtering these terms as part of its ruling. But, ideally we'd prefer options #1-3 for a stronger case.

2. What are the ramifications if NIH does not win the lawsuit? What does that mean NIH will and will not be able to moderate on its Facebook and Instagram pages?

The DOJ explained that if NIH fully loses the case and the judge deems NIH's Facebook and Instagram as public forums and grants an injunction, NIH would still be able to moderate the platforms for the categories of speech that are not protected by the First Amendment, such as obscenity, fighting words, defamation, incitement to induce imminent lawless action, true threats, and solicitations to commit crimes. The DOJ did say that the NIH would not be able to moderate off-topic comments if the injunction is granted.

If the NIH only lost on the viewpoint discrimination argument, but the platforms were not viewed as public forums, the DOJ's preliminary opinion is that the comment guidelines would only need a slight modification to clarify that animal testing as a general topic is off limits.

Overall, the DOJ's opinion is that even if NIH fully lost the lawsuit, NIH would not be in a worse position than if it did not fight the lawsuit. Essentially, losing the lawsuit would only allow NIH to moderate the areas of speech that are not protected by the First Amendment and to not have any discretion outside of these areas. It appears that NIH not fighting the lawsuit and removing all animal-related filters would have a similar effect, although by not being under a court order NIH would still have discretion to moderate as it pleases, which would include off topic comments. However, if NIH removes all of the animal related filters to get PETA to drop the lawsuit and then manually moderates PETA's off topic comments, PETA may file another lawsuit about the manual moderation so it may not get us very far.

Please let us know your thoughts on if you are in agreement with the DOJ's assessment that losing the case versus not fighting it would have a similar effect.

Next Steps and Additional Requests for Information

The DOJ and PETA have agreed to file a stipulation of facts to avoid discovery, and then the briefs for summary judgement will be drafted based on these facts. Summary judgement means the judge will make a decision on the injunction based

on the briefs without holding a full trial. The deadline for the stipulation of facts is next Wednesday, December 8th but this may be pushed back a few days. The DOJ seeks some additional information from the NIH to fill in the facts, outlined below:

1. Manual Moderation of Comments
 - a. What was the exact date NIH stopped manually moderating comments? I know it was after the lawsuit was filed, but can you give us the date?
 - b. When NIH was manually moderating comments, what was the frequency? For example, was the manual hiding of comments weekly? daily? every 4 hours Monday-Friday? constantly?
2. Comment Guidelines- In its complaint, PETA states NIH's Facebook was created on October 14, 2008 (and Instagram created in 2018). From our emails, you stated OGC approved the Comment Guidelines in January 2015.
 - a. Do you know the exact date the Comment Guidelines become in effect?
 - b. Before these Comment Guidelines, were any other comment policy or guidelines in place from 2008-2015 for Facebook commenting?
3. Pro-Animal Testing Comments
 - a. Is there any way you could find examples of pro-animal testing comments that were hidden? This can either be the comment itself, or a comment thread where there was an anti-animal testing comment and a pro animal testing advocate replied to that comment, but the entire comment thread with replies to the original comment was hidden? It would be very helpful if you could find 2-3 examples of this and provide us with screenshots. If the comment was manually hidden, that is fine. It would be preferable if you could find this during the time frame of the complaint, which is between September 2020 to September 2021.
4. PETA's effect on NIH Goals- The DOJ would like to include an argument showing how PETA's spamming of off topic comments inhibits NIH's mission. As the keyword blocking does target animal testing and PETA as we've discussed, the DOJ wants to justify this targeting to state that the case isn't a debate about animal testing but about harassment from PETA.
 - a. Do you have any statistics about how often PETA comments compared to other comments? Or statistics about how many comments are about animal testing? If there is any way DOJ could state animal testing comments are 50% of the comments received but the NIH has only posted about animal testing for 5% of its posts, that would be helpful.
 - b. Could you find specific examples of how PETA stands out among all other groups and comments? We are looking for some extreme examples of PETA's comments where they go over the top to highlight 2-3 examples with screenshots.
 - c. In addition, extreme examples of PETA's past actions not involving the social media platforms will help as well. On our last call you mentioned a campaign against Elisabeth Murray. 1-2 examples with screenshots or other documentation would be helpful.

Thank you very much, and happy to have a call to review all of this.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, November 10, 2021 3:30 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [C] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>

Subject: Call Regarding Update on NIH Facebook/Instagram Lawsuit

Hi everyone,

David Lankford and I would like to schedule a call with you to give an update on our discussions with the DOJ this week, some additional questions we have and your initial thoughts on DOJ's current proposed next steps. We haven't received any firm advice on what NIH should do moving forward yet, but wanted to get your opinion on DOJ's current next steps to see whether we should have further discussions with them about their proposed strategy.

Can you please let me know when your team is available for a discussion this Friday, 11/12? We are open except from 3-4pm.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: "Fine, Amanda (NIH/OD) [E]" <[REDACTED]@nih.gov>
To: "Myles, Renate (NIH/OD) [E]" <[REDACTED]@mail.nih.gov>, "Kern, Anna (NIH/OD) [E]" <[REDACTED]@nih.gov>
Cc: "Polimeni, Lydia (NIH/OD) [E]" <[REDACTED]@nih.gov>, "Haley Spencer" <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Date: Wed, 26 Jan 2022 11:39:34 -0500

Importance: Normal

Inline-Images: image001.png

A couple of additional suggested edits on top of Renate's.

Thanks,
Amanda

From: Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Sent: Wednesday, January 26, 2022 11:31 AM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna:

I updated the response to the first Q based on our discussion.

Thanks,
Renate

From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, January 26, 2022 9:55 AM
To: Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: FW: PETA Lawsuit Update and Requests for Information

Bumping!

From: Kern, Anna (NIH/OD) [E]
Sent: Tuesday, January 25, 2022 3:53 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; [REDACTED] <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda and Renate,

Below is a draft response (#1) back to Sarah regarding a question about the Twitter chat. I thought that the paragraph they drafted about the manual moderation of comments looked good. Please let us know if you have additional thoughts by COB tomorrow. Thank you!

Released by Chairman Rand Paul

1. **Re: PETA on the NIH Twitter chat—can users see that whole Twitter chat?** Plaintiffs claimed they may want context for the complaints, but asserted they couldn't necessarily view the whole chat. Is that true? .

Yes, for the most part. **Tweets from users with a public profile can be seen by anyone following the chat.**

Tweets from users whose accounts are private **would not be seen by everyone**; only followers **of a user with a private account** would be able to view their tweets. However, PETA's tweets directed at NIH and the tweets complaining about PETA's disruptions are public. Here's the link to the chat with those publicly available tweets: [Full Twitter chat thread from 10/3/14 on brain health that was disrupted](#).

2. **Please let me know your feedback and if you have any edits on the following paragraph concerning NIH's manual moderation:**

Once Plaintiffs' complaint was filed, NIH paused its efforts to manually hide comments consistent with its comment moderation guidelines. Prior to this litigation, NIH did engage in manual comment hiding—however, due to resource constraints of the COVID-19 pandemic, these efforts were limited—although it principally relied upon its keyword filters to ensure compliance with its comment moderation guidelines. If NIH had the resources to manually moderate its social media accounts on a more consistent basis, it would have done so. NIH intends to resume manual comment moderation following a resolution of the parties summary judgment motions, if consistent with the Court's order resolving those motions.

From: Kern, Anna (NIH/OD) [E]

Sent: Tuesday, January 25, 2022 11:53 AM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Just confirming receipt and that we are working on these responses. Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Monday, January 24, 2022 5:09 PM

To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Thanks so much! We are getting close to finalizing the fact stipulation. Hopefully by Friday but possibly next week if necessary. I have one needed clarification about Twitter, and would like your team to review some language about manual moderation to see if you have any feedback or edits.

Released by Chairman Rand Paul

We initially did not want to include any detail about manual moderation, but this seems to be a sticking point for Plaintiffs. We think they want to focus on non-animal rights comments that violate NIH's comment guidelines and argue that NIH is only targeting animal rights comments, and will use the presence of these other extreme comments as their argument. The DOJ and I are starting to be ok with including a statement about manual moderation because we can easily explain why these other off topic comments exist- we can say that we didn't catch them because of lack of resources, and that we may hide those comments and look into adopting new filters to catch similar comments for in the future if the court's decision permits.

If you could get back to me on the below by Wednesday COB if possible that would be great, or Thursday morning I think would be ok too. Thank you!

1. Re: PETA on the NIH Twitter chat—can users see that whole Twitter chat? Plaintiffs claimed they may want context for the complaints, but asserted they couldn't necessarily view the whole chat. Is that true?
2. Please let me know your feedback and if you have any edits on the following paragraph concerning NIH's manual moderation:

Once Plaintiffs' complaint was filed, NIH paused its efforts to manually hide comments consistent with its comment moderation guidelines. Prior to this litigation, NIH did engage in manual comment hiding—however, due to resource constraints, these efforts were limited—although it principally relied upon its keyword filters to ensure compliance with its comment moderation guidelines. If NIH had the resources to manually moderate its social media accounts on a more consistent basis, it would have done so. NIH intends to resume manual comment moderation following a resolution of the parties summary judgment motions, if consistent with the Court's order resolving those motions.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, January 19, 2022 10:00 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Please see the answers to your questions below:

1. **Were the twitter posts on the 10/3/14 discussion on brain health linked below posted directly on NIH's Twitter account main page? Or was there a separate "chat" where these were posted? Plaintiffs want to know if anyone that went to the NIH's twitter account during that time would have seen those posts.**

Released by Chairman Rand Paul

You cannot post to someone's page on Twitter in the same way you can on Facebook. On Twitter, you can either reply to someone's tweet (aka tweet thread) or tweet under an established hashtag. The hashtag is a way to filter and organize tweets across Twitter by creating a feed with only those tweets using the same hashtag. It's a way to create a conversation on the platform. The hashtag for the chat was established by the NIH so that all chat participants could see the conversation around brain health.

PETA posted both to NIH tweets and used the hashtag in this scenario. Participants would be looking at the tweets appearing on the hashtag (i.e. the conversation) and would have seen PETA's posts, and those following the tweet thread would have also seen PETA's posts. This means there would be no way to follow the information on the Twitter chat without being disrupted by the posts and being forced to work around them to get the relevant health information.

2. **Are you aware of complaints we've received against other types of posts, unrelated to animal testing? E.g., posts concerning Dr. Fauci, or posts concerning vaccine misinformation? I know I've asked this before, but Plaintiffs specifically want to know if the complaints NIH receives are really focused on PETA, or if NIH received complaints about inflammatory posts on a variety of subjects. I think Plaintiffs want to make the argument that NIH is targeted animal rights posts over other inflammatory posts when they are equally inappropriate. Since Plaintiffs want this answer as part of our fact stipulation negotiations, I think we have to provide it.**

Yes – we've received complaints about other inappropriate and/or off topic content that is not related to animal testing. Please see the screenshots and links to posts below.

- <https://www.facebook.com/43331696829/posts/10159317371801830/?d=n>
- <https://www.facebook.com/43331696829/posts/10159342469336830/?d=n>
- <https://www.facebook.com/100064843296393/posts/239873164850792/?d=n>
- <https://www.facebook.com/100064843296393/posts/251454613692647/?d=n>
- <https://www.facebook.com/100064843296393/posts/255266059978169/?d=n>
- <https://www.facebook.com/100064843296393/posts/255956623242446/?d=n>
- <https://www.facebook.com/nih.gov/posts/255820046589437>
- https://www.instagram.com/p/CT2N82Jlcui/?utm_medium=copy_link

Let us know if you any additional questions.

Thanks!
Anna

From: Kern, Anna (NIH/OD) [E]
Sent: Tuesday, January 18, 2022 3:25 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

You're correct – we did not delete these comments. I imagine since she made several comments in a row with no time in between the comments it violated FB's community standards and they were removed. See FB's policy regarding spam here: <https://transparency.fb.com/policies/community-standards/spam/>

Thanks!
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Tuesday, January 18, 2022 2:13 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks, Anna. So sorry but another question came in. Plaintiffs are claiming comments that showed up for them are no longer showing up and are asking if we deleted them. In the attached first document, the post shows 20 comments and Brittney Hopwood's comments containing words show. This is what she saw in July and she took screenshots at that time. In the attached second document, the post shows 7 comments, with only one comment viewable and none of Brittney Hopwood's comments. I looked on my personal account myself and confirmed I only see one viewable comment and none from Brittney Hopwood.

Plaintiffs' question is: Ms. Hopwood has confirmed that she did not delete these comments. Can you ask the NIH if they removed the comments at some point after they were initially posted?

I assume the answer is no, NIH did not delete these comments, but I wanted to double check with you.

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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Sent: Tuesday, January 18, 2022 11:44 AM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Yes – we'll get you those answers by COB. We'll elaborate in our response, but yes – while those activists posted from their own Twitter accounts, they tagged @NIH and used the NIH designated hashtag for the chat #NIHChat to ensure their responses appeared in the chat feed, so those comments did take place on a hashtag that NIH created. In addition to the activists, PETA tagged NIH and used the hashtag as well.

Thanks,

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Tuesday, January 18, 2022 11:32 AM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Is there any way you could get these answers to me by COB today? Thanks. I received a little more information on the Twitter question:

Plaintiffs are arguing that the relevant Twitter posts took place on the animal rights activists' own Twitter accounts; according to Plaintiffs, those Twitter posts did not take place on NIH's page. My understanding is that, perhaps, those activists "tagged" NIH's Twitter handle, which caused their comments to appear on NIH's Twitter page. Is that correct?

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, January 14, 2022 12:56 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Sure – we can get those answers to you by COB today. Thanks!

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, January 14, 2022 9:22 AM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer

<[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

I have two additional follow-up questions from the DOJ:

1. Were the twitter posts on the 10/3/14 discussion on brain health linked below posted directly on NIH's Twitter account main page? Or was there a separate "chat" where these were posted? Plaintiffs want to know if anyone that went to the NIH's twitter account during that time would have seen those posts.
2. Are you aware of complaints we've received against other types of posts, unrelated to animal testing? E.g., posts concerning Dr. Fauci, or posts concerning vaccine misinformation? I know I've asked this before, but Plaintiffs specifically want to know if the complaints NIH receives are really focused on PETA, or if NIH received complaints about inflammatory posts on a variety of subjects. I think Plaintiffs want to make the argument that NIH is targeted animal rights posts over other inflammatory posts when they are equally inappropriate. Since Plaintiffs want this answer as part of our fact stipulation negotiations, I think we have to provide it.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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From: Kern, Anna (NIH/OD) [E] [REDACTED]@nih.gov>

Sent: Monday, January 3, 2022 6:14 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Haley Spencer <[REDACTED]@palladianpartners.com>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Thanks for your patience on these! Still trying to track down number 3 – will have an update for you tomorrow. Thanks!

1. The NIH Facebook and Instagram pages currently link to the privacy policy, <https://www.nih.gov/about/privacy.htm>. Would you have any concerns about adding a link on both pages to the comment moderation guidelines in addition to the privacy policy? ***This is not a request yet, the DOJ is just weighing options.***

Not at all, this would be ok with us.

2. To prove the point that inflammatory comments may dissuade interested citizens from visiting the social media pages: Has the NIH received any complaints about animal rights comments on its social media pages? Has it

received complaints about other comments that it considers to be “off-topic” or “inflammatory”? If so, do you have any specific proof or examples?

Please see examples below and screenshots attached.

Full Twitter chat thread from 10/3/14 on brain health that was disrupted (Animal testing focused):

Specific examples of participants complaining of disruption:

- <https://twitter.com/MarieAnneLeCler/status/518098761617506304>
- <https://twitter.com/CreativeSage/status/518098626456088578>
- <https://twitter.com/CreativeSage/status/518170943727095809>
- <https://twitter.com/CreativeSage/status/518098132589371392>
- <https://twitter.com/tdverstynen/status/518108160880828416>
- <https://twitter.com/CreativeSage/status/518096043297488896>

Examples of other off-topic disrupting comments from Facebook and Instagram (mostly COVID misinformation):

- <https://www.facebook.com/43331696829/posts/10159317371801830/?d=n>
- <https://www.facebook.com/43331696829/posts/10159342469336830/?d=n>
- <https://www.facebook.com/100064843296393/posts/239873164850792/?d=n>
- <https://www.facebook.com/100064843296393/posts/251454613692647/?d=n>
- <https://www.facebook.com/100064843296393/posts/255266059978169/?d=n>
- <https://www.facebook.com/100064843296393/posts/255956623242446/?d=n>
- https://www.instagram.com/p/CT2N82Jlcui/?utm_medium=copy_link

3. In your last response, you mentioned NIH has had some form of guidelines for moderating content since November 2012. Can you provide the guidance used prior to the March 30, 2015 guidelines were posted?

We are still trying to locate this – the person who would know is out sick. Can we have until tomorrow on this?

4. The Plaintiffs believe Facebook account holders can set the “level” of the profanity filter (weak/strong/etc.). What level has the NIH selected for its Facebook profanity filter?

NIH has the “strong” profanity filter in place. This has been in place prior to Sep 2020 and continues to be in place.

5. During the relevant time period (Sep 2020 to now), has the NIH set any Facebook Live video-specific filtering?

No, but the general filters in place from Sep 2020 to now apply to Facebook Lives as well. Also, the platform attempts to prioritize most relevant comments on Facebook Lives, but off-topic comments still come through due to the volume of the comments coming through.

6. On Facebook, is it possible that “non-animal” would be hidden because it contains the filtered word “animal”?

No, the word has to match the keyword filters in order to be hidden. The phrase “non-animal” would not be hidden since it doesn’t match “animal.”

From: Kern, Anna (NIH/OD) [E]
Sent: Monday, January 3, 2022 12:57 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Most of us are back in the office, so we will aim to have these answers to you by COB today.

Thanks!
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 29, 2021 11:47 AM
To: Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Lydia,

Thanks for your response. We need to get a draft back to the Plaintiffs early next week, so that is fine but if there is any way I could have the answers back Monday COB or Tuesday am that would be ideal.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Sorry for the delay, I was off yesterday

Amanda and Anna are out this week but I can work on getting you answers to some of these; may not have it all until next week when I can consult with them however. Want to make sure the info is accurate!

I hope that works.

Thanks!

Lydia Polimeni

Office of Communications and Public Liaison

Office of the Director, National Institutes of Health

[REDACTED] | [REDACTED]@nih.gov



From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Monday, December 27, 2021 5:52 PM

To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi team,

I know some of you are out but I figured I would email the whole group the questions to see who is around and can answer a few questions this week. We are working on the next round of edits to the fact stipulation. Thank you very much for your help!

1. The NIH Facebook and Instagram pages currently link to the privacy policy, <https://www.nih.gov/about/privacy.htm>. Would you have any concerns about adding a link on both pages to the comment moderation guidelines in addition to the privacy policy? ***This is not a request yet, the DOJ is just weighing options.***
2. To prove the point that inflammatory comments may dissuade interested citizens from visiting the social media pages: Has the NIH received any complaints about animal rights comments on its social media pages? Has it received complaints about other comments that it considers to be "off-topic" or "inflammatory"? If so, do you have any specific proof or examples?
3. In your last response, you mentioned NIH has had some form of guidelines for moderating content since November 2012. Can you provide the guidance used prior to the March 30, 2015 guidelines were posted?
4. The Plaintiffs believe Facebook account holders can set the "level" of the profanity filter (weak/strong/etc.). What level has the NIH selected for its Facebook profanity filter?
5. During the relevant time period (Sep 2020 to now), has the NIH set any Facebook Live video-specific filtering?
6. On Facebook, is it possible that "non-animal" would be hidden because it contains the filtered word "animal"?

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney

Office of the General Counsel
Public Health Division, NIH Branch

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[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)

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Sent: Wednesday, December 22, 2021 7:43 PM

To: Imhoff, Sarah (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>; Kern, Anna (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>

Cc: Spruill, Crystal (NIH/OD) [C] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>; Prince, Scott (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>; Lankford, David (NIH/OD) [E] <[\[REDACTED\]@od31tm1.od.nih.gov](mailto:[REDACTED]@od31tm1.od.nih.gov)>; Myles, Renate (NIH/OD) [E] <[\[REDACTED\]@mail.nih.gov](mailto:[REDACTED]@mail.nih.gov)>; Polimeni, Lydia (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

Thanks for the update! I'm out next week, but Renate will be in. Good news on the extended deadline!

Have a great holiday season and a happy new year!

Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>

Sent: Wednesday, December 22, 2021 6:52 PM

To: Fine, Amanda (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>; Kern, Anna (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>

Cc: Spruill, Crystal (NIH/OD) [C] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>; Prince, Scott (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>; Lankford, David (NIH/OD) [E] <[\[REDACTED\]@od31tm1.od.nih.gov](mailto:[REDACTED]@od31tm1.od.nih.gov)>; Myles, Renate (NIH/OD) [E] <[\[REDACTED\]@mail.nih.gov](mailto:[REDACTED]@mail.nih.gov)>; Polimeni, Lydia (NIH/OD) [E] <[\[REDACTED\]@nih.gov](mailto:[REDACTED]@nih.gov)>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

Happy holidays! I am following up from our last call. As an update, we just received another draft of the fact stipulation back from the Plaintiffs. It is now due to the court January 14, 2022 due to an extension request and we will be continuing to negotiate the facts with them over the next 3 weeks. I expect to have a few additional factual questions for you next week. In the meantime, I wanted to send you an answer to your question from our last call:

Question: Could a decision in this case impact other NIH ICO social media accounts?

Answer: It will likely not, because the case is limited to NIH's main Facebook and Instagram accounts. However, there is a small risk that a court may apply it more broadly if they rule for PETA. It is likely Plaintiffs will use broad wording in their briefs in order to have a wide scope to attack any policy that might apply NIH's main Facebook and Instagram pages. If a court rules for PETA, they may be ruling with that broad scope in mind and apply it to all of NIH and not the two specific accounts at issue. The DOJ has seen the court apply the decision more broadly than they should before. However, the DOJ has this scope on their radar and they will be sure to be extremely clear with the court that this concerns only the two social media pages, and if there was a ruling adverse to NIH it should be limited to these two pages only. This is why the DOJ sees a broader application to other NIH social media accounts as a small risk.

Please let me know if you have any questions.

Thank you,

Released by Chairman Rand Paul

Sarah J. Imhoff, JD, MHSA
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

Thank you for responding at such a late hour! Looking forward to talking through this tomorrow.

Speak tomorrow,
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 8, 2021 11:24 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

I apologize for the confusion- my comments about the effect of losing the lawsuit – specifically the last two sentences of my prior email- need to be modified after further discussion with DOJ (yes at 11pm). I struck these sentences out below.

The effect of NIH losing the lawsuit depends on how the Judge ultimately chooses to frame the injunction. It is more likely than not that the injunction would specifically target (i) the animal-testing filters and/or (ii) all efforts to target animal testing comments. Of course, there's always a chance that a Judge can issue a broad injunction that, say, concludes that the NIH social media pages are public forums, and that no "content-based restrictions" are allowed, i.e. moderating any comments based on subject matter.

I hope this helps clarify that there are multiple options of how a judge could rule if NIH loses. Happy to discuss further on the call.

Thanks again,

Sarah J. Imhoff, JD, MHSA
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From: Imhoff, Sarah (NIH/OD) [E]

Sent: Wednesday, December 8, 2021 10:57 PM

To: Fine, Amanda (NIH/OD) [E] <@nih.gov>; Kern, Anna (NIH/OD) [E] <@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <@nih.gov>; Prince, Scott (NIH/OD) [E] <@nih.gov>; Lankford, David (NIH/OD) [E] <@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Thank you very much. I'm not sure we can get through everything in 30 minutes, but we can try. Lets tentatively set from 12:30-1pm.

As to your comment that you haven't stopped the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals yet, can you please double check to confirm these are still on the list? I just checked NIH's most recent Instagram posts from my own personal Instagram account and I see #stoptestingonanimals and #stopanimaltesting comments. If this is still on the filter list, then this adds confusion as to why these comments are not hidden. For example, I see a #stoptestingonanimals on the December 3rd post about the POTUS briefing and on the December 3rd post about the placenta image. I also see a #stopanimaltesting on the November 19th post on Marsha's Alzheimer's Caregiver story.

Essentially, your statement about the lawsuit is accurate, ~~but only for moderating off topic animal testing comments.~~ The lawsuit is about the animal-related keyword filters. To not fight the lawsuit, NIH would have to stop all animal-related keyword filters to appease the plaintiffs to drop the suit. Since manual hiding is not at issue in the lawsuit, NIH would have full discretion to do manual hiding. However, if NIH instead of using the keyword filters manually hid comments each day, it is likely plaintiffs would pick up on their comments being hidden and file another lawsuit about the hiding. So, in my opinion, I don't see the benefit of attempting to moderate the animal testing comments through another hiding mechanism, since it will likely just end up in another lawsuit as soon as plaintiffs notice their comments are hidden. If you see any other angle of how off-topic animal testing comments could be moderated without alarming the plaintiffs to want to file another lawsuit, then I'm happy to discuss.

Therefore, for NIH to continue moderating off-topic animal testing relating comments, it seems the only option is to defend NIH's practices through the lawsuit, and if NIH wins then it can continue as-is and have discretion to filter viewpoint-neutral animal-related keywords and conduct manual hiding, etc. If NIH doesn't win, then NIH would not be able to moderate off-topic animal testing comments. ~~The scope of an injunction would only apply to the animal testing keyword filters at issue. NIH would be able to continue to moderate off topic comments for subject matters outside of animals.~~

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
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Sent: Wednesday, December 8, 2021 8:57 PM

To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah-

So sorry for writing late. Crazy week for us! A call would be great, but we have another crazy day tomorrow and the best time that will work is 12:30-1pm. Will that work for you all as well?

I'm attaching our responses to your comments in the stipulations document. I've included the answers to your questions below (highlighted). To answer your question about the key policy decision maker: that would be Renate. In terms of who has the most information to talk through the stipulation—that would be all of the OCPL people on this email. We each have different pieces of the information.

My take away from the below explanation is that if we want to continue to moderate off topic comments on Facebook and Instagram, then we must decide to fight the lawsuit, and only if we win, then we could continue to do so. Is that accurate?

Looking forward to the call.

Thanks,
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>

Sent: Wednesday, December 8, 2021 6:32 PM

To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>

Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi,

I want to clarify my answer below to #1. I just heard from DOJ that they'd prefer holding on adding any new keywords to the filter list for right now. It would be easier to just litigate with the universe we have, rather than change the facts at a later stage. However, our fact stipulation will expressly reserve the right for NIH to add content neutral keyword filters to capture posts that violate the comment guidelines in the future.

Please let me know if you have any further questions about this point.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel

Public Health Division, NIH Branch

(direct)

[@nih.gov](#)

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Sent: Monday, December 6, 2021 9:52 PM

To: Kern, Anna (NIH/OD) [E] <[@nih.gov](#)>

Cc: Spruill, Crystal (NIH/OD) [C] <[@nih.gov](#)>; Prince, Scott (NIH/OD) [E] <[@nih.gov](#)>; Lankford, David (NIH/OD) [E] <[@od31tm1.od.nih.gov](#)>; Myles, Renate (NIH/OD) [E] <[@mail.nih.gov](#)>; Fine, Amanda (NIH/OD) [E] <[@nih.gov](#)>; Polimeni, Lydia (NIH/OD) [E] <[@nih.gov](#)>

Subject: RE: PETA Lawsuit Update and Requests for Information

Hi team,

I also reviewed the document you sent over and have a few follow-up responses/questions:

1. For the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals, NIH chose option #1- . Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work. You asked "Can we add filters in the future as long as they're neutral?" **Answer- As things currently stand with our litigation strategy, NIH can add neutral filters now and in the future. If the court issues an injunction based on a ruling that NIH's social media pages are designated public forums, it is possible NIH would not be able to include neutral filters to prevent discussion about a broad topic, such as animal testing generally or COVID vaccinations generally.**

Question- What date did NIH remove the Instagram filters #stopanimaltesting, #stoptesting, and #stoptestingonanimals? We have not done that yet, but can be done immediately.

2. To follow-up on the inquiry about pro-animal testing comments, the DOJ would like to make the argument that the NIH doesn't have a policy of targeting anti-animal testing posts. Posts defending animal testing, as much as posts critical of animal testing, would not be permitted if they are off-topic, inflammatory, etc. I know you said you don't have any examples of hiding pro-animal testing comments, but again, if we can include examples of where the filters caught some of those posts, whether separate posts or posts in response to an anti-animal testing post, that would help. If there are any issues where there might have been more debate that you could browse through to double check, such as maybe the beagle uproar, that would be helpful.

We'll continue to look, but this is not a scenario that happens because people aren't really posting pro-animal testing. However we do have examples of other instances where we have hidden comments that were off topic. For example we posted about NIH's ending structural racism effort, and there were comments about Wuhan Institute of Virology and Ivermectin that were hidden for being off topic.

Thank you,

Sarah J. Imhoff, JD, MHSA

Senior Attorney

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Released by Chairman Rand Paul

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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information
Importance: High

Hi Anna and team,

Thank you so much! This is extremely helpful. I will work with DOJ on incorporating this information into the facts. Please see my responses below in red.

After all your work, I already have a request for follow-up. The draft stipulation of facts we received from the Plaintiffs included a number of examples of specific comments that were hidden from NIH's Facebook and Instagram. They attribute these hidden comments to NIH's Facebook and Instagram filter lists. Interestingly, we have discovered that the HHS Facebook comments plaintiffs mention were likely filtered through Facebook's own spam filter, as HHS does not filter "monkey" from its Facebook comments (as a reminder, Plaintiffs only claimed HHS' Facebook blocked the word monkey and only gave a few examples). Due to this, DOJ is currently discussing removing HHS from the lawsuit with Plaintiffs, so then the only defendant would be NIH. Therefore, we'd like to confirm that these hidden comments were actually based on NIH's own filters and not some other mechanism.

I have attached a document of all of the examples Plaintiffs included. Could you please investigate the following:

- 1. Check each example on Facebook and Instagram, to the extent possible, to confirm that NIH's filters did indeed hide these comments.** I reviewed all of the examples myself against the Facebook/Instagram filter lists to ensure at least one word in each example is on the filter lists, and inserted a comment where there are discrepancies.
- 2. Where I inserted a comment where there are discrepancies, please respond to the comments to let me know whether you think the filters did capture these terms, whether they were manually hidden by NIH or whether you think Facebook or Instagram's own filters may have been in effect.**

As far as timing, the DOJ wants to submit our edits to the proposed stipulation of facts on Wednesday or Thursday at the latest to allow time for some back and forth with the plaintiffs before the deadline. Please let me know if you can get back to me on this by COB tomorrow. I apologize for the continued short turn around time. The stipulation is likely our only opportunity to get the facts in the record.

I'd also like to schedule a quick call with the key decision maker and the person who has the most comprehensive knowledge of the facts to review the facts presented and ensure there are no other key facts that might be useful to include. I can provide a copy of the draft fact stipulation in advance, or review a summary of the facts with you during the call.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

Released by Chairman Rand Paul

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Sent: Monday, December 6, 2021 6:31 PM
To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Since there were quite a few questions and requests for screenshots, we have compiled our responses in the attached word doc. Our answers to your questions are highlighted in yellow. Please let us know if you have any questions regarding the responses. We have two main questions for you and DOJ:

1. **Can the chief policy maker just be NIH or do we have to name a specific person? We'd prefer to not name a specific person given the history of PETA sharing people's personal information with their supporters.**

OGC- David Lankford and I- would like to know the ultimate NIH decision-maker for this lawsuit. The person's name will not be given to Plaintiffs and is for our own internal coordination purposes only.

2. **Our desired outcome is to still be able to moderate comments, specifically those comments that are off topic to the posts. Based on this desired outcome, which path would OGC recommend we take with this lawsuit?**

I will get back to you on this shortly after further discussion.

Thank you,

Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, December 3, 2021 1:16 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Great, thanks so much Anna!

Sarah J. Imhoff, JD, MHSA
Senior Attorney
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

We don't have a decision on those quite yet, we just removed "peta" and "petalatino" for now. Hoping to have a decision on Monday.

Thanks!
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Friday, December 3, 2021 1:10 PM
To: Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Anna,

Thanks so much for the update. To clarify, what was your group's decision on the Instagram filters #stopanimaltesting; #stoptesting; and #stoptestingonanimals? If you don't have a decision on those filters yet, that is fine.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
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Sent: Friday, December 3, 2021 12:36 PM
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Sarah,

Thanks so much for the extension. We did want to update and let you know that we have removed the filters you mentioned below on Facebook and Instagram today, so you can give the date of 12/3/21 to DOJ as when the filters were removed.

Thanks!
Anna

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Thursday, December 2, 2021 12:42 PM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi everyone,

Plaintiffs agreed to an extension, so COB Monday works well for getting the additional information back to us.

Thanks so much,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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To: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks Sarah! Much much appreciated.

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 1, 2021 11:55 AM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Hi Amanda,

Released by Chairman Rand Paul

Wow of course! I'll check with DOJ on timeline. I know they thought if we were going to make the deadline we'd need to get a draft back to PETA by the weekend... but they were already thinking we wouldn't make it since PETA got us their draft later than they promised....I know its super short notice. I'll touch base with them to see if they can get started on an extension request today to get us some additional time.

Thanks,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
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Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information

Thanks, Sarah! We'll take a look and try to get you answers. I'm out tomorrow and Friday, and we're handling the POTUS visit tomorrow, so we're completely underwater. Is there any possibility for us to get back to you by COB Monday? I know it's longer than ideal, but just want to make sure we are able to give this the attention it needs.

Thanks!
Amanda

From: Imhoff, Sarah (NIH/OD) [E] <[REDACTED]@nih.gov>
Sent: Wednesday, December 1, 2021 11:43 AM
To: Fine, Amanda (NIH/OD) [E] <[REDACTED]@nih.gov>; Kern, Anna (NIH/OD) [E] <[REDACTED]@nih.gov>; Polimeni, Lydia (NIH/OD) [E] <[REDACTED]@nih.gov>; Myles, Renate (NIH/OD) [E] <[REDACTED]@mail.nih.gov>
Cc: Spruill, Crystal (NIH/OD) [C] <[REDACTED]@nih.gov>; Prince, Scott (NIH/OD) [E] <[REDACTED]@nih.gov>; Lankford, David (NIH/OD) [E] <[REDACTED]@od31tm1.od.nih.gov>
Subject: RE: PETA Lawsuit Update and Requests for Information
Importance: High

Hi everyone,

I had a call with DOJ yesterday and am writing to answer questions from the last call, provide an update as to next steps and ask for some additional information. I thought it would be helpful to have this all in writing, but if you would like to have a call to discuss please let me know. The DOJ unfortunately needs the additional information ASAP, so if you could provide it by tomorrow that would be very helpful.

As a first matter, **we'd like to know who is the ultimate decision-maker for the team.** There is a policy decision to be made, as described below, and we want to ensure the appropriate person is looped in and making the decision.

Questions from Last Call

1. Should NIH should stop its blocking non-viewpoint neutral keywords? NIH should stop blocking the following keywords immediately:

Facebook

- Peta
- Petalatino

Instagram

- Peta

When this is done, please let me know so I can give the date these keywords were no longer blocked to the DOJ.

In terms of the following Instagram filters:

- #stopanimaltesting
- #stoptesting
- #stoptestingonanimals

The DOJ is leaving this as a policy decision for NIH. The ideal solution would be for NIH to still achieve its desired goals without having these one-sided keywords blocked. For example, if the hashtag #testing is blocked, will that also block #stopanimaltesting, #stoptesting, and #stoptestingonanimals? Or, does the entire phrase need to be blocked for it to work? I do see “testing” is a manual filter, but not hashtag #testing- does this make a difference?

The options are: 1. Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work, 2. Keep the above filters but add a hashtag representing the pro-animal testing side to achieve neutrality, if there are any commonly used pro-animal testing words or hashtags such as #keepanimaltesting, 3. Remove the filters without additional changes if it isn't making much of a difference, or 4. Keep the filters without additional changes if options #1 and #2 are not feasible and these filters are key to stopping harassment from PETA.

If you are considering option #4, while a court may find that these keywords are not viewpoint neutral, the DOJ said the worst that would happen is a court would order NIH to stop filtering these terms as part of its ruling. But, ideally we'd prefer options #1-3 for a stronger case.

2. What are the ramifications if NIH does not win the lawsuit? What does that mean NIH will and will not be able to moderate on its Facebook and Instagram pages?

The DOJ explained that if NIH fully loses the case and the judge deems NIH's Facebook and Instagram as public forums and grants an injunction, NIH would still be able to moderate the platforms for the categories of speech that are not protected by the First Amendment, such as obscenity, fighting words, defamation, incitement to induce imminent lawless action, true threats, and solicitations to commit crimes. The DOJ did say that the NIH would not be able to moderate off-topic comments if the injunction is granted.

If the NIH only lost on the viewpoint discrimination argument, but the platforms were not viewed as public forums, the DOJ's preliminary opinion is that the comment guidelines would only need a slight modification to clarify that animal testing as a general topic is off limits.

Overall, the DOJ's opinion is that even if NIH fully lost the lawsuit, NIH would not be in a worse position than if it did not fight the lawsuit. Essentially, losing the lawsuit would only allow NIH to moderate the areas of speech that are not protected by the First Amendment and to not have any discretion outside of these areas. It appears that NIH not fighting the lawsuit and removing all animal-related filters would have a similar effect, although by not being under a court order NIH would still have discretion to moderate as it pleases, which would include off topic comments. However, if NIH

Released by Chairman Rand Paul

removes all of the animal related filters to get PETA to drop the lawsuit and then manually moderates PETA's off topic comments, PETA may file another lawsuit about the manual moderation so it may not get us very far.

Please let us know your thoughts on if you are in agreement with the DOJ's assessment that losing the case versus not fighting it would have a similar effect.

Next Steps and Additional Requests for Information

The DOJ and PETA have agreed to file a stipulation of facts to avoid discovery, and then the briefs for summary judgement will be drafted based on these facts. Summary judgement means the judge will make a decision on the injunction based on the briefs without holding a full trial. The deadline for the stipulation of facts is next Wednesday, December 8th but this may be pushed back a few days. The DOJ seeks some additional information from the NIH to fill in the facts, outlined below:

1. Manual Moderation of Comments
 - a. What was the exact date NIH stopped manually moderating comments? I know it was after the lawsuit was filed, but can you give us the date?
 - b. When NIH was manually moderating comments, what was the frequency? For example, was the manual hiding of comments weekly? daily? every 4 hours Monday-Friday? constantly?
2. Comment Guidelines- In its complaint, PETA states NIH's Facebook was created on October 14, 2008 (and Instagram created in 2018). From our emails, you stated OGC approved the Comment Guidelines in January 2015.
 - a. Do you know the exact date the Comment Guidelines become in effect?
 - b. Before these Comment Guidelines, were any other comment policy or guidelines in place from 2008-2015 for Facebook commenting?
3. Pro-Animal Testing Comments
 - a. Is there any way you could find examples of pro-animal testing comments that were hidden? This can either be the comment itself, or a comment thread where there was an anti-animal testing comment and a pro animal testing advocate replied to that comment, but the entire comment thread with replies to the original comment was hidden? It would be very helpful if you could find 2-3 examples of this and provide us with screenshots. If the comment was manually hidden, that is fine. It would be preferable if you could find this during the time frame of the complaint, which is between September 2020 to September 2021.
4. PETA's effect on NIH Goals- The DOJ would like to include an argument showing how PETA's spamming of off topic comments inhibits NIH's mission. As the keyword blocking does target animal testing and PETA as we've discussed, the DOJ wants to justify this targeting to state that the case isn't a debate about animal testing but about harassment from PETA.
 - a. Do you have any statistics about how often PETA comments compared to other comments? Or statistics about how many comments are about animal testing? If there is any way DOJ could state animal testing comments are 50% of the comments received but the NIH has only posted about animal testing for 5% of its posts, that would be helpful.
 - b. Could you find specific examples of how PETA stands out among all other groups and comments? We are looking for some extreme examples of PETA's comments where they go over the top to highlight 2-3 examples with screenshots.
 - c. In addition, extreme examples of PETA's past actions not involving the social media platforms will help as well. On our last call you mentioned a campaign against Elisabeth Murray. 1-2 examples with screenshots or other documentation would be helpful.

Thank you very much, and happy to have a call to review all of this.

Thank you,

Sarah J. Imhoff, JD, MHSA

Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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Subject: Call Regarding Update on NIH Facebook/Instagram Lawsuit

Hi everyone,

David Lankford and I would like to schedule a call with you to give an update on our discussions with the DOJ this week, some additional questions we have and your initial thoughts on DOJ's current proposed next steps. We haven't received any firm advice on what NIH should do moving forward yet, but wanted to get your opinion on DOJ's current next steps to see whether we should have further discussions with them about their proposed strategy.

Can you please let me know when your team is available for a discussion this Friday, 11/12? We are open except from 3-4pm.

Thank you,

Sarah J. Imhoff, JD, MHSA
Senior Attorney
Office of the General Counsel
Public Health Division, NIH Branch
[REDACTED] (direct)
[REDACTED]@nih.gov

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Questions from Last Call

1. **Should NIH should stop its blocking non-viewpoint neutral keywords? NIH should stop blocking the following keywords immediately:**

Facebook

- Peta
- Petalatino

Instagram

- Peta

When this is done, please let me know so I can give the date these keywords were no longer blocked to the DOJ. **DONE ON 12/3/21**

In terms of the following Instagram filters:

- #stopanimaltesting
- #stoptesting
- #stoptestingonanimals

The DOJ is leaving this as a policy decision for NIH. The ideal solution would be for NIH to still achieve its desired goals without having these one-sided keywords blocked. For example, if the hashtag #testing is blocked, will that also block #stopanimaltesting, #stoptesting, and #stoptestingonanimals? Or, does the entire phrase need to be blocked for it to work? I do see “testing” is a manual filter, but not hashtag #testing- does this make a difference?

- Entire phrase needs to be put as a filter for it to be blocked. “Testing” would only block “testing.”

The options are:

1. Remove the above filters and use a different neutral keyword hashtag to achieve the same effect to help stop the barrage of comments from PETA, such as #testing or #animals, if this would work – NIH chooses this option

Question: Can we add filters in the future as long as they’re neutral?

2. Keep the above filters but add a hashtag representing the pro-animal testing side to achieve neutrality, if there are any commonly used pro-animal testing words or hashtags such as #keepanimaltesting,

3. Remove the filters without additional changes if it isn’t making much of a difference, or

4. Keep the filters without additional changes if options #1 and #2 are not feasible and these filters are key to stopping harassment from PETA.

If you are considering option #4, while a court may find that these keywords are not viewpoint neutral, the DOJ said the worst that would happen is a court would order NIH to stop filtering these terms as part of its ruling. But, ideally we'd prefer options #1-3 for a stronger case.

2. What are the ramifications if NIH does not win the lawsuit? What does that mean NIH will and will not be able to moderate on its Facebook and Instagram pages?

The DOJ explained that if NIH fully loses the case and the judge deems NIH's Facebook and Instagram as public forums and grants an injunction, NIH would still be able to moderate the platforms for the categories of speech that are not protected by the First Amendment, such as obscenity, fighting words, defamation, incitement to induce imminent lawless action, true threats, and solicitations to commit crimes. The DOJ did say that the NIH would not be able to moderate off-topic comments if the injunction is granted.

If the NIH only lost on the viewpoint discrimination argument, but the platforms were not viewed as public forums, the DOJ's preliminary opinion is that the comment guidelines would only need a slight modification to clarify that animal testing as a general topic is off limits.

Overall, the DOJ's opinion is that even if NIH fully lost the lawsuit, NIH would not be in a worse position than if it did not fight the lawsuit. Essentially, losing the lawsuit would only allow NIH to moderate the areas of speech that are not protected by the First Amendment and to not have any discretion outside of these areas. It appears that NIH not fighting the lawsuit and removing all animal-related filters would have a similar effect, although by not being under a court order NIH would still have discretion to moderate as it pleases, which would include off topic comments. However, if NIH removes all of the animal related filters to get PETA to drop the lawsuit and then manually moderates PETA's off topic comments, PETA may file another lawsuit about the manual moderation so it may not get us very far.

Please let us know your thoughts on if you are in agreement with the DOJ's assessment that losing the case versus not fighting it would have a similar effect.

Next Steps and Additional Requests for Information

The DOJ and PETA have agreed to file a stipulation of facts to avoid discovery, and then the briefs for summary judgement will be drafted based on these facts. Summary judgement means the judge will make a decision on the injunction based on the briefs without holding a full trial. The deadline for the stipulation of facts is next Wednesday, December 8th but this may be pushed back a few days. The DOJ seeks some additional information from the NIH to fill in the facts, outlined below:

1. Manual Moderation of Comments

1. What was the exact date NIH stopped manually moderating comments? I know it was after the lawsuit was filed, but can you give us the date? **9/10/21**



2. When NIH was manually moderating comments, what was the frequency? For example, was the manual hiding of comments weekly? daily? every 4 hours Monday-Friday? constantly? It was sporadic, as we haven't had the support to manually moderate, so we let the filters do most of the work. At most, we'd maybe manually hide a comment 1-2 times a month. If a comment was hidden manually it was most likely because it had an expletive or violent threat, which may not have always been related to PETA.
2. Comment Guidelines- In its complaint, PETA states NIH's Facebook was created on October 14, 2008 (and Instagram created in 2018). From our emails, you stated OGC approved the Comment Guidelines in January 2015.
 1. Do you know the exact date the Comment Guidelines become in effect? OGC approved blog comment guidelines January 2015. The guidelines page was posted on March 30, 2015.
 2. Before these Comment Guidelines, were any other comment policy or guidelines in place from 2008-2015 for Facebook commenting? There were existing guidelines from November 2, 2012 that were not vetted by OGC as far as we are aware.
3. Pro-Animal Testing Comments
 1. Is there any way you could find examples of pro-animal testing comments that were hidden? This can either be the comment itself, or a comment thread where there was an anti-animal testing comment and a pro animal testing advocate replied to that comment, but the entire comment thread with replies to the original comment was hidden? It would be very helpful if you could find 2-3 examples of this and provide us with screenshots. If the comment was manually hidden, that is fine. It would be preferable if you could find this during the time frame of the complaint, which is between September 2020 to September 2021.

No, but if someone threaded a pro-animals in research response to a comment that had been manually hidden because it was off topic, their response would be hidden as well.
4. PETA effect on NIH Goals- The DOJ would like to include an argument showing how PETA's spamming of off topic comments inhibits NIH's mission. As the keyword blocking does target animal testing and PETA as we've discussed, the DOJ wants to justify this targeting to state that the case isn't a debate about animal testing but about harassment from PETA.
 1. Do you have any statistics about how often PETA comments compared to other comments? Or statistics about how many comments are about animal testing? If there is any way DOJ could state animal testing comments are 50% of the comments received but the NIH has only posted about animal testing for 5% of its posts, that would be helpful.

We do not have statistics as we don't have a way to measure that through our analytics platforms. The only way to get that information is to count manually. But for example, for the last 20 posts on NIH's Instagram, none of which were related to animal testing, at least one PETA supporter commented about animal testing on 16 out of 20 of those posts.

We have observed that most PETA related comments are on our Instagram rather than our Facebook account. When PETA calls out NIH publicly on their social media channels, which they do frequently (at least a few times a month), it increases the number of PETA comments on our posts. Below are recent examples of where they have tagged NIH's social media channels to send their followers to our pages and their allegations are inaccurate:

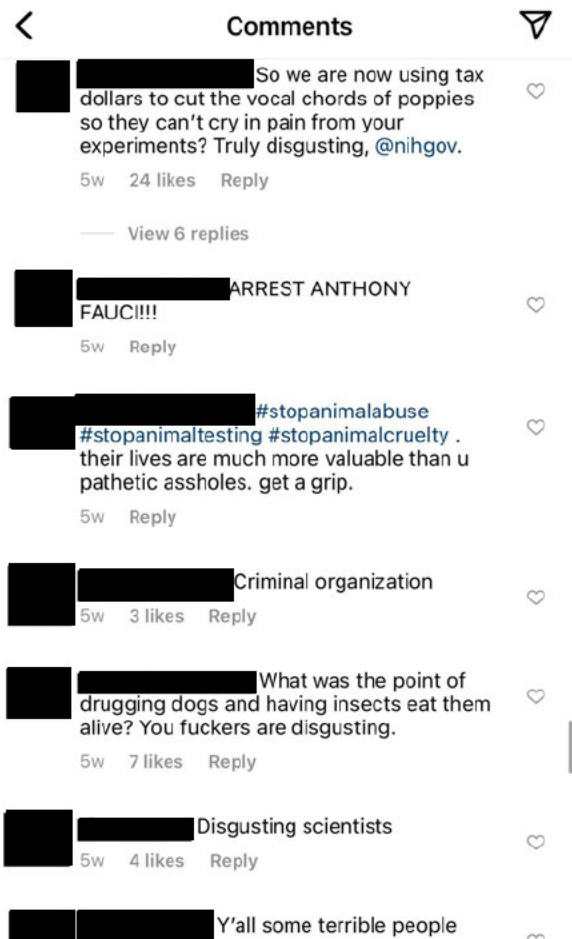
- <https://www.instagram.com/p/CWJI4GLv4oZ/>
- <https://www.instagram.com/p/CWEnIJXvVKw/>
- <https://www.instagram.com/p/CVd2bQwPMYV/>
- <https://www.facebook.com/official.peta/posts/10160183334769586>
- <https://www.facebook.com/official.peta/posts/10160180615084586>
- <https://www.facebook.com/official.peta/posts/10160143308534586>
- Washington Post article:
<https://www.washingtonpost.com/investigations/2021/11/19/fauci-beagle-white-coat-waste/>

Could you find specific examples of how PETA stands out among all other groups and comments? We are looking for some extreme examples of PETA's comments where they go over the top to highlight 2-3 examples with screenshots.

All of these posts/screenshots include extreme examples. As you can see, the NIH posts have nothing to do with animal testing and include important information (ex. Alzheimer's caregiving info, sickle cell anemia info) and the comments are extremely disruptive to the overall information and conversation of the post.

- https://www.instagram.com/p/CVVrLYfsV3X/?utm_medium=copy_link
- https://www.instagram.com/p/CWLfu4JsV4j/?utm_medium=copy_link
- https://www.instagram.com/p/CT7qcxnJYVC/?utm_medium=copy_link
- https://www.instagram.com/p/CVRUwPdthav/?utm_medium=copy_link

< Comments	< Comments >
PUPPY KILLERS 5w Reply	CLOSE THIS SHIT DOWN WE DONT NEED YOU NIH 5w 1 like Reply
Save the beagles 5w Reply	Save yourself from herpes virus with natural remedies from 5w Reply
Save beagles 5w Reply	I have been cured from genital herpes I know how it feels thinking nothing else can be done 5w Reply
PUPPY KILLERS 🤢 5w 1 like Reply	Take down the government 5w Reply
SAVE THE PUPPIES 🤢🤢 🤢 SAY NO TO EVIL SCIENCE 5w 1 like Reply	You guys all deserve a one way ticket to GITMO especially Fauci. 5w Reply
Puppy killer. You lost all respect! 5w 1 like Reply	MONSTERSS!!!!!! 🤢🤢 5w Reply
Absolutely despicable 5w 1 like Reply	#adrenochromeproduction 5w Reply
#firefauci 5w Reply	#animalcruelty 5w Reply
Wait till u find out what they are doing to the children... with VACCINES....	#faucilieddogs died



In addition, extreme examples of PETA's past actions not involving the social media platforms will help as well. On our last call you mentioned a campaign against Elisabeth Murray. 1-2 examples with screenshots or other documentation would be helpful.

PETA Calls to Protest at Medical Center Metro/NIH Campus

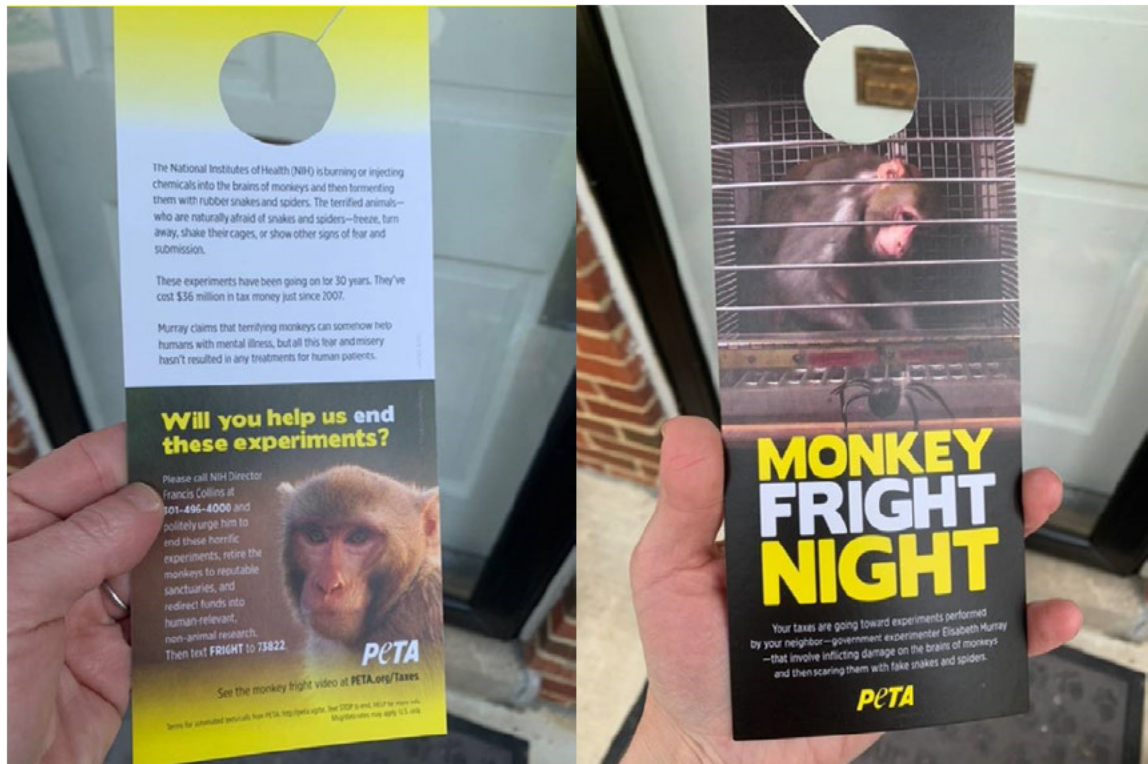
- <https://www.peta.org/features/apologists-support-experiments-on-monkeys/>
- <https://www.peta.org/media/news-releases/giant-mutilated-mouse-to-protest-near-drowning-at-nih-metro-station/>
- <https://www.peta.org/blog/ad-campaign-cruel-nih-experiments-baby-monkeys/>
- <https://www.peta.org/media/news-releases/peta-to-screen-graphic-footage-of-taxpayer-funded-nih-monkey-fright-experiments/>
- <https://support.peta.org/page/1866/action/1>

PETA Harassment of Elisabeth Murray

- <https://investigations.peta.org/nih-monkey-torture/campaign-updates/>









Released by Chairman Rand Paul



your site is hacked. Please inform FB. Just scroll down the list of comments whenever you mention vaccines or Covid. Some responses are still in Russian and too many others are repeated comments - almost verbatim. I had to scroll up to the top of the page because I thought i was on Fox News or Newsmax. 90% of the comments are negative and attempting to discredit your posts as well as science and facts.

#25868213.1

Released by Chairman Rand Paul

Why do these people in the comments follow a science page if their anti-understanding any of it? It'd be great if they were actual trying, but they're just spouting nonsense. 🤨

7w

Like

Reply

Released by Chairman Rand Paul

  These people are the ones literally killing you. 🤔

15w 3 likes Reply



 burner30284 

You're the ones killing people with misinformation.

15w 1 like Reply



Released by Chairman Rand Paul

.@NIH mentioned research about retina issues and Alzheimers, but I missed those tweets due to @peta — important for my family. #NIHchat

1:59 PM · Oct 3, 2014 · erased4838853