



HOUSE OF LORDS

Select Committee on Communications

Corrected oral evidence:
The internet: to regulate or not regulate?

Tuesday 22 May 2018

3.30 pm

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Members present: Lord Gilbert of Panteg (Chairman), Lord Allen of Kensington; Baroness Bonham-Carter of Yarnbury; The Lord Bishop of Chelmsford; Lord Goodlad; Lord Gordon of Strathblane; Baroness Kidron; Baroness McIntosh of Hudnall; Baroness Quin.

Evidence Session No. 6

Heard in Public

Questions 44 - 51

Witnesses

Dom Hallas, Executive Director, Coalition for a Digital Economy (Coadec);
Antony Walker, Deputy Chief Executive, techUK.

USE OF THE TRANSCRIPT

This is a corrected transcript of evidence taken in public and webcast on www.parliamentlive.tv.

Examination of witnesses

Dom Hallas and Antony Walker.

Q44 **The Chairman:** Can I welcome our witnesses to this session of the Communications Committee inquiry on internet regulation? Our first witnesses are from the Coalition for a Digital Economy and from techUK. You are very welcome.

Today's session is broadcast online and a transcript will be taken. We will not be voting today, so we will have an uninterrupted session. Perhaps I can ask you to introduce yourselves and tell us about your organisations. What are your thoughts on the economic impact of online regulation, the impact on start-ups and innovation, and the likelihood of big tech companies to locate in the UK if we get regulation wrong or overregulate?

Dom Hallas: Thank you very much for having us here. I am the executive director of the Coalition for a Digital Economy, or Coadec for short. We represent start-up and scale-up technology businesses in the UK to Parliament and other political stakeholders. There are over 220,000 digital businesses now in the UK on the latest figures. The vast majority of those are not the tech giants you see every day in the news. In fact, they are the traditional SMEs or, as we call them, start-ups and scale-ups that drive the British economy.

When Coadec was founded in 2010, it was a real outsider voice and at the edges of the political debate. Reflecting the shift and the role of tech start-ups and scale-ups in the UK economy more broadly, we have moved closer and closer to the centre to the extent that I now sit on the Digital Economy Council with the managing directors of Facebook and Google for the Government and have engaged extensively throughout Whitehall and Westminster on those issues, as well in Brussels.

I have worked on tech policy for the bulk of my career, including the dark days of the GDPR, for those of us who have been involved in it, including Antony. Until January, I worked at the Department for Exiting the European Union on diplomatic strategy until I took over in January as the executive director of Coadec.

To answer your question about economic impact, as I said, the role that start-ups and scale-ups have played in the British economy has been vast. We have seen that development has been absolutely extraordinary. We are talking about 30% in the past five years of additional technology value in start-ups and scale-ups. There are now 800,000 programmers in the UK. Some 300,000 of those are in London, but half a million of those are outside of London. That is the important issue here. A lot of the perception of technology is that it is quite an elitist institution and we are talking about hipsters in Shoreditch. The reality is that these days that is absolutely not the case. It is a much broader and more important part of the economy. Regulation and the stability of that legal framework in the United Kingdom has been critical in allowing those start-ups to develop.

Antony Walker: I am deputy CEO of techUK, a technology trade association representing approximately 950 companies that operate here in the UK in digital technology companies. That includes the very largest global companies all the way through to a long tail of medium-sized and smaller UK firms. We represent the breadth of very large to small.

To answer your question on the economic impact of regulation, regulation can have a very positive economic impact. Good regulation can be enabling. It provides a clear framework in which businesses can operate and do business on a basis of trust between each other and on a basis of trust with their consumers. When we get it right, good regulation can be extremely positive. Indeed, I would argue over the last 20 to 25 years, we have seen a process of progressive development of regulation that relates to the online economy.

We do not recognise the depiction of the internet as a kind of wild west. There is a huge amount of law that has been developed specifically for the digital world. Of course, there is lots of common law that applies directly to online and offline. As long as we make sure that it is proportionate, targeted, focused on clear outcomes and that it delivers against those outcomes, it can be very positive.

In terms of the economic opportunity for the UK as we enter the next phase of the digital economy, if we can continue to get the policy and regulatory environment right for businesses, that will attract investment to the UK. All that is predicated on getting it right and getting into the detail of understanding the implications and understanding what works and what does not work, which I am sure we will get into in the course of this discussion.

The Chairman: In the course of our inquiry, some witnesses have advocated the Australian system of online regulation in which it is argued that a tiered system of regulation with greater burdens on the larger tech companies and reduced burdens on start-ups and innovative companies is the way forward. Have you studied the Australian regulatory system? Do you have any observations on it?

Dom Hallas: I would not necessarily describe it as a tiered system. The Australian system is more about dividing into good actors and bad actors. My understanding is that if you do not opt into the system, you are put into the higher camp. That is not necessarily about size.

More broadly, talking about tiered systems, there is a challenge that is ultimately that all start-up businesses want to grow. The idea of restricting the goal of innovation by constantly placing additional regulatory requirements on them when they may not be necessary is a challenge. Something we are seeing from the European Union at the moment is a conversation about looking at what the biggest tech giants can do—the Googles and Facebooks—and thinking about scaling that down to smaller companies. This is a mistake and misunderstands the nature of the way in which regulatory compliance and those functions would grow within a business.

The other thing about the Australian system, and I know that the Irish Government were also looking at this, is that it is incredibly expensive to administer for the outcomes we are talking about. About 700 complaints about cyberbullying have been filed with the Government over the past three years under the Australian system. The system costs about £15 million. That is Cones Hotline-esque value for money. I would not necessarily advise that. I know that the Irish Government have looked elsewhere for options.

Antony Walker: First of all, the scope of this example is focused on one particular issue of cyberbullying. It is a very specific issue. As my colleague said, you can argue about whether the apparatus that has been put in place is proportionate to the particular challenge or whether it is the right way to get to the challenge.

To answer the broader question of whether the same rules should apply for large businesses and very large platforms versus new entrants, one thing you do not want to do is create regulation and legislation that entrenches incumbency. You do not want to make it hard for new companies to come in and new platforms to emerge that can challenge the established platforms. An unintended consequence of regulation is that, if you are not careful, you can do that by making the regulation a significant barrier to entry.

Clearly, we have to recognise that small companies will want to scale and grow quite quickly, so it is good to get them thinking about the implications of their services as they grow in scale. You want them to be pointing in the right direction when they are constructing their services and thinking about the risk for unintended harm. The Australian example is interesting, but I am not sure it tells us a lot about what we should be doing here in the UK.

Q45 **Baroness Kidron:** Before we get to the question of regulation, are there design features inherent in the common services that worry you? I am thinking about things such as echo chambers, compulsive technologies, and maybe some of the things that we are looking at with regard to the internet of things and smart toys. Take your pick.

I am interested to know whether either or both of you have some concerns niggling at the back of your mind about what is out there and how it might affect users.

Dom Hallas: These are important issues that everyone is now debating, including us. I am a technology evangelist, which is why I do the job that I do. It is a very good thing for society and will continue to be.

On issues such as addiction to technology and the way these services are designed, we have heard all this before. I was not around in the 1970s, but I am reliably informed by my mum that there was a big discussion around people being addicted to television. Certainly, in my era there was a big conversation around the impact of things like video games. It is important to set any discussion about the newest coolest technology and

the impact that it will have in the broader context of the gradual development of different things.

Baroness Kidron: There is nothing that worries you as it stands.

Dom Hallas: It is important to debate these issues as a society. Personally, nothing particularly worries me. Ultimately, “you are the law makers here”, is what I would say.

Baroness Kidron: Indeed.

Antony Walker: There are lots of digital technology platforms that have developed incredibly quickly and have scaled incredibly quickly. When you have services like this that are used by so many people on a daily basis, you start to see behaviours and consequences that were not always easy to predict at the outset and that you may determine have consequences that need to be explored.

We are clearly in that phase of starting to understand some of the implications of the very wide use of social media and other technology platforms. We are starting to see things that we think are great and are positive. We are also starting to wonder about the implications of the sort of behaviour that we are starting to see and whether the design of that service is driving towards a behaviour or an outcome that is less desirable.

There are issues that are of concern. They are mostly out there in the public debate. At the moment, we are having a very lively debate about some of the implications of living in a digital world. In the technology sector, I have seen a lot of people, particularly technologists looking at the next generation of technologies and artificial intelligence, who absolutely recognise that we need to be extremely thoughtful about how we develop the next generation of technologies, particularly when we have seen some of the outcomes from the current range of technology—hence the big focus on digital ethics and the very live discussion that is taking place internationally on the choices that technologists, researchers and businesses make when it comes to the application of new technologies.

So, yes, I would say there are issues that are of concern. The question is how to address them.

Baroness Kidron: Funnily enough, that was my follow-up question. Thank you for getting there so swiftly. Where does that responsibility lie? Mr Hallas has already said, “That’s for society to discuss”. In a way, regulation is an expression of society’s view about what is acceptable or not acceptable. Is it now time for us to be thinking about the design rather than the content, which has rather preoccupied everybody and is possibly of less import, frankly, than the design and structure of services?

Antony Walker: There is increasingly a discussion about design. Within GDPR, you have the principle of privacy by design. Concerns about cybersecurity are leading to a big focus on security by design. They are

two situations where we are very clear about the desired outcome and what harm we are trying to mitigate. In areas such as echo chambers and hate speech, the norms are less clear. That is why the design part is more difficult. You are trying to get companies and people developing technology to anticipate issues that it may be for society to debate what the desired outcome could be.

Do I think design is important? Yes. Do I think we need to be very careful, particularly when we think about AI, to think through the implications of where we are applying AI and to what purpose? Absolutely. We should also recognise that these are complicated issues. It will not always be clear exactly what the right and wrong thing to do is.

Dom Hallas: Building on that, this conversation about outcomes is absolutely the right one to be having. We understand that these issues are complex. At a societal level, it is important to debate and discuss what we want those outcomes to be. This is the case for the GDPR. It is also encouraging to see this built into the Government's *Internet Safety Strategy* Green Paper response that came out over the weekend. It is sensible to have the conversation with industry, the start-ups and scale-ups and all the technologists about how to implement that to deliver those outcomes as opposed to the line-by-line regulation that can be quite burdensome and have that economic impact that we are concerned about.

Baroness Kidron: If I might quote you back at yourself, would you not recognise that society might put value on spending \$15 million to save 700 bullied children and companies will not? There is a balance that society has to dictate as well as be informed by the need.

Dom Hallas: I do not necessarily speak for those companies, but the vast majority of companies have processes in place, which can be criticised. Society has a right to ask them to do more. My broader point was that replicating something that could be delivered effectively through guidelines and the encouragement of industry to do certain things.

Baroness Kidron: We look forward to industry doing those things.

Antony Walker: Can I make a comment on the bullying issue?

Baroness Kidron: I am sorry. I was not making a narrow point about bullying; I was talking about values rather more broadly.

The Lord Bishop of Chelmsford: Mr Hallas, you described yourself as an evangelist.

Dom Hallas: Which you are quite aware of, yes.

The Lord Bishop of Chelmsford: It is a subject that I know a little about. In my experience, the best evangelists are those who can acknowledge the weaknesses and challenges in their own arguments. I am also probably about the same age as your mother. I have to say, and I say it with a smile, that your answer sounded very complacent. The

issues that we are facing as a society now over addictions, particularly among children and young people, are of a completely different order.

You are right that there were concerns about television and video games, but it was much easier to exercise control over those in society, particularly in the family. It is much harder in the world we are now inhabiting. You are on the record in this conversation. I wondered whether you wanted to rethink your answer. Surely you can see that there are some issues here to do with addictions. You sounded as though you were saying that there is no problem—"It is in people's imagination. We had this in the past and that's the end of it".

Dom Hallas: I do not think that is necessarily what I was saying.

The Lord Bishop of Chelmsford: That is what we heard.

Dom Hallas: In which case I should restate my case. As a society, we think about what we want from companies, and that is the role that you play as law makers. When I was talking about the past, as in those discussions, I am not saying that legitimate points are not being made on both sides. As you say, you know a lot more about the definition of an evangelist than I do. There are a lot of people with a more negative view of technology in the world right now. The important role that I play as executive director of Coadec is to put across the point about the economic value and the broader social good.

The Lord Bishop of Chelmsford: What I am putting to you is we are more likely to take your evidence seriously if you acknowledge that there are some real issues here that we need to address together and find solutions to together.

Dom Hallas: I am here to talk on behalf of e-commerce businesses, for example, one of which I met last week in Leeds. It makes greeting cards. The important thing is that we do not lose sight of the idea that the broader digital economy is much broader than the issues that we are talking about, as important as those issues might be.

Baroness Kidron: Both of you seem to suggest that it is a question of striking the right balance. Is the balance right at the moment? What worries me quite a lot is the fact that users, to get the information they want, share a lot of information about themselves in that process. Obviously that is in companies' interests, because they target those people with adverts and information which they think they might be interested in. It can be seen by the user as something of an invasion of privacy. Is the balance right at the moment? Does the balance need to be changed?

Antony Walker: This is a central issue. For anybody who is busily deleting GDPR emails, we recognise that there is a major change in the law coming though, which has proved to be very timely.

On the issue of privacy and the relationship between data subjects, like all of us, and other organisations, we are going through a moment

rebalancing. We will see what the implications of that will be. The GDPR was debated in enormous detail in the European Union, in this House and elsewhere. That whole process was about striking a balance. We are going to have to see what happens with the GDPR and the extent to which it addresses people's concerns and supports ongoing innovation.

It is very interesting that the previous data protection directive was quite enduring and lasted for 20 years. I am not as confident that the GDPR will be as long lasting, given that it is more prescriptive at a time when the world is changing more quickly. It will absolutely be a central focus for politicians and policymakers, because it is such a fundamental issue for our society.

Dom Hallas: I do not have much to add to that.

Q46 **Lord Gordon of Strathblane:** You made the point that something has endured for 20 years, but the pace of change, as you pointed out, has grown exponentially since then, and the problems/opportunities have increased. Can we still get by with the Safe Harbour idea that online platforms have no responsibility for what goes out online? Or do they have some responsibility, and, if so, is it a self-defining obligation, or are there external criteria that we can use to determine where in the spectrum they lie?

Antony Walker: The e-commerce directive was one of these fundamental pieces of enabling regulation that tried to strike a balance between appropriate safeguards and providing a legal framework by which companies and individuals could transact safely across in an online world. It has been pretty enduring. It was quite an enabling piece of legislation. It was not too prescriptive.

Having said that, there is a misunderstanding that there are blanket exemptions from liability in the e-commerce directive, which is not the case. The limitations are limited. They are also quite specific. There are specific instances where you have limitations of liability. If you move out of that, those limitations do not exist. Addressing this limitation of liability issue would be a panacea for a whole set of issues to do with rebalancing the role that some of the big digital platforms play.

We are less confident that that is the case, not least because it is an area where you make a change to address a particular problem in the digital world that you have identified, but you risk impacting everybody across the whole digital economy through to the online greeting card company. This is one where we feel that this is the wrong tool for the job. We are not saying that there is not an issue. We are saying that this feels like a sledgehammer to crack a nut.

Lord Gordon of Strathblane: The purpose of this inquiry is to try to find the right tools for the job. Can you help us? What should be done?

Antony Walker: Something that slightly concerns me about the current debate—and, if I may say so, the title of your inquiry—is that when we talk about the internet and harms, we are increasingly conflating many,

many different issues. Concerns about bullying and terrorist content are confused with issues of competition law and monopoly. There are implications of AI.

A challenge that we have at the moment is that all these issues are becoming rather confused and rather conflated. Where your work could be incredibly helpful would be to try to segment that down to, "Here are a very specific set of issues that we are concerned about and about which we think there's a legitimate public concern" and we can look at finding the right solutions to those issues. That would be very helpful.

At the moment, there is something of a gap between the political rhetoric and the way in which some of these issues and concerns are discussed at a political level and in the media, and the policy reality, which is unhelpful for everybody.

Lord Gordon of Strathblane: When you referred to the political rhetoric, did you have in mind the Secretary of State's comments at the weekend?

Antony Walker: We have said publicly that we do not recognise this characterisation of the online world being the wild west. As I said, we have 20 years plus of specific legislation that applies to the digital world. What is illegal offline is also illegal online. We do not challenge that as a concept in any way. That is where the disconnect is. We would like to get much more into the detail, but at the moment there is a gap.

Lord Gordon of Strathblane: Let me assure you that references to the wild west did not come from politicians originally. They came from witnesses to our last inquiry from the advertising world, who described digital advertising as the wild west and produced a fair degree of justification for it.

Antony Walker: That is where I think we should get specific about the very problem that we are trying to address and not talk about the internet.

Lord Gordon of Strathblane: It covers a multitude of sins or virtues.

Antony Walker: Many virtues.

Dom Hallas: On that point about the e-commerce directive, I share Antony's perspective. Fundamentally, there has been extraordinary growth and development in technology businesses and internet businesses more broadly in the past 20 years. The e-commerce directive has been a fantastic legal basis for that conversation. It is important to realise that the directive does not draw a distinction between media businesses or tech businesses. If you have a newspaper, the online comments on your website are also covered by the same limitations of liability that a social media platform might be.

Equally, with Matt Hancock's app, for example, when he puts his own content on the application, it is not covered by the liability, but the users'

comments are. It is important to get into the conversation about the exact specifics of the e-commerce directive. This is an interesting forum in which to do so, because you have the ability to consider these things in further detail and the value that it adds to the internet economy.

The Chairman: Does it act as a disincentive on companies to take action?

Dom Hallas: To take action on content?

The Chairman: Yes.

Dom Hallas: I would flip it round. One of my big concerns about the e-commerce directive and the conversation about limitations of liability and the potential removal of them is that in many ways it would not address the challenge that people think it would. There is a lot of conversation from politicians about tackling tech giants through the removal of limitations of liability. In many cases, these companies are best placed to deal with the removal of those limitations precisely because they have the largest amount of resources and armies of lawyers.

Lord Gordon of Strathblane: Yet things happen that clearly should not happen.

Dom Hallas: Indeed.

Lord Gordon of Strathblane: Is that a failure of self-regulation?

Dom Hallas: It is partially a conversation about how best to regulate. One piece of legislation is not necessarily the conversation about the whole ecosystem, which is exactly Antony's point. There is a breadth of regulation on these issues, and it is about understanding which buttons to push as opposed to pointing one out and saying that it is a concern.

Baroness Kidron: Mr Walker, I feel a bit split in that you are saying on the one hand that everything is all right but be specific. As soon as you are specific, that is better dealt with by them because they will see it all right. It is a little confusing. On this particular issue about Safe Harbour, there is a "do not look, do not see" problem, is there not? Platforms take down content if it has been pointed out. They do not have to go and find it. It requires a member of the public or some other person to point it out. Is that suitable?

Antony Walker: We have moved on from that. We are already seeing the largest platforms using AI technology to identify material that is either illegal or very clearly harmful. As that new technology is being developed and implemented, we are seeing a significant increase in the amount of material that has been taken down before anybody has viewed that.

We have to be clear that where things are illegal, the context is clear and it is very easy to identify them—that applies in particular to child abuse content and quite a lot of terrorist propaganda content—it is very easy to

be confident as a business about your decision to take that material down.

The public debate is not about that material; it is about things like hate speech and bullying, which takes you into material that is often language-based and highly contextual. How you read and make a determination about that is a much more nuanced issue that machines at the moment are frankly not good at doing. That is where you have to bring in the human decision-making.

Baroness Kidron: Could you not agree with me on this point? I completely agree with you. A nuanced way forward is what we all seek. Suddenly deciding that a big platform has responsibility for hate speech is not necessarily the answer. Have your members come to the table to engage with what a societal answer is?

Antony Walker: In the last year we have seen a significant stepping up of activity, such as: the Government's response in the Green Paper, which was published at the weekend, in which they recognise that the larger players are doing a lot more; the recent transparency reports that have been published; the kind of debate that we have with companies about those transparency reports where they are very clearly interested in taking views on what more could be done as they further iterate; and the very fact that companies are investing significantly in more resources and more teams.

Some of these companies were a bit slow. Many would recognise that. They are very quickly trying to change gear and address these issues. They are trying to be quite responsible in thinking about the broader implications of them moderating public debate online and talking to lots of NGOs and civil liberties organisations to try to gauge where they should be going to get the balance right. There is a lot of activity and behaviour that is very positive but is rarely portrayed in the broader debate. That is from my perspective. That is what I see.

Q47 **Lord Gordon of Strathblane:** I will follow up on the algorithm point now, because in many ways it might be the answer to the human element that you view as being required. Last week we had the Internet Watch Foundation, which made the point that it should have a human being adopting every algorithm that is used and monitoring whether it is doing its job properly. Would that be a start of an answer?

Dom Hallas: Broadly, the points that Antony made about the role of AI are correct. It does a very effective job at addressing things like child abuse images, where oftentimes these are images that are recirculated among the same networks; they are old images that you can re-analyse.

AI has more of a challenge precisely with the human element. One of my big worries, which cuts back to the competition conversation, is that if the answer is to encourage Facebook to hire 20,000 moderators, that is certainly not the answer for the rest of the digital economy. That would

be my one big plea. The role that AI can play as it gradually develops in doing more of that work is very important.

Antony Walker: We are still in the early stages of the development and application of AI for these kinds of solutions. It works well when we are talking about images and video. At the moment, it is much less effective when we are talking about issues with language. Therefore, it seems highly likely that you will continue to need human moderation alongside the AI. The recent transparency reports show that the trusted flaggers approach works quite well. That is an example of where some of these large companies have been working with communities and engaging quite widely about how they build their solutions.

The technology will improve. The big question is about the smaller emerging platforms that do not have the kinds of resources that the very largest players have. There is some quite good dialogue and engagement between the big players about how they can share some of their technology. The Home Office and the Government have been working with third parties to see whether they can develop AI solutions that could be used by smaller players. I am quite optimistic about the role of AI, but we have to be very cognisant and aware of where we draw the line when it comes to the decisions that AI or these companies should be taking about the material that should or should not be online.

Lord Gordon of Strathblane: Are you content with a situation where in a way you are guilty until proved innocent, because the algorithm finds you guilty and a human individual might decide it was reasonable after all?

Antony Walker: The recent example in Germany is significant. Facebook took down some content in accordance with the new German law on hate speech and was told by a court that it had acted improperly. This is the sort of jeopardy that businesses are very concerned about and do not want to be caught in. They are conscious of the real significance of some of these discussions. Frankly, this is where policymakers need to be engaged, particularly in helping to define some of the issues about what is and what is not harmful content. This is where companies need help. It is not their job to make those sorts of determinations. There needs to be a public debate to help.

Lord Gordon of Strathblane: For clarification, if it is clear that something is harmful, it is their responsibility to stop putting it on their platforms.

Antony Walker: I am talking about instances where it is debatable whether something is harmful. Companies need the help of government and policymakers to help make determinations in understanding that line. If they are clear and confident about the decisions that they are taking, that enables them to react much more quickly.

Lord Gordon of Strathblane: The word for that is regulation, is it not? That is the help they receive.

Antony Walker: There are many ways in which you can do it.

Baroness McIntosh of Hudnall: You are on to something central to the discussion that we are having. For example, last week we were told that it was much easier to police and to have systems in place that could deal with child abuse images, because it was clear that the harm was defined. I am listening to what you are saying and asking myself whether what you want is not necessarily more regulation but more legislation. Is that what you are saying? Are you saying that it should be the business of policymakers and legislators to start trying to define what they mean by harm more rigorously than is currently the case? That appears to be what you are leading towards. That is a very big thing.

Antony Walker: Helping to provide clarity regarding how we determine these issues of harm absolutely will be helpful for businesses, which then have the responsibility to act. The Internet Watch Foundation is an interesting model that I would encourage you to look at and to think about why it has been so successful, because it absolutely has been. It is internationally leading in the way in which charitable organisations, industry and government have come together and worked effectively to collaborate to put a strong system in place for identification, takedown and subsequent prosecution in relation to child abuse.

Baroness McIntosh of Hudnall: We would entirely accept that. The point is that they work from an established body of law. You appear to be saying to us that there is a deficiency in the quantum of law that exists that would allow people in your sector to be more precise about where the boundaries are. Is that what you think?

Antony Walker: It is the case. The law may also struggle with some of these issues.

Baroness McIntosh of Hudnall: We cannot say it is too difficult.

Antony Walker: I am absolutely not saying that it is too difficult. I am saying that businesses need the help of government and legislators to think about how we can define that.

The Chairman: What we are stretching for is to define the device by which this certainty is created. We have talked about regulation, law and co-regulation, but the actual device by which the platforms and other companies have clarity about what it is society has decided is not acceptable.

Antony Walker: We are open to different approaches. There will be some areas where we can potentially provide a lot of clarity. There will be other areas where the challenge will be that we are working in legally very grey areas. The question is how you provide a bit more certainty that can provide better guidance. The law itself may struggle in some areas, but that should not stop us from trying to do a better job of defining norms in relation to harmful content and issues of harm.

Baroness McIntosh of Hudnall: Who do you mean by "us"? If it is not

the Government through legislation, you would be pointing to—

Antony Walker: I do not think it has to be through legislation. It can be through codes. There are many ways in which we can do it. In some areas, legislation may be the better approach. We have not come that far in our thinking. I absolutely agree that we should be focusing collectively on government working together with industry.

The Chairman: You are posing a question and we are putting it back to you for an answer, to be fair.

Q48 **Lord Allen of Kensington:** You asked for specifics, so I would like to focus on the concern about the patents of algorithms and their use. In what ways would online platforms be more transparent about the impact of algorithms, how they are used and the impact on their users?

Dom Hallas: When we talk about algorithms, it is a question of what we mean by harm. When we dive down into the research and the polling about what people are concerned about, they are worried that algorithms and their data are being misused.

Lord Allen of Kensington: They are probably right to be worried from evidence we have taken and seen over the last number of months and years. Would you agree?

Dom Hallas: It depends on the specifics, but it is understandable if you have seen the debate in public over the last three months.

Lord Allen of Kensington: I will come back to the question of public trust, because another issue is what you will do about it. Mr Walker talked about the actions that you can take, but building trust is a significant issue, and I would like both your views on that.

Dom Hallas: On the point about algorithms, it is important to be clear that clarity about how data is used and clarity about what algorithms are being used for are not necessarily the same as pure transparency. My concern about what the Government published this Sunday in the *Internet Safety Strategy* is that the code of conduct is encouraging and suggesting that regulation might follow if platforms do not comply: a model where commercial platforms, including start-ups, are having to open up an awful lot of the kimono of their business to the public more broadly in a way that for a lot of UK-based start-ups that are growing platforms is genuinely very commercially risky when you have giant technology players that are buying up a lot of businesses. The internal workings of these companies are very commercially sensitive. We understand there are broader societal questions we have to address.

Lord Allen of Kensington: We are not talking about detailed programming. It is the purpose. What will this algorithm do? What is the impact on me, and how will it influence my behaviour or impact on me personally? We are not asking for the coding. That is the same point.

Dom Hallas: That is exactly what I mean. That is the distinction between giving clarity and giving what is often called transparency. Those two things are slightly separate.

Lord Allen of Kensington: In your evidence, Mr Walker, you talked about mechanisms. You did not favour legislation or regulation. Can you give us specifics on what sorts of mechanisms could be used to address this specific issue?

Antony Walker: The issue of algorithmic transparency is an incredibly live issue and debate across the tech community internationally, particularly as we look forward to the wider application of AI in society. There are clearly lots of situations where algorithms are taking sensitive decisions that impact people's lives where it seems entirely reasonable that it should be possible to explain why the algorithm made the decision it did. In fact, that is already written into GDPR in the right to explanation. Within GDPR it is unclear what that right of explanation means and the degree and extent of transparency that is required. It could require simply a top-level explanation—"It broadly said it took the decision for these reasons"—or it could require laying open the algorithm for full interrogation.

When you look to the wider application of AI and think of more autonomous machines operating where potentially something happens that should not have happened, being able to interrogate that algorithm to find out and understand why the outcome that happened did so will clearly be important in a society where we are so dependent on AI because it is embedded all around us.

The question is what that means in practice and how you resolve that issue. There is a misconception that all AIs are black box and you put data in and an outcome comes out and you cannot find out what is going on. That is not the case with most machine learning. It should be possible to be reasonably transparent to understand what happened with most machine-learning algorithms.

It is different for deep neural networks, where achieving full transparency may be more difficult. The research community is very focused on these issues and is looking at ways in which that kind of transparency, accountability and explainability can be achieved. In the world of computer science, this is an absolutely live issue. There are researchers around the world focused on these issues. As we enter into this next phase of living and working alongside smart autonomous machines, it is essential that we know why they are making the decisions that they make. It will be a big focus, particularly because we can see what is coming, not because of the examples that we see today.

Lord Allen of Kensington: If you come to the point that I made earlier about public trust, what specific actions should be taken to ensure that public trust?

Antony Walker: This is an issue that we have been—about around Ts and Cs being in language that the public can understand. The worry would be that you can explain it but that 90% of the population, including myself, do not understand.

Antony Walker: Cookies are a good example of a well-intended solution that fails to deliver the outcome that everybody wanted to achieve. How many times have we all clicked away the cookie reminder? Clearly, it was ineffective. Ts and Cs are clearly the wrong tool for the job. Ts and Cs are not a good way to explain to the user how a service operates. They are a legal requirement. They are there for a legal purpose. They are complicated precisely because of the legal requirements. Many companies have invested in thinking about how to make the relevant information available to the user at the point at which they need to know.

We did some work with the Competition and Markets Authority a couple of years ago. We took it through the process by which a number of our members have sought to take what is in their Ts and Cs and turn it into meaningful, timely information that is there at the right moment. I found what they have done quite impressive. Ts and Cs are clearly the wrong tool for the job when we are trying to think about how to make the way this service works understandable for people. There will be companies out there that want to hide behind their Ts and Cs, but good and reputable companies will want to make sure their users understand how the service works.

This brings me back to the question of ethics. We were a strong proponent of what has become the Centre for Data Ethics and Innovation. We are actively supporting the establishment of the Ada Lovelace Institute. We hosted a big digital ethics summit last year precisely because we think there is a whole new set of issues that is coming along whose ethics and norms we need to think through.

Once we have the ethics and norms right, we can focus in on, “What’s the right tool for the job? How do we reach this specific issue there?” or, “We need a broad concept or framework that people can innovate under”. There is a spectrum of activity from the very precise and targeted to the broad and general. We need to find the right mix of tools for that.

Q49 **The Lord Bishop of Chelmsford:** You helpfully reminded us that it is dangerous to conflate too many things together under this topic. Here is a specific question. In their written evidence to our recent inquiry on advertising, the News Media Association noted that Google and Facebook have bought companies whose applications might have challenged their market dominance. In your opinion, is the current competition law effective in regulating the activities of platforms in this regard?

Dom Hallas: At the moment, in the conversation on competition we are seeing perhaps understandable frustration at the pace at which the competition process works. When I think back to the way in which the European competition regulators have consistently addressed technology issues of the time, there has been an impact and they have made the

effort to do so, but oftentimes, by the nature of the process being evidence-based, it has taken longer than ideally would have been the case, given public discourse and the pace of change.

I am by no means a competition law expert, I should add, but there is no doubt that it is an extremely complex conversation. At the moment, quite often the people who are having the discussion are not necessarily the best placed to do so. I make that broad point and bow out safely as a non-competition-based guy. Perhaps it would be worth consulting the new chair of the Competition and Markets Authority, who I understand will be joining you in the House of Lords.

The Lord Bishop of Chelmsford: So I understand, was that a yes or, "I don't know"? Is competition law effective?

Dom Hallas: Broadly it is effective, but it is perhaps slower than might be ideal.

The Lord Bishop of Chelmsford: So it is a yes.

Dom Hallas: Yes.

Antony Walker: Competition law gives us the best set of tools to address the way in which markets operate overall. There are two questions about competition law in relation to the digital economy. The first question is whether it can keep pace and keep up. Competition law is necessarily quite slow, but innovation and companies scale incredibly quickly. We have seen that over the last few years, and the question is whether it can keep pace.

The second question is whether it can cope with the economics of platform businesses. Platform businesses are not entirely new, but they have emerged as a fundamental shift in business models over the last few years.

When the CMA, under Alex Chisholm, looked at this issue in quite a lot of detail a couple of years ago when the European Commission was asking these questions about competition law, the CMA's view was that it had all the tools in the toolbox. The fundamental doctrine of competition law was not the problem. The problem was more about the application and the need for competition authorities to make sure that they have a good and deep understanding of what is happening in digital markets, where maybe they have been a bit slow to understand that the economics of highly scalable platform businesses were different from the economics of other businesses.

Competition authorities can be quicker in sending signals to the market about what may be a desirable outcome. In a number of instances, the CMA has been quite good at signalling where it has a concern about something happening in a market. In itself, that leads to a correction before it has to intervene deeply in that market. Sometimes competition authorities could use those tools of signalling and say, "We are starting to

see too much concentration here”, or, “We’re seeking outcomes here that we think are anti-competitive”.

The Lord Bishop of Chelmsford: That sounds like a no, or at least it is a “No, but they could be implementing it better”. Do you want to add anything about post Brexit in this regard, as a lot of the regulation currently comes to us through the European Union?

Antony Walker: Brexit is definitely a complicating factor. Ideally, we would want to see UK competition approaches continuing along the same path as European competition policy. Philosophically and with regard to the underlying doctrine, they are the same. I do not see why they should diverge, but there is always a risk. It is definitely a complicating factor. There are some who worry that the European Union could use competition policy in more of a defensive way; I do not particularly share that concern. The European Union has a very strong track record in tackling issues of market dominance and will continue to do so.

The Chairman: Do you agree, Mr Hallas?

Dom Hallas: Yes. It is one of the many areas where we all acknowledge the benefits of acting at scale. It is important that the UK competition authority continues to nod to Brussels as it continues to work.

Q50 **Baroness McIntosh of Hudnall:** This next question connects directly to what you have been talking about. It is about network effects, which appears to me, as somebody with no expertise in this area at all, to be directly related to the question of scale and new entrants into the market, how quickly they can scale up and whether further interventions are needed to make it easier for new entrants and smaller entrants to compete with the big guys who have the benefit of networking effects. I do not think that we need necessarily to spend a lot of time on this, given what you have said, but do you want to add anything on that issue?

Dom Hallas: This cuts to the much broader conversation that we have been having. Antony mentioned a little earlier the risk of regulation as a moat for the big businesses. I made a point about liability. One of the big challenges is in lifting liability, which might seem at first to address some of the challenges that might be presented by the big platforms. However, in many cases you would entrench their dominance precisely because their ability to control their network would be easier under heavier regulation.

The broader point to be made about the ecosystem is that we need to continue to have a sensible approach that will allow platforms and other networks to continue to liaise with each other. We see that technology businesses grow where there are other technology businesses. We always talk about the PayPal mafia in the technology industry, which is that the company PayPal had many of its children form other very successful companies. It is important to sustain that as well.

Baroness McIntosh of Hudnall: The ecosystem as you describe it has a lot of small players in it, but you also described—I cannot remember

which one of you it was—a slightly predatory approach on the part of the large companies towards smaller companies. Somebody talked about them being hoovered up, as it were, by the big companies.

It has also been put to us that for many smaller companies—platform-based or not, but particularly platform-based—it is their aspiration to be hoovered up by the larger companies. How does the ecosystem allow companies to operate independently but also leave them in a place from which they can take advantage?

Antony Walker: This is a phenomenon that the competition authorities need to understand well.

The Chairman: Do they understand it?

Antony Walker: I am not convinced that they have been as attentive as they could have been to whether companies' ability to buy out their competition will cause problems further down the line. As you say, for many founders and many businesses it is absolutely an aspiration to be bought, and there is nothing wrong with that.

For companies that do not want to be bought out and that want to scale and grow, you want to support that as much as you can. Where you are intervening to distort the market in some way, you have to draw the line to clear the path for them. That is problematic. There is a real risk of creating a regulatory dependency for that company at a later stage, which often causes bad feedback problems.

Government can play a role in making sure that it is open to procuring from small companies and that it does not have a bias towards buying only from the large suppliers. You are not messing with the market in that way; you are simply being open to what small companies can offer.

Dom Hallas: When I made that point I was trying to say that it is important that the Government, in trying to intervene in one area, do not accidentally open smaller companies up to additional transparency that would encourage potential purchases and give larger companies much more information than they otherwise might have. If a company wants to be bought, that would be their right, and I believe there are many founders who would be very interested in doing that.

It is important to create an ecosystem where we can both encourage UK start-ups and scale-ups to become the next \$10 billion company, but if someone else wants to sell for \$1 billion, there is no problem with that. We would celebrate that as well and that is absolutely fine.

The Chairman: We have one further question. I will ask Baroness Quin to put the question on the record and ask our witnesses to reply to Baroness Quin and other members of the Committee in writing.

Q51 **Baroness Quin:** It is a wider question on Brexit in terms of what you both feel will effectively be UK's departure from the EU on this area. For example, Kodak expressed concern about continued access to the

European Investment Fund. There were concerns raised with us about somehow being outside the EU's data protection framework and not part of that shared system. A more general but concerning question about the loss of influence by not having a seat at the table and, therefore, neither the UK Government nor British industry being in the negotiations at a crucial phase and losing out as a result. Those are the kinds of issues that I wanted to flag up.

The Chairman: The clerk will write to you and reinforce those questions, so you do not need to make a comprehensive note of them. I ask you if you would be so kind to reply to the Committee in writing. Can I thank our witnesses for shedding a lot of light on a number of issues for us around design and ethics, as well as competition law, which are at the heart of our inquiry? You are all working sensibly in this area. If you have further evidence that you believe would be of value to the Committee as your work proceeds, we would very much like to receive it and add it to our reading list. Thank you to both of our witnesses again for giving evidence today.