



OVERTURNED

2021-013-IG-UA



Ayahuasca brew

The Oversight Board has overturned Meta's decision to remove a post discussing the plant-based brew ayahuasca.

Policies and topics

-  Cultural events, Health, Religion
-  Regulated goods

Region and countries

-  Latin America and the Caribbean
-  Brazil

Platform

-  Instagram

Attachments

[Public Comments 2021-013-IG-UA](#)

Case summary.

Note: On October 28, 2021, Facebook announced that it was changing its company name to Meta. In this text, Meta refers to the company, and Facebook continues to refer to the product and policies attached to the specific app.

The Oversight Board has overturned Meta's decision to remove a post discussing the plant-based brew ayahuasca. The Board found that the post did not violate Instagram's Community Guidelines as they were articulated at the time. Meta's human rights responsibilities also supported restoring the content. The Board recommended that Meta change its rules to allow users to discuss the traditional or religious uses of non-medical drugs in a positive way.

About the case

In July 2021, an Instagram account for a spiritual school based in Brazil posted a picture of a dark brown liquid in a jar and two bottles, described as ayahuasca in the accompanying text in Portuguese. Ayahuasca is a plant-based brew with psychoactive properties that has religious and ceremonial uses including among Indigenous groups in South America. The text states that "AYAHUASCA IS FOR THOSE WHO HAVE THE COURAGE TO FACE THEMSELVES" and includes statements that ayahuasca is for those who want to "correct themselves," "enlighten," "overcome fear" and "break free."

The post was flagged for review by Meta's automated systems because it had received around 4,000 views and was "trending." It was then reviewed by a human moderator and removed.

Key findings

Meta told the Board it removed the post because it encouraged the use of ayahuasca, a non-medical drug. The company stated that "the user described ayahuasca with a heart emoji, referred to it as 'medicine,' and stated that it 'can help you.'"

The Board finds that while the content violated Facebook's Regulated Goods Community Standard which prohibits content which speaks positively about the use of non-medical drugs, it did not violate Instagram's Community Guidelines which, at the time, only covered

the sale and purchase of illegal or prescription drugs.

Meta's international human rights responsibilities support the Board's decision to restore the content. The Board is concerned that the company continues to apply Facebook's Community Standards on Instagram without transparently telling users it is doing so. The Board does not understand why Meta cannot immediately update the language in Instagram's Community Guidelines to tell users this. Meta also did not tell the user in this case what part of its rules they violated.

The Board also disagrees with Meta's claim that prohibiting positive comments about ayahuasca was necessary in this case to protect public health. The post, which mainly discussed the use of ayahuasca in a religious context, was not closely linked to the possibility of harm. The user did not post instructions for using ayahuasca or information about its availability.

To respect diverse traditional and religious practices, the Board recommends that Meta change its rules on regulated goods to allow positive discussion of traditional or religious uses of non-medical drugs which have a recognized traditional or religious use.

The Oversight Board's decision

The Board overturns Meta's decision to remove the content, and requires that the post be restored.

As a policy advisory statement, the Board recommends that Meta:

- Explain to users that it enforces Facebook's Community Standards on Instagram, with several specific exceptions. Meta should update the introduction to Instagram's Community Guidelines within 90 days to inform users that if content is considered violating on Facebook, it is also considered violating on Instagram.
- Explain to users precisely what rule in the content policy they have violated.
- Modify Instagram's Community Guidelines and Facebook's Community Standard on Regulated Goods to allow positive discussion of the traditional or religious uses of non-medical drugs where there is historic evidence of such use. Meta should also make public all allowances, including existing

allowances.

*Case summaries provide an overview of the case and do not have precedential value.

Full case decision

1. Decision summary

The Oversight Board overturns Meta’s decision to remove an Instagram post discussing ayahuasca in the context of religious or traditional use. The Board concludes that while the content violates Facebook’s Community Standards and the updated Instagram Community Guidelines, the platforms’ stated values and international human rights principles support restoring the content. The Board also recommends that Instagram and Facebook adjust the relevant policies to permit positive discussion of religious or traditional uses of non-medical drugs where there is historic evidence of such use.

2. Case description

In July 2021, an Instagram account for a spiritual school based in Brazil posted a picture of a dark brown liquid in a jar and two bottles, described as ayahuasca in the accompanying text in Portuguese. Ayahuasca is a plant-based brew with psychoactive properties that has deeply-rooted religious and ceremonial uses among Indigenous and other groups in some South American countries, and related communities elsewhere. Ayahuasca contains plants which are sources of dimethyltryptamine (DMT), a substance that is prohibited under Schedule I of the 1971 UN Convention on Psychotropic Substances and the law of many countries, though there are relevant exceptions under international law for substances containing DMT such as ayahuasca, and exceptions under some national laws, including in Brazil, for other uses such as religious and Indigenous use.

The text states that “AYAHUASCA IS FOR THOSE WHO HAVE THE COURAGE TO FACE THEMSELVES” and includes statements that ayahuasca is for those who want to “correct themselves,” “enlighten,” “overcome fear” and “break free.” It further states ayahuasca is a “remedy” and “can help you” if one has humility and respect. It ends with “Ayahuasca, Ayahuasca!/Gratitude, Queen of the Forest!”

The content was viewed over 15,500 times and no users reported it. The post was flagged for review by Meta’s automated systems because it had received around 4,000 views and was

“trending.” Meta specified neither the image nor the text triggered automatic review. The post was subsequently reviewed by a human moderator and removed. Meta told the Board that it was removed for violating Facebook’s Community Standard on Regulated Goods, but later stated it removed the content for “violating the Instagram Community Guidelines, which include a link to the Facebook Community Standard on Regulated Goods.” Meta notified the user that the post went against Instagram’s Community Guidelines, stating “post removed for sale of illegal or regulated goods.” The messaging also noted that Meta removes “posts promoting the use of hard drugs.”

After another human review of the content, Meta upheld its initial decision to remove the content. Meta notified the user of its decision and they then appealed to the Oversight Board.

3. Authority and scope

According to its Charter, the Oversight Board is an independent body designed to protect free expression by making principled, independent decisions about important pieces of content. It operates transparently, exercising neutral, independent judgement and rendering decisions impartially. The Board has the power to review Meta’s decision following an appeal from the user whose post was removed (Charter Article 2, Section 1; Bylaws Article 3, Section 1). The Board may uphold or reverse that decision, and its decision is binding on Meta (Charter Article 4).

The Board’s decisions may include policy advisory statements with recommendations. These recommendations are non-binding, but Meta must respond to them (Charter Article 3, Section 4).

4. Relevant standards

The Oversight Board considered the following standards in its decision:

1. Meta’s content policies

This case involves Instagram’s Community Guidelines and Facebook’s Community Standards. Meta’s Transparency Center states that “Facebook and Instagram share content policies. This means if content is considered violating on Facebook, it is also considered violating on Instagram.”

At the time this content was posted and removed, Instagram’s Community Guidelines prohibited “buying or selling illegal or prescription drugs (even if legal in your region)” under the subheading “Follow the Law.” Users are instructed to “Remember to always follow the law when offering to sell or buy other regulated goods.” The phrase “regulated goods” links to Facebook’s Community Standard on Regulated Goods. On October 26, 2021, Meta updated this section of Instagram’s Community Guidelines in response to previous Board recommendations (see Section 8.3 below) and prompted by the Board’s decision to review this case. Under the subheading “Follow the Law,” Meta removed the reference to “illegal or prescription drugs,” replacing it with “non-medical or pharmaceutical drugs,” and added language to prohibit “buying or selling non-medical or pharmaceutical drugs [and] remove content that attempts to trade, co-ordinate the trade of, donate, gift, or ask for non-medical drugs, as well as content that either admits to personal use (unless in the recovery context) or coordinates or promotes the use of non-medical drugs.”

Facebook’s Community Standard on Regulated Goods has a section on non-medical drugs which prohibits content that “[c]oordinates or promotes (by which we mean speaks positively about, encourages the use of, or provides instructions to use or make) non-medical drugs.”

II. Meta’s values

Meta’s values are outlined in the introduction to Facebook’s Community Standards. The value of “Voice” is described as “paramount”:

The goal of our Community Standards has always been to create a place for expression and give people a voice. [...] We want people to be able to talk openly about the issues that matter to them, even if some may disagree or find them objectionable.

Meta limits “Voice” in service of four values, the relevant ones in this case being “Safety” and “Dignity”:

“Safety”: We’re committed to making Facebook a safe place. Content that threatens people has the potential to intimidate, exclude or silence others and isn’t allowed on Facebook.

“Dignity”: We believe that all people are equal in dignity and rights.

III. Human rights standards

- The UN Guiding Principles on Business and Human Rights (UNGPs), endorsed by the UN Human Rights Council in 2011, establish a voluntary framework for the human rights responsibilities of private businesses. The Board's analysis of Meta's human rights responsibilities in this case was informed by the following human rights standards. Meta's [Corporate Human Rights Policy](#), announced [March 16, 2021](#), reflects the company's commitment to respect rights as reflected in the UNGPs.
- [The right to freedom of opinion and expression](#): Article 19, International Covenant on Civil and Political Rights ([ICCPR](#)); [General Comment No. 34](#), Human Rights Committee, 2011; UN Special Rapporteur on freedom of opinion and expression, reports: [A/HRC/17/27](#) (2011).
- [The right to take part in cultural life](#): General Comment No. 21 on the right of everyone to take part in cultural life, E/C.12/GC/21, December 21, 2009; [UNESCO 2005 Convention](#) on the Protection and Promotion of the Diversity of Cultural Expressions.
- [The right to freedom of religion and belief](#): Article 18, ICCPR; [General Comment No. 22](#), Human Rights Committee, 1993.

Other sources of international law that informed this decision include:

- Article 14, para. 2, UN Convention Against Illegal Traffic in Narcotics Drugs and Psychotropic Substances, 1988;
- Article 1 and Schedule I, 1971 United Nations Convention on Psychotropic Substances; Commentary on the Convention on Psychotropic Substances, 1971; Report of the International Narcotics Control Board, 2010.

5. User statement

The user stated in their appeal that they are certain the post does not violate Instagram's Community Guidelines, as their page is informative and never encouraged or recommended the purchase or sale of any product prohibited by the Community Guidelines. They said that they took the photo at one of their ceremonies, which are regulated and legal. According to the user, the account aims to demystify the sacred ayahuasca drink. They said that there is a great lack of knowledge about ayahuasca. The user stated that it brings spiritual comfort to

people and their ceremonies can improve societal wellbeing. They further state that they have posted the same content previously on their account and that post remains online.

6. Explanation of Meta's decision

In its explanation for the decision, Meta stated it removed this content because it encouraged the use of ayahuasca, a non-medical drug. According to Meta, its decision aligns with Facebook's Community Standards, Meta's values, and international human rights principles.

Meta stated that the content violated Facebook's Community Standards because "the user described ayahuasca with a heart emoji, referred to it as 'medicine,' and stated that it 'can help you.'" Following a question from the Board about whether the content was removed for violating Instagram's Community Guidelines or Facebook's Community Standards, Meta responded the content was removed "for violating the Instagram Community Guidelines, which include a link to the Facebook Community Standards on Regulated Goods." Specifically, the user violated Instagram's prohibition on content "buying or selling illegal or prescription drugs (even if legal in your region)." Meta also cited another line of the Community Guidelines which links to the Community Standard on Regulated Goods, which "clarifies that Facebook prohibits content that '[c]oordinates or promotes (by which we mean speaks positively about [...] non-medical drugs.'")"

Referring to Meta's values, the company stated that "Safety" displaced "Voice." Meta noted that users are permitted to advocate for the legalization of non-medical drugs and to discuss the medical and scientific benefits of non-medical drugs, but that there is no religious or traditional use allowance. Meta argued that this rule strikes the correct balance between "Voice" and "Safety."

Meta also stated that prohibiting this content follows human rights principles. It stated that it considered the right to freedom of expression under Article 19 ICCPR and the right to freedom of religion or belief under Article 18 ICCPR, and argued that its decision satisfied the conditions required to restrict these rights.

According to Meta, Facebook's Community Standard is easily accessible and its non-public definition of non-medical drug as a "substance that causes 'a marked change in consciousness'" is apparent. It further argued that the decision sought to protect public health. It stated that dimethyltryptamine (DMT), one of the active hallucinogenic substances

in ayahuasca, poses significant safety risks, citing the 1971 UN Convention on Psychotropic Substances.

Meta cited court decisions from the Supreme Court of the Netherlands (ECLI:NL:HR:2019:1456 (Case No. 18/01356, Supreme Court of the Netherlands, Oct. 1, 2019)) and the European Court of Human Rights (Franklin-Beentjes and Ceflu-Luz da Floresta v. The Netherlands (Case No. 28167/07, European Court of Human Rights, May 6, 2014 (dec.))) which found that a ban on the use of ayahuasca was a necessary and proportionate restriction on the right to freedom of religion. It argued that “since a complete ban on ayahuasca use is necessary and proportional under human rights principles,” therefore, “the lesser restriction of a non-state actor proscribing its promotion is likewise permissible.”

Meta also provided information regarding the process followed in this case. In its response, Meta made a distinction between the ability to “appeal” a decision, and the ability to “disagree with a decision.” Meta explained that where people are offered the option to “disagree with a decision,” there is no guaranteed review of the decision, but Meta might review it if capacity allows. Meta said that while it could “not always offer people the option to appeal” due to capacity restrictions related to the pandemic, it reviewed decisions people disagreed with “when it has human review capacity to do so.” Meta told the Board that the user appealed the removal. However, the Board reviewed Meta’s transparency reports on Instagram policy enforcement and noted that no content was reported as appealed for violating the Regulated Goods policy since mid-2020. After the Board asked about this, Meta stated that “the user received outdated appeal messaging” in error. Meta explained the user should have received messaging stating they could “disagree with decision” and that it is currently investigating why they received the wrong messaging.

7. Third-party submissions

The Oversight Board received seven public comments in this case. One comment was from Latin America and the Caribbean and six comments came from the United States and Canada.

The submissions covered the following themes: the importance of recognizing the traditional practice and religious uses of ayahuasca; the need to take the local social and legal context into account during content moderation; the importance of the local context when the

Community Standard is justified by reference to off-platform harm; academic studies as well as anecdotal evidence of harms and treatment benefits of hallucinogens; and the need for consistency in applying Facebook’s Community Standards.

To read public comments submitted for this case, please click [here](#).

8. Oversight Board analysis

The Board looks at the question of whether content should be restored through three lenses: Facebook’s Community Standards and Instagram’s Community Guidelines; Meta’s publicly stated values; and its human rights responsibilities. The Board concludes that while the content violates the updated Community Guidelines and Community Standards, Meta’s values and international human rights principles support restoring the content. The Board recommends changes in Meta’s content policies to allow users to make positive statements regarding traditional and religious uses of non-medical drugs where there is historic evidence of such use.

8.1 Compliance with Meta’s content policies

The Board agrees with Meta that the content violates the Instagram Community Guidelines as updated, and the Facebook Community Standards. However, as discussed below, the Board nonetheless concludes that the content should be restored and makes a policy recommendation to change Meta’s relevant standards.

1. Instagram’s Community Guidelines

At the time the content was posted, the Instagram Community Guidelines prohibited the “buying or selling” of “illegal or prescription drugs (even if legal in your region)” and instructed users to “always follow the law when offering to buy or sell other regulated goods.” The Board observes that the reference to “illegal drugs,” “even if legal in your region” is confusing and contradictory.

The user’s post made no reference to the sale or purchase of ayahuasca. The Instagram Guidelines also refer to illegality and following the law. The user is based in Brazil, where the use of ayahuasca is permissible for religious rituals and by Indigenous communities (see the [2010 resolution](#) of Brazil’s National Anti-Drug Council (CONAD)). Ayahuasca has been held to be permitted for some religious purposes under federal law in the United States, where Meta

is incorporated (see the US Supreme Court case of *Gonzales v. O Centro Espirita Beneficente Uniao Do Vegetal*, 546 U.S. 418 (2006)). In this respect, there is no indication the user was not following the law. Therefore, content positively discussing the use of ayahuasca as part of a religious practice that the user understands to be legal did not violate the Instagram Community Guidelines as communicated to the public.

In response to the Board's questions as to how this content violated Instagram's rules, Meta stated that the enforcement of the Guideline "does not turn on either the legality of the substance or the nature of the intended use," despite the text of the rule which referred to "illegal drugs" and "follow[ing] the law." Meta has stated that in addition to the Instagram Community Guidelines, the Facebook Community Standards also apply to content on Instagram. The Board emphasizes that this relationship is still not made sufficiently clear to users, in particular where the two sets of rules seem to differ, as they did at the time.

At the time this content was posted, it did not violate the Instagram Community Guidelines as then articulated, which were confined to content involving sale or purchase, although it did violate the linked Facebook Community Standard. As mentioned above, Meta updated the Instagram Community Guidelines on October 26, 2021 to replace the reference to "illegal or prescription drugs" with "non-medical or pharmaceutical drugs," and explicitly add a prohibition on "content that either admits to personal use (unless in the recovery context) or coordinates or promotes the use of non-medical drugs," which reflects the language of the Facebook Regulated Goods Community Standard.

II. Facebook's Community Standards

There is a link to Facebook's Regulated Goods Community Standard from the part of the Instagram Community Guideline stating "always follow the law when offering to buy or sell other regulated goods" – the Board notes that this does not make it clear to users that the full Regulated Goods Community Standard applies to all content on Instagram. The Regulated Goods Community Standard prohibits "speak[ing] positively about" or "encourag[ing]" the use of non-medical drugs. Unlike the pre-October 26 Instagram Guideline, this Standard is not limited to illegal drugs. Meta does not provide a public definition of non-medical drugs, but has stated to the Board that it includes substances which can be used to achieve a "high or altered mental state."

Meta states that it treats content speaking positively about non-medical drugs that are used

to achieve an “altered mental state” as part of a “spiritual or religious practice” the same as other content speaking positively about non-medical drugs used to achieve an altered mental state. Meta’s Internal Implementation Standards allow discussion of the “medical or scientific merits of non-medical drugs.” The post contains some language about general healing properties of ayahuasca, and other language rooted in traditional and religious practices. On balance, the Board finds that the latter predominates, and the discussion here should be understood as an affirmation of those practices. Experts consulted by the Board stated that the text in this post is part of known prayers and rituals and the reference to “Queen of the Forest” is a reference to the Virgin Mary within these traditions.

The Board agrees with the company that the content violates the Facebook Regulated Goods Community Standard, as incorporated by reference in the Instagram Guidelines. Ayahuasca may be used to achieve an altered mental state, the content spoke positively about it, and no allowance applied.

The Board concludes that although the content violates the Regulated Goods Community Standard, Meta’s values and international human rights standards support the Board's decision to restore the content, as analyzed in Sections 8.2 and 8.3 below. The Board also makes policy recommendations to bring the Community Standard in line with Meta’s values and international human rights standards.

8.2 Compliance with Meta’s values

The Board concludes that Meta’s decision to remove the content was not consistent with the company’s values. In this case, as in many, Meta's values of “Voice,” “Safety,” and “Dignity” point in different directions. Meta's decision to take down the post weighted “Safety” over “Voice.” The Board would balance the values differently, believing that the genuine but not particularly strong interests in “Safety” are outweighed in this context by the value of “Voice” and the importance of recognizing the “Dignity” of those engaging in traditional or religious uses where there is historic evidence of such use, including by Indigenous and religious communities. Scientific research indicates that the use of ayahuasca in a controlled context in traditional and religious ceremonies is not linked to a serious risk of harm. Meta cited the European Court of Human Rights case of Franklin-Beentjes and Ceflu-Luz da Floresta v. The Netherlands (Case No. 28167/07, European Court of Human Rights, May 6, 2014) to demonstrate the risks of ayahuasca use. Other courts, however, have reached different conclusions – for example, the United States Supreme Court, in considering the risk of harm

from “the circumscribed, sacramental use of hoasca” by members of an ayahuasca based religion, found that the government had not put forward sufficient evidence of harm from religious use, which was its burden, to justify the prohibition in these circumstances. Meta’s rationale does not appear to have taken into account controlled uses of ayahuasca which aim to mitigate health risks. In light of scientific research, Meta’s rationale did not demonstrate the danger of this post to the value of “Safety” in a manner sufficient to displace “Voice” and “Dignity” to the extent to justify removal of the post. These interests are discussed further in Section 8.3.III below.

8.3 Compliance with Meta’s human rights responsibilities

The Board finds that human rights norms point in the direction of restoring the post to Instagram. Meta has committed itself to respect human rights under the UN Guiding Principles on Business and Human Rights ([UNGPs](#)). Its [Corporate Human Rights Policy](#) states this commitment includes the International Covenant on Civil and Political Rights (ICCPR).

Freedom of expression

Article 19 of the ICCPR provides for broad protection of expression. The Human Rights Committee has stated that “freedom of expression is also indispensable to the enjoyment of all other rights [including freedom of religion and belief]” (A/HRC/40/58, para. 5). Expression serves as “‘enabler’ of other rights, including [...] the right to take part in cultural life” ([A/HRC/17/27](#) para. 22, see also General Comment 21, paras. 13-19, 37, 43). Freedom of expression facilitates the promotion of the diversity of cultural expressions ([UNESCO 2005 Convention](#)).

In this case, as noted above, the post discussed the usage of ayahuasca in the context of a traditional or religious practice in the region where the post originated. Although ayahuasca’s use has recently spread to a wider population, it is a central part of the ceremonial practices of certain Indigenous and religious groups in Latin America and in the Latin American diaspora.

Article 19 requires that where restrictions on expression are imposed by a state, they must meet the requirements of legality, legitimate aim, and necessity and proportionality (Article 19, para. 3, ICCPR). As stated above, Meta has voluntarily committed itself to respecting

human rights standards.

I. Legality (clarity and accessibility of the rules)

The first part of the test requires rules restricting expression to be clear and accessible so that those affected know the rules and may follow them (General Comment No. 34, paras. 24-25). Applied to Meta, users of its platforms should be able to understand what is allowed and what is prohibited. In this case, the Board concludes that Meta falls short of meeting that responsibility.

The Board has repeatedly drawn attention to the lack of clarity for Instagram users about what policies apply to their content. See [case decision 2020-004-IG-UA](#) about breast cancer awareness in Brazil and [case decision 2021-006-IG-UA](#) about commentary on Ocalan's confinement. The Board reiterates that concern here, notwithstanding changes made to these rules.

Instagram's Community Guidelines do not clearly inform users that Facebook's Community Standards also apply. Although some sections of the Guidelines link to the Community Standards, the section of the Guidelines that Meta argued the user violated ("buying or selling illegal or prescription drugs") contains no hyperlinks to Facebook's Community Standards. Users would need to consult Transparency Center reports to find language stating "Facebook and Instagram share content policies. This means if content is considered violating on Facebook, it is also considered violating on Instagram." The Board notes that there are exceptions to the shared policies – in response to the Board's previous recommendation to clarify the relationship between the Guidelines and the Standards in case 2021-006-IG-UA, Meta has stated that, for example, people on Instagram may have multiple accounts for different purposes, while people on Facebook can only have one account using their "authentic identity."

While Meta has committed to provide additional information about this relationship to users and provide an update on its progress by the end of 2021 in [response](#) to earlier Board recommendations, the Board is concerned that the company continues to apply Facebook's Community Standards on Instagram without transparently telling users it is doing so. The Board does not understand why Meta is unable to immediately provide users with a greater degree of transparency by updating language in the Guidelines. While there may be reasons that specific policies should apply on one platform and not the other, users need to know when this is the case.

This case generates particular confusion because, at the time the content was posted, it did not violate Instagram’s Community Guidelines as communicated to the user, but did violate Facebook’s Community Standards. At that time, the Community Guidelines prohibited the content related to purchase and sale of illegal drugs, and emphasized following the law. As noted above, in both Brazil, where the user appears to be based, and the United States, where Meta is based, there are certain exceptions in national law that permit ayahuasca's use in the context of religious (and in Brazil, Indigenous) use. It is not clear to the Board how an Instagram user should have known this content was prohibited, given that the user was not buying or selling illegal drugs and believed they were following the law.

As noted above, Meta updated the Instagram Community Guidelines on October 26, 2021 to replace the reference to “illegal or prescription drugs” with “non-medical or pharmaceutical drugs” and explicitly add a prohibition on “content that either admits to personal use (unless in the recovery context) or coordinates or promotes the use of non-medical drugs,” which reflects the language of the Regulated Goods Community Standard. This update provides a clearer and more accurate representation of the rules Meta applies.

The Board further finds that the definitions of substances under the Facebook Community Standard on Regulated Goods are not sufficiently comprehensible and transparent to users. The Standard prohibits content related to certain goods, including guns, marijuana, pharmaceutical drugs, and non-medical drugs and alcohol and tobacco. Meta does not define non-medical drugs for users, but told the Board it maintains an internal definition for moderators, as well as a confidential list of non-medical drugs.

Lastly, the user was not told what part of Meta’s content policies they violated. According to the company, the user received messaging stating the post was removed for “promoting the use of hard drugs.” As this term appears nowhere in Instagram’s Community Guidelines or Facebook’s Community Standards, the Board finds Meta did not clearly communicate the policy violation to the user. The Board has made recommendations in this regard in previous cases (see [case decision 2021-005-FB-UA](#) about the ‘Two Buttons’ meme and [case decision 2020-005-FB-UA](#) about a Nazi quote).

Given these problems, the Board finds that Meta did not meet its responsibility to make its rules clear and accessible to users. The Board reiterates below previous recommendations on the relationship between Instagram’s Community Guidelines and Facebook’s Community

Standards and the importance of informing users of how their content violated company policy.

II. Legitimate aim

Any state restriction on expression should pursue one of the legitimate aims listed in Article 19, para. 3 the ICCPR. The Board has found that these aims may also motivate Meta's content policies. Here, Meta cited public health as the aim of its policy, and the Board agrees that this qualifies as a legitimate aim.

III. Necessity and proportionality

The Board concludes that international standards on necessity and proportionality point in the direction of restoring this content to Instagram. It disagrees with Meta's argument that prohibiting positive comments about ayahuasca in this content was necessary to protect public health. In this case, the Board found that there was no direct and immediate connection between the content, which primarily discussed the use of ayahuasca in a religious context, and the possibility of harm. The user did not post instructions for using ayahuasca or information about its availability. Both the 1971 United Nations Convention on Psychotropic Substances and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances recognize exceptions for substances which are "traditionally used" and for "traditional licit uses, where there is historic evidence of such use" respectively. The scientific literature indicates that the use of ayahuasca in a controlled context in traditional and religious ceremonies is not linked to a serious risk of harm. Given these points, the current rule prohibiting all positive discussions of non-medical drugs is overbroad.

The Board recognizes that the exceptions in these international instruments, as well as regional and national decisions, pertain to possession and use, not to speech. In light of the primacy of freedom of expression, the Board concludes that in most contexts it is not necessary and proportional to forbid speech that pertains to conduct that is itself permitted under a relevant exception.

Meta has argued that discussion of the medical or scientific benefits of ayahuasca or advocating for its legality would not pose a risk, but that positive commentary about ayahuasca more generally in a traditional or religious context poses a severe enough risk to

merit removal. In the Board's view, Meta has not adequately explained this difference, nor is it consistent with its approach to other substances, such as marijuana, tobacco, and alcohol.

The positive discussion of these substances are permitted despite the fact that they present serious health risks.

The Board has considered other measures by which Meta can promote respect for public health when moderating non-medical drug-related content. Meta currently advises users who search for certain drug-related terms that they may be seeking content that violates content policies, and recommends resources to address drug abuse. However, this response does not seem to be generated in the same way for searches for all non-medical drugs, and does not appear when searching for ayahuasca on either Facebook or Instagram. Applying such messaging more consistently for users seeking drug-related content may help Meta better respect public health.

Given that removal did not align with Meta's values and that human rights principles and international law point in the direction of permitting this expression, the Board has decided that the content should be restored. Some Board Members, however, emphasized that content such as this may be restricted in accordance with human rights principles. For these Members, if Meta had a clearly articulated and non-arbitrary policy that restricted positive discussion about non-medical drugs, human rights norms do not bar Meta as a private company from enforcing that policy.

Other Members believe that Facebook's Community Standards are not inconsistent with international human rights law given considerations of enforcement at scale and the need to ensure the administrability of the rule. For these Members, a broad allowance for "traditional and religious" drugs would not be administrable and would likely be subject to users attempting to "game" the system. Enforcing such an allowance would require a case-by-case examination that would give rise to a risk of significant uncertainty, which weighs in favor of a general rule that can more easily be enforced (see, for a comparative perspective: European Court of Human Rights, *Case of Animal Defenders International v the United Kingdom*, para. 108).

The Board recommends below that Meta modify its rules on Regulated Goods to permit positive discussion of traditional and religious uses of non-medical drugs where there is historic evidence of such use, and make public all allowance to these policies.

While in agreement that Meta’s policies should be altered, a minority of the Board believe that positive statements in general about non-medical drugs with a recognized traditional or religious use should not be prohibited, regardless of whether they discuss those traditional or religious uses. The minority believes that Meta should not be in the position of attempting to distinguish posts that positively discuss traditional and religious practice, finding this to be too porous a line for effective enforcement. They observe that this modification can be more easily administered by removing non-medical drugs with traditional and religious uses from the internal drug list and instructing content moderators to consult the drug list when in doubt.

9. Oversight Board decision

The Board overturns Meta’s decision to take down the content, requiring the post to be restored.

10. Policy advisory statement

Enforcement

1. The Board reiterates its recommendation from [case decision 2020-004-IG-UA](#) and [case decision 2021-006-IG-UA](#) that Meta should explain to users that it enforces the Facebook Community Standards on Instagram, with several specific exceptions. The Board notes Meta’s response to these recommendations. While Meta may be taking other actions to comply with the recommendations, the Board recommends Meta update the introduction to the Instagram Community Guidelines (“The Short” Community Guidelines) within 90 days to inform users that if content is considered violating on Facebook, it is also considered violating on Instagram, as stated in the company’s Transparency Center, with some exceptions.

2. The Board reiterates its recommendation from [case decision 2021-005-FB-UA](#) and [case decision 2020-005-FB-UA](#) that Meta should explain to users precisely what rule in a content policy they have violated.

Content Policy

3. To respect diverse traditional and religious expressions and practices, the Board

recommends that Meta modify the Instagram Community Guidelines and Facebook Regulated Goods Community Standard to allow positive discussion of traditional and

religious uses of non-medical drugs where there is historic evidence of such use. The Board also recommends that Meta make public all allowances, including existing allowances.

***Procedural note:**

The Oversight Board's decisions are prepared by panels of five Members and approved by a majority of the Board. Board decisions do not necessarily represent the personal views of all Members.

For this case decision, independent research was commissioned on behalf of the Board. An independent research institute headquartered at the University of Gothenburg and drawing on a team of over 50 social scientists on six continents, as well as more than 3,200 country experts from around the world, provided expertise on socio-political and cultural context. The company Lionbridge Technologies, LLC, whose specialists are fluent in more than 350 languages and work from 5,000 cities across the world, provided linguistic expertise. The Board was also assisted by Duco Advisors, an advisory firm focusing on the intersection of geopolitics, trust and safety, and technology.