



Select Committee on Communications

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

Tuesday 16 October 2018

3.35 pm

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Members present: Lord Gilbert of Panteg (Chairman); Baroness Benjamin; Baroness Bertin; Baroness Bonham-Carter of Yarnbury; The Lord Bishop of Chelmsford; Baroness Chisholm of Owlpen; Viscount Colville of Culross; Lord Goodlad; Lord Gordon of Strathblane.

Evidence Session No. 17

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Questions 143 - 151

Witnesses

Dan Brooke, Chief Marketing and Communications Officer Channel 4; Magnus Brooke, Director of Policy and Regulatory Affairs, ITV; Clare Sumner CBE, Director, Policy, BBC.

USE OF THE TRANSCRIPT

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

Examination of witnesses

Dan Brooke, Magnus Brooke and Clare Sumner.

Q143 The Chairman: I would like to welcome our witnesses to our House of Lords inquiry into regulation of the internet. Our witnesses today are from the broadcasting companies. You are very welcome. Thank you for taking the time to come and give evidence. In a moment I will ask you to say a few words of introduction. Today's session will be recorded and a transcript will be kept. We may have a Division or possibly several Divisions during the session this afternoon. If that happens—one of them may come quite soon—we will briefly suspend the session for about 10 minutes and then come back and pick up where we left off.

Our witnesses are Dan Brooke of Channel 4, Magnus Brooke from ITV and Clare Sumner of the BBC. May I ask the witnesses to briefly introduce themselves, tell us about their role and about any perspectives they have on the broader issue that the Committee is investigating. In so doing, please tell us what you think are the strengths and weaknesses of the regulated framework for the internet and particularly if your organisations have an assessment of the Ofcom report regarding harmful online content, which you will all be aware of.

Magnus Brooke: I am director of policy and regulatory affairs at ITV and I am responsible for our relations with Ofcom, with Government and with the European institutions. It is important to begin by recognising the incredible benefits that the internet and many of the major online businesses have brought to people's lives. The process that we have seen in the development of the internet, however, is a bit like 19th century industrialisation. In both cases, we have seen rapid growth and transformation unconstrained by specific regulatory restrictions, but at the same time we have seen significant externalities. It took some time for Government to catch up with industrialisation and to do something about it and the externalities. I do not think that we should repeat that mistake.

Beyond the general law, there is very little specific regulation for major online platforms. Indeed, it is the reverse; laws were put in place at the outset to avoid those platforms assuming real liability. Whereas that was once a strength, it now looks unsustainable. To put it into perspective, if you think about a chemical plant or an oil refinery, they do important work but there is clear agreement that they cannot pollute rivers or groundwater near to them with waste products. It is the cost of doing business to make sure that those waste products and processes are dealt with effectively and appropriately. This is not voluntary. It is not on a best-efforts basis. It is a mandatory legal requirement. We need to start tackling the downsides of major online platforms in the same way.

On the Ofcom contribution, we thought it was considered and helpful. We were struck by Ofcom's research into the scale of online harm. We also thought that its highlighting of a lack of a level playing field between people like us and some of the new online platforms was also helpful.

Above all, its suggestion that there are things that you can learn from the broadcasting sector and apply to online was helpful, particularly the idea that Parliament sets a clear statutory objective of the kinds of harm that the regime is seeking to prevent and where an independent body such as Ofcom is instructed to establish an effective regime on the back of that.

Then, with powers of enforcement, it is a matter for the platforms to comply, just as we comply as broadcasters. We can see no reason why that approach would not work. Ofcom already oversees a system in which there is a need for appropriate levels of protection and assurance against harmful content, but it also recognises the potential conflict between that and freedom of expression. It is well equipped and experienced in dealing with that potential conflict, as we are as broadcasters.

Clare Sumner: I am a director of policy for the BBC and my remit covers very similar areas to Magnus, so I will not repeat it. As I was preparing for this Committee, I thought I should go back to Sir Tim Berners-Lee. We were all very excited at the beginning by the opportunities of the web for freedom of expression and creativity. I was struck that he said recently, "The responsibility—and sometimes burden—of making these decisions falls on companies that have been built to maximise profit more than to maximise social good. A legal or regulatory framework that accounts for social objectives may help ease those tensions". That is something that the Committee should have in mind.

We have said before in relation to the BBC that the current regulatory system has an imbalance. This may not just be in the UK; there may now be a global imbalance. It is definitely the right time for your Committee to look at this, and we believe that a stronger framework is needed.

We also think that in this context you should also consider the role of the PSBs and help to ensure that this important part of the UK creative economy continues to thrive. The imbalance that we see at the moment is in a tightly regulated PSB system. In many ways that is right because of our accountability, the way we are funded and the importance of transparency. However, we are also seeing an imbalance with new market players who are now operating in a very different space and in a very different way. As you know, as part of this the BBC, ITV and Channel 4 have been campaigning for things like the importance of prominence so that people can find PSB content easily. I would particularly flag the importance of attribution and well-sourced news, which are critical in the battle against fake news.

Picking up on the Ofcom report in particular, there were three things that really struck me. First, many of our audiences and consumers think that YouTube is much more highly regulated than it is; 30% thought that it was already covered by regulation. It is a concern that people think that they are consuming something with set principles and standards when in reality we know that not to be true.

Secondly, I commend page 18 of the report to you. I have brought it with me. This is a diagram which shows you that different kinds of

organisations with exactly the same content are treated in different ways. That reinforces my point about the imbalance at the moment in the current system.

Finally, on the framework that has operated so successfully in this country, like Magnus—I suspect we might break out in agreement about this—I think it has been about Parliament creating a framework of principles and a framework of standards for what is important. In order to have a good regulatory system you need two things. First, you need the organisations themselves to create standards. For the BBC, I would flag up the world-leading editorial standards. Part of the reason why that is so important is that you then get a culture in the organisation that applies to those standards. Things such as complaints and appeals and regulatory backstops are the last resort.

The question in this debate, however, is: what is that backstop? The Committee needs to look at this. What is that sanction that encourages organisations to change some of their ethos and their culture and therefore operate in different ways to deal with the harms, which I know the Committee has already taken a lot of evidence on so I will not repeat them? Briefly, as you know, there is the social impact on children, bullying, harassment, hate crime, and this huge issue with fake news.

Dan Brooke: Thank you for the opportunity to give evidence. I am the chief marketing and communications officer for Channel 4, which incorporates corporate affairs. I am also the board champion at Channel 4 for diversity and inclusion, which is a role that I am particularly proud to hold.

I would echo much of what Magnus and Clare have said. I will start with the positives, which are always a good place to start in life. The internet is arguably humankind's greatest ever invention. It has transformed life in the world in so many ways across so many different fields, in parliaments, in governments, in business and the media. The list goes on. There are unfortunately dark sides, and sadly those dark sides are considerably more significant than my children's obsession with the game "Fortnite", which they spend a considerable number of hours of their day on. We are talking about trolling. We are talking about fraud, cyberbullying, hate speech, child abuse, fake news, and so on. I am sure these are not intended consequences of the internet, but they are undoubtedly consequences, and the system that we have in place, however we choose to describe it, has not prevented those things.

I would ask whether there is a problem and how big the problem is. The answer to that question is that we do not know. When we have the chief executive of NHS England talking, as he did last week, about the problem with young people submitting themselves to the health service for mental health complaints as a result of using social media, which is reaching epidemic proportions, we can safely say that we have a problem.

All those things that I mention are, of course, grave concerns, but our belief is that the most insidious one is fake news. Why? Because fake

news undermines the fundamentals of how we choose to organise ourselves as a society through the system of democracy. We believe that information is the lifeblood of democracy and that fake news is like leukaemia. It is like a cancer to the blood supply of democracy. It is absolutely essential, and we applaud the fact that Parliament is looking into it and how to regulate the internet better.

As an organisation and a public service broadcaster, we are looking into it. Last year we held a week called Fake News Week. This year we have had our Channel 4 News exposé of the operations of Cambridge Analytica and a "Dispatches" programme that went undercover in a Facebook moderation centre. We will continue to do these things.

I would like to conclude by echoing what Clare said about thinking hard about how to cherish and nurture the positive side of the system. As we would perceive it, this is the side of the system that is putting something positive into the blood supply by way of public service news and cherishing the system that produces it, in particular by focusing on updating and modernising these rules on prominence.

The Chairman: Thank you to our witnesses who have covered a lot of ground. We will return some of these areas in our questions, the first of which will come from Baroness Chisholm.

Q144 **Baroness Chisholm of Owlpen:** Welcome. I am interested that it has been mentioned that it would be a good idea to have the establishment of a new horizon-scanning or possibly even a co-ordinating body. Would that help the regulators?

Dan Brooke: Yes. On the Ofcom report, the co-ordination that it already has with the ICO, the Electoral Commission and the CMA seems very positive. I know that the Commons Select Committee has recommended much more co-ordination between those bodies, and that is important. We believe that the issue of content delivered on the internet is so vast and so absent largely of regulation at the moment that a body that is specifically dedicated to that is imperative. It is entirely possible that one could get to a position where it is best placed as a specific unit within an existing regulator like Ofcom. Because of the vastness of what such a body would have to look at, what might make sense is for that body to have the co-ordinating role between all the other regulators that touch on activities on the internet.

The Chairman: Would you prefer Ofcom to take on that co-ordinating responsibility if it were clearly defined, or do you favour a new body to bring it together?

Dan Brooke: We favour a body that is dedicated to the subject of content regulation. As to whether that is a separate body from Ofcom or that sits within Ofcom, we do not at this stage have a strong view. Wherever it sits, we believe that it should have a strong co-ordinating role with other regulators.

Baroness Chisholm of Owlpen: Presumably one of the points about

possibly having a new body would be that it would help the joined-up effect, which does not seem to be happening at the moment between the different platforms.

Clare Sumner: I take a slightly different view on this, partly from my time in government when I worked in the Cabinet Office. I was privileged to work with Lord Hennessy and think about horizon scanning. There is a really important role for government here, because when you get an intervention that is as big as the internet, and if you think about the new interventions, which I know that you have been talking about, such as data and artificial intelligence, and where that takes us in 30 years' time, you are narrowing the question slightly because there are several elements to it.

First, there is a real role for government, whether that is in the Cabinet Office or the DCMS, because the industrial strategy has only fairly recently picked up on the UK creative economy and tech economy. That shows potentially that we need to be doing more in this area. We should probably acknowledge that coming to these issues at this stage feels a bit late for all of us. There is a macro issue, therefore, and precise natures regarding what the regulators should do.

As you know, Sharon White has been open to allowing the issues to be placed on the table. There could be a role for Ofcom and there could be a role for another body. We do not have a strong view on that. I do have a strong view, however, on things that fundamentally change the UK economy and the UK culture; there is definitely a role for government horizon scanning. I agree with Dan that the Government would again be well placed with regard to co-ordination and bringing things together. That is where I come from on this question.

Magnus Brooke: There are two slightly different things going on here. One is the application of the general law to these platforms. There are a number of different regulators of various different sorts applying the general law. There is, however, also a specific question about the content that appears on online platforms, and whether there should be a specific regulatory regime for that content, with a regulator whose responsibilities are defined in statute and backed by effective penalties.

For me, that is the critical question. That organisation could be Ofcom and it could also be the co-ordinating body with a lot of these other regulators seeking to apply the general law. You end up therefore, as you often do in broadcasting, with a sector-specific regime targeted at a particular thing, in our case broadcasting, together with the general law, which is the Information Commissioner's Office, the Gambling Commission and all sorts of other people. There is a degree of co-ordination between those to some extent overseen by Ofcom.

The other point is to make sure that this new regulator, regulatory apparatus or whatever is well resourced. Making sure that the regulator understands the thing it is trying to regulate could be quite expensive. You are trying to recruit quite a lot of people who are well paid and in

high demand, so it is important to make sure that the regulator is appropriately funded by some sort of levy from the people it is regulating, as we do with Ofcom. We pay millions of pounds a year to Ofcom and at ITV we do not have any difficulty with that. We want to have a high-quality regulator with good people with whom we can have a high-quality conversation. That is where we should be trying to get to.

The Chairman: Can I come back to Clare on the issue of the role of government with regard to horizon scanning and setting some principles? Do you think that through the Digital Charter programme the Government are doing that or not?

Clare Sumner: I think it meets it in part, because it is a principle-based approach, particularly in relation to harms. The bit that is potentially missing is what the implications will be in 20 or 30 years of some of these things and therefore what framework we should consider putting in now to get the outcome that we want in 20 or 30 years. We support the Digital Charter. We think it is a good idea and a good intervention. The question is whether it is sufficient in itself and whether we should go further.

Q145 **Lord Gordon of Strathblane:** This question is particularly for Clare. Any regulatory structure is bound at some point to recommend the need for some degree of further legislation. Do you think that government as we operate now is equipped to deliver that regulation in time, or that by the time the ink is dry on the Act of Parliament we may have moved on to a different technology?

Clare Sumner: That is a good question, and it is one of the things we have been looking at in relation to our campaign on prominence, which is perhaps to give more discretion to a Secretary of State with regard to future changes.

In answer to your question, however, you can protect that partly by having a clear, principled approach. That is the only way you can ensure it. If you get into too much specificity, there is a danger, as you say, that the market moves so quickly and the interventions happen so fast that it could be out of date, which is why you need to be at a high level.

Lord Gordon of Strathblane: You will be aware that MPs in particular, perhaps quite rightly, are very sensitive about giving Ministers powers that are untrammelled and not responsive to parliamentary scrutiny.

Clare Sumner: I absolutely accept that.

Viscount Colville of Culross: Magnus, you spoke about the BBC in your evidence and about the social levy. You talked about ensuring that it generates maximum impact and that you would like to look at a range of different strategies. If you are setting up a new body, making sure that you get the maximum talent to be able to understand what is happening and to horizon scan is going to be incredibly expensive. Will that not take up most of the money from the social levy, or do you see the social levy as having a whole range of different functions?

Magnus Brooke: It depends on what you set up and how you do it. For example, if you gave responsibilities to Ofcom, it is an established organisation and you would not be starting again with a completely new organisation. There is clearly an economy in doing it in that way, and there are certain co-ordination benefits, because these worlds are colliding. The world of broadcasting, the world of YouTube and the world of social media are all coming together. Putting them into an established organisation like Ofcom from the content point of view would make a lot of sense. There is then less pressure potentially on the levy.

In a sense, however, the uses of the levy depend on how big the levy is, we are talking about companies that are making a serious amount of money with a very high margin. We are saying that the externalities that they create in society need to be compensated for. That is the cost of doing business that we all bear and we pay for a regulator. That is the appropriate way to do these things. If there are other projects such as media literacy or other things that the levy could pay for, that is terrific. Ofcom may or may not be the vehicle for deciding that. There may be some other approach to dividing up some of that levy and using it for other public purposes such as the education of children and safety initiatives. There are a number of different things that you could think of. The primary purpose to start with, however, is establishing an effective regulator with a regime that works.

Clare Sumner: I very much agree with that approach. It makes a lot of sense. We probably pay a bit more than ITV because obviously the regulator does more in relation to the new charter for the BBC. It is important that we ensure that the respective platforms are contributing to that high-quality regulation. By doing that, it will ensure that you get the right people looking at these questions. There is a danger that you create further imbalance if you do not set up the right body to do this or use Ofcom's existing role and build on that. That is a choice.

Viscount Colville of Culross: Are you prepared to put a figure on what the social levy should be? A percentage or a number?

Clare Sumner: That would be quite hard to do.

Q146 **Baroness Bonham-Carter of Yarnbury:** Picking up on two things that have already been said, I think I know what the answer to my question will be. It was interesting that Clare said that people think that YouTube is regulated, and Magnus talked about worlds colliding. We also have written evidence from Channel 4. Should online platforms be treated now in a similar manner to publishers and found to be liable legally for the content that they host?

Dan Brooke: The answer to that, broadly speaking, is undoubtedly yes. I am absolutely amazed that we are still having this debate. The fact that we are is a matter of legal weaselling—nothing more than that. Self-regulation for us would be the ideal first port of call. That is what exists by way of content standards. It is clear, however, that that system has not worked. It self-evidently has not worked.

What is the alternative? We would have to be realistic about that. Asking online platforms, and social media platforms in particular, to somehow pre-approve all content that gets uploaded to their platforms is totally unrealistic. What is realistic, however, is to ask them to scan their platforms for content that is either illegal or harmful, to identify it, take it down promptly and ensure that it is kept off the platform. That is not unreasonable. The secret filming we did in a Facebook moderation centre in Dublin clearly shows that they are not capable of doing that off their own bat on the basis of the evidence of that programme. Maybe that is a one-off but it did not seem like a one-off.

To us it is absolutely clear that a code of practice needs to be introduced, and there needs to be clear liability for what happens if that code of practice is not met. They cannot introduce it themselves so it would need to be introduced by somebody else—Parliament.

Magnus Brooke: I broadly agree with that. It is time to turn the current presumption on its head and start from the position that they are responsible for the content.

My position is slightly more nuanced however. First, you need to distinguish different types of content. Take advertising content, for example, we cannot see why an online platform ought not to be wholly responsible for the compliance of the advertising content that they carry and for the acceptability of where it is placed, just as television companies are. The truth is that their sales teams sell the advertising, they get the money, they take the advertising and they put it in the place where they want to put it. They can or could have control over that entire process. That is their content. That is not content being uploaded by individuals over which they have no control. That is one category. They ought to be responsible for that. They ought to have a duty of care. The regime ought to apply to them. At the moment, it does not.

Secondly, there is the question of the other content. Here I agree with Dan that the truth is that the sites have been adept at keeping certain forms of content—pornography, child abuse imagery and so on—off their platforms, which indicates that they can, if they put their minds to it, be pretty effective in the way that they run their platforms. Leaked documents at the weekend suggested that Google sees itself as a moderator-in-chief. So it could be done, but you need to be realistic about continuing to have a platform of open access where there is no delay in uploading content. Finding that balance is the trick.

Clare Sumner: Unsurprisingly, I agree with much of what has been said. I looked at the DCMS Select Committee report because I think that these terms are getting outdated. It was interesting that they asked why we should not start from scratch, what these organisations are for and what they are doing now. When they were first established, we saw them as distributors. They were the pipes. I read that they are actually passive aggregators. They are not doing anything passively, however.

How much they target advertising and various things to consumers is hugely managed and controlled, as Magnus has said. Equally, how some of their algorithms for service news and information are managed is also very controlled. So the question now is about harmful content, content that is wrong, and about how they establish more self-regulation that we can all have faith in, in the way other organisations have.

In order to do that, as I said earlier, they need to have a legal framework and a backstop. Otherwise, there is a danger that we keep relying on them to come up with their own codes of conduct and we find the behaviour that we are all concerned about after the horse has bolted. Probably the time has come now to look at something more formal.

Q147 Baroness Bonham-Carter of Yarnbury: The other thing that has come up a lot in our evidence is that everyone is now concentrating on this. You are saying that we may have been a bit behind. We tend to think about the big companies. We also have to think about the smaller companies. That may be what Magnus was addressing: that you have to have the ability to allow a certain openness but also regulation.

Magnus Brooke: Yes.

Clare Sumner: There is another thing, which is that we have got used to things coming on very quickly. Everything comes on immediately. One of the things we particularly do with our children's services is moderation, where things might come on a little more slowly. The sense that everything needs to be up immediately is perhaps sometimes not quite as true as it appears. That is how the culture has changed. We expect everything to be immediate. If that is the case, you have to have these take-down mechanisms that work quickly and self-policing communities. This leads you to education which we touched on briefly. It is critical that people are equipped to both challenge and ensure that things are taken down quickly.

The Chairman: Before we come back to Baroness Bonham-Carter, may I ask Magnus Brooke for clarification? Is it your position that online advertising is effectively unregulated?

Magnus Brooke: No, I do not take that position in the sense that the ASA does as good a job as it can in regulating online advertising. The central difficulty is that the platform itself is not the entity that is being regulated. The advertiser is being regulated, not the platform. As far as the platform is concerned, it takes an advert. It does not matter to the platform what is in the advert or where it places the advert. It is simply a concern for somebody else. It is one reason why you see bad outcomes in the incentivisation of things like fake news: because the platform does not need to worry about that. That is someone else's problem. It is the advertiser's problem. The advertiser is at one remove from the crucial decisions that are being made about where that advertising goes.

Compare and contrast broadcasters who are absolutely responsible for everything we carry. We have to make sure that the advertising complies

and we put that advertising in a place that is appropriate. It is a fundamentally different system and the result is a completely imbalanced system overall, because the platforms can take an advert and literally put it up as soon as they get it. We have to go through a lengthy and extremely expensive compliance process. We spend millions of pounds a year complying adverts.

Baroness Bonham-Carter of Yarnbury: I have a supplementary question. Do you think the provisions of the e-commerce directive are still fit for purpose?

Magnus Brooke: In principle, I think they are. The difficulty is who does and does not qualify for safe harbour. It was conceived as being a bit like the Royal Mail, which is not responsible for the content of people's letters, or the telephone network, which is not responsible for what people say on the telephone. That is the original concept, but we have moved a million miles away from that with some of these platforms. They are, in effect, global media platforms competing against media providers such as the ITV, BBC and Channel 4.

What we see at the moment is increasing challenge, with endless litigation in the courts over whether those platforms are or are not caught by or protected by safe harbour, and you can see that across courts in Europe. We have a very uncertain situation at the moment where they defend this privilege case by case and you end up with an uneven playing field and uncertainty about what is or is not covered.

The other thing is that in the end you get to a point where you say: let us forget that. We need to accept that they are active players and not passive players, and we need to put a regime in place for that moment, which is probably quite close, when the courts say that they are no longer covered by the regime. You will then have chaos unless you put a regime in place to replace what we have at the moment, which is effectively no regulation.

Clare Sumner: I repeat the point I made earlier about passive and active, because that is where the e-commerce directive needs to be updated.

Dan Brooke: It was put in place 18 years ago before YouTube and Facebook existed.

Q148 **Lord Goodlad:** In your view, what principles and best practice for content moderation and the handling of complaints could be transposed from broadcasting to online?

Clare Sumner: The framework that the BBC operates, which I believe Ofcom spoke to you about, has some resonance here. We have clear editorial guidelines which set the standards for what we expect all our journalists and content makers to meet. The BBC has a particular mission and particular public purposes, so getting that content right is important for us. It starts, however, by having clear guidelines and standards which everybody as they come into the organisation is inducted and trained in.

Regarding what happens next, we have a clear policy of “broadcaster first”. The complaints come into the BBC first. This is slightly updated with our new charter, but essentially, we try to answer 90% of those complaints within two weeks. If we get it wrong, we try to say quickly that we have got it wrong, and we try to explain the context if things are not as our audiences think they should be. Then there is an appeals process within the BBC and a final appeals process to Ofcom, which is the more controversial cases or the ones where people have real concerns about harm done or something like that.

One of the things that has come up in this debate is the scale of content that some of these platforms have and are operating under. How would you deal with a system like that? You probably have to begin to categorise the areas that are of real concern. It is easier for the platforms if the activity is illegal; you referred to pornography or something that encourages real harassment. That obviously has to be taken down immediately. It is about enabling consumers to have more transparent mechanisms for how they complain, who they complain to and how their comments get resolved.

It is also about whether—this is a really hard question, because it requires scale for an organisation to do this—there should be any appeal mechanism for an individual if they feel that they have not been treated appropriately, and about how you would seek to make that manageable. That is a very difficult question, but it is not one that we should duck. You either have to get that consumer accountability up front by being clear about what you are signing up to, what it means and whether you agree, and having more transparency in that, or you have to have clearer mechanisms: if this is not how you think it should be, what do you do?

Dan Brooke: The short answer to the question is that there is a lot that can be learned from broadcasting by the online world in content standards because there are very strong content standards in broadcasting and there is almost none online. I thought it would be interesting to bring to your attention some of the details that we learned from the documentary where we sent journalists to film secretly in the Facebook moderation centre in Dublin because it yielded quite a lot of information which up until that point was not in the public domain. It is worth comparing some of the things that we found to what we at Channel 4 are subject to.

Is there a dedicated UK content code for Channel 4? Yes, it is the broadcasting code. With Facebook, is there a dedicated UK code? No, there is not. There is one code that applies to the whole world. Is the code set by an independent third party? Yes, in the case of Channel 4 it is set by Ofcom. In the case of Facebook, no, it is decreed from Silicon Valley by Facebook. Is the code published? For Channel 4, yes. The Ofcom broadcasting code is published for everybody in the world to see. For Facebook, no. We had to send in hidden cameras to yield some of the information about what their content standard codes were.

Does the code apply to all content? Yes, for Channel 4 and for all the PSBs. For Facebook, no, they only look at content that has been flagged by users. What percentage is there of that content, or all harmful or illegal content, on Facebook? We have absolutely no idea because nobody knows and nobody has the full view of what is on Facebook because all of our news feeds are personalised. Are there sanctions for not following the code? For Channel 4, yes, we might be forced to make apologies or fined or ultimately lose our broadcasting licence. For Facebook there is absolutely no sanction whatsoever.

You can see that in this specific tale. It is slightly contradictory, but coming from Channel 4 I can occasionally afford to be slightly contrary to Magnus. There was a video about child abuse that featured in our documentary where there is a very unpleasant video of an adult abusing a child that was used as part of the training for the moderators in the centre in Dublin. The people being trained were told, "You have to keep a video like that up because that is a way of helping to find the perpetrator".

The perpetrator was then found. It turned out he was in Malaysia and he was arrested. The Facebook code requires that once the perpetrator has been found, the video should be taken down. That was the understanding about what had happened. It then took a session of a Select Committee in the Irish Parliament who had called Facebook in front of them to ask questions specifically about the programme that we had put out. They were asked whether the video had been taken down. They said "Yes", but in fact it had not and was then hurriedly taken down. That was weeks ago. I checked on my phone this morning and the video is back up there.

That tells us a lot about how effective are the systems they operate and what kind of impact there is around complaint and appeal. Maybe that is a one-off but it is what we found because of a specific activity. What appears to have been created is genuinely a Frankenstein's monster where the person who created it does not fully know exactly what they have created but it is lurching around knocking into people and knocking into things, perhaps unintentionally. I do not think that they are doing anything more than wandering around after Frankenstein's monster with a tin full of sticking plasters. They are dealing with whatever they need to deal with in order to stop PR problems rather than fundamentally dealing with the problems.

Magnus Brooke: I would not disagree with any of that. The critical point is that being effectively regulated, having a regulator that is capable of getting to the bottom of things, is capable of enforcing the rules and potentially penalising people who do not obey, is what concentrates the mind. In Germany, for example, where the German Government has brought in the law around take-down it is striking to see the extent of the improvements in take-downs. I read in the Commons Select Committee Report that a sixth of Facebook's moderators now work in Germany, which is also very striking. That is the answer because it concentrates the minds of commercial organisations.

Baroness Kidron: Something was troubling me a bit because you all gave fantastic explanations for why they were responsible and that they are not acting like platforms and so on, but you each in your own way said that they cannot be responsible for their content, although you did not use those exact words. I struggle with that idea and I want to put to you that if they are getting revenue from something that is popular in the example that Magnus gave, where they are putting something next to content, is there something that one should be looking at that is proportionate? Do you really believe that they are too big to have a look from the beginning at all the content because their size is reflected in their share price, which is also reflected in what they could put towards solving some of these problems? I was interested that all of you, while being very acute that they are responsible, also backed off and said that actually they are not.

Dan Brooke: They are responsible for their content. What I think is unrealistic is to ask for them to be responsible for the pre-approval of any content that gets put up. I think that is hard because it is such a vast ocean.

Clare Sumner: I struggle with it too. As I was preparing for this Committee, I read the Ofcom report which said that it is so big and so unwieldy and how do we do this. I do not think you would be able to do the whole lot. I wonder if you need clearer demarcation between community zones, such as where are people having their own conversations, clearer attribution and sourcing, particularly to information which is critical with fake news, and potentially the capability which they could afford around moderation in some of these areas.

The whole premise of how we define an open internet, which we talked about at the beginning, is critical here and whether it could be segmented. What it would mean as a consumer, because you need consumer buy-in in this conversation, is whether therefore the pace of things coming would naturally slow down. What moderation means is that you cannot do immediate posting and immediate content making in quite the same way.

The question is probably one of scale. I do not think that you can do the whole thing. Are there particular areas where it would be more advantageous for a bit of time? The other thing, which I appreciate we will be coming on to later, is how do the algorithms work that then surface content that enables people to be informed across a range of sources and not then lock down into what I would call filter bubbles or echo chambers.

Baroness Kidron: If I have understood what you are saying it is that it would be good to know if you were in a church or shopping mall or a playground and then act appropriately.

Clare Sumner: Yes. It is about naming things and being clear with consumers about what this relationship means. For example, I give my personal data to Facebook. I appreciate that in my feed I get information

about slippers or sportswear or whatever. I take that as the consumer relationship that I have and I am getting a service back for free. The other thing we have not talked about is they are highly commercial operators with advertising but the deal with the consumer, which is why in part many of us sign up, is because they are giving us something that we find useful. There is that community sense, bringing people together and sharing information. The question becomes that when you are looking at more things that we would almost call broadcast material in this country—news, drama, videos and content—should there be something around that which we could segment more clearly? I agree that the sheer scale of it means that if you try to start with all of it, it is all a bit baffling. You have to segment it.

Magnus Brooke: I would distinguish between the advertising because I think the advertising is key. They can and should control where their advertising goes. To the extent that they are putting advertising around content, they ought to know what that content is and not put it around inappropriate content. That seems to be relatively straightforward. It is harder when you have content uploaded over which they do not have visibility or control at all times. You can reverse the presumption, however, and say that we are going to hold you responsible for the content as the starting principle but we are going to carve out or find ways to make that possible. We will then pass the responsibility to the regulator with the most serious harms in mind for it to figure out what the best efforts look like.

For instance, how much should you be spending? What should you be doing in order to get as close as you possibly can to preventing harm without necessarily being entirely responsible for all the content at all times because you would struggle to do that? Part of the role of the regulator is to say, "These are the harms you want to prevent and this is what best efforts look like. This is what we expect you to do in terms of moderation, in terms of use of algorithms, in terms of the harms that we are seeking to prevent", in addition to the control over advertising. You may not get all the way there but you will get quite a lot further than you are at the moment. That is at least a starting point.

The Lord Bishop of Chelmsford: Magnus started to answer my cracked-record question that I keep asking about pre-approval. I do not see why there could not be a much greater degree of pre-approval and you could turn the moderation thing on its head. Rather than moderate about the content that should be taken down, you moderate the other way over the content that is being prevented where you say, "No, could you please put it up". Some people would say that that is censorship. I do not see why that should be the case. If the moderation works then the content is put up; it is just delayed a little. Why can you not turn it all on its head and why can the clever algorithms which are so good at selling me slippers and sportswear and clerical garb not do this work?

Dan Brooke: That would have to be through artificial intelligence. I do not think there is any other way. Despite their vast wealth, the idea of

doing that exclusively via human beings seems unrealistic. I am no advocate for the social media platforms, as you can probably gather, but there is the sheer vast amount of content. That does not mean that I think that, given all of the content, the proportion of it that might be illegal or harmful could not be weeded out. That part is and I think it is possible to do it properly. The evidence that exists thus far and what we know about in Germany shows that.

To build on what Magnus was saying about the German example. We are particularly exercised about fake news. Facebook is where the issue of fake news is strongest. Facebook have said and trumpeted strongly when Zuckerberg gave evidence to Congress that they have doubled the number of moderators from 10,000 to 20,000 people, which sounds terribly impressive. They are the people who are responsible for safety and security. It turns out, however, that we do not know what safety and security means. It could be people who are trying to hack Facebook's website or it could be the physical security for their offices around the world. It transpires in the same evidence to the Irish Select Committee that 7,500 of them were moderators. If there are 7,500 moderators, and if one in six of them is in Germany, that is 1,250 moderators covering content in Germany. What did our programme find? The number of people on the ground in Dublin dealing with UK content was about 12 at any one time. Germany has strong regulation and that is motivating Facebook to put on the ground 100 times more content moderators than it appears are dealing with UK content.

There are other differences between the UK and Germany but the population sizes are not vastly different and the cultural differences are not vast. What is it that is motivating them to make that big change? Clearly it is regulation and that suggests to me that they believe, from their viewpoint of understanding the entirety of their platform, that content moderation is the absolute key to keeping it cleaner.

Viscount Colville of Culross: May I ask a supplementary to that? You praised the German example. Many people have said that the German law has been counterproductive and acts as a control on free speech. It has made heroes of the AfD, the far right. Is there not a concern that if you put as much energy into it as the Germans that the upside is they have lots of content moderators and the downside is that they seem to take down an awful lot more than they should, certainly if you want free speech.

Dan Brooke: No system is perfect. I would look at the British system for the regulation of television news. What we do rests, particularly in Channel 4, on being able to fulfil the concept of liberal free speech that we have in this society. Yet we also have the strictest form of regulation around television news and the by-product of that is that we are still people's number one source of television news and we are also the most trusted. There are lots of imperfections and the system and I am sure it can be improved, but it shows me that the concepts of free speech and regulation can co-exist successfully, if not perfectly.

Q149 Viscount Colville of Culross: To declare an interest, I am a series producer making content for the Smithsonian Institution digital channel and for CNN. I want to bring up the issue of the cancer of fake news, as you call it. Our sister Committee, the DCMS Committee in the House of Commons, when looking at this subject called for the Government to do proactive work to introduce transparency in this area. Facebook has come back very recently saying that it has introduced transparency in sourcing and where the user is or where it lands. It is also, so BBC evidence tells me, advising people to sign up to the fact-checking code of principles. Is that enough? What more needs to be done to force or introduce transparency into the social media platforms in order to counteract fake news?

Clare Sumner: The BBC's view on this is that it is our public purpose number one to provide independent and impartial news. In an online environment we work very hard to give our audiences a mix of sources where they can check information. One that you may have all used is Reality Check where we broadcast information to, but primarily on the web you can look up and see if you want to find out more about exactly what a hard border means. The other thing to bear in mind, particularly with younger audiences, is that they are coming to the BBC as the place where they check facts and information, which is very important.

To answer your question, I would like platforms to do more of ensuring that when you are in those streams you can easily see which stories are from which organisations, particularly PSBs, and begin to think about not a legal framework solution but a practical one. Particularly in this country, and not just the PSBs but our newspaper industry as well, we have clear regulation and clear principles about the way we operate. Perhaps it could be easier to come out of the filter bubble and link in to other sources. If you think about BBC Online, you can link to other newspaper sites or online sites to get more information about what you are looking at. That sort of approach is important. Some sites have begun to source recognised contributors so that you can check the credibility of who is making comments and giving information. That is important because in order to protect freedom of expression we need to understand where each of us is coming from. If you represent a particular point of view, I as a consumer can see that easily rather than be forced to not quite be able to work it out.

Viscount Colville of Culross: Should we legislate in order for that to happen?

Clare Sumner: That is a good question. At the moment we have a halfway house. On the prominence debate, there is something interesting in the news space in that perhaps we should be looking more at how we link out to a range of different sources. Coming back to Lord Gordon's point earlier, the specificity of that may be too much in terms of detail but at a principle level the fact that in this country consumers should be able to access a range of news sources is something that we should perhaps be looking at more. That would be my attempt at trying to do something like that.

Magnus Brooke: There is quite a neat link here to the Cairncross review looking at the future of news. You can see a sort of sweet spot solution coming out of that as well as out of the TV prominence debate that we have been working on which all goes to the same basic point. You have global platforms seeking to shape the worlds of British citizens and British consumers. As a Parliament, do you want to do some things as a result of which British news and news from credible organisations that submit themselves to regulation or are in other ways verified, would get some priority in the lists and in the news results that are surfaced? It is not just about television; it is about the press as well.

On the commercial incentivisation point, I am sorry to bang on about this again, but there is some simple stuff you can do to start with. Quite a lot of people are creating fake news to make money. There are of course state actors seeking to create fake news for different reasons but there are an awful lot of them doing it to make money. We can start by making sure that they do not make money out of fake news. That can easily be the responsibility of the platform because they just have to do their homework about where they are putting their advertising. All of these other solutions are more difficult, more complicated, will take more time and will probably require some form of legislation. All go to a similar point, however, which is: what has surfaced, how prominent is it and how much do people use it and pass it on?

Dan Brooke: If I have understood your question correctly, a lot of those things are contained within the concept of self-regulation which has been shown to be completely wanting. The only way of dealing with that is for an independent third party to impose a code of practice and to ensure that there is liability if those codes of practice are not met. It is up to the platforms to figure out the best way of policing their own platforms to ensure that this or that type of content that the code requires should not be on their site. I would observe that in the many things that we are told, such as "We are trying this or trying that", there is still an enormous amount of opacity about what those things are and what impact they have.

The biggest thing that appears to have been done differently, which has come from piecing together, as I did a second ago, information around how many moderators they have around the world, how many are in Germany and how that compares to the UK and so on, is to add a significant number of moderators. That suggests to me—suggests, because I do not know—that the best way to combat fake news is probably an element of artificial intelligence and to have human beings moderating content. The more people you have doing it the quicker that is going to occur. We all know that part of the problem is that a lie can get halfway around the world, as Churchill said before the internet was even invented, before the truth has got its boots on.

Q150 **Baroness Kidron:** I want to ask you a little more about algorithms, which have been cropping up here and there. In a conversation I had the other day someone, who is a leading thinker on this, said rather brilliantly

that the biggest failure of algorithms is that they have been over-marketed. They do not work as well as we think. We have a problem in that they do not work very well. It may be that they work too well in certain environments, but we are not sure what working well looks like. Can you each say something about that? I was going to ask you, Clare, if you could particularly mention the piece of your evidence which said that the BBC thinks that data should belong to the user but, in the meantime you will be using it. I was quite interested in that nuanced approach.

Clare Sumner: On the broader question, the BBC is asking people to sign into our services and become registered users so that we can use the data to make personalised recommendations about the content that we manage. This is not commercial in any way. It is trying to surface the programmes that you like and enjoy already and it is also trying to think about the serendipity of inform, educate and entertain that we can create on a linear schedule that in a digital environment is sometimes more difficult. When we look at data, to answer your specific question, that is what we are trying to achieve with it. If any of you are signed-in as registered users you will have emails saying, "Have you seen this programme and have you also thought about these things?" to try to make some connections between the content you might expect to see and some of the content we think might surprise you and that you would enjoy.

Baroness Kidron: What is your duty to us about understanding what decisions you are making?

Clare Sumner: Everything around algorithms needs to be more transparent and people need to be more honest about whether they are using algorithms and what they are doing. For example, in the platforms it is sometimes surfacing news stories and how that priority works. You will see, for example, on our BBC website that you have the running list of the stories that we think are the most important—the editorial judgment—but we also have a section where you can go to the most read. This is being clear about where they are being used so that you as the consumer can see and understand it without getting into the algorithmic equation that might be powering the machine behind it.

Dan Brooke: The openness about data and algorithms and how they are used is essential. As a public service broadcaster, like the BBC we ask everybody to give their details to use our online service, All 4, and we collect that data and use it to personalise services and target advertising better. We have something called Our Viewer Promise where we very clearly lay out in plain English, "This is what we are collecting from you, this is why we are collecting it, and this is how it is going to be used". We have won awards for that. I think that everybody should do that. It is more complicated if you are running a global social media platform but we would agree with the DCMS Select Committee that just as financial accounts can be audited and scrutinised so algorithms should be to some extent. Precisely what the limits are to that I am not expert enough to know but there is so much opacity at the moment. Anything that yields a bit more transparency for citizens would definitely be a good thing.

Magnus Brooke: I agree with that. One of the things we do is to give people a choice of a gold, silver or bronze targeted advertising service. Bronze is not targeted and gold is very targeted and we use third party information. It is clear to the user which one you are opting for. Some people do opt to get more targeted advertising because they do want to get served adverts that are appropriate for them. I agree with Dan and Clare, however, that it is all about transparency, making it easy to make your initial decision, to make subsequent decisions, but also to change your mind and go down a different route if you prefer, having had the experience.

Baroness Kidron: Can I ask whether any of you offer the user the opportunity of de-personalising them? Once we change our mind about whether we are interested in cooking or cars, can we clear our content cookies? I do not mean so much for advertising.

Dan Brooke: We have a nuclear button where you can say, "Get me out of here". The promise is that all of your data is deleted and it is deleted.

Clare Sumner: I think we have something similar but I will check. The other thing we have is the ability to keep updating what your interests are because they might change over time. I might be into natural history this week and into something else next week. I will double-check on that point.

Q151 **The Lord Bishop of Chelmsford:** I want to ask about safety or Secured by Design. The background to this is research the BBC has done which shows that about two-thirds of 10 to 12-year-olds have a social media account yet, as we know, most social media platforms have a minimum age of 13. We are aware that some of the BBC apps have good parental controls and guidance. The question for all three of you is how you incorporate Secured by Design into your products and services? What advice can you give us about how such principles might be enforced or promoted, although I think you are probably going to say enforced?

Clare Sumner: You are right in the question; it is how they are designed in from the start. For example, we have something called CBBC Buzz for under-13s. You have to verify your age and get parental consent. This is an idea for sharing creativity and games in our programmes. It is a moderated site. You can keep some stuff to yourself if you do not want to share it, but if you do want to share, it goes through a moderation process. I would say that, particularly around children which is a very specific area if you are looking at children's content, this could be looked at. The Government have started to focus on children as well. There is something about the design and transparency, accountability and being clear about the parental controls. The old watersheds were put there for a reason. Making sure that within a digital environment there are parental locks that you can apply and content signs similar to film classification about what are we watching are all relevant.

The other important check on this, as a colleague reminded us a few weeks ago, is the role you have as a parent, and I speak as a parent, in

ensuring that you know broadly what your child is up to in this space. There is something about ensuring that parents know what is available to them. Coming back to education on online interactivity, the BBC has done a lot to promote that and is going to do more. We are looking at wellness apps and things like that so that we use technology in a good way and recognise where it can become too addictive or you end up using it too much. Some of that is an important parental responsibility as well. I do not want to sound too preachy but it is important.

Magnus Brooke: I agree with all of that. There are a couple of points I would make. One is about the content. We control all of the content on our sites. It is a walled garden fundamentally and it consists of content all of which has been made to standards that are appropriate for linear television. One of the things you know about contemporary childhood is that the one place where parents are happy to put their children is in front of linear television. It is a safe place compared to online. The second is PIN control. Like the BBC, we offer parents the ability to PIN control content on our sites. We offer visible guidance warnings with explanations about why particular content may or may not be suitable. There is a range of things. There does, however, need to be a degree of education of parents that more is expected of them online, even on services like ours, than is expected on linear television because you are giving people more choice, you are trying to give more tools to parents and there is a degree of responsibility there as well.

Lord Gordon of Strathblane: On the issue of prominence, we have moved from linear broadcasting and are in the process of online streaming et cetera. How are you going to manage this, bearing in mind that there may be a legitimate conflict between what people want as consumers—and online providers can provide them with what they want—and what they ought to have as citizens which public service broadcasters want to give them? How are you going to square that circle?

Magnus Brooke: At the moment at least I am not sure there is that much of a circle to square. The truth is that the services we provide are incredibly popular. The consumption levels of PSB very high.

Lord Gordon of Strathblane: So you are not worried by Sky directing viewers with their Q control “to programmes we know you like”?

Magnus Brooke: That is exactly what we are worried about. We are worried about global platforms who have global incentives to favour their own content or to favour content of their partners which they put in more prominent positions to try to change the muscle memory of the audience when actually from the audience’s point of view a lot of the time what they are trying to find is PSB content. The problem is one where the incentives of global operators are different from the incentives and interests of UK consumers. We are saying that UK consumers do want to consume public service broadcasting content at scale. Even though they have had in the UK for many decades a huge amount of choice, the PSB services are still immensely popular. We are worried about attempts to try to effectively hide PSB content so that it is harder to find and

eventually people just give up and say, "I cannot find this stuff and it is not easy to access. I will just settle for this other content". In our experience, it is not what they want but it may be what happens because PSB content gradually drifts further and further away from the screens that people see easily when they turn their devices on.

Lord Gordon of Strathblane: How can this be prevented?

Magnus Brooke: There are a number of ways we can do that. The critical thing, as Clare said earlier, is not to set a prescriptive framework in primary legislation. At the moment we have the EPG rules. The EPG rules have worked because effectively EPGs have not changed for 20-odd years. It has been a fairly static method of accessing television. The problem that you are going to have over the next 20 years is that accessing television is not going to be static in any way at all. What you have to try and do is establish a primary legislative framework which says that these services matter to us and that we want them to have a prominent position on interfaces which people use in large numbers to access television services.

Baroness Bertin: I hear what you say and have huge sympathy about prominence rules and regulations. You made the point about sticking plasters in a different context. The size of their pockets is huge, so I am curious to know how seriously you are taking that. We do not have much time but it strikes me that changing the rules around prominence will not be the answer.

Magnus Brooke: If it were far reaching enough it could make a big difference. If you look at the effort that, for example, Netflix is making to secure prominence globally on screens that open when you turn your device on but, even more importantly, on remote controls, it gives you a feel for the extent to which people are fighting for the public's attention in the living room. We are saying that you can do something from the legislative point of view to say that the services we value ought to be in the prominent positions that Netflix will seek to buy and you are setting yourself up in the UK with a system where you have the best of all worlds. You have got Netflix, of course. We all consume Netflix as it is a terrific service but alongside it we do not want five other Netflix, we also want to have the PSB services.

Clare Sumner: We are trying to ensure that UK consumers have a choice when they get to that interface. The old interface was the linear channel with one, two, three and four. That has moved on a great deal and what we are saying now is that it is beyond our linear services, it is to our online services. When you look at the prominence of those on UIs there should be equality in that so that the consumer makes the choice. Coming back to what our audiences want, at the moment they rate all of our services very highly. Why do they rate them so highly when we cannot compete with "The Crown" of Netflix which cost millions of pounds? The BBC's response is that we have done 18 series of UK dramas that reflect our society in a way that resonates with our

audiences both young and old or particular parts of content such as “Blue Planet II”, which is genuinely ground-breaking and global.

Part of it is that some of the responsibility is on us to make really good content that everybody wants to watch but another part of it is about the recognition of what our brands respectively mean and what we will be investing our much more limited resources in. Netflix spends \$8 billion. We as PSBs spend £2.5 billion on drama. That is a huge differential. We have got to make sure that that investment in British content and British talent really counts. To our credit, there is some great content going on at the moment. You are hopefully enjoying some of it, whether it was “Bodyguard” or “Killing Eve” or “Wanderlust”. There are some really amazing pieces on at the moment and that is what draws our audiences in. Our fear is that in the current system there is a danger that Netflix can pay for the remote-control buttons, that commercial decisions are made about which thing goes here linked to advertising which would diminish the availability of content that the British public have said that they like and contribute to, in our case with the licence fee. That is really valuable in terms of the overall service that we provide. That is why I also mention news in this debate. The attribution and sourcing of news is really important and it goes together.

Dan Brooke: I do not think that we would say that prominence is the be-all and end-all answer to the future health of the public service system but it is a significant one. In the quid pro quo that is the PSB system, let us ask broadcasters to make a whole load of content that is good for society and good for citizens but we think the market might not otherwise provide and let us make that prominently available. That also helps the audiences of the providers which allows them to be well funded to ensure that there is a strong business model for the production of that content. That is a principle and a logic flow which has existed for decades. That does not mean that it still has a place today and should be examined, but there is a set of principles there that Parliament and industry have bought into. Although it does require legislation, it is not a reinvention of the wheel. We are talking more about a re-treading of the tyres and updating a system that already makes a lot of sense for the modern age because the way that people watch television has changed and therefore the system should change. We believe that it will make a difference, otherwise we would not be going on about it so much.

Viscount Colville of Culross: The Government have said that it is nonsense.

The Chairman: We will write to you so that you can get on the record on the issue of copyright in particular which we would like to explore. I thank our witnesses for their evidence session today which was very useful. We may well be in touch but with five minutes before our deadline I will suspend the session. Thank you.