

UCLA Institute for Technology, Law and Policy
Addressing the Challenges of Content Moderation
October 16, 2020

Transcript

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00:00:02.850 --> 00:00:09.809

John Villasenor: So I'd like to welcome everyone to our panel discussion today addressing the challenges of content moderation and

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John Villasenor: Very, very happy to have two absolutely terrific panelists with us a cake colonic from St. John's University and John Samples from the Cato Institute, as well as the Facebook oversight board.

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John Villasenor: So just to set a little context. This is the event is being hosted by the UCLA Institute for Technology long policy or as we call it, it LP

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John Villasenor: We launched that in early 2020 and as the name suggests, we're exploring some of the most timely and pressing issues of the technology law policy intersection

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John Villasenor: And today we're talking about addressing the challenges of content moderation, which is certainly one of those topics and under, under the simplest framing the content moderation challenges facing companies like Facebook and Twitter, and YouTube

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John Villasenor: Really boil down to a drawing a line between what's acceptable content and unacceptable content.

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John Villasenor: But that sort of simple framing just where do you draw the line obviously mass to a much more complex set of questions about what the goals of content generation should be who should be making these decisions, how companies.

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00:01:05.490 --> 00:01:13.920

John Villasenor: That operate globally should navigate, you know, the very complex and very and cultural legal frameworks relating to the limits of acceptable content in different jurisdictions and

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00:01:14.310 --> 00:01:26.880

John Villasenor: Here to unpack all that with us are two top experts on content moderation. So first, Kate Colonic is a professor at St. John's University School of Law, where her research centers on law technology.

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00:01:27.150 --> 00:01:35.850

John Villasenor: Using cognitive and social psychology as a framework. And most recently, she's been studying and writing about Private Internet platforms and how they govern online speech.

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00:01:36.090 --> 00:01:45.930

John Villasenor: Professor Colonic has published in academic venues, including Harvard Law Review Georgetown Law Journal and as well as broader press venues, including the New York Times, The New Yorker and the Atlantic.

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00:01:46.290 --> 00:01:56.460

John Villasenor: And she's the author of the forthcoming New Yorker article on content moderation. She holds an ad from Brown University a JD from Georgetown and a PhD from law from the law school.

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00:01:57.090 --> 00:02:08.430

John Villasenor: With us ALSO TODAY IS JOHN Samples, who is a vice president at the Cato Institute, he founded and directs kato center for representative government which studies the First Amendment government institutional failure in public opinion.

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00:02:08.730 --> 00:02:17.730

John Villasenor: Dr. Samples also serves on the Facebook oversight board which here's appeals from content moderation decisions by Facebook and Instagram and prior to joining Kate, though.

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00:02:18.210 --> 00:02:25.650

John Villasenor: John served eight years as director of Georgetown University Press. He received his PhD in political science from Rutgers University and

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00:02:26.130 --> 00:02:34.830

John Villasenor: He emphasizes that the views that he is expressing during today's discussion are his own and do not represent those of the Oversight Board or a Facebook. Facebook.

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00:02:35.370 --> 00:02:40.350

John Villasenor: So with that, let's just go straight into some questions. And we've i'm sure got more questions than we have time for all the answers, but

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00:02:40.860 --> 00:02:51.030

John Villasenor: There's a lot of talk about content moderation. Today, these days, and talk involving section 230. And so I think probably many of the people who are going to be seeing this

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00:02:51.480 --> 00:02:58.170

John Villasenor: Know what that is, but maybe some need a little bit of a refresher. So let's start out with a high level question. In brief, what is section 230

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00:02:59.670 --> 00:03:00.930

Kate Klonick: You want me to handle it.

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00:03:02.130 --> 00:03:03.720

John Samples: I would like for you to handle it, please.

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00:03:03.930 --> 00:03:04.530

Okay.

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00:03:05.580 --> 00:03:17.910

Kate Klonick: It's a section 230. And so let's just kind of like take a step back, because actually the story section 230 and to really understand the motivations that are behind it and why it's being fought over right now. You just have to know a little bit about what was happening.

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00:03:18.210 --> 00:03:27.240

Kate Klonick: On the eve of Section 230 which was that there were basically two disparate are two very different state court and opinions that had come.

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00:03:27.600 --> 00:03:43.140

Kate Klonick: Out in the Latin like the early 90s around what platforms at that point platforms like prodigy or Compu serve. We're going to how they were going to be held liable under like defamation law basically a private causes of action.

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00:03:44.790 --> 00:03:50.490

Kate Klonick: In the context of basically being considered an editor like something like or a publisher, like the New York Times

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00:03:51.240 --> 00:04:01.560

Kate Klonick: You know you can sue the New York Times for publishing defamation and they have deep pockets and that's like that's like a whole thing that we allow it to happen and so court to come out in very

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00:04:01.560 --> 00:04:13.050

Kate Klonick: Different ways and one hand courts had basically said, Listen, if you platform touch any of this and moderate any of this space or take down things like a few things.

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00:04:13.260 --> 00:04:18.000

Kate Klonick: Then like you break it, you bought it like you're like you're on the hook for everything that stays up

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00:04:18.360 --> 00:04:27.660

Kate Klonick: And we're going to hold you liable. Right. So this creates like this incentive right for platforms to not do any moderating at all of their site because if they do anything.

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00:04:27.960 --> 00:04:36.660

Kate Klonick: They're going to get in trouble. And then, or it makes them say, okay, well, we'll take on everything and you have a huge problem of over censorship.

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00:04:37.110 --> 00:04:48.450

Kate Klonick: And on the other hand, you had the opposite, which was basically like okay, we are going to not hold you liable as a company and so like keep doing whatever you're doing it so companies were very confused as to

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00:04:48.630 --> 00:04:59.100

Kate Klonick: What was going to be the precedent that was going to hold and national level, all of these things the same time around 1995 Georgetown Law Journal published a study that said that 85%

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00:04:59.370 --> 00:05:06.300

Kate Klonick: Of the pages on the internet were filled with pornography. And so all of these you know conservatives in the in

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00:05:06.810 --> 00:05:16.980

Kate Klonick: In Congress kind of threw their skirts over their head and we're like, oh my god, pornography on the Internet, of course, the First Amendment protects pornography on the Internet. So they can't or pornography generally from government regulation.

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00:05:17.310 --> 00:05:24.630

Kate Klonick: So they can't regulate it directly. So they say, Okay, we're going to create this thing called the Communications Decency Act in which we're going to incentivize

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00:05:25.260 --> 00:05:39.180

Kate Klonick: These third private third parties to take down like lewd lascivious types of content right we will like tell them, but they will have like this carrot this carrot of immunity from

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00:05:39.660 --> 00:05:43.350

Kate Klonick: From basically from private causes of action of defamation for acting in this way.

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00:05:43.740 --> 00:05:50.970

Kate Klonick: And this is kind of became what is known as like section 230 and this created kind of some bright lines around what it was we were going to, well, it

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00:05:51.480 --> 00:05:59.430

Kate Klonick: Started to create some bright lines about what we were going to like to expect from what we call kind of platforms or these these

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00:06:00.210 --> 00:06:07.320

Kate Klonick: These web companies that were publishing other people's content or people were self publishing on their sites so

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00:06:08.130 --> 00:06:17.940

Kate Klonick: Most of the CDA the Communications Decency Act is struck down in 1997 the Supreme Court case called *reno versus ACLU*, because to directly interfered with

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00:06:18.360 --> 00:06:21.900

Kate Klonick: With. With. First Amendment rights are like infringe on the First Amendment rights.

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00:06:22.560 --> 00:06:35.310

Kate Klonick: But section 230 remained and then was interpreted incredibly broadly in a, in a case like the, I think. Later that same year called *zahrn* and so following that for about a decade.

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00:06:36.090 --> 00:06:48.270

Kate Klonick: Who like the question of who was a publisher who was who is a platform, who is going to get section 230 and unity was just incredibly broadly and still continues really to be broadly construed by by courts.

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00:06:48.540 --> 00:07:02.130

Kate Klonick: And allows for a, like a huge amount of like interactive computer service providers, which is the exact term that like is like used in like kind of hokey data language section 232 like to have all of this immunity.

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00:07:03.090 --> 00:07:09.330

Kate Klonick: Against private causes of action which means they can't be sued when they do something that's really harmful to people.

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00:07:09.870 --> 00:07:17.550

Kate Klonick: Or they screw up. And so now basically in that huge kind of like chasm of immunity like that they've had

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00:07:17.880 --> 00:07:20.400

Kate Klonick: You're seeing people push back you're seeing

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00:07:20.670 --> 00:07:31.230

Kate Klonick: You know, kind of, we can get into this later, but you're seeing people on the left complain that they're keeping too much up or taking too much down. You see people not right complaining. They're keeping too much for taking too much down

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00:07:31.830 --> 00:07:34.170

Kate Klonick: You see kind of caused repealing this I

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00:07:34.710 --> 00:07:43.920

Kate Klonick: Have a paper coming out that I'm calling this like the horseshoe of Section 230 where it's like people in the very far left, and people in the very far right or weirdly coming together over this issue.

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00:07:44.340 --> 00:07:54.720

Kate Klonick: Even though they would almost never agree on anything or be like we're be in bed with these people at all. And so I think that this is kind of an interesting moment for speech, but that's kind of where we are today.

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00:07:55.170 --> 00:07:56.850

John Villasenor: Thank you very much. JOHN, anything to add to that.

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00:07:56.850 --> 00:08:04.110

John Samples: Sure, yeah, I would add a couple point. That's a very good. That's a tough thing to summarize, I would summarize it as the

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00:08:04.560 --> 00:08:05.700

Kate Klonick: Basic practice.

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00:08:08.220 --> 00:08:14.220

John Samples: He remembered you know the only cases, I would say, what it does is it protects

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00:08:14.730 --> 00:08:26.160

John Samples: The firms are the companies from liability of their users if they do something that's one thing. The other thing is it empowers it pretty clearly has a really broad empowerment to the company's

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00:08:26.490 --> 00:08:31.740

John Samples: To take down stuff and it list a bunch of different kinds of speech that he can take down

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00:08:32.160 --> 00:08:40.110

John Samples: And then it has this broad catch all term that is much thought about called taking down anything that's otherwise objectionable. So it's a very

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00:08:41.010 --> 00:08:49.380

John Samples: Broad grant of power and the thing I'm involved on the Oversight Board is one way of trying to do that content moderation in general as a way of carrying out that

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00:08:49.800 --> 00:08:58.260

John Samples: Power that ability that exists. Now the other thing that I think people sometimes miss here is, look, these are businesses.

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00:08:58.680 --> 00:09:06.090

John Samples: There is there is not going to be the case that these are sort of functional business is not going to have any content moderation.

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00:09:06.360 --> 00:09:13.650

John Samples: Stuff is going to be taken down. And it's going to be taken down because the users want it that way. Right. You can't the kinds of

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00:09:14.340 --> 00:09:22.920

John Samples: Websites that don't have content moderation and things like a Chan where people have all kinds of different conversations, but most people

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00:09:23.430 --> 00:09:36.900

John Samples: Yeah, the other inside. I would say somebody worked for Facebook for a long time, told me is, you know, the bread and brother Facebook is not sort of political speech or something like that. The bread and brother is friends and family.

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00:09:37.320 --> 00:09:44.970

John Samples: And they don't want to go on there and read something about somebody talking about mass shooting and how to do mass shootings better, which is what you get on a chair.

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00:09:45.330 --> 00:09:55.050

John Samples: So you're gonna have, there's going to be content moderation. The question is, what's it going to be can be made legitimate what Kate is done and was really

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00:09:55.950 --> 00:10:06.210

John Samples: I think instrumental in bringing this about a few years ago was call for process, some, you know, some rule of law, like issues we're not used to talking about that in terms of private entities.

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00:10:06.630 --> 00:10:11.700

John Samples: But at the end of her article, the new governor. She talks about that because she thinks it can make it legitimate.

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00:10:12.120 --> 00:10:17.910

John Samples: And that's what I'm involved in. And I have to say there's a lot of procedures that were coming up with

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John Samples: But this is it's inevitable that there's going to be content moderation. The question is how can it really become legitimate and how can I serve this. The other thing.

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00:10:29.760 --> 00:10:38.100

John Samples: It gets forgotten here because we've been through four years where everyone's upset with the companies and with tech and with social media look

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00:10:38.790 --> 00:10:48.780

John Samples: We forget this is one of the greatest things ever happened to humanity. It really is. I mean, just think about it, all these people have this power to talk to one another. And most of them use it.

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00:10:48.930 --> 00:10:58.950

John Samples: I mean, if it's just like I have a garden and you're talking to your cousin. You haven't seen in three years. And here's my garden. And here's some photos of it. I mean, that's a fantastic thing, right.

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00:10:59.340 --> 00:11:14.040

John Samples: It's just like an amazing thing. And we've got to be I see content moderation as sort of making sure that it continues to reach the potential that we have here because I didn't so fantastic thing we tend to forget it because of what has happened.

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00:11:14.040 --> 00:11:23.730

John Villasenor: Right, I do think that's a good point about the, you know, certainly. Social media has many things that can rightly be criticized, but it has also enabled. For example, you have

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00:11:24.150 --> 00:11:29.100

John Villasenor: People who are suffering from very, very rare medical conditions, who are able to form communities. Right.

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00:11:29.520 --> 00:11:35.760

John Villasenor: And engage you know and talk to each other in ways that would have been completely inconceivable right and without a social media.

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00:11:36.150 --> 00:11:38.640

John Villasenor: Platform to do that on. So, so let me. You mentioned

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John Villasenor: You know Facebook and I know both of you have a very significant knowledge about Facebook's new oversight board.

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00:11:45.510 --> 00:11:52.170

John Villasenor: John you're actually a member of that board and Kate. My understanding is that you've done a an extensive set of interviews as part of a forthcoming.

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00:11:52.560 --> 00:12:02.760

John Villasenor: New Yorker piece. And so both of you have from from different perspectives have looked very deeply at that body and how it's how it's working or could be improved and so

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00:12:03.090 --> 00:12:10.920

John Villasenor: Do you have any thoughts on how is it working so far, and in what ways is this a good model for social media companies in what ways might there be ways it could be improved.

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00:12:13.500 --> 00:12:14.970

John Samples: Yeah, Kate. Kate has gone

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00:12:15.960 --> 00:12:19.980

John Samples: Well, first of all, let me make a little a world announcement here, I think.

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00:12:20.250 --> 00:12:29.580

John Samples: Maybe I'm not supposed to do this, but after six months of getting ready. This next week we will be rolling out and become active and start doing things I've sort of felt like

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00:12:29.970 --> 00:12:32.730

John Samples: You know if you ever seen those films about D day where

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00:12:33.090 --> 00:12:41.580

John Samples: Everyone's in sort of on the boats and they practice getting on the boats and getting in the planes and all that. And everyone's getting edgy after six months in the weather is bad.

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00:12:41.970 --> 00:12:47.550

John Samples: Well, that's a sort of feeling like that. Let's get in the boats and get across the channel and let people shoot at us. Right.

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00:12:48.450 --> 00:12:55.710

John Samples: But so the boats go off this week, so we'll see. I think the preparation has been thorough

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00:12:56.310 --> 00:13:04.320

John Samples: It's been very I'm not accustomed to large organizations working their way towards something and it said thoroughness and lots of

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00:13:04.950 --> 00:13:18.450

John Samples: And as I said with Kate's suggestion, you know, it's been a very, very procedural very process oriented and a real concern actually from the staff. I think comes outward from the staff and the sort of

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00:13:19.650 --> 00:13:33.930

John Samples: People who are staff leaders among the board members about making sure that the processes are there to constrain what we do and everyone agrees to the processes. Right. It's very liberal in that sense of procedural

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00:13:34.800 --> 00:13:51.270

John Samples: Concern about a lot of stuff and belief is that's the way to go. And it's kind of bureaucratic, but it's also means that you can tell people what you're doing and what is you've got an agreement from people after you've gone through a process.

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00:13:52.590 --> 00:14:05.280

Kate Klonick: Yeah, and so I actually had a piece that already came out on this in the yellow journal and I wouldn't recommend like just reading it at pinches a very dense.

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00:14:05.880 --> 00:14:16.980

Kate Klonick: Kind of documenting of the process of the Oversight Board being set up and and what happened, I was kind of, I was invited in into Facebook.

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00:14:17.670 --> 00:14:24.150

Kate Klonick: Without an NDA and being led to record all of my meetings and I shadowed the team that was there and

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00:14:24.750 --> 00:14:39.990

Kate Klonick: And so I did that and they, you know, and that is a story about institution building but it all takes place before like it basically ends with the board being announced and the board members names being announced and

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00:14:41.700 --> 00:14:48.780

Kate Klonick: That was like at like thinking back on it when the process was when you were talking about the process of creating something that's and I'll get

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00:14:49.050 --> 00:14:57.660

Kate Klonick: I'll go back one second and talk about exactly what the oversight board is because I think that like that's actually kind of something that a lot of people have a vague idea, but not exactly.

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00:14:58.620 --> 00:15:04.980

Kate Klonick: But, um, the process of creating it was just like this insane 18 month process.

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00:15:05.850 --> 00:15:19.740

Kate Klonick: From Mark Zuckerberg announcing it and then everything like the board starting to get set up and it was, I can't overuse like but like the giving birth like metaphor like enough. It was like a thing that was supposed to be independent.

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00:15:21.330 --> 00:15:30.390

Kate Klonick: In the same way that like a child is supposed to eventually become independent of you, but like, how can you ever ensure that it doesn't like that you're not like you know that it's not still clutching

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00:15:30.720 --> 00:15:38.520

Kate Klonick: The apron strings when it's like 17 years old right like there is kind of like you have to put some things in place to make sure that it isn't.

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00:15:38.760 --> 00:15:46.830

Kate Klonick: And I think that like what watching what was crazy. Was I remember the head of the administrative head of the Oversight Board and I had

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00:15:47.460 --> 00:15:51.690

Kate Klonick: I think he was one of my last people I saw in person and indoor setting like

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00:15:52.290 --> 00:16:04.380

Kate Klonick: Right before the pandemic happened, and he was really like in late January, we have this meeting and in New York. And he was like, Yeah, well, we're getting set up and it was the first meeting that I've had with people that were on the Oversight Board.

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00:16:05.010 --> 00:16:06.840

Kate Klonick: That were not employed by Facebook.

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00:16:07.200 --> 00:16:18.450

Kate Klonick: And that Facebook wasn't there. And then all of a sudden they had like this kind of dawned on me that like oh my gosh it's its own entity its own institution and the he's really building it like a startup, AND SO WHEN JOHN speaks to that. I think that like

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00:16:19.110 --> 00:16:29.250

Kate Klonick: People don't have a full appreciation for that they think that it's just like you split off some wing of Facebook and made the oversight board, but that's not at all what happened. It was a much more organic process and like

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00:16:29.760 --> 00:16:38.940

Kate Klonick: It really is nothing like i mean it's it's really not Facebook. So I think that that's maybe the most important thing that I was waiting to see

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00:16:39.030 --> 00:16:51.690

John Samples: That I could say I would add to that. I mean, I've been surprised by that, I think, in the sense that, so take knows was really know a lot of people on Facebook. I knew a fair number of people in Facebook, up until

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00:16:52.650 --> 00:17:03.840

John Samples: May or whatever. Whenever I was appointed and then the split came and it's been quite amazing to me. I don't, I can't, I don't, I can't have contact with Facebook.

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00:17:03.900 --> 00:17:04.170

Yeah.

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00:17:05.340 --> 00:17:21.030

John Samples: And so one time I just asked about a factual matters something somebody I knew over there and you know He directed me to the OSB staff, he wouldn't even answer. So it's like you can't even if you wanted to talk to Facebook people, they're not going to talk so

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00:17:21.030 --> 00:17:29.880

John Villasenor: That's interesting. I think many people, many people have heard of Facebook oversight board, but I think many people may not appreciate the attempt to make them make the oversight board really a distinct entity from

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00:17:30.240 --> 00:17:38.550

John Samples: Facebook. And there's another thing I would add to that it actually isn't necessary, but I think I will confirm this, which is that

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00:17:39.780 --> 00:17:41.220

John Samples: In the we've had these

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00:17:42.360 --> 00:17:58.440

John Samples: 20 or 30 sessions together one way in small and large groups and at a few times, it's come up and I think there really is an esprit de corps there and a desire to be independent to to have a kind of sense of integrity or a sense of

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00:17:59.070 --> 00:18:08.190

John Samples: What the Facebook. What this board is about is whatever else. It's independent and that's sort of the core identity and it's why we're doing this and we're sort of

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00:18:08.730 --> 00:18:16.230

John Samples: And you know how antagonistic we are to Facebook or whatever, it will be an issue, but we're certainly there's a desire not to be seen as a

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00:18:16.770 --> 00:18:23.730

John Samples: And as a part of Facebook or as an agent of Facebook. And I have to say this also for me. There's a sense that

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00:18:24.720 --> 00:18:34.050

John Samples: We can't really help in this situation, if we are not seen as independent of Facebook, right, there's a, you know, it's like one of these

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00:18:34.590 --> 00:18:44.940

John Samples: Ideas of a professional role in society professionals professional roles Fukuyama talks about this with government to you need people that have this sense. And so I think

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00:18:45.660 --> 00:18:56.190

John Samples: There's a decent chance that what has developed so far is people wanting to concoct and to take on this role and feel like, you know, that's my identity. That's why I'm on this board right

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00:18:57.900 --> 00:19:02.730

John Samples: And that's come up a few times during our meetings. I've been. I was struck by that.

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00:19:02.940 --> 00:19:09.720

John Villasenor: Thank you. Let me just also mention to any of you are watching today that you are more than welcome to put questions in the chat.

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00:19:10.320 --> 00:19:19.770

John Villasenor: And I will see them and in 2025 minutes or so later on the session, we will get to those questions. So feel free anytime with questions in the chat.

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00:19:20.070 --> 00:19:32.580

John Villasenor: So I guess following along the lines of, you know, talking about Facebook again you know a lot of people are worried about the, you know, enormous power that Facebook has, you know, over its platform, including obviously the decisions that it makes

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00:19:32.880 --> 00:19:40.020

John Villasenor: Regarding expression on the platform and what it, what it flags and what it doesn't flag and so on. Do you think the oversight board will

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00:19:41.010 --> 00:19:54.240

John Villasenor: Will you know be viewed as maybe checking some of that power. And in doing so, giving creating more legitimacy for the decisions that Facebook makes in content moderation.

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00:19:56.400 --> 00:19:58.800

Kate Klonick: So that's, go ahead. JOHN

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00:19:59.310 --> 00:20:00.480

John Samples: Go, go, please go

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00:20:00.600 --> 00:20:08.520

Kate Klonick: I was just gonna say that. That's always been the question. Um, one of the things about the oversight board that people said over and over, so

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00:20:09.840 --> 00:20:15.690

Kate Klonick: Zuckerberg had this idea, starting at the beginning of 2018 like in the

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00:20:16.170 --> 00:20:26.250

Kate Klonick: January, February, and kind of like, put it like Noah Feldman how put it at Harvard Law School, how put them in words like they presented to the board, they decided to go forward with it.

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00:20:26.670 --> 00:20:36.720

Kate Klonick: Mark made this announcement in November of 2013 in which he announced that he was going to create the Supreme Court at Facebook, he didn't put it, he didn't use those words. That's what people came to understand it as

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00:20:37.650 --> 00:20:45.090

Kate Klonick: Which would do two things. It would like basically allow the main thing that it would do would be to create like transparency.

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00:20:45.570 --> 00:20:52.050

Kate Klonick: And process around appeals, like when users had their content removed or when they requested removal of certain types of content.

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00:20:52.320 --> 00:20:58.920

Kate Klonick: They would have a mechanism outside of Facebook or a body as it Facebook that would serve as a check on Facebook.

142

00:20:59.250 --> 00:21:06.930

Kate Klonick: That would be like you improperly censored me you didn't understand the cultural significance of this like of this this piece of content and

143

00:21:07.290 --> 00:21:19.410

Kate Klonick: It would also have a role in like helping sheet like each of those decisions as small as they may be would have like a signal effect to Facebook as to what they should how they should perhaps like changed their policy.

144

00:21:20.190 --> 00:21:20.670

Kate Klonick: But like

145

00:21:21.630 --> 00:21:34.440

Kate Klonick: The problem with creating an independent oversight board that you're going to set up with your own money like creating an oversight board to check yourself is that of course the question of independence is going to be naturally like question.

146

00:21:34.680 --> 00:21:38.040

Kate Klonick: Legitimacy is going to be questioned until you can prove

147

00:21:38.310 --> 00:21:48.270

Kate Klonick: That Facebook one listens to this board and to that the board is itself not full of No offense John but like a bunch of Patsy's that like just are going to tell Facebook whatever it wants, or like, do whatever

148

00:21:48.570 --> 00:21:51.540

Kate Klonick: It Facebook wants it to do. Because after all, they selected it

149

00:21:52.140 --> 00:22:00.270

Kate Klonick: So like instead of this idea springing from like the head of like Mark Zuckerberg fully formed, they decided to create this kind of long. And I actually think this is

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00:22:00.480 --> 00:22:10.320

Kate Klonick: Super important participatory process in which they went around the entire world and held dozens upon dozens of workshops with stakeholders and

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00:22:10.650 --> 00:22:14.160

Kate Klonick: Had an online portal for suggestions and all of these different things.

152

00:22:14.460 --> 00:22:23.340

Kate Klonick: And which they basically consulted and try to figure out what was most important to people. And I will say that people are very good at saying high level things that are very important to them like diversity.

153

00:22:23.640 --> 00:22:29.280

Kate Klonick: And then have no idea how to articulate how diversity should be created in a 40 person board.

154

00:22:29.610 --> 00:22:40.890

Kate Klonick: That is supposed to be globally representative right like that's like an insane task like you couldn't even put together a 40 person board, in my opinion, that would be representative of like New York City or like New York State.

155

00:22:42.420 --> 00:22:54.090

Kate Klonick: But the, the point is is like, that was kind of the process was to gain this legitimacy. So I don't know. So the question was, I guess, like the question again John was basically like what like

156

00:22:54.150 --> 00:23:04.410

John Villasenor: I mean, just, you know, does does will it be effective in creating legitimacy to people who are skeptical about you know the the enormous power that Facebook has

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00:23:04.770 --> 00:23:10.950

John Villasenor: And mistakes that people think that Facebook sometimes make does that well that accord well that good Facebook more

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00:23:11.850 --> 00:23:16.920

John Villasenor: Respect to do it in the eyes of people who watch this, or, or is the problem. So intractable that even

159

00:23:17.250 --> 00:23:25.110

John Villasenor: The most well intentioned board of 40 people you know is going to run up against some of these you know inherit incompatibilities with what people think should and shouldn't be taken down.

160

00:23:25.380 --> 00:23:27.000

Kate Klonick: So you spoke to

161

00:23:27.090 --> 00:23:29.820

Kate Klonick: Sorry, I just spoke on what was like I'm setting this up for you. JOHN, sorry.

162

00:23:30.030 --> 00:23:40.740

Kate Klonick: That I just spoke to, like, basically all of the things that people were very concerned with what they tried to do what's going to actually happen. JOHN Is like the PERT like the person to kind of maybe best predict this

163

00:23:41.610 --> 00:23:44.460

John Samples: So it's sort of adding the assumption I think among

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00:23:45.510 --> 00:23:49.920

John Samples: My colleagues and myself is that it's struck me it was like, you know,

165

00:23:50.430 --> 00:24:02.370

John Samples: This will seem odd but content ethics. Right. Well, what is concert concert says if you want to. If you do something that you want. And it's in your interest, you have every incentive to do it that really can't be ethical right

166

00:24:02.760 --> 00:24:09.570

John Samples: Because you you have every reason to earn, you're going to do it anyway. Ethics comes in when you sort of have these conditions or some kind of rules.

167

00:24:09.900 --> 00:24:15.360

John Samples: That make you do something other than what you would actually do. So the, the issues will come to

168

00:24:16.020 --> 00:24:24.150

John Samples: Follow the analogy is when we do something Facebook doesn't want done right when we do something they don't want to do, that'll be the crucial moment.

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00:24:24.570 --> 00:24:30.990

John Samples: And I think those moments will come up and they on that what they say they want is they want someone to tell them that and they

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00:24:31.350 --> 00:24:49.530

John Samples: There's also other issues of consistency and things like that. Now the one thing I would add to this and this is I don't think I've heard anyone else articulate this on the board. So this may be just me. My concern is that we've gone through the last three or four years and

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00:24:50.640 --> 00:24:59.520

John Samples: Facebook and other social media companies have become fairly unpopular right and a bit criticized and one thing or another. The problem is it's not

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00:25:00.420 --> 00:25:09.810

John Samples: Companies and Facebook have not been criticized from a consistent single position. Right. So one thing is people might see in the board.

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00:25:10.380 --> 00:25:17.250

John Samples: Something like, Oh, finally, some people who have been assigned to make Facebook do the right thing.

174

00:25:17.790 --> 00:25:23.490

John Samples: And the and they will do it you know it, then it's obvious what the right thing is for many people ride.

175

00:25:24.210 --> 00:25:31.650

John Samples: Over this last few years they drew lessons from that the problem being that what everyone expects us to do.

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00:25:31.980 --> 00:25:38.040

John Samples: Is not consistent. So if we do one thing or the other will make some people happy. And some people not happy.

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00:25:38.400 --> 00:25:48.900

John Samples: And you'll find yourself in a situation where the expectations were that it's obvious what you should do. You've done something else. Maybe you were following the rules and so on. But you're going to kind of trap.

178

00:25:49.290 --> 00:25:58.260

John Samples: Now, I think that can be that that's a sort of neurotic, and everything. And so that may be just me, but I think people in general.

179

00:25:58.860 --> 00:26:06.240

John Samples: From the beginning of this thing. And from my earliest discussions with Kate. I've always thought that there needed to be some room to experiment here.

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00:26:06.600 --> 00:26:13.140

John Samples: This is a new thing. This is a private company trying to do this, this isn't the supreme court with 200 years of existence.

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00:26:13.650 --> 00:26:18.420

John Samples: So people are going to have to give us a little room to do something that they may think is wrong.

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00:26:19.410 --> 00:26:28.470

John Samples: Or but they will we do have to write opinions. I mean, this is part of it. We've gone through, we have this little decision format where we fill in.

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00:26:29.040 --> 00:26:37.470

John Samples: The different parts and so that people, you know, people are not going to know who are on the panels, because you can't do that, actually, but

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00:26:37.920 --> 00:26:52.020

John Samples: They are going to know why these five people came together and agreed to the words in that decision and it's going to, it's going to have to have some reference. It can't just be well we decided, and you won't know why they decided

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00:26:52.620 --> 00:26:57.300

John Samples: It's, it's gonna have to be articulated something we need, you know,

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00:26:57.900 --> 00:27:06.510

John Samples: The Ultra then the other thing I would say, and finish up here is the alternate. The reason I got involved reason a lot of these people got involved. I think this is the alternatives are not good.

187

00:27:07.380 --> 00:27:13.770

John Samples: You read. Think about the person in government in the Senate or in Congress or the presidency.

188

00:27:14.430 --> 00:27:26.400

John Samples: That you that worries you a lot. Think of those people do you want them messing around with what can be said on social media, and what can be set on the platform that seems to be like the major alternative right

189

00:27:26.760 --> 00:27:38.430

John Samples: Or. And again, do you just want the technocratic elite, the people, the managers that run the company. Well, I think Facebook said, Look, that's not working anymore. We've got to go find something else.

190

00:27:38.820 --> 00:27:40.320

John Villasenor: So yeah, and I and of course you know you mentioned the

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00:27:40.320 --> 00:27:43.290

John Villasenor: Supreme Court. But even with 20 years of experience. You know, I think.

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00:27:43.830 --> 00:27:47.100

John Villasenor: Every time the supreme court makes a decision. There's a lot of people don't think it was right. So it's a

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00:27:47.490 --> 00:27:51.090

John Villasenor: You know all the experience in the world. But let me actually does a couple of questions that came in.

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00:27:51.750 --> 00:27:57.090

John Villasenor: on this very topic. So rather than pushing them downstream. Let me just sort of Strike while the iron is hot, it's me the questions.

195

00:27:57.390 --> 00:28:02.310

John Villasenor: Did you know john you were mentioning and Kate and I was talking also about sort of the independence of

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00:28:02.910 --> 00:28:16.680

John Villasenor: The oversight board, but I guess you know the kind of devil's advocate, you know, response that but, like, hold on a second, art, these people paid you know by Facebook and so is is that, does that mean it's less independent than, you know, it might be presented as. Is that a concern.

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00:28:17.730 --> 00:28:18.210

Kate Klonick: Not

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00:28:18.600 --> 00:28:27.570

John Samples: I'm not concerned because the money, six years of money, as I've been told I mean I didn't see it being put aside, but, you know, we have

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00:28:28.440 --> 00:28:35.610

John Samples: Six years of money for the salary in the running of the board your salary can be reduced or in your term you have three year terms on the board.

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00:28:36.030 --> 00:28:46.320

John Samples: And actually the for being reappointed is a pretty. It's not a strenuous process, it would be hard for Facebook to go after someone, I think that the board wanted

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00:28:47.040 --> 00:29:04.320

John Samples: And then you've got trustee is between you and the end Facebook and the outside world, as it were. And you know, I think when people see these trustees, they would get to a point. Now, I think they're gonna go, Wow, those guys have got a lot of big reputations.

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00:29:04.980 --> 00:29:09.750

Kate Klonick: Let me just back up. So people because I don't think people know that it's an interest john necessarily

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00:29:09.780 --> 00:29:10.320

John Samples: Oh, right.

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00:29:10.500 --> 00:29:11.070

So,

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00:29:13.080 --> 00:29:15.420

Kate Klonick: So I just drew. I've got I think it might be

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00:29:16.590 --> 00:29:17.250

John Villasenor: That I like

207

00:29:17.670 --> 00:29:18.150

John Villasenor: That's good.

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00:29:18.210 --> 00:29:29.370

Kate Klonick: Yeah, so I just read this really quickly so you have Facebook here right Facebook gave 130 million dollars. It is not an endowment that is not enough for endowment. It is a irrevocable gift.

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00:29:29.610 --> 00:29:36.510

Kate Klonick: It cannot get it back and Facebook is managing it as money the trust itself is not managing this money, those are

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00:29:36.990 --> 00:29:48.300

Kate Klonick: Technical but important details for the long term, the hundred and \$30 million was given because it was estimated it would be enough to keep the oversight board running for six years as as john mentioned, which is two terms.

211

00:29:48.660 --> 00:29:55.950

Kate Klonick: So it goes into this trust. And what's interesting is they formed the trust and then the next day they formed what's called the oversight board LLC.

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00:29:56.250 --> 00:30:03.030

Kate Klonick: So Facebook gave the money to the trust created this trust. These are legal fictions like trusts obviously and corporations.

213

00:30:03.960 --> 00:30:11.430

Kate Klonick: But they've created this trust in Delaware and then the next day they created an LLC, called the oversight or an LLC or the trust created the oversight board LLC.

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00:30:11.700 --> 00:30:22.740

Kate Klonick: And this oversight board LLC is like not touched by Facebook. Does that make any sense of like the trust quit the money, then the oversight board LLC, get the money and then Oversight Board LLC is like

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00:30:23.220 --> 00:30:35.910

Kate Klonick: You can see the overlapping circles. It is the thing that takes the money from the trust and the trustees and kind of carries it across the gap and gives it to the actual administrative body and the salaries of the Oversight Board members.

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00:30:36.120 --> 00:30:37.230

John Villasenor: And so that was kind of

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00:30:37.230 --> 00:30:40.560

Kate Klonick: The workaround. Yeah, so that's the workaround of how they ended up

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00:30:41.130 --> 00:30:47.670

Kate Klonick: actually creating the, the so called financial independence of the board. Now you know like you can question.

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00:30:47.880 --> 00:30:58.020

Kate Klonick: Whether or not people especially staff members who serve full time the oversight board capacity, not board members like john but he mentioned like there's an entire administrative staff.

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00:30:58.320 --> 00:31:06.900

Kate Klonick: That are like clerks or clerks of the court that like run the oversight board and give them information and take information in and run the technological aspects of the board.

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00:31:07.440 --> 00:31:14.190

Kate Klonick: And there's like i think i think there's like 40 people employed now and and those people are like,

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00:31:14.490 --> 00:31:23.220

Kate Klonick: You know they shaped like a clerk would shape a judge, like they are in charge of giving the information they can kind of package it certain ways, or like kind of tell

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00:31:23.550 --> 00:31:30.510

Kate Klonick: You know hint to a judge after lunch that they think something should be overturned, or like whatever to be kind of legal realist about it.

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00:31:31.050 --> 00:31:39.240

Kate Klonick: And so there is a question of like, you know, even more than the board members necessarily like is there a potential for staff members to want their job to keep going.

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00:31:39.810 --> 00:31:51.630

Kate Klonick: To want Facebook to keep funding this after six years. And so, therefore, to give some in some way favorable decisions to Facebook. The counter to that is, basically, if

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00:31:52.140 --> 00:32:09.450

Kate Klonick: The Oversight Board is doesn't do the job of giving Facebook a very hard time and therefore, kind of like relieving some of its burden in the public, public affairs arena of like getting all of these content moderation decisions wrong then like it's not clear that

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00:32:10.620 --> 00:32:20.700

Kate Klonick: But it's not created the oversight board will be funded either. So if it's too favorable to Facebook, it's not doing its job. And of course, if it's very, very despicable Facebook. There's a question that it's not doing its job. So

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00:32:21.120 --> 00:32:37.080

John Villasenor: Thank you. And by the way, another question that came in is, why does the Facebook Oversight Board focus on content moderation decisions as opposed to overall processes and best practices that can help scale content moderation in general.

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00:32:38.790 --> 00:32:47.130

John Samples: So I think it's possible, as we go. The decisions we make will have one one part will be for certain

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00:32:47.520 --> 00:32:55.440

John Samples: And then there will be another part. Let me explain that the part for certain is when we start out is Facebook takes down something

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00:32:55.980 --> 00:33:05.190

John Samples: And then it's considered a difficult case and significant case and it comes to the board. The board accepts it for hearing and then the decision will be yes.

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00:33:05.910 --> 00:33:12.270

John Samples: The material was taken down correctly or no the content shouldn't have been taken down and you have to put it back up.

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00:33:12.990 --> 00:33:30.120

John Samples: Facebook has agreed to put that as a as per you know the contract that they will they are bound to put that material back that material backup and insofar as possible other material related to it. So that's one side of it. There is an

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00:33:30.600 --> 00:33:32.490

John Villasenor: Issue. Sounds like a precedent kind of thing.

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00:33:32.520 --> 00:33:44.280

John Samples: Right. Is it is yeah it's beginning with things that are taken down and then should they be putting put back up. I can tell you that as soon as possible, and perhaps early next year.

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00:33:44.640 --> 00:33:56.910

John Samples: It will also be will also be casting judgment on things that have stayed up that people believe should be brought down. So we'll be doing both kinds. There won't be a cemetery there.

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00:33:58.200 --> 00:34:05.070

John Samples: There is an opening in the bylaws for the court to all also make policy.

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00:34:06.330 --> 00:34:16.080

John Samples: advisory opinions as part of it. So we can say like, put it back up. And then we there's something that's gone wrong here or something and working through the case, we see a problem with the procedures.

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00:34:16.470 --> 00:34:24.210

John Samples: We have the right to us, you know, to say to Facebook. We believe you should do X, Y, or Z about the policies.

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00:34:25.110 --> 00:34:30.870

John Samples: Now they don't. They are not bound to do that. But I think there we can serve as a

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00:34:31.680 --> 00:34:46.890

John Samples: In the sense of that question is someone to give them some outside advice about what they're doing wrong and maybe they will take it. There is a general policy role for the board in which Facebook and ask us about policy questions.

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00:34:48.000 --> 00:34:54.840

John Samples: For example, this did not happen because we're not working, but last week Facebook media policy decision about

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00:34:55.770 --> 00:35:10.470

John Samples: A Holocaust denial, right, in theory they could have asked us first about that good to change the policy or not. But in fact, they get nine episodes. They didn't ask us, but they could have. And then we can give them advice.

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00:35:10.530 --> 00:35:10.650

John Samples: And

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00:35:11.130 --> 00:35:21.090

John Villasenor: The policy was that they were going to remove from now on forward that it was not going to be acceptable, they were going to remove that content and that was not the case priors that the change is that

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00:35:21.120 --> 00:35:29.970

John Samples: Yeah. Yes, that is a change about, I think, a year and a half ago at the beginning of the real controversies Mark Zuckerberg decided that

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00:35:31.290 --> 00:35:42.120

John Samples: As part of a strong free speech strong voice position for Facebook that even this kind of material would stay up and he went to some reasons why that would be so

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00:35:42.570 --> 00:35:46.800

John Samples: And for other reasons. They've changed their mind. I haven't been part of that or no.

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00:35:47.220 --> 00:35:56.940

John Samples: Warning know a lot about it, but I'm giving you as an example. He could have asked us that week and the it's now been decided that I believe that will the board will have

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00:35:57.450 --> 00:36:11.820

John Samples: Various subcommittees perhaps working on that. But I think there will be a policy committee will opinion will be for the whole from the whole board. And now, Facebook is not bound to take that they can, they cannot take it if they want to.

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00:36:12.390 --> 00:36:17.430

John Villasenor: Advise policy advisory decisions. They're not bound to date but but content moderation decisions they are bound to buy

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00:36:17.550 --> 00:36:24.480

John Samples: If they are, yeah. I mean, I do think they will take the content moderation decisions because otherwise.

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00:36:24.960 --> 00:36:25.410

John Villasenor: What for

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00:36:25.890 --> 00:36:37.200

John Samples: Well, you've been. This is not some small thing they have just cake can give you the you know idea here. This is not just something they thrown out there and yeah 130 million, you can say all that's nothing for face look

255

00:36:37.470 --> 00:36:38.040

Kate Klonick: It's not just

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00:36:38.310 --> 00:36:38.880

Kate Klonick: A lot of money.

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00:36:39.540 --> 00:36:41.520

John Samples: It's not a lie. This but

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00:36:41.730 --> 00:36:49.800

John Samples: It's not just that they've put their best people. I mean, the people that worked on this. I was struck by the quality of individuals that worked on this.

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00:36:50.070 --> 00:37:03.810

John Samples: For on the Facebook side they put a lot of resources into this is not some thing they've thrown off. So I don't think they're going to ignore on a core issue like content moderation, they're going to ignore us. I just don't think it's going to happen.

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00:37:05.400 --> 00:37:22.170

Kate Klonick: Okay, yeah. Yeah, I do. So there's so I just want to say. So the question itself is kind of phrases like an either or. But what is happening is like basically like these, like, no, like John and everyone else that is on the board.

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00:37:22.770 --> 00:37:33.210

Kate Klonick: Not experts in product not experts in building things, necessarily. There are some people who are very technical and very savvy. But a lot of these experts are extra experts on free expression.

262

00:37:33.600 --> 00:37:42.960

Kate Klonick: Human rights are lawyers. They're like, they're, they're journalists, there are people who are political science experts. There's their

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00:37:43.410 --> 00:37:54.210

Kate Klonick: theoreticians it's a it's a very diverse group, but they all have that kind of common thread of being very steeped in those one of those traditions and a few of them actually

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00:37:54.480 --> 00:38:04.200

Kate Klonick: Are a little bit more leaning in terms of like having skills and institution building because I think that like it was seen as an essential part of, like,

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00:38:04.770 --> 00:38:12.990

Kate Klonick: Starting this board that like the people who were going to be on it initially knew how to create a board like new habit like set something up right

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00:38:13.440 --> 00:38:22.140

Kate Klonick: That being said, like there was a lot of conversations that I was a part of. I went to all of these different workshops and they give demos of, like, let's sit down with this decision.

267

00:38:22.500 --> 00:38:29.910

Kate Klonick: And like tell us how this is going to work. And, like, people would say something like, so like they would look at something like the killer man example. I don't know if you've heard this, but a

268

00:38:30.180 --> 00:38:39.360

Kate Klonick: Person post kill all men, and it's kind of like a speech bubble coming out of like a like a young girls mouth of black and white picture. And it's like, haha. This is like a joke and

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00:38:40.200 --> 00:38:46.380

Kate Klonick: This was like taken down by Facebook because it was against like it was like a class of people, men, and it was

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00:38:46.800 --> 00:39:02.430

Kate Klonick: It was like promoting violence against men, and that was like a per se, like violation and people freaked out and they're like, well, men aren't really a protected class of people. They're not like a protected gender, like all of these things do we put it back up, or do we keep it down and

271

00:39:03.510 --> 00:39:13.410

Kate Klonick: People different on this, I would say in the Europe in the US. Most people wanted to go back up, but none of them could articulate and I really watched like four or five brilliant people

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00:39:13.710 --> 00:39:30.270

Kate Klonick: At each time I saw this run. And I thought, run probably six times struggle to articulate what satire was or what humor was or how to make an exception for something like this and how to write it into a rule, and it is just very, very, very hard to do.

273

00:39:31.290 --> 00:39:43.140

Kate Klonick: Like, you know, and so like that. Like so. I think that the better thing is that people like John who are experts in these like broad theoretical concepts. Say, listen, here's where we want to get

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00:39:43.530 --> 00:39:57.360

Kate Klonick: You figure out a way to do it. And we're like, and you're the people you're the engineers, you're the people with this policy expert who's been working on this all the time you articulate this and make this like make it so these are the outcomes that we want.

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00:39:57.810 --> 00:40:03.420

John Villasenor: That's a great point. Like I just remind like an, you know, an artificial intelligence, of course, it's extremely hard to teach an AI.

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00:40:03.840 --> 00:40:14.850

John Villasenor: You know engine satire and humor and sarcasm and, you know, it's just, you know, AI is really good at saying what's the fastest route to get from here to here, but not so good at discerning sarcasm.

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00:40:15.000 --> 00:40:25.080

John Villasenor: So one other question that kind of came up that that that one of the attendees posed is, you know, obviously, moral, the moral alarms, on the one hand, and there's market forces on the other in terms of

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00:40:26.160 --> 00:40:30.000

John Villasenor: Content moderation decisions. And sometimes they'll wind up but sometimes they'll be in conflict.

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00:40:30.300 --> 00:40:42.450

John Villasenor: I guess is the oversight board charged with basically sort of ignoring market forces and making whatever it thinks is the morally kind of appropriate decision or a market forces supposed to play at all consideration. Any thoughts on that.

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00:40:43.920 --> 00:40:50.220

John Samples: So this is something I've thought a fair amount about and what I'm about to say is my

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00:40:51.930 --> 00:40:59.670

John Samples: Is the way I've resolved it. And in fact, it is not been in my experience, related to the board has not been mentioned at all.

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00:41:00.270 --> 00:41:06.510

John Samples: We've never talked about it and for at one point I was talking about it with the board and

283

00:41:07.260 --> 00:41:22.410

John Samples: You know, I said something like, if they're concerned about this business decisions they really have appointed the wrong board right because many of the people are have judicial or political or other co or non governmental institution experience and I've

284

00:41:22.890 --> 00:41:41.070

John Samples: Been working at think tech and so on. We're not business people. We haven't run a gigantic multi national corporation that has platform. So it's. However, there is an issue which is, in my opinion, not everyone's opinion but in my opinion.

285

00:41:42.090 --> 00:41:58.650

John Samples: A business is there to maximize value for shareholders. Now, what that doesn't tell you though. And that can cause people criticize Facebook and say that, following that causes problems. It leads them to keep up harmful content. However, the other way I look at it is

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00:41:59.670 --> 00:42:11.070

John Samples: Over what time horizon. Right. Facebook is an extremely successful Corporation, you talk to people about Mark Zuckerberg. They say he talks about five year intervals five years into the future.

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00:42:11.910 --> 00:42:24.030

John Samples: I think the decision on their side that's made here is, look, we need this board. We need to have legitimacy for content moderation and it may not be at every quarter or every day that we're maximizing value.

288

00:42:24.390 --> 00:42:29.970

John Samples: But it's an important element to over that period over the medium term, let's say,

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00:42:30.630 --> 00:42:40.140

John Samples: This board if it can work if it can do its job the way we want it to do. It can be independent and can force us to sometimes do stuff. Maybe we wouldn't have done.

290

00:42:40.800 --> 00:42:59.310

John Samples: Nonetheless, that's for the good of the House, as it were, it is it maximizes value for our shareholders over the medium term, if not every margin. Right. So I think that's the big question. Is that true, but I think that's a plausible account of how profits and

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00:43:00.330 --> 00:43:15.660

John Samples: Really an obligation Zuckerberg has an obligation to his shareholders. Also, but it's, it can be reconciled with work we are doing and the work we are doing is not business work. We're not trying to figure out how to to maximize that every margin.

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00:43:17.850 --> 00:43:18.240

Kate Klonick: Um,

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00:43:19.740 --> 00:43:27.540

Kate Klonick: Yeah, that's exactly right. JOHN. Here's the thing that you kind of never hear and I don't say it very often because I just like it's

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00:43:29.610 --> 00:43:38.610

Kate Klonick: Like it's like people just like don't believe me, but every time I have talked to people who are making in charge of making any of these decisions that I've talked to people.

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00:43:38.970 --> 00:43:49.560

Kate Klonick: From as far as like Google and YouTube like that were there in like 1998 to 2008 and you talk to people at Facebook and Twitter who were there from 2008 to now.

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00:43:50.160 --> 00:43:57.240

Kate Klonick: And there is not a single person who says, but like money comes up in the decision of what what to do with this pieces of content.

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00:43:57.570 --> 00:44:03.180

Kate Klonick: I totally understand that there is an ad based business model that is like based on this.

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00:44:03.660 --> 00:44:13.470

Kate Klonick: But the decision on any one piece of content creates such bad make so many people mad at them no matter what they do that. There's like not a way to win it.

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00:44:13.890 --> 00:44:26.220

Kate Klonick: Like there's not a way to like keep it up or take it down people quit the platform advertisers are going to pull out. You keep something salacious up like something super gory like like people are like Facebook kill them. It like

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00:44:26.670 --> 00:44:36.810

Kate Klonick: Published like this thing of like a man killing a homeless man in Cleveland, and they posted the video and they left it up for 30 minutes because it got them clicks it didn't get them any clicks.

301

00:44:37.290 --> 00:44:55.800

Kate Klonick: It had 140 viewers and like, then it came down and instead Facebook lost like I don't know. Probably like over a million dollars in advertising revenue because people like advertisers pulled out because they didn't want advertising associated with them, keeping up so like

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00:44:57.420 --> 00:45:03.480

Kate Klonick: Oh, I'm trying to say is like when they're making that decision, knowing it's like a murder is good for Facebook. Let's keep this up for a few more minutes.

303

00:45:03.750 --> 00:45:11.160

Kate Klonick: That's actually not what happens. And so like I actually think that like it's not like that is not true, by the way.

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00:45:11.580 --> 00:45:24.030

Kate Klonick: For larger products like news speed and like like decisions to like algorithmic algorithmic maybe rank something right those are those are much more like what what is going and those

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00:45:24.480 --> 00:45:39.870

Kate Klonick: I don't, I still don't think that those have the same level of like intentionality as people think they do. But what I'm trying to say is that like these one off content moderation decisions are almost never about like about money. I'm the least the ones that you hear about

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00:45:40.410 --> 00:45:42.510

John Villasenor: Thank you. I'm sorry. So just a quick

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00:45:43.350 --> 00:45:51.660

John Samples: Well, I was just going to add to it. I don't know. One's told me anything, but I share the fairly common view that the political advertising in particular is

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00:45:52.080 --> 00:45:59.130

John Samples: You know, they may make some money off of it, but it's not worth the headaches that causes them and they would get rid of it. And the second if they didn't think

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00:45:59.520 --> 00:46:16.080

John Samples: You know they had some well there's a political complications of doing that. But the, I think at some point. Mark Zuckerberg felt it was our obligation of some sort. But it's not the money there would dictate you get rid of political advertising. It's just too costly to the managers time

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00:46:16.440 --> 00:46:19.860

John Villasenor: So I guess I'd like to talk to something you know Kate alluded to earlier.

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00:46:20.430 --> 00:46:28.170

John Villasenor: You know this, you know, but those are the horseshoe effect, I guess, and I'm just for context, you know, as you know, but but but some of the attendees may not know

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00:46:28.920 --> 00:46:39.420

John Villasenor: Presidential nominee Democratic presidential nominee Joe Biden in January, called for section 230 to be repealed President Trump has repeatedly say that

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00:46:39.840 --> 00:46:48.780

John Villasenor: That it should be said that it should be revoked in recent months, so that revoking a repealing section 230 maybe one of those very, very small number of things that that

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00:46:49.530 --> 00:46:58.290

John Villasenor: Both candidates agree on, but obviously for different reasons. And maybe, can you explain that landscape landscape, a bit like what is it about, you know,

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00:46:59.010 --> 00:47:07.230

John Villasenor: In what way does the fact that you have hostility from both the left and the right towards the current form of Section 230 does that represent just a

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00:47:07.470 --> 00:47:13.410

John Villasenor: You know, the same conclusion. But for very different reasons, or the same conclusion for this and you can kind of help explain that a little bit like

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00:47:15.780 --> 00:47:16.590

John Villasenor: The horseshoe thing.

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00:47:17.070 --> 00:47:21.960

John Samples: For yeah I have an explanation. They. I mean, there's, I have a general explanation which

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00:47:22.260 --> 00:47:23.100

John Villasenor: About the horseshoe. Awesome.

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00:47:23.940 --> 00:47:24.270

John Samples: Well, this

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00:47:25.380 --> 00:47:44.190

John Samples: This is a horseshoe. I remember you. The, the grief, they really care about is from politicians, I think I have a theory that which is that when new technology comes along and new technology. They can affect the reelection or the political success of failure of elected officials.

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00:47:45.450 --> 00:47:53.700

John Samples: They communications technology of that sort, they become very anxious about it they they're worried about, they have to. They want to understand it.

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00:47:54.060 --> 00:48:01.230

John Samples: And above all, they want to have some kind of controls over it. They don't want someone wandering around out there that can do something

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00:48:01.620 --> 00:48:11.610

John Samples: In their mind whether it actually is true or not, they can profoundly affect their chances of re election of success of having a career and so on. And when you think about it for a moment.

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00:48:11.910 --> 00:48:17.670

John Samples: If all of us were politicians and elected officials, we might well feel the same way about that right

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00:48:18.330 --> 00:48:30.840

John Samples: So the thing that happened with social media was unlike radio and television was that it it came about during this era of kind of deregulation. So you're in the 80s and 90s. Right.

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00:48:31.230 --> 00:48:36.750

John Samples: And so you're you're 15 years and even as late as 2012 everyone's saying it's great, it's great.

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00:48:37.260 --> 00:48:45.780

John Samples: The real problems only happen maybe what 20 or 30 years into the, the technology itself. And so you want to reassert

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00:48:46.050 --> 00:48:58.110

John Samples: To some degree, a sense that yeah I matter to and look. I can't just run around out there, causing me problems. I don't know what might happen here. That's the big picture in my opinion, which is not something you're going to maybe hear everywhere.

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00:48:59.160 --> 00:49:00.600

John Villasenor: Okay, the horseshoe. How does that work.

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00:49:01.530 --> 00:49:13.470

Kate Klonick: Oh, I mean, it's like, I mean, there's lots of issues that have like a, the better the horseshoe but section 230 just like I guess this is just like how I think of it, which is that I have all of these super progressive friends that are these

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00:49:14.670 --> 00:49:23.400

Kate Klonick: That are just like these, these advocates for victims rights. These advocates against sexual exploitation.

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00:49:23.970 --> 00:49:35.490

Kate Klonick: People who want to hold these companies and these platforms accountable in private causes of action under a kind of a torrent regime and they're going to regime of, like, Listen, if we Institute.

334

00:49:36.060 --> 00:49:47.730

Kate Klonick: Torches responsibility, you'll create better products that don't harm people and like right now, we have no leverage and because of Section 230 section 230 is removed that so we don't have that kind of that, put that like

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00:49:48.150 --> 00:49:53.070

Kate Klonick: You gave them this carrot and you took away or stick is basically like is I guess what people say.

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00:49:53.880 --> 00:50:02.880

Kate Klonick: And so that you have like those people who have just been like rail in Section 230 like listen, it's not that complicated. But like people's eyes glaze over.

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00:50:03.240 --> 00:50:13.920

Kate Klonick: It if you talk to people like it's so it becomes a mantle for something that like you can prevent like sounds like you're privileging and honestly like I do think there's a psychological element to this.

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00:50:14.490 --> 00:50:27.390

Kate Klonick: People don't quite understand like, you can kind of like bluff your way out of, like, not really knowing what's going on. And like, but still, like, go out there with your picket sign and be like, or appeals action to 30 like. I mean, we've seen the President do it. So there's that.

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00:50:29.400 --> 00:50:34.770

Kate Klonick: But there's a but then you have people what's really fascinating is in the last couple of years.

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00:50:35.790 --> 00:50:51.540

Kate Klonick: As content moderation is a concept has come into the four and this really happened in like so I started my thesis, so I'm like in like, I guess the like the spring of 2015 my under my PhD thesis, which became all of these papers in this work.

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00:50:52.830 --> 00:50:58.170

Kate Klonick: And I would say that at that point, my I had two people that were in my

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00:50:58.560 --> 00:51:08.730

Kate Klonick: PhD seminar and they were like, two of these professors and they were like, this isn't legal work. This isn't, this isn't important. No one's going to care about this. This is just how companies like

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00:51:09.120 --> 00:51:16.080

Kate Klonick: Like do like they make their own rules like this is just their terms of service. Like, why are you like doing an entire paper on this.

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00:51:16.620 --> 00:51:27.360

Kate Klonick: And and then when my dissertation came out was published like was the same day that Mark Zuckerberg testified in Congress about content. Content moderation policies in Cambridge analytica

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00:51:27.780 --> 00:51:38.580

Kate Klonick: And so, like, in the last five years, you've just seen this site Geist of this becoming an issue. And you've seen people on the right. Suddenly, understanding that this is happening and

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00:51:38.850 --> 00:51:48.540

Kate Klonick: Being able to claim their own victimhood and their own kind of like this is happening to me and I'm being censored and look who's in charge now it's all of these like

347

00:51:49.050 --> 00:52:00.420

Kate Klonick: All of these, you know, progressive kids that are super sensitive making all of these rules inside these tech companies and they're censoring and like harming conservatives. So let's repeal section 230

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00:52:00.960 --> 00:52:07.800

Kate Klonick: And I have like a surprise for everyone, which is pretty much if you repeal section 231, you're just going to hurt.

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00:52:08.310 --> 00:52:17.220

Kate Klonick: Like you're going to amplify the the the monopoly problem, like you're talking about, it'll be harder for small small actors to enter the market.

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00:52:17.610 --> 00:52:28.200

Kate Klonick: To you're going to hurt like the the little people that like do all of the heart horrible work of content moderation, like the actual human to look at the terrible content that you flagged.

351

00:52:28.650 --> 00:52:36.180

Kate Klonick: And then you're going to basically like net. It's going to have no net effect because probably a lot of these private causes of action will be

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00:52:36.690 --> 00:52:51.180

Kate Klonick: Like not will be blocked through First Amendment protection and so like these. All of these things are kind of like this. All of this is kind of, I think, like a whole like a whole bunch of like jawboning hoopla

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00:52:52.290 --> 00:52:56.760

Kate Klonick: But that's kind of how I see the two sides coming together. So it's like all of a sudden, Josh, Holly.

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00:52:57.030 --> 00:53:04.440

Kate Klonick: And Elizabeth Warren are staring at each other and they're both holding repeal affection to 30 science and it's just kind of like, Who did I get in bed with, like, I don't

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00:53:04.890 --> 00:53:12.120

Kate Klonick: You know, so it's it's I think it's going to be a super interesting thing to see how it plays out. And I don't think it'll be necessarily productive.

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00:53:12.720 --> 00:53:27.690

John Samples: But the other thing that struck me is now with this thing about Biden's son is basically the left and a various kinds after the 2016 election was put on Facebook's they weren't

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00:53:28.500 --> 00:53:33.570

John Samples: Trump's election was their fault. And now I think Trump's likely defeat

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00:53:34.320 --> 00:53:44.310

John Samples: The right has its now it has its bloody shirt as a word Facebook at all of these companies have defeated the Donald Trump, who would have one otherwise right

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00:53:44.670 --> 00:53:49.530

John Samples: And then that they would have want to Hillary won one otherwise all of these sort of questionable things

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00:53:49.890 --> 00:53:56.970

John Samples: And of course, the other thing about it is, people like this for some level they like being upset and angry and feeling put upon

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00:53:57.360 --> 00:54:03.420

John Samples: And it's a very effective message when you go that's the shoe, I think, is that ultimately

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00:54:03.810 --> 00:54:20.910

John Samples: People have to appeal to and have you have you got to get people to the give you money. Got to get people to go to the voting booth, and this is something people care about on both sides and people they feel that both sides feel that they've been hard done by actually and that's

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00:54:22.080 --> 00:54:31.410

John Samples: I don't think that's necessarily going to work out well, at least, but both people both sides have been hard now so they feel like, you know, I've got old wide right

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00:54:32.220 --> 00:54:39.330

John Villasenor: So yeah, so yeah, I guess we just have about four minutes left. I'll say briefly again, there's some, some of the attendees may or may not know

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00:54:39.870 --> 00:54:51.060

John Villasenor: There's not only the statute itself, but there's its interpretation application. Just this week, you know, we had FCC Chairman pie coming out and you know saying that the FCC was going to engage in rulemaking.

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00:54:51.420 --> 00:54:56.760

John Villasenor: On you know you know it's not clear to me that there's the authority to engage and we're making on section.

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00:54:56.760 --> 00:54:57.600

Kate Klonick: Or to anyone.

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00:54:57.630 --> 00:54:58.170

Kate Klonick: Don't worry.

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00:54:58.860 --> 00:55:00.510

John Villasenor: I mean, so, I mean, I mean the

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00:55:00.960 --> 00:55:11.040

John Villasenor: FCC seems to believe it has that authority and and so so that's another sort of front in the discussion is not only what the statute, how you might have been the statute. But, but, you know, of course.

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00:55:11.490 --> 00:55:13.110

John Villasenor: You know, the whole rulemaking.

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00:55:13.650 --> 00:55:24.840

John Villasenor: Process, you know, obviously going to be contested as well, should the FCC actually proceed with rulemaking, so we just have maybe two or three minutes you're actually maybe four minutes left. And I just asked me, each of you maybe if you had

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00:55:25.200 --> 00:55:31.410

John Villasenor: Two minutes of closing comments on know Kate, you want to start with you, and then we'll go to john anything else you want to say.

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00:55:32.400 --> 00:55:40.290

Kate Klonick: Yeah, just be really brief, um, there's a lot of talk about regulating big tech or breaking up big tech. And in fact, like

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00:55:41.070 --> 00:55:49.080

Kate Klonick: You know, I think that a lot of what Josh Holly and a lot of and Ted Cruz and the right is threatening. And I think the leftist will do it or threaten it to

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00:55:49.380 --> 00:55:55.650

Kate Klonick: Or has already is that you break up like stop but being biased and what you're doing, or will break you up.

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00:55:56.070 --> 00:56:03.990

Kate Klonick: And I just want everyone to kind of take a moment and like, I'm not like this crazy and no offense John I'm not a libertarian I'm not like

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00:56:04.290 --> 00:56:13.380

Kate Klonick: I'm not like someone who is against the regulation, but I don't I do see government involvement in speech as like almost always

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00:56:13.800 --> 00:56:25.200

Kate Klonick: Not something that works out for individuals, generally, and I think that like if we started having and like, and that what threatening to regulate in order to

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00:56:25.620 --> 00:56:36.900

Kate Klonick: Get the platforms to mop like moderate how the political parties or the government wants them to is not direct censorship, but it's collateral censorship and it's something that people should like

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00:56:37.440 --> 00:56:46.110

Kate Klonick: While we are in this moment, realizing how much we depend. And all of these various platforms have been are now, especially in the pandemic.

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00:56:46.440 --> 00:56:51.480

Kate Klonick: This is, as you said before John we're talking about like how you didn't realize that that you go out

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00:56:51.930 --> 00:56:56.460

Kate Klonick: Outside until you have smoke everywhere. And all of a sudden you realize like, Oh, how much I love breathing air.

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00:56:56.910 --> 00:57:10.590

Kate Klonick: I kind of feel like that's how we feel about the free and open Internet right now. I think the once it goes away. We're going to like, be very sorry that like a lot of the information that we wanted that we want access to you. And a lot of the ways that we want to speak isn't as open

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00:57:11.820 --> 00:57:16.980

Kate Klonick: As, as we've gotten used to being so that's just something to keep in mind as this goes forward.

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00:57:17.340 --> 00:57:19.440

John Villasenor: Thank you very much enjoy just two minutes and

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00:57:19.980 --> 00:57:34.170

John Samples: Luckily, I would say this week. I think I understood the arguments long but on the left which is question in a way that I hadn't understood before abstract before, which was the change in the whole thing about

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00:57:35.760 --> 00:57:44.100

John Samples: Holocaust denial. Mark Zuckerberg made that decision and the left has always said isn't in many people say, Isn't this too much power for one person.

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00:57:44.520 --> 00:57:54.720

John Samples: And I think in some sense he himself saw that that that that wasn't going to fly that that kind of decision making and that's why he set up these kinds of it again. It's Kate's influence

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00:57:55.200 --> 00:58:01.710

John Samples: He set up this these kinds of processes that look like the rule of law, so I just feel it's very important.

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00:58:01.950 --> 00:58:14.070

John Samples: That we have some room to make this work. And it's very important. We do our job correctly because the next I'll turn it of is collateral censorship. It absolutely is. And that would be terrible online, who would really this is a

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00:58:14.400 --> 00:58:23.880

John Samples: Great thing. We can't let it, we can't let it fail social media, the ability to communicate this way. We just can't, we can't. We have to refuse and we have to define something here.

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00:58:24.690 --> 00:58:31.560

John Villasenor: Great. Okay. Why, I just want to say thanks to both of you. I know you've got many demands on your time. So thanks, Kate. Thanks. JOHN AND

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00:58:32.250 --> 00:58:38.160

John Villasenor: You know the story is not over. I think the one thing we can certainly be sure of is that there will be more discussions.

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00:58:38.820 --> 00:58:51.090

John Villasenor: In you know on on content moderation in the coming, you know, weeks, months, and years, I'm sure. And so thanks again for your time. Thanks, as well, to those of you who attended the event, and we will get this posted on the website. So thanks. Thanks very much.

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00:58:51.630 --> 00:58:52.260

John Samples: Thanks very much.

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00:58:52.440 --> 00:58:54.870

Kate Klonick: Thank you so much for organizing. Great to see you john

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00:58:55.140 --> 00:58:55.440

Thank you.