



Select Committee on Communications

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

Tuesday 9 October 2018

3.25 pm

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Members present: Lord Gilbert of Panteg (Chairman); Baroness Benjamin; Baroness Bertin; Baroness Chisholm of Owlpen; Viscount Colville of Culross; Lord Goodlad; Baroness Kidron; Baroness McIntosh of Hudnall; Baroness Quin.

Evidence Session No. 15

Heard in Public

Questions 128 - 134

Witnesses

I: Kevin Bakhurst, Group Director, Content and Media Policy, Ofcom; Yih-Choung Teh, Group Director, Strategy and Research, Ofcom.

USE OF THE TRANSCRIPT

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

Examination of witnesses

Kevin Bakhurst and Yih-Choung Teh.

Q128 **The Chairman:** Welcome to this meeting of the House of Lords Communications Committee and to our inquiry into regulation of the internet. We have evidence today from Ofcom and the Competition and Markets Authority.

We start with witnesses from Ofcom. Gentlemen, thank you very much for joining us today. Today's session will be broadcast online and a transcript will be taken. Can I ask Mr Yih-Choung Teh and Mr Kevin Bakhurst to introduce themselves and to tell us a bit about Ofcom's remit and their roles within it? In your introductory remarks, could you tell us what the current role of Ofcom is in relation to regulating online and whether you feel that you have the necessary resources and enforcement powers to meet your remit?

Yih-Choung Teh: I am group director for strategy and research. I will start by making a couple of points by way of context. We very much appreciate the opportunity to provide evidence to you today. Previously, Ofcom provided input into your inquiry into children and the internet. We are very conscious of your valuable thinking and contribution across this whole area.

As the UK's converged communications regulator, we are aware of the growing public debate about online harms. Indeed, you will have seen from our recent research that four out of five adults have concerns about going online. As you are aware, Ofcom oversees telecoms, post, broadcast TV and radio. You will have seen our recent discussion paper concerning online harms. Our intention was not to put forward proposals, but to make a contribution to the debate. Convergence means that communications companies are increasingly in the business of telecoms content and distribution online. We very much hope that our experience and the principles we have learned from broadcast regulation can be helpful as policymakers consider any regulation that might help to address harmful content online.

Kevin Bakhurst: I echo my colleague's comments. Thank you very much for having us here today. My job is group director of content and media policy at Ofcom, so I have responsibility for broadcasting and media, as the title might suggest.

One of your questions was about our current responsibilities in this area. You will be aware that we license around 2,000 broadcasters at the moment; 300 of those are on-demand services, available online. They include Amazon Prime and services such as ITV Hub, All 4 and BBC iPlayer. Since 2016, under the charter and agreement, we have some oversight of the BBC's online activities. That is different from the way we regulate the broadcast content; we have an advisory role in relation to the online content, but we have some responsibility in that area.

You will also be aware that we have responsibility in the field of media literacy. Primarily, that involves research and liaising with experts and so

on, and trying to do relevant research to inform people in the area. That is an area we are looking at currently. We feel that we may have to approach some different areas. Baroness Benjamin will be aware that, in children's content, we are doing a significant bit of research about children's habits on YouTube and so on as part of our work. We also have responsibility for media plurality, which takes into account online as well as traditional media areas. In our recent work on Fox and Sky, and on Trinity Mirror and Express Newspapers, we very much had to take into account the online area as well.

Yih-Choung Teh: We also have some broader responsibilities that include online. We ensure effective competition. We have concurrent powers with the Competition and Markets Authority, which I know you will hear from shortly, to conduct market studies and to enforce competition law. We protect consumers from unfair practices. That could be the discovery of content or the distribution of content. At the network level, we ensure that critical services and the underlying network are secure and are available to users, and we oversee net neutrality rules. We have a limited role on the privacy of electronic communications.

The Chairman: Let us stick for a while with your remit and your relationship with other regulators.

Q129 **Baroness Quin:** Partly, we have the impression that some kind of co-ordination might be needed at an overall level. Are there areas of overlap in remit between Ofcom and other regulators? Are there gaps in the system? If either of those things is true, how best can we go about tackling that? Is there a need for some kind of overall co-ordinator, with a remit to look right across the horizon?

Yih-Choung Teh: I will start with the question of working with other regulators. We work very closely with other regulators, as you might expect. We have a number of mechanisms in place to ensure effective collaboration and co-ordination.

I can give you three quick examples. We have duties with regard to broadcast advertising. We have a co-regulatory partnership with the Advertising Standards Authority, so it looks after that piece alongside its responsibilities for online advertising. That results in a simpler regulatory regime for consumers and businesses.

We have done quite a bit of work jointly with the Information Commissioner's Office on nuisance calls over the last few years, and, more recently, with the research that we have put out. With the Competition and Markets Authority, we have a memorandum of understanding in place to share information and to help us understand who should take the lead on certain cases.

Informally, we participate in a number of networks. For example, we work on best practice with other economic sector regulators through the UK Regulators Network. The CMA takes the lead on mergers, but if there are issues of technical or sector expertise, we may second someone to the case team. There are a number of different ways in which

collaboration is very much key to ensuring that different regulators can bring their expertise to generate the best outcome.

Kevin Bakhurst: I can give a concrete example, and I am sure you will have a chance to talk to the CMA about this shortly. We worked very closely with the CMA on the Fox-Sky takeover, and provided editorial expertise to the CMA when it was considering the competition aspects of that. There are concrete areas where we work together.

These are relatively early days for the regulators as regards the powers that we do and do not have on the internet. Certainly, our early work in considering this highlights one of the points you have just made. There are some areas, such as competition, that we currently cover alongside the CMA. There are some areas, such as content regulation, that nobody covers. We are very conscious of that. In our early work on this and in thinking about what contribution we could make to the debate, it was one of the earliest things we looked at. It is a vast area of the internet. Some areas of the internet, such as on-demand services, are covered, and will be covered increasingly after the new AVMSD regulations come into force, but, as you rightly point out, some areas—much of the online content and social media—are simply not covered by anybody at the moment.

Baroness Quin: Do you have discussions with government about how to improve co-ordination and coverage across the piece? Are there ongoing discussions about that?

Yih-Choung Teh: There are discussions. Ultimately, institutional arrangements are a question for government and Parliament.

Part of your question was about the benefits of an overarching body. There are some real attractions to that proposition. I am conscious that regulators such as Ofcom could benefit from a facilitating body that could help us with our digital capabilities and understanding. There is some echo of that in the Doteveryone proposals from Baroness Martha Lane-Fox on regulating for responsible technology. The Government are looking at how the Centre for Data Ethics and Innovation could work with regulators. That might be a body that can help in the area of data and artificial intelligence.

Baroness Quin: Do you think that there is real urgency to this?

Yih-Choung Teh: Our research certainly demonstrates that the public are increasingly concerned about a number of different issues. As Kevin said, there are some areas, such as social media, that have little by way of specific regulation. The biggest area of concern for people that comes across in our research is protection of children—whether it is a safe environment and whether they meet online people they have never come across before. There are a number of issues.

The Chairman: Before we move on, can we look at the wider issue of co-ordination across the regulatory piece? One thing that is evident to us is that regulators face the challenge that everyone faces of keeping up with technological change and the issues that arise from it, both the risks and the solutions. Where across the piece is the responsibility for

monitoring and understanding technological change and its implications for public policy and regulation? Is there a body where you all come together to do that, or would you say that it is a particular responsibility of Ofcom or one of the other regulators?

Kevin Bakhurst: It is not an easy question to answer. There are specific areas where we have responsibility. In Ofcom, we have been building up our capability in understanding the online areas we have to regulate, such as on-demand services and aspects of websites. We have been building up, and recruiting people. Recently, we recruited a new chief technology officer. We are very aware that this is an area where we have already taken on new people. We are constantly trying to make sure that we have the right skill set for the areas where we currently have responsibility.

Similarly, there are areas for which we do not have responsibility, but where we feel we want to make a contribution to the debate, as we did in our paper. We identify areas where we feel that we need more capability in the organisation. It is an evolving process. To go back to Baroness Quin's point, in the liaison with other regulators, we are very conscious, as Elizabeth Denham may have said in her evidence to you, that you may have the resource, but it is quite hard to attract the right people with the right skills to our organisations. Frankly, there are many opportunities outside, in the commercial world, that are probably better paid for people who understand data and so on. That is a particularly difficult area to recruit in at the moment.

Baroness Benjamin: I am pleased to hear that children are quite a high priority for Ofcom, which is great news. When I was at Ofcom, it always had an arm's-length policy about regulating online. Obviously, there has now been a change, because we have seen how the world has developed. You keep mentioning skills. What skills do you think you actually need in order to help you with your work and to regulate in the way the general public want you to regulate, as you said your research has shown? What skills are you looking for? Will Ofcom really take on the responsibility to be as wide and as effective as the general public want you to be?

Kevin Bakhurst: There is a wide range of skills that we need. Obviously, in my team, the content and media area, our primary focus is on broadcasting, because that is our statutory duty. Increasingly, as you will be aware from the work on children, to understand broadcasting you need to understand the wider environment. We need people with content experience. We also need people with market research intelligence in the area, who understand what questions to ask and where to get the information to inform the debate. As I have just touched on, we need people who understand data and their use; people who understand the techniques that some of the big tech companies are using, for example.

The Chairman: Those people are expensive. Can you afford them?

Yih-Choung Teh: There are some challenges, as Kevin said, in recruiting there. I do not think that means that we cannot build up our expertise. There are certain skills in data analysis and some areas of

academic research that can help. There are some challenging areas, in the sense that, as we oversee the sectors and seek to keep up with what companies are doing, there is a very significant commercial aspect to how some companies operate. You want to gain some of that understanding. Some of that is more challenging when recruiting the right skill set.

Kevin Bakhurst: Baroness Benjamin, on your arm's-length point, as the converged content and communications regulator, we felt that we had something to say in the debate about online. Obviously, we have limited duties in that area at the moment. Whatever duties any regulator, or no regulators, might get are a matter for Parliament and the Government. There is a difference at the moment. It would be a big step change if we or any other regulator were asked to recruit to take on regulatory responsibilities. There would be a big step change from where we are now in understanding. If we were asked to do the job, that would be something very different, but it is entirely a matter for government.

Baroness Chisholm of Owlpen: Are the people out there to recruit, if you want to recruit them? Are we educating people in these fields, so that it leads to their being able to be recruited to do the job, or are they just not out there anyway?

Kevin Bakhurst: There are definitely people out there. There is quite a good supply, but there is an even bigger demand. That is the problem. The demand is international. In some areas of Ofcom, quite a lot of the people we recruit are recruited internationally. We look wherever we can find the best skill set. The people are there, but you have to look hard and there is a lot of competition for them.

Baroness Bertin: Do you think that you are being creative enough in how you partner with universities? You could do apprenticeships. You could get some young people early. They may not stay with you for 10 years, but you could get them at the beginning of their careers. It could be an amazing training ground for them to go on to other things, which would make it attractive to come to Ofcom, for example.

Yih-Choung Teh: That is exactly right. We have a very successful graduate programme. For a number of years, some of the best talent we have had we have brought in as new graduates. They have then learned their trade in the organisation. As you say, we are now investing effort in looking at the apprenticeship possibilities. That is potentially a very rich vein.

Baroness McIntosh of Hudnall: Could I take you back to something you mentioned in your opening remarks about things for which you have responsibility? You mentioned media literacy. In your report, you point to that as one of the ways in which it might be possible to combat the particular harm that comes from misinformation being used to try to influence political choices of one sort or another.

First, do you see it as a growing potential source of harm? Secondly, when you say that media literacy is one of the ways in which it can be combated, how do you anticipate carrying through your responsibilities

to make that better across the population?

Yih-Choung Teh: That is a very good question.

Kevin Bakhurst: Can I answer it first?

Yih-Choung Teh: By all means.

Kevin Bakhurst: This is a joint responsibility, in a way, so we can both answer the question. We have no doubt that one of the key weapons you can arm consumers with is an understanding of where they are getting their information, who is paying for it, whether it has an agenda and what their expectations about accuracy, impartiality and so on should be.

Across the world, particularly across Europe, there is an increasing focus on media literacy. This is an area for which we have had some responsibility, and we are redoubling our focus on it because of its importance in the current debate. We are now working up plans for the particular areas we should be looking at. A lot of good work has been going on elsewhere, here in Parliament and across other research bodies.

One of the questions for us is how you can better co-ordinate all the sources of media literacy. The BBC is doing a fair bit, and the *Telegraph* has been doing quite a lot on it. A lot of work has been done in Parliament, and a lot of academic work has been done. We have been talking to our colleagues at the Irish regulators, whose approach is very much about trying to bring together the best sources and making sure that they are available to audiences in the most effective way.

The Chairman: How muscular are you about that sort of co-ordination? In our inquiry some time ago into children and the internet, we found a whole range of very good work from the kinds of organisations and agencies you mentioned, and, indeed, from some of the companies in the field, but a significant lack of co-ordination. There was not much conflict between what they were doing, but there was waste and a lack of co-ordination. Is anyone taking a muscular approach to changing that?

Yih-Choung Teh: As Kevin said, it is certainly our hope to try to move forward from research to provide more of a co-ordination role. We already do a certain degree of that by participating in conferences and gathering together academics and other industry players, but I think there is more we can do.

The Chairman: You think that it is your job.

Yih-Choung Teh: I think our responsibilities on media literacy give us the potential to do that. It is something we think is very important.

The Chairman: I am trying to find out who is going to take the lead on it. Are you saying, "We are going to step up to the plate and take the lead on this one"?

Kevin Bakhurst: It is certainly our intention to step up the pace. As I mentioned, we have a statutory duty on media literacy, so we feel that we can play a leading role. I do not know whether we are the lead, but, to answer your question bluntly, there is a lot more we can do. The role

of media literacy has become much more crucial, certainly for the foreseeable future.

Baroness McIntosh of Hudnall: Could you address specifically the question of the impact on the democratic process of the particular kinds of technology for which, at the moment, you do not have much responsibility, but where literacy has some impact?

Kevin Bakhurst: As we said in our paper, one of our key areas of concern is misinformation and fake news, and the impact that that has self-evidently had, and is suspected of having had, on key processes. A lot of the thinking we have been doing has been about how you can bring more transparency to the social media organisations that, frankly, are responsible for spreading a lot of information and misinformation, and how you can make sure that users know where the information is coming from. In particular, some very interesting work has been going on around Europe on elections. We are liaising very closely with our fellow European regulators about the work they are doing in France, Germany and so on about tackling misinformation.

You are quite right: a lot of this is outside our remit, because it is outside everyone's remit. That is one of the reasons why we felt we had a contribution to make. Obviously, we have experience in the area of regulating news on broadcast media, and doing so to a high standard. That is why, despite the questioning environment generally, audiences around the UK still trust news and current affairs on our regulated broadcasters very highly, as they should. The broadcasters have to live up to very strict guidelines on due impartiality and due accuracy, and audiences are clearly sophisticated enough to understand that. Part of what we were trying to do was to take lessons from the importance of PSB news, in particular, as well as commercial news on Sky and so on, to see what you could learn from that in the online space about what is valuable, what is reasonable and what principles you can start from to try to help audiences to navigate their way through the blizzard of information and misinformation.

Baroness Quinn: To go back to the whole business of co-ordination, including in the areas we have just been talking about, should government designate a lead organisation? How is leadership going to be arrived at? The different organisations at the moment have their areas of responsibility, which, no doubt, take up most of their time and effort. Who should be designating a leadership role in this situation?

Kevin Bakhurst: The Secretary of State and DCMS have said that they plan to publish proposed legislation in the parliamentary winter, as you know. They are giving it careful consideration. To answer a previous question, we provide whatever information we are asked for to help their work on that. We try to make a contribution to the ongoing debate. We hope that that paper, when it is published, will give a clear sense of direction.

The Chairman: We had better move on.

Q130 **Baroness Chisholm of Owlpen:** How do you feel that Ofcom's

experience in the regulation of communications can be applied to online content moderation and complaints procedures? Leading from that, Ofcom has experience of regulating broadcasting content for the internet, so what lessons do you feel can be drawn from that on the need to balance online safety and freedom of expression?

Kevin Bakhurst: Part of what we tried to address in our paper was what lessons we, as the broadcast regulator, can learn from that and what aspects of our regulation regime we feel are and are not appropriate to online. Self-evidently, broadcast is very different from online, because of the sheer volume of material and the sources. We license 2,000 broadcasters. That is a lot, but they are responsible for the material that appears on those platforms. Self-evidently, social media are not responsible. That is a conversation. They have some responsibility, but they do not generate the material themselves; it is the public. There are clearly differences.

We feel that there are some appropriate lessons that we can take. For example, we have quite a lot of experience of operating a system where Parliament has set out principles on regulation. The Communications Act was very clear on that. It sets out a requirement for a range of things. It then leaves it to an independent regulator to interpret the best way of providing those standards.

Our experience in that area could be transferable, because it allows Ofcom the flexibility to move as broadcasting moves and to adapt quite quickly as audiences change, as well as to adapt to audience expectations of the broadcasters and the different platforms, which also change over time. There could be a principles-based set of requirements from Parliament or government, and an independent body, whoever government decides that should be. We feel that gives credibility, as well as a regime, because you can be transparent, you can be based on evidence and, by and large, people will trust you to do your job and to interpret it in a reasonable and proportionate way.

I will try not to go on for too long, but there are other key areas where we feel we have experience. One is balancing the right to freedom of expression, which is really important, both in broadcast and, clearly, online, with the obligations and rights of individuals. We also have an understanding of contextual factors: what audiences expect from the BBC as regards editorial standards and so on will be different from what they might expect from a website they have never heard of.

We feel that being able to enforce effectively is really important. It is important to have a statutory base for regulation and a system where you can enforce properly, with fines or other meaningful measures, if necessary, so that people respond in the end, even if they do not want to. Those are the sorts of things that we would draw from our experience.

Baroness Chisholm of Owlpen: Somewhere in your report I think you said that you felt that one of the problems was that at the moment enforcement of online content is almost at the beginning. People are not thinking ahead to regulating before it happens, so they are not really

thinking ahead about what will be designed in the future. Everything is reactive, rather than proactive. Do you think that is true?

Kevin Bakhurst: Yes, we think that is valid. I think it is in the report. Whatever the Government decide, if they decide that there needs to be some form of regulation, they should enable it to be flexible and reactive. Look at how online has changed in the last five years; no one would have predicted that. No one would have predicted the rise of Netflix and Amazon Prime in the way it has happened, or the rise of social media and their influence, or the problems with disinformation. It is happening very quickly, so, in our view, a regime needs to be based on principles. It must allow a body or regulator to respond quickly and to keep looking ahead, so that it is not regulating for yesterday's problems, but looking ahead to address today's problems.

The Chairman: Do those principles exist?

Kevin Bakhurst: Yes, there are some key principles that exist. First, it would essentially be a matter for Parliament to determine what were the key areas it wanted to deal with, whether that is protection of children, take-down of illegal content, harmful content and what Parliament means by that—bullying or whatever it may be—or misinformation. You could lay out a set of areas that need to be tackled.

Secondly, there are principles you can bring to it. One is independence of regulation, which gives a degree of flexibility and credibility, in my view. Others are freedom of expression and freedom of innovation, which are key to online. There are a number of principles that you could set as a framework.

The Chairman: Whose job is it? Is it Parliament's job to start the work on those principles and the balances between them?

Kevin Bakhurst: Ofcom exists because of Parliament, and we take our duties from Parliament. Our work on the BBC, which is quite recent, is quite a useful blueprint, in a way. Parliament set out clearly its desires for the BBC in the charter and agreement. Then it said, "We are going to appoint an independent regulator to make sure that the BBC performs to those standards". In our experience, that is a very effective way of operating. The answer is yes, it is for Parliament to set out those principles.

Baroness Kidron: Can I pick up on a couple of things? First, you said, "Obviously, they are not responsible". I am not sure that the Committee totally agrees with that. Even though it may be content that is created in some way by the public, if platforms are making money from it, curating it, privileging it or spreading it, are they obviously not responsible?

Kevin Bakhurst: Maybe I was not clear enough.

Baroness Kidron: It is a view that exists. I am not suggesting that you alone made it up.

Kevin Bakhurst: No, that would not be our view. Clearly, they have a responsibility. They are not responsible for the original creation of the content. People just do that, and they are enabled to do it until someone

stops them doing it. Allowing people to do that is probably the tenor of freedom of expression, but you must have responsibility for the content that you disseminate in the end—how you do it, what you stop and what you take down.

Baroness Kidron: That is fantastic. The other thing you said that I thought was quite interesting was at the other end of the chain. You are calling for a statutory and independent look at it. I wonder whether you would like to comment on the fact that often we say that they are so powerful, and then we give them more power in the way they regulate, which ends up with people from Facebook sitting in Berlin saying, “Is this hate speech? Is this not?” Is that the sort of thing you are talking about? Do we need something that is very clear-cut for all parties about where the deciding voice is?

Kevin Bakhurst: Yes. Our view, which is built on our own experience, is that regulation works only if it has statutory backing, a clear remit from Parliament in the UK and a trusted independent body that will interpret that and set clear rules.

Germany is an interesting example, because there was quite hasty regulation ahead of an election. We looked at that quite closely, and worked closely with the German regulators. Whatever the rights and wrongs and the unforeseen consequences of what they have done there, the interesting thing about Germany is that it shows us what individual countries can do. People often say, “You can’t tackle these institutions, because they are international and multinational”. You can, and Germany has shown that. You can tackle them. It has forced Facebook and Google to take action in Germany.

Yih-Choung Teh: I am conscious that the platforms have started to pay more attention and to do a bit more, but self-regulation has its limitations. You made that point in your report on children and the internet; the commercial incentives mean that self-regulation will take you only so far. Kevin’s point is a good one.

Viscount Colville of Culross: I want to pick up what you said about self-regulation. What role do you think the regulator has in looking at the appeal processes of the social media platforms, and whether they are effective, fair, transparent and timely?

Kevin Bakhurst: That is a tricky question, but a really important one. We have spent a lot of time looking at it. We feel there are some lessons for us from how the “BBC First” complaints system works, which is quite interesting. Viscount Colville, you will remember from the BBC that a lot of complaints come in. The BBC deals with 250,000 complaints a year. People have to complain to the BBC first, before they can come to Ofcom. We can step in if we want to, but normally it goes through the BBC first.

In our first year regulating the BBC, we ended up looking at fewer than 200 complaints. There is a substantial number of complaints, but, by and large, people go through the BBC process and get some satisfaction from that. There is a system. If you have to complain to the media

organisation first, hopefully, it becomes more manageable. When it comes to online, the number of complaints is in a different sphere. The answer may be a lot more transparency about how they handle complaints and what the outcomes are. An appeals process could be extremely labour intensive for some of the big companies, so, in my view, it is not clear-cut what the best solution would be.

Q131 Lord Goodlad: My question is about duty of care and the legal obligation. Could you tell us what thought you have given to legislation to introduce a duty of care to prevent online harm?

Kevin Bakhurst: We were very interested in Will Perrin's and Lorna Woods's suggestions about a duty of care. In fact, we were at a very interesting and useful session organised by the Carnegie Endowment. It kicked off with their suggestions, and there was a wide-ranging discussion afterwards, which was very useful.

I have said this before, so I hope I do not get boring. To come to your point, we said in our paper that a form of principles, whether that is a duty of care or some principles set out by Parliament, is quite a good place to start. Will Perrin talks a lot about the HSE and the duty of care it has set out, but the HSE is a very big organisation to police that. The issue is whether that would truly translate, or whether just a system of principles might translate, but we think it is a really interesting idea. We have engaged with them quite closely on it. We are looking at it and having a discussion about how it might or might not work practically.

Lord Goodlad: The common law on this is very well established. It does not really extend to what we are talking about here and has to be done by Parliament in a pretty precise way. It cannot just be left to the courts, can it?

Yih-Choung Teh: The appeals mechanism that would sit on the back of it is an interesting question that would need to be considered. The question it raises is that, if the recourse that every individual has is to go through the courts, is that necessarily the best answer to some of the questions? It goes back to the question of what specific harms we are seeking to deal with. Some precision is probably required around that.

Baroness Bertin: The NCA has suggested kitemarking some websites that are aimed at children. I want to know very briefly what you think about that.

Yih-Choung Teh: There are some attractions to trying to communicate clearly with the public what are and are not safe areas. As Kevin observed, one of the advantages for public service broadcasters is that they have a brand and an identity; consumers have a certain expectation and there is a degree of trustworthiness. There are similar ideas that might be fruitful.

Q132 Baroness Kidron: One thing that keeps coming up for us is the scale and breadth of harms. One of the big movements now is "ethical by design"—"Let's go upstream and fix things before they happen, so that we are not constantly picking up the pieces". I would like you to say

something about your thinking on that. In particular, as well as the harms we have already discussed, I want to put on the table Tristan Harris's point about addiction by design as a possible harm that we might define. I am interested to know what you have been doing around that.

Yih-Choung Teh: I will have a go at saying something broadly, and Kevin may pick up specific examples. My understanding of "ethical by design" is that it refers to applying in the design phase principles such as empathy for users, providing enough information for users to make informed choices and understanding the differing needs, abilities, viewpoints and morals of users. As an approach, it has to be very attractive so that you prevent some of the harms we are talking about by design, rather than trying to look for a cure after the event. As a parent of young children, you desperately want an online environment where you feel that they are safe by design, rather than one where you are always watching out for something.

To echo some of what we have been speaking about, for me, it probably relies on trying to identify the principles you want taken into account in the design phase. I am very conscious that this is an area of rapid innovation, where we want new services to come forward and everyone to benefit from them. You want to be conscious of not being overly prescriptive in platform standards, which might constrain some of that, but, at the same time, you want to embrace some of those principles. You would hope that those would be embedded and would generate positive behaviours and outcomes right at the outset.

Turning to some specifics, we are conscious of the age-appropriate design code.

Kevin Bakhurst: We have been following your amendment very closely. We have been working very closely with the ICO on aspects of that. I know that it is out to consultation at the moment, and following it through will probably be a substantial piece of work, both for you and for the ICO. I am sure that it could be a really useful tool in the armoury.

Obviously, it does not answer all questions, because there are huge, influential companies already distributing content to children. There are also big tech companies distributing content that children access but that is not aimed at kids alone, so it can be only one part of it. From what we have seen so far in some of the work that has been done, it is a hugely encouraging start to tackling one of the harms that, as we say in our joint research with ICO, consumers and audiences put highest: harm to children.

Baroness Kidron: The second part of this question is around enforcement. If it is only a principle, how do you enforce it? If it is a standard, maybe we can. That is the battleground. I am very interested to know about that.

Kevin Bakhurst: That would possibly come back to what I touched on earlier. You could set principles and then allow a body—ICO, another regulator or whoever the Government decide should have the

responsibility—to decide practically how those principles translate into real action. Websites would have to build in certain aspects at design, if they were aimed at kids, and would then have to demonstrate transparently that they had done that to an independent body that could hold them to account for it. Platforms would have a duty to take down content that is harmful to children within a certain timeframe or to prevent it going up. They might have their community guidelines saying that they do that, but at the moment there is very little transparency about whether they are delivering what they promise to deliver. You can work from principles, and have a body that takes those principles and turns them into practical reality.

Baroness Kidron: I absolutely understand what you are saying and really appreciate it, but, for the record, what we are saying is that having principles is not ducking the issue. Principles can be met by statutory enforcement, with an independent regulator.

Yih-Choung Teh: Indeed—even if the companies themselves are putting forward how they interpret certain aspects of a code. They may say clearly themselves, “This is the information that we are gathering from children. This is how we are collecting it. This is what we are using it for. This is how parents and children can maintain some control”. If that is transparent and made clear, we have the opportunity to have a body that can hold them to account.

Kevin Bakhurst: I come back to the earlier point about lessons from broadcasting regulation, where there are a lot of principles. We turn those into concrete rules. We have the statutory powers to write to the broadcasters or to go in to see what they are doing practically to deliver the standards required under the guidelines. You can translate principles through the right process, using statutory power and transparency to make sure that the outcome is correct.

Baroness Benjamin: With the BBFC, in films for children, a voice announces what they are going to see and the duty of care. Do you think that online providers should be doing the same thing and telling children, “This is what the policies are”? “Newsround” did a thing on whether children understand what they are signing up for. The children said that the writing is so small that they do not read it; they just go straight in. Do you think there should be something bigger telling children, “This is what you are signing up for”? They do not actually care, because a big enough point is not being made that “This is what you are doing”.

Kevin Bakhurst: Our approach is that it should be absolutely clear to children and their parents what they are signing up for and what they are watching. The area of online content that we now regulate for children under AVMSD is on-demand children’s content. There are clear guidelines around that. As we know, the BBFC is working on age-appropriate guidelines. It is not straightforward. One fear for me, as a parent of slightly older children, is that sometimes it can be an invitation, rather than a prevention, if you tell them they should not be watching it.

Baroness Benjamin: On the BBC, when you sign up, there is now a voice that tells you, “You have to do such-and-such and such-and-such

and such-and-such". There is a voice that actually says it. Do you think that children need to have that on the things that are going to be provided for them? That is one way of alerting them to what they are signing up for.

Kevin Bakhurst: The voice is not the only way of doing it. They could be made to go through a process where they either have to prove that they are a certain age or it is clear to them what content they will be watching. Sometimes I look at things and think, "That isn't clear. It is a small line in the corner of a screen".

Baroness Benjamin: Exactly.

Yih-Choung Teh: It may be a good example of the principles base, where there may be different ways to achieve the outcome, but, as you say, there is something going wrong if the message is not getting across. In the same way, a company may put down lots of terms and conditions and you have to tick a box before you download the app to your mobile phone, but I guess that the majority of people do not read them. That is not really working.

Baroness Benjamin: Exactly.

The Chairman: Let us move on to TV-like content.

Q133 **Viscount Colville of Culross:** I would like to declare an interest, as a series producer working for Smithsonian Channel and CNN.

You have very clear parameters for the regulation of PSBs. However, it is a hotchpotch when it comes to the other parts of the VoD environment and the way people receive programmes. You have quite a good diagram that shows some of the chaos in regulation. Should there be a much more level playing field between broadcasters and other content providers, and in the way they are consumed?

Kevin Bakhurst: I would describe it as variable geometry, rather than a hotchpotch, but you are undoubtedly right; there are different standards, depending on how people receive their content. Yes, broadcasters are held to the highest standards. The thresholds or standards for them are higher. That is partly under statute, so on-demand content is regulated to a lower level.

At the moment, the protections for online content are designed particularly around terrorist content and protecting young people. Under the new AVMSD rules, if they are transposed, the protection of audiences will be increased slightly, but it will still be a variable geometry.

Our research shows that, by and large, audiences value the protection they get in broadcasting through regulation. They recognise that, to a large extent, the content they consume on the main broadcasters is highly regulated and that content they might find online has a different set of rules. Is there room for them to come closer together? I know that some of the commercial broadcasters would like to see a narrowing of the gap. We are always looking at what more we can do, and what we

have the powers to do, to protect audiences, and the key areas where we need to act.

Yih-Choung Teh: On protecting audiences, in July we put out a document on prominence for public service broadcasters. As I am sure you are aware, our duties are constrained to linear electronic programme guides. We asked a question about whether there needs to be more to ensure that public service broadcasting is not just available, but is discoverable when people are watching on demand or on other devices. Of course, that is a question for Parliament, rather than for us, but it is an interesting point.

Viscount Colville of Culross: You are looking at that question yourselves right now, are you not?

Yih-Choung Teh: We have raised the question. I am just observing that we can look at the question of linear, and where on the EPG certain services can be. When it goes beyond linear, it will be a question for government.

Viscount Colville of Culross: We did try.

Yih-Choung Teh: I appreciate that.

Viscount Colville of Culross: My other question is about impartiality. I have been working at ITN. At ITN, they are extremely concerned by the fact that you say that people's expectations of impartiality for certain content are lower when it comes to online. Where does that leave the public service broadcasters when it comes to online and online consumption? Increasingly, that is where their news and current affairs is being consumed. Trying to maintain their impartiality in an environment where everything is about opinion and editorialisation is a problem, is it not?

Kevin Bakhurst: You might describe it as a problem. I would say that it is actually a great opportunity for the public service news organisations, because we know that audiences value the impartiality and accuracy they are obliged to demonstrate and that, for a vast amount of the time, they live up to.

As I said before, we have to make judgments about contextual factors, which include what audiences expect from individual services. When audiences are watching a mainstream, UK-focused news service such as the BBC, Sky or ITN, they have extremely high expectations, and rightly so, of accuracy and impartiality. When they are listening to LBC or Capital, it is the same. When audiences are watching other services, such as foreign news channels, that are licensed in the UK, either through country of origin or in the UK itself, or are consuming content online that has no obligations, mostly, on impartiality or, indeed, on accuracy, we know they have different expectations.

We always have to weigh up the range of views that people can get and the issue of media plurality. There is a place for opinionated news. If there were not, newspapers would not be in the market. There is a place for it in broadcasting as well, if it is clearly labelled and the audience

knows that what it is watching is coming from a particular perspective. We are not in the business of shutting down a range of perspectives. It is really important for people to be able to get that. Key, at the heart of that, particularly in the light of concerns about disinformation, is the value that audiences put on ITN, Sky and the BBC, and the huge numbers who still go to them to get accurate, impartial and extremely high-quality news.

Q134 Baroness McIntosh of Hudnall: We are getting on in this discussion, and you might have thought that we were going to get all the way through to the end without anyone saying the word "Brexit".

Kevin Bakhurst: We were hoping.

Baroness McIntosh of Hudnall: Wrong. In an early part of this discussion, you mentioned your collaboration with European regulators in respect of issues to do with fake news, so-called, and misinformation. I have no doubt that there are many other ways in which you are collaborating with your European colleagues and, indeed, other international colleagues.

It has been put to us that Ofcom has been, and is, the lead regulator in Europe in these matters. Now it looks as though we are not going to be a member of the European Union for much longer. What impact do you anticipate that having on your ability to collaborate? What other impacts do you envisage it possibly having? Looking more broadly at international collaborations, can you see ways in which there might be opportunities in the future? Is there anything you want to tell us, given that we are discussing a global issue?

Yih-Choung Teh: I will try to make a start and then Kevin can add to it. Leaving the EU will clearly have implications, but the key observation is that we will continue to need to collaborate with other regulators and agencies globally, regardless of whether we are in the EU or not.

I say that for two reasons. First, a lot of the questions we have been discussing, such as our concerns about online harms and protection of children, are shared globally. It strikes me that there is a lot to be gained by sharing and pooling our research, understanding and learnings across a global community.

Secondly, for the most part, we are talking about companies that are global in nature. Greater standardisation and harmonisation are likely to help in reducing the costs of good outcomes, increasing the likelihood of compliance and reducing complexity. We very much want to continue to collaborate with bodies both inside Europe and not. As you indicated, we would like to think not only that we get the benefits of sharing understanding and best practice, but that we can be quite influential.

In the content space, there are certain bodies we participate in.

Kevin Bakhurst: In the content space, it is variable. On media regulation, there are two bodies in which we have played a very full role. One is ERGA, which is associated with the European Commission. Obviously, our role in that will change. We do not know what it will be.

We will not be a full member, because you cannot be if you are not a member of the European Union. There is some discussion about our being there as observers. Switzerland and one or two other countries are there as observers. You can still be in the room and have a voice, but, obviously, you cannot have a vote.

There is another organisation called EPRA. In fact, tomorrow I am going to a two-day meeting of EPRA in Bratislava.

Baroness McIntosh of Hudnall: Can you tell us what the acronym means? I imagine that it is "European something".

Yih-Choung Teh: It is something like the European Platform for Regulators Association.

Kevin Bakhurst: Do not hold us to that.

Baroness McIntosh of Hudnall: We will check it.

Kevin Bakhurst: We will check it for you. We have a representative on EPRA's board at the moment. You are right to say that we are very influential in it. One of the reasons why I am going for two days is that we want to make sure that we remain influential in the organisations where we will have an unchanged role. It is a very good platform for liaising not just with EU regulators but with other regulators that are not in the EU.

At the same time, we have deliberately stepped up our international efforts. We liaise quite often with regulators from Australia, Canada and other parts of the world that are not in the EU. We have good bilateral relations with the Germans and the French, and we have seen the Swedish, the Irish and so on. We intend to carry that on, and they have made it clear that they are very keen for it to carry on. It is a very valuable forum for the exchange of ideas. There is no doubt that, in some bodies, we will be less influential, but we are making every effort to make sure that we maintain the maximum international involvement.

Baroness McIntosh of Hudnall: I noticed that the US was not in the list of territories you mentioned. Clearly, given the location of the homes of some of the biggest platforms, we would be interested to know how you anticipate developing relationships in that area.

Kevin Bakhurst: To be fair, we have been over to the US a couple of times. I went over myself, with two colleagues, earlier in the summer, when we were looking at whether we were going to make a contribution to the debate about online regulation. We went to visit both some of the regulatory voices there and the key tech firms. We went to Google, Facebook, Twitter and Reddit to try to get under the bonnet of what they are doing, what they say they are doing and what the reality of it is, to find out a little more about the culture of the companies, to find out what their view would be on a form of regulation, to discuss some principles of that and to see how they responded to it. We are engaging internationally in the States as well.

Baroness Bertin: Can I ask what you saw under the bonnet?

Kevin Bakhurst: How long do we have?

Baroness Bertin: You know what I mean. What is their general feeling?

Kevin Bakhurst: There are lots of different messages coming out. There are two universal messages. First, I think they agreed with something I suggested to all of them, which is that they have become so big, so powerful and so influential so quickly that their internal governance and the ways they handle themselves corporately have not kept up. There was no dispute on that. Some of them are running quite hard to try to catch up, but they are developing so quickly, and the issues are coming at them so fast and are so huge, that it is a challenge for them. Generally, they recognise that they are bigger than they can manage at the moment. I do not think I am giving away anything I should not.

The second thing is this. A year and a half ago, when we tried to have some conversations, they said, "Go away. You are regulators. We want nothing to do with you". Interestingly, this time they were very open to engaging. They took us in, and we met some very senior people to discuss what regulation could look like if a Government decided to legislate. We discussed some ideas we have, which are in our paper and which I have touched on, about how it might operate: principles-based and respecting freedom of expression and innovation—but bringing a whole load more transparency and requirements to what they do.

They were not unreceptive. They said that they look around the world and see that lots of countries are trying to regulate, or thinking about regulating, at the moment. I came away feeling that, if the Government decide to go down that road, there is a space for the UK to create a system of regulation that could be very effective in dealing with some of the worst harms and it could be a global model for how to do it. I do not look around anywhere and think there is a brilliant model. Neither do they, by the way. They do not like regulation very much generally, but they almost feel that, if the UK did something other countries could look at as a good form of regulation, it might be valuable to them in the long run in heading off some of the madder ideas. Those were the two headlines.

The Chairman: We need to draw the session to a close. I thank Mr Teh and Mr Bakhurst for their evidence. Do you wish to add anything that you think we might have asked, but did not?

Kevin Bakhurst: I would not suggest anything. You put us through our paces. Thank you very much.

The Chairman: Thank you very much for your evidence. It has been very useful. As we develop our report, we may come back to you to discuss technical issues.

Kevin Bakhurst: If we can provide any information, we will be delighted to do so.

The Chairman: That would be appreciated. Gentlemen, thank you very much for your time today.