Communications and Digital Committee

The Communications and Digital Committee is appointed by the House of Lords in each session “to consider the media, digital and the creative industries and highlight areas of concern to Parliament and the public”.

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Declaration of interests

See Appendix 1.

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Evidence is published online at https://committees.parliament.uk/work/745/freedom-of-expression-online/publications/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.
The right to speak one’s mind is a hallmark of free societies. Many people across the world are still deprived of that right, but in the UK it has long been treasured. However, it is not an unfettered right. Civilised societies have legal safeguards to protect those who may be vulnerable. One person’s abuse of their right to freedom of expression can have a chilling effect on others, leaving them less able to express themselves freely.

The internet—and particularly social media—provides citizens with an unprecedented ability to share their views. We welcome this and seek to strengthen freedom of expression online. However, the digital public square has been monopolised by a small number of private companies, which are often based outside the UK and whose primary aim is to profit from their users’ data. They are free to ban or censor whoever and whatever they wish, as well as to design their platforms to encourage and amplify certain types of content over others. Too often they are guided by concern for their commercial and political interests rather than the rights and wellbeing of their users. The benefits of freedom of expression must not be curtailed by these companies, whether by their actions or their failures to act.

In recent years, the harms users can suffer online have received growing attention. We support the Government’s proposal that, through the draft Online Safety Bill, platforms should be obliged to remove illegal content. Ofcom should hold them to strict timeframes where content is clearly illegal. We also support the Government’s intention to protect children from harm, although the draft Bill is inadequate in this respect—particularly in relation to pornographic websites. Nor are we convinced that the draft Bill sufficiently protects vulnerable adults. These duties should be complemented by an increase in resources for the police to allow them effectively to enforce the law, including on harassment, death threats, incitement, stirring up hatred, and extreme pornography. Platforms should contribute to this increase in resources.

The Government also proposes to introduce duties in relation to content which is legal but may be harmful to adults. This is not the right approach. If the Government believes that a type of content is sufficiently harmful, it should be criminalised. For example, we would expect this to include any of the vile racist abuse directed at members of the England football team which is not already illegal. It has no place in our society. The full force of the law must be brought down on the perpetrators urgently.

Content which is legal but some may find objectionable should instead be addressed through regulation of the design of platforms, digital citizenship education, and competition regulation. This approach would be more effective, as well as better protecting freedom of expression.

Social media platforms do not simply provide users with a neutral means of communicating with one another. The way they are designed shapes what users see, what they say, and how they interact. Platforms’ business models drive them to design services to maximise the time users spend on them, even if this means encouraging their worst instincts. This includes incentivising the posting of outrageous content, content whose reach is then amplified by platforms’ algorithms. The Online Safety Bill should include a robust duty to ensure that powerful platforms make responsible design choices and put users in control.
of what content they are shown by giving them an accessible and easy-to-use toolkit of settings, including through third-party applications.

Design changes must be complemented by digital citizenship education—both through schools and public information campaigns—to make clear the moral duties to others which come with the right to express oneself freely online and the consequences which the abuse of that right can have, as well as the dangers of retreating into social media echo chambers.

Ultimately, people must be given a real choice about the platforms they use. The dominance of companies such as Facebook and Google is such that they have little incentive to put their users’ interests first, as users have little choice to go elsewhere. They have become like utilities. Tougher competition regulation is long overdue. The Government must urgently give the Digital Markets Unit the powers it needs to end the stranglehold of the big technology companies.

The rights and preferences of individual people must be at the heart of a new, joined-up regulatory approach, bringing together competition policy, data, design, law enforcement, and the protection of children. The UK has an opportunity to lead the world and set a standard to which fellow democracies can aspire. We must get this right.
Free for all? Freedom of expression in the digital age

CHAPTER 1: INTRODUCTION

1. Freedom of expression is the right to express and receive opinions, ideas and information. It is central to our democracy. Accompanying this right are responsibilities held by the Government, by media and technology intermediaries, and by citizens. It is subject to legal limits, such as in the Defamation Act 2013, the Public Order Act 1986, the Protection from Harassment Act 1997 and the Terrorism Act 2006.¹

2. Debates and exchanges of information increasingly take place online. Social media platforms in particular have allowed people to publish and share their views with large audiences in a way not previously possible. However, the design of these platforms shapes what is said and what is seen. Search engines are also central to freedom of expression online, creating new opportunities to exchange information. Dr Sharath Srinivasan, David and Elaine Potter Lecturer in Governance and Human Rights at the University of Cambridge, responded to the media theorist Marshall McLuhan’s famous statement “The medium is the message” by asking “What is the message of this digital technology?” He told us that one aspect of the message is that “When you say something, you say it very quickly; it goes very far and wide; and it lasts forever”.²

3. The average Briton spent three hours and 37 minutes online per day in 2020, up by nine minutes since 2019 and 40 since 2017.³ Table 1 shows the average minutes per day spent by users on websites owned by different companies. Figure 1 shows the proportion of UK adults who say they have used social media or video sharing platforms in the past three weeks.

Table 1: Average minutes per day spent by UK users on websites owned by these companies/publishers

<table>
<thead>
<tr>
<th>Site/publisher</th>
<th>Average minutes per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Google Inc. (YouTube)</td>
<td>55</td>
</tr>
<tr>
<td>Facebook Inc. (Instagram, WhatsApp)</td>
<td>30</td>
</tr>
<tr>
<td>Spotify</td>
<td>6</td>
</tr>
<tr>
<td>Netflix</td>
<td>6</td>
</tr>
<tr>
<td>Bytedance (TikTok)</td>
<td>5</td>
</tr>
<tr>
<td>Microsoft (MSN, Hotmail)</td>
<td>4</td>
</tr>
<tr>
<td>Amazon</td>
<td>4</td>
</tr>
</tbody>
</table>

¹ Defamation Act 2013, section 13; Public Order Act 1986, section 5; Protection from Harassment Act 1997, section 1; Terrorism Act 2006, section 1
² Q 66
<table>
<thead>
<tr>
<th>Site/publisher</th>
<th>Average minutes per day</th>
</tr>
</thead>
<tbody>
<tr>
<td>Verizon Media (Yahoo, AOL)</td>
<td>3</td>
</tr>
<tr>
<td>BBC</td>
<td>3</td>
</tr>
<tr>
<td>Twitter</td>
<td>2</td>
</tr>
<tr>
<td>Snapchat</td>
<td>2</td>
</tr>
<tr>
<td>Apple</td>
<td>2</td>
</tr>
<tr>
<td>eBay</td>
<td>2</td>
</tr>
<tr>
<td>Sky</td>
<td>2</td>
</tr>
<tr>
<td>Reach (Mirror, local news brands)</td>
<td>2</td>
</tr>
<tr>
<td>Mail Online</td>
<td>1</td>
</tr>
<tr>
<td>Samsung (Upday)</td>
<td>1</td>
</tr>
<tr>
<td>News UK (Sun, Times)</td>
<td>1</td>
</tr>
<tr>
<td>Rightmove</td>
<td>1</td>
</tr>
<tr>
<td>LinkedIn</td>
<td>1</td>
</tr>
</tbody>
</table>


Figure 1: Percentage of UK adults who have used social media or video sharing platforms, 2011–20


4. Freedom of expression is a fundamental right protected under the Human Rights Act 1998, which brought article 10 of the European Convention on Human Rights (ECHR) into UK law. It is also protected under common law. Article 10 includes the caveat that this freedom:

“may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in
the interests of national security, territorial disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.4

5. The Government plans to add to existing legislation through the Online Safety Bill, published in draft on 12 May 2021 (see Box 1). We examine the draft Online Safety Bill in more detail in Chapters 2, 3 and 4. Our inquiry also took place in the context of a Law Commission consultation, on communications offences discussed further in Chapter 2.

**Box 1: Draft Online Safety Bill**

The draft Online Safety Bill aims to address illegal and harmful content online. It imposes duties in relation to illegal content and content that is harmful to children on “user-to-user services”, such as social media platforms and search engines (“search services”).5

The draft Bill also imposes duties regarding freedom of expression and privacy. User-to-user services which meet specified thresholds (“category 1 services”) are subject to additional duties in relation to content that is harmful to adults, content of democratic importance and journalistic content.6

The draft Bill gives powers to Ofcom to oversee and enforce the new regime and requires Ofcom to prepare codes of practice to assist providers in complying with their duties of care. Ofcom’s existing duties to promote media literacy are expanded.7

6. The Hate Crime and Public Order (Scotland) Act 2021, which received Royal Assent on 23 April 2021, made “stirring up hatred” against protected groups a criminal offence in Scotland.8 During its course in the Scottish Parliament the Bill was widely criticised, including by the Law Society of Scotland; the Scottish Police Federation; the Catholic Church; the National Secular Society; Jim Sillars, former Deputy Leader of the SNP; and the actor Rowan Atkinson. A Savanta ComRes poll commissioned by the ‘Free to Disagree’ campaign group found that just 29 per cent said the law should criminalise “offensive” words.9 Sixty-four per cent believed that people are too quick to shut down debate.10

7. Ayishat Akanbi, a cultural commentator, told us: “we have to fight for freedom of speech and free expression online and distinguish between hate speech and speech we hate, which sometimes is hard to see.”11

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6 Ibid.
7 Ibid.
11 Q 4
8. We heard criticism of the UK Government’s approach to online harms as absolutist. Robert Colvile, Director, Centre for Policy Studies, said that discussions in government around online harms often “appeal to the inner authoritarian”, with the Home Office dominating the narrative. He said that in previous Conservative Manifestos, there has often been “a very large bit about the dangers of people saying or doing anything on the internet ever, and the fact that there are lots of bad people out there and they need to be stopped, which has been very obviously written by the Home Office.” There was a competition within government “to see who could say the meanest, toughest things about the big tech companies”.12

9. Freedom of expression is crucial, although not an absolute right. We heard from Dr Jeffrey Howard, Associate Professor of Political Theory, University College London, that “the right to express one’s views and to communicate with others is paramount to the development and exercise of our personal autonomy and our political agency. That includes the right to engage in robust and heated debate with others.” However, this is limited by a “moral responsibility we owe to others not to endanger them”.13

10. Box 2 outlines different conceptions of freedom of expression. In our report, we focus on the power of the state and major platforms to limit freedom of expression. We also recognise that receiving serious abuse can leave people less free to express themselves. This is different from being exposed to views one disagrees with or finds offensive or upsetting.

**Box 2: Theories of freedom of expression**

<table>
<thead>
<tr>
<th>Theory</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Freedom of expression as a value.</td>
<td>This holds that more scope for expression is generally preferable to less. It can be used as a measure</td>
</tr>
<tr>
<td>Freedom of expression as a fundamental right.</td>
<td>This holds that freedom of expression relates to non-interference by the state.</td>
</tr>
<tr>
<td>Freedom of expression as a positive obligation.</td>
<td>This holds that the state should take positive steps to guarantee an individual’s right to freedom of</td>
</tr>
<tr>
<td></td>
<td>expression from interference by other individuals and organisations. This concept is increasingly</td>
</tr>
<tr>
<td></td>
<td>being adopted by the European Court of Human Rights, where it is known as ‘the theory of horizontal</td>
</tr>
<tr>
<td></td>
<td>fundamental rights’.</td>
</tr>
<tr>
<td>Freedom of expression as competing rights.</td>
<td>This holds that each individual’s right to freedom of expression comes into conflict with others’</td>
</tr>
<tr>
<td></td>
<td>freedom of expression. Individuals can wield their right against others like a form of violence.</td>
</tr>
</tbody>
</table>


11. There has been considerable debate about whether social media companies should be considered publishers and therefore more responsible for the content expressed by users on their platforms. Alan Rusbridger, a member of the Facebook Oversight Board, said that services such as Facebook
and Twitter are neither “just platforms” nor publishers in the sense that newspapers are.  

12. Benedict Evans, an independent analyst, told us: “Arguing about whether these things are platforms or publishers is a bit like looking at radio and saying, ‘Is that a book or a newspaper?’ No, it is not, it is radio.”

13. Social media platforms are often described as the digital equivalent of the public square, including by their founders. As the U.S. Supreme Court has noted, such websites “can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” Yet they are controlled by private companies, which are free to ban or censor whoever or whatever they wish and whose platforms shape the nature and visibility of communications transmitted on them.

14. Huge volumes of user-generated content are uploaded to social media platforms each day, making artificial intelligence increasingly important in moderation decisions. Artificial intelligence is also key to the ranking of search engines’ results. This raises questions about algorithms’ effectiveness and biases, as well as about the diversity of their designers, the business models motivating them, and whether they should be subject to external audits. The concern that algorithms can demonstrate racial and gendered bias was echoed throughout our inquiry.

15. Algorithms have also been criticised for encouraging poor online behaviour by pushing users toward sensationalist content. We discuss such concerns further in Chapters 2 and 3.

16. In recent years, there have been many high-profile controversies about action taken by social media platforms. These include Twitter preventing users from tweeting a story by the New York Post; Facebook banning the famous “napalm girl” photograph from the Vietnam War before reversing its decision; YouTube taking down videos which “go against World Health Organisation recommendations” on COVID-19; Instagram limiting the visibility of posts by Black and plus-size women; and Twitter’s banning of Donald Trump.
17. Social media platforms have been criticised for not doing enough to remove content which breaks the law or community standards. More than 1,200 companies and charities, including Adidas, Unilever and Ford, suspended their advertising on Facebook in July 2020 to pressure the company to “stop valuing profits over hate, bigotry, racism, antisemitism, and disinformation.”21 Platforms have been criticised for design decisions that encourage or amplify harmful content, which can leave certain groups less comfortable to express themselves online.

18. Debate around freedom of expression online has taken place in parallel to discussions of freedom of expression in other contexts. These have centred around the role of “cancel culture”, “no platforming” and free speech at universities. In March 2018 the Joint Committee on Human Rights concluded that wholesale censorship of debate in universities did not occur, in contrast to suggestions in media coverage.22 However, the think tank Policy Exchange has argued that “no platforming” is a threat to academic freedom.23 In an attempt to “strengthen academic freedom and free speech in universities in England”,24 the Government has introduced the Higher Education (Freedom of Speech) Bill.25 At an engagement event with students from different universities, we heard a range of views. Some believed that that cancel culture does not exist, as people who are being “cancelled” already have a privileged platform; some that cancellation should be determined by whether the speaker intends to offend; and others that cancel culture is a genuine threat to free speech on campus (see Appendix 6).26

19. A Savanta ComRes poll in February 2021 found that 50 per cent of adults believe that freedom of speech is under threat in the UK, compared with 24 per cent who disagree.27

20. Similar debates are taking place internationally, with freedom of expression under threat by authoritarian regimes. According to ARTICLE 19, which measures freedom of expression using 25 indicators across 161 countries, freedom of expression has fallen to its lowest score since 2009. Countries low in the global ranking included large and influential states such as China, India, Turkey, Russia and Iran.28

21. Our report is focused on how public policy can protect freedom of expression online. It considers how competition between platforms can be increased to

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21 Stop Hate for Profit, ‘Thank you to All of the Business that Hit Pause on Hate’: https://www.stophateforprofit.org/participating-businesses [accessed 18 May 2021]; Seb Joseph, ‘As the Facebook boycott ends, brand advertisers are split on what happens next with their marketing budgets’, Digiday (3 August 2020) : https://digiday.com/media/as-the-facebook-boycott-ends-brand-advertisers-are-split-on-what-happens-next-with-their-marketing-budgets/ [accessed 18 May 2021]
22 Joint Committee on Human Rights, Freedom of Speech in Universities (Fourth Report, Session 2017–19, HC 589, HL Paper 111), p 20
26 Summary of virtual roundtable discussion with students, 14 April 2021: Appendix 6
the benefit of freedom of expression; how the Government should ensure that illegal content is removed and that legitimate opinions are not censored; and how the design of platforms and initiatives to promote digital citizenship can support inclusive and civil online environments for the exchange of information, ideas and opinions. We make recommendations to the Government on how it should regulate platforms and to the industry on how it can change.

22. We build on previous work, including our reports Social Media and Criminal Offences (July 2014), Growing up with the Internet (March 2017), Regulating in a Digital World (March 2019) and Breaking News? The Future of UK Journalism (November 2020).

23. In Social Media and Criminal Offences, our predecessor committee found that existing law, such as on harassment and grossly offensive publications, was generally appropriate to social media. It recommended that there should not be new offences for online behaviour.29

24. In Growing up with the Internet, we proposed that the Government should create a digital literacy programme, a minimum standard for those providing internet services and a commitment to “child-centred” design. As a principle, we suggested that children should be treated online with the same care that has been established through regulation in offline settings such as television and gambling.30

25. In Regulating in a Digital World, we proposed 10 principles that should shape and frame all regulation of the internet, and a new Digital Authority to oversee this regulation. These 10 principles were: parity between protection online and offline; accountability; transparency; openness; privacy; ethical design; recognition of childhood; respect for human rights and equality; education and awareness-raising; and democratic accountability, proportionality and evidence-based approach.31

26. In Breaking News? The Future of UK Journalism, we recommended that the Government should coordinate existing work on media literacy, establish a Digital Markets Unit as a matter of urgency and use the Online Safety Bill to legislate for a mandatory news bargaining code.32

27. We are grateful to our specialist adviser Dr Ella McPherson, Senior Lecturer in the Sociology of New Media and Digital Technology, University of Cambridge. We thank everyone who submitted written and oral evidence.

29 Communications Committee, Social Media and Criminal Offences (1st Report, Session 2014–15, HL Paper 37), p 6
30 Communications Committee, Growing up with the Internet (2nd Report, Session 2016–17, HL Paper 130), p 3
31 Communications Committee, Regulating in a Digital World (2nd Report, Session 2017–19, HL Paper 299), p 194. See Appendix 4 for the full principles.
32 Communications and Digital Committee, Breaking News? The Future of UK Journalism (1st Report, Session 2019–21, HL Paper 176), pp 32, 64 and 70
CHAPTER 2: REGULATING CONTENT

Moderation by platforms

28. Huge volumes of material are posted on social media each day. Dr Jeffrey Howard, Associate Professor of Political Theory, University College London, noted: “engaging in content moderation at scale across countless cultures and countless languages is a difficult business.”

29. Platforms’ moderation policies—and enforcement of them—have been the subject of growing scrutiny and controversy. They have been criticised for inaction against a range of harms, including antisemitism and conspiracy theories.

30. A literature review by the Alan Turing Institute found that between 0.001 and 1 per cent of content on mainstream platforms is abusive. Content directed at MPs is considerably more likely to be abusive: between 2 and 5 per cent of tweets. Between 10 and 20 per cent of people in the UK have been targeted by online abuse, including through private messaging and emails. However, a survey by the Scottish Government in 2018 found that only 2 per cent of people in Scotland had experienced online abuse. In 2017–18, 2 per cent of hate crimes had an online element.

31. Tables 2 and 3 show the percentage of respondents in different categories who told Microsoft in 2020 that they had ever experienced a given online harm. Table 4 shows the percentage of people who told Ofcom that they had seen a given type of content in the last year.

Table 2: Prevalence of harm by age and gender (%)

<table>
<thead>
<tr>
<th></th>
<th>Adult male</th>
<th>Adult female</th>
<th>Teenage male</th>
<th>Teenage female</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trolling</td>
<td>14</td>
<td>15</td>
<td>18</td>
<td>16</td>
</tr>
<tr>
<td>Bullying</td>
<td>5</td>
<td>13</td>
<td>13</td>
<td>25</td>
</tr>
<tr>
<td>Harassment</td>
<td>8</td>
<td>13</td>
<td>15</td>
<td>18</td>
</tr>
<tr>
<td>Hate speech</td>
<td>9</td>
<td>10</td>
<td>19</td>
<td>12</td>
</tr>
</tbody>
</table>


33 Q6
36 Ibid., p 4
37 Ibid., p 12
38 Ibid., p 14
### Table 3: Prevalence of harm by age (%)

<table>
<thead>
<tr>
<th></th>
<th>55+</th>
<th>40–54</th>
<th>25–39</th>
<th>13–24</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trolling</strong></td>
<td>8</td>
<td>13</td>
<td>15</td>
<td>19</td>
</tr>
<tr>
<td><strong>Bullying</strong></td>
<td>0</td>
<td>5</td>
<td>12</td>
<td>20</td>
</tr>
<tr>
<td><strong>Harassment</strong></td>
<td>5</td>
<td>9</td>
<td>10</td>
<td>18</td>
</tr>
<tr>
<td><strong>Hate speech</strong></td>
<td>3</td>
<td>6</td>
<td>15</td>
<td>16</td>
</tr>
</tbody>
</table>


### Table 4: Ofcom data on prevalence of harm (%)

<table>
<thead>
<tr>
<th>Harm</th>
<th>Prevalence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Violent/disturbing content</td>
<td>17</td>
</tr>
<tr>
<td>Hate speech/inciting violence</td>
<td>10</td>
</tr>
<tr>
<td>Bullying, abusive behaviour or threats</td>
<td>9</td>
</tr>
<tr>
<td>Trolling</td>
<td>7</td>
</tr>
<tr>
<td>Content promoting self-harm</td>
<td>5</td>
</tr>
<tr>
<td>Promotion of terrorism/radicalisation</td>
<td>5</td>
</tr>
<tr>
<td>Stalking</td>
<td>4</td>
</tr>
<tr>
<td>Child sexual abuse material</td>
<td>3</td>
</tr>
</tbody>
</table>


32. Harmful content can be experienced unequally in society. Forty-one per cent of black respondents in the UK reported being the targets of obscene and/or abusive emails, which is more than four times the rate reported by white respondents. Racist abuse of footballers has also received attention, Analysis by The Guardian of 585,000 posts before, during and after England’s three group games in the European Championships in June 2020 found that 44 were racist. A further 2,070 were categorised as abusive but not racist. Analysis of tweets sent after the final of the Championships found that 1,913 tweets directed at four players were racist. Twitter said that it had deleted more than 1,000 tweets.

33. A study in 2019 by Marjan Nadim and Audun Fladmoe found that harassment of women was qualitatively different to harassment of men. Harassment of women was

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39 Ibid., p 5
41 Channel 4 News (@Channel4News), tweet on 12 July 2021: [https://twitter.com/Channel4News/status/1414649905277284368](https://twitter.com/Channel4News/status/1414649905277284368)
men generally focused on their opinions whereas harassment of women generally focused on their gender.\textsuperscript{43}

34. Polls have shown that women are more likely than men to value safety ahead of freedom of expression.\textsuperscript{44} Dr Fiona Vera-Grey, Assistant Professor, Department of Sociology, Durham University, suggested: “that tells me very clearly that women do not feel safe in online spaces and that, in order to feel free, they need to first feel safe.”\textsuperscript{45}

35. A poll for Amnesty International in 2017 found that 21 per cent of women in the UK had experienced abuse or harassment online. Of these, 10 per cent left the social media platform on which they were targeted, 20 per cent stopped sharing their opinion on certain issues, 34 per cent made their account private/protected and 41 per cent blocked the users who were responsible.\textsuperscript{46}

36. A survey ran by Glitch, whose participants were self-selected, found that significant numbers of female and non-binary respondents had experienced online abuse since the beginning of the COVID-19 pandemic. Some reported that it had got worse during lockdown.\textsuperscript{47}

37. Research into sexist tweets identified more than 419,000 tweets per day that included at least one of four sexist slur words during a one-week collection period.\textsuperscript{48} However, Dr Kim Barker and Dr Olga Jurasz told us that neither Twitter nor Facebook allows users to categorise abuse they report as gender-based.\textsuperscript{49}

38. Platforms told us that they work to minimise the availability of prohibited content. Twitter said that 50 per cent of abusive content on its platform is reviewed without having been reported by a user, while Facebook said it removes more than 95 per cent of hate speech before it is reported—having been 25 per cent three years previously.\textsuperscript{50} TikTok said it proactively removes 80 per cent of such content.\textsuperscript{51} Google told us that companies signed up to the EU Hate Speech Code of Conduct, including YouTube, assessed 89 per cent of content flagged by NGOs within 24 hours.\textsuperscript{52}

\begin{itemize}
\item \textsuperscript{44} YouGov, ‘When it comes to online behaviour in the form of comments and social media posts, which is more important?’ (2 August 2017): \url{https://yougov.co.uk/topics/education/survey-results/daily/2017/08/02/20888/2} [accessed 21 June 2021]; Policy Exchange, \textit{Academic freedom in the UK} (August 2020): \url{https://policyexchange.org.uk/wp-content/uploads/Academic-freedom-in-the-UK.pdf} [accessed 21 June 2021]
\item \textsuperscript{45} Q 73
\item \textsuperscript{47} Q 91 (Seyi Akiwowo)
\item \textsuperscript{49} Written evidence from Dr Kim Barker and Dr Olga Jurasz (FEO0099)
\item \textsuperscript{50} Written evidence from Twitter (FEO0010); Q 209 (Richard Earley)
\item \textsuperscript{51} Oral evidence taken before the Home Affairs Committee inquiry on Online Harms, 20 January 2021 (Session 2019–21) Q 19
\item \textsuperscript{52} Written evidence from Google (FEO0047)
\end{itemize}
39. Both the proactive removal of content and reviews of content flagged by users or third parties typically use algorithms. This is necessary due to the volume of content on social media.

40. Facebook has found that artificial intelligence (AI) can more effectively identify visual content, such as nudity, than nuanced and context-dependent speech.53 Professor Sandra Wachter, Associate Professor at the Oxford Internet Institute, University of Oxford, told us that algorithms can work effectively only on a very clear target. She gave the example of identifying whether content on a platform matched content known to be subject to copyright.54 However, we heard that there are problems with relying on algorithms to enforce copyright. Julia Reda, Researcher at the Society for Civil Rights and a former MEP, told us: “an algorithm is never going to develop a sense of humour and be able to distinguish between a copyright infringement and a legal parody, because the algorithms look for patterns that are the same and do comparisons.”55

41. The Guardian Media Group warned that platforms are likely to make greater use of AI as they come under more pressure to remove content, with the potential to lead to “a significant chilling of free expression.”56

42. Between April and June 2020, YouTube used fewer than its usual 10,000 moderators and made greater use of AI. Twice the usual number of videos were removed during this period and algorithmic decisions were twice as likely as human decisions to be reversed on appeal.57

43. Algorithms’ effects on freedom of expression can fall disproportionately on some groups. Two studies in the US found evidence of widespread racial bias, with algorithms more likely to identify posts by African–Americans as hateful.58 Ruth Smeeth told us that content is twice as likely to be deleted if it is in Arabic or Urdu than if it is in English.59 Google noted: “there is extensive research highlighting the ways in which artificial intelligence could entrench existing inequalities around race, gender and sexuality, among other areas.”60 Chi Onwurah MP, Shadow Minister for Digital, Science and Technology, described algorithms as ‘industrialising’ bias.61

44. Platforms’ policies and the decisions of their human moderators have also been criticised, with the problem of false information receiving particular attention.

45. Studies suggest that the prevalence of such content is low. Researchers at MIT, the University of Pennsylvania and Microsoft found that fake news is “a negligible fraction of Americans’ daily information diet”, representing only 0.15 per cent of the average American’s media consumption. No age

53 Written evidence from Facebook (FEO0095)
54 Q 107
55 Q 140
56 Written evidence from Guardian News & Media (FEO0093)
57 Alex Barker and Hannah Murphy, ‘YouTube reverts to human moderators in fight against misinformation’, Financial Times (20 September 2020): https://www.ft.com/content/e54737c5-8488-4e66-b087-d1ad426ac9fa [accessed 29 June 2021]
59 Q 44
60 Written evidence from Google (FEO0047)
61 Q 203
group consumed more than one minute of fake news a day.\textsuperscript{62} Researchers at Princeton and New York University found that during the 2016 US election campaign, in which fake news was reported to be widespread, 92 per cent of people shared no ‘fake news’ articles with a further 5 per cent sharing only one such article.\textsuperscript{63} Another study found that only 0.34 per cent of internet users visited a fake news website on a given day over the same period.\textsuperscript{64} In France, less than 0.01 per cent of tweets during the 2017 presidential election (4,888 out of 60 million) contained a link to a story determined by online fact-checkers to be false.\textsuperscript{65} The Democracy and Digital Technologies Committee noted: “It is not clear that online misinformation is particularly worse than offline misinformation”.\textsuperscript{66}

46. Nevertheless, many controversies about content moderation have related to purported misinformation and disinformation. In March 2021, Twitter marked as misleading a tweet on the coronavirus vaccines by Martin Kulldorff, an epidemiologist who is Professor of Medicine at Harvard Medical School and a member of the U.S. Centre for Disease Control and Prevention (CDC) Vaccine Safety Technical Sub-group. Users were prevented from liking it, replying to it or retweeting it without a comment.\textsuperscript{67}

47. When asked why Twitter had done this, Katy Minshall, Head of UK Public Policy at Twitter, told us: “It is not Twitter saying he is wrong or misleading. It is the CDC and health authorities around the world.” She added that the public interest in health officials being able to engage in debate, which may dissent from health authorities, had to be “balanced by the fact that people will come to Twitter looking for the latest official, accurate information.” Ms Minshall suggested that Twitter had marked the tweet as misleading to help users to “make up their own mind”.\textsuperscript{68}

48. After Facebook marked as false a post on COVID-19 by Carl Heneghan, Professor of Evidence-Based Medicine at the University of Oxford, we asked Richard Earley about the qualifications of the post’s fact-checker. He told us that all Facebook’s fact-checkers are “certified by the International Fact-Checking Network” but may not have any scientific or medical qualifications.\textsuperscript{69}

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\textsuperscript{68} Q 210

\textsuperscript{69} Q 211
49. Action against content perceived to be false is not limited to fact-checks and restrictions on engagement with posts. In April 2021, YouTube removed a video of a roundtable discussion in which Ron DeSantis, Governor of Florida, was joined by Professor Kulldorff, Sunetra Gupta, Professor of Theoretical Epidemiology at Oxford; Jay Bhattacharya, Professor of Medicine at Stanford; and Scott Atlas, a Senior Fellow at Stanford’s Hoover Institution and former member of the White House Coronavirus Task Force. The platform has banned views which “go against World Health Organisation recommendations”.

50. Platforms have been accused of stifling debate in areas where the truth has not yet been established. Until April 2021, Facebook removed or marked as false posts which suggested that COVID-19 originated in the Wuhan Institute of Virology.

51. Platforms have censored posts sharing news stories from established media organisations. In October 2020, Twitter prevented users from tweeting a story about Hunter Biden by the *New York Post*—one of America’s most-read news publishers—and locked the newspaper out of its account for 16 days in the run up to the presidential election after it refused to delete tweets linking to the article. The White House Press Secretary was also locked out of her account until she agreed to delete her tweet sharing the article.

52. Jack Dorsey, CEO of Twitter, conceded that Twitter had made a “quick interpretation” based on “no other evidence”. He acknowledged that Twitter had made the wrong decision.

53. Mark Zuckerberg stated in May 2020 that he didn’t “think that Facebook or internet platforms in general should be arbiters of truth” and there should be particular tolerance for political speech. However, in October 2020 Facebook reduced the number of people who would be shown the *New York Post* story—a decision made with reference to its misinformation policy.

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Facebook produced no evidence to disprove the story. Nor was it categorically denied by the Biden campaign.78

54. Facebook has not fact-checked or limited the reach of articles by the Global Times, a Chinese state news organisation, denying that the Chinese state has subjected Uyghur Muslims to genocide and forced labour, and accusing concentration camp survivors of being “story tellers” who had “concocted tales”.79 We asked Mr Earley why. He thanked us for bringing the posts to Facebook’s attention and told us that the company was watching the situation in Xinjiang “very seriously”.80 The posts remain without fact checks. A subsequent post linking to an article by Global Times staff which claimed that “China has never had a history of genocide and ethnic cleansing” and described allegations of genocide as “hyped”, “untenable” and “a ‘projection’ of facts based on [Western countries’] own heinous past and continued systemic violence and oppression” has also not been fact checked.81

55. Dr Lucas Graves, Associate Professor in the School of Journalism and Mass Communication at the University of Wisconsin–Madison, described four levels of intervention: providing context, such as links to relevant articles; marking a post as false; inhibiting the spread of a post, either by covering it with an interstitial message users must click on before viewing it or deprioritising it in the platform’s content curation algorithm; and removing the post.82

56. Professor Sandra Wachter explained that interventions “can range from labelling certain content as disputed or maybe as wrong, but still giving people the opportunity to make up their own minds, through to blocking a person if they are doing something extremely harmful.”83

57. Dr Graves and Will Moy, Chief Executive Officer of Full Fact, argued that the latter approach “should be reserved for those really unambiguous cases where the falsehood is clear and where the potential harm is also quite obvious.”84 Will Moy noted that freedom of expression includes the freedom to be wrong.85

58. Dr Howard argued that fact checks and interstitial messages should be placed on a post only “where its falsehood is incontrovertible such that there

80 Q 212
82 Q 102
83 Q 110
84 Q 97 (Will Moy); Q 102 (Lucas Graves)
85 Q 97
is an overwhelming consensus among the relevant experts that it truly is false and truly dangerous.”

59. Full Fact has warned: “There is a moral panic about ‘fake news’ which is prompting frightening overreactions by Governments and potentially internet and media companies.” Research for Ofcom found that some believe that the term ‘misinformation’ has been “weaponised for censorship of valid alternative perspectives”.

60. The effectiveness of fact-checking has been questioned. A study by academics at Boston and Cornell Universities of Twitter’s fact-checks of President Trump found that while those who were not disposed to believe Mr Trump were less likely to believe him, those who were already disposed to believe him were more likely to do so after seeing the fact-checks.

61. Faye Flam, a science journalist, has argued that labelling online misinformation does more harm than good as “stifling ideas can backfire if it leads people to believe there’s a ‘real story’ that is being suppressed.” Ms Flam suggested that it is preferable to provide users with additional information to allow them to make their own judgement.

62. Platforms’ approaches to political leaders have generated further debate.

63. Many posts by President Trump attracted criticism. These included: a tweet saying that a group of Democratic congresswomen, all of whom were born in the US, should “go back and help fix the totally broken and crime infested places from which they came”; suggesting that a journalist critical of Mr Trump had murdered one of his staff; quoting a Fox News contributor’s warning that there would be a civil war if he were impeached and removed from office; and warning in the aftermath of the killing of George Floyd that “when the looting starts, the shooting starts”. Twitter permitted all of these. The latter was marked with a note saying that although it glorified violence Twitter considered displaying it to be in the public interest.

64. Jimmy Wales, founder of Wikipedia, suggested:

“If you are Twitter, you might have a very loud, obnoxious politician who insults people and behaves very badly, which creates headlines every single day. It creates a lot of noise and traffic … You can see how a platform might say, ‘it is going to be hard to kick this person off, because they are generating so many page views that it is quite a tremendous thing for us’.”

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86 Q 7
87 Q 97 (Will Moy)
92 Q 80
65. Twitter’s share price fell 12.3 per cent after permanently banning Mr Trump on 8 January 2021, following his defeat in the November 2020 presidential election and the 6 January storming of the US Capitol building. Twitter said that the decision to ban him was based on tweets on 8 January in which he said that those who voted for him “will have a GIANT VOICE long into the future. They will not be disrespected or treated unfairly in any way, shape or form!!!” and “I will not be going to the Inauguration on January 20th.” Twitter judged that these infringed its ‘glorification of violence policy’. Mr Trump was also banned from Facebook, Instagram, YouTube, Snapchat and Twitch.

66. *The Times* suggested that rather than acting out of a sense of civic duty “tech giants have a wary eye on forthcoming regulation from a Democrat-controlled White House”.

67. The Chartered Institute of Journalists told us: “You don’t have to like the outgoing President Donald Trump to be alarmed that a commercial entity operating in ‘the public space’ or at least what has come to be seen as a public space, can silence those with whom it disagrees.” Alexei Navalny said that the decision was “based on emotions and personal political preferences”, arguing that it provided a precedent for Vladimir Putin to censor opponents.

68. We asked Twitter why the company has not also banned Ayatollah Khamenei, Supreme Leader of Iran. Tweets by the Ayatollah, which have not been removed and were posted since the introduction of Twitter’s current world leader policy in 2019, include: “We will support and assist any nation or any group anywhere who opposes and fights the Zionist regime, and we do not hesitate to say this.” and “The only remedy until the removal of the Zionist regime is firm, armed resistance.”

69. Ms Minshall suggested that the posts had been allowed because Twitter considered them “sabre rattling” rather than incitement. She told us that Twitter was reviewing its policy. The Ayatollah has since used his Twitter account to describe jihadi groups as “valuable”.

70. As we discuss in Chapter 4, the market power of the largest platforms leaves them free to make content moderation decisions in their own commercial and political interests rather than the interests of users’ freedom of expression and safety. As Dr Roxane Farmanfarmaian, Director of ‘Protecting Freedom of Expression in Religious Context’ at the University of Cambridge, told us:

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96 Written evidence from the News Media Association (FE00058)

97 Written evidence from the Chartered Institute of Journalists (FE00074)


99 Ayatollah Khamenei (@khamenei_ir), tweet on 20 May 2020: [https://twitter.com/khamenei_ir/status/1263181288338587649](https://twitter.com/khamenei_ir/status/1263181288338587649); Ayatollah Khamenei (@khamenei_ir), tweet on 21 May 2020: [https://twitter.com/khamenei_ir/status/126351872872386562](https://twitter.com/khamenei_ir/status/126351872872386562) [accessed on 29 June 2021]

100 Q 209; Q 210

101 Ayatollah Khamenei (@khamenei_ir), tweet on 21 May 2021: [https://twitter.com/khamenei_ir/status/1395801790428364802](https://twitter.com/khamenei_ir/status/1395801790428364802) [accessed 16 July 2021]
“Twitter can say, ‘There will be no more President Trump on our platform’, but we cannot so easily say, ‘There will be no more Twitter’.”

71. Senator Marsha Blackburn told us that platforms “protect themselves with content guidelines that are so vague that they can remove just about anything without recourse.”

72. Under clause 13 of the draft Online Safety Bill, the largest (category 1) platforms would be required to “put in place systems and processes which ensure that the importance of the free expression of content of democratic importance is taken into account when making decisions” to remove or limit the reach of such content. These systems and processes should “apply in the same way to a diversity of political opinion.”

73. The draft Bill defines “content of democratic importance” as that which “is or appears to be specifically intended to contribute to democratic political debate in the United Kingdom or a part or area of the United Kingdom.” The explanatory notes to the Bill add: “Examples of such content would be content promoting or opposing government policy and content promoting or opposing a political party.” The Government’s press release refers to “campaigning on a live political issue”.

74. In a letter to the Government, we expressed concern that this definition privileges debates initiated by elected representatives and political parties over those initiated by members of the public as well as excluding those campaigning for social rather than policy change.

75. Caroline Dinenage MP, Minister for Digital and the Creative Industries, replied: “the democratic content provisions apply to the content and not the actor … As such it does not seek to privilege communications from certain actors over others.” She did not deny, however, that the draft Bill would privilege participants in some debates over participants in others.

76. POLITICO and Index on Censorship have characterised this as politicians seeking to give themselves special treatment.

77. We questioned whether the proposed duty would be effective as it focuses only on “systems and processes”. A platform would not be allowed to state in its terms and conditions that hateful content was not permitted but then remove hateful content from only one side of the political spectrum and not the other. However, the draft Bill does not appear to prevent platforms from

102 Q 69
103 Q 194
104 Draft Online Safety Bill
105 Explanatory Notes to the Online Safety Bill [Bill CP 405-EN], p 20
107 Letter from the Chair to the Rt Hon Oliver Dowden MP, Secretary of State for Digital, Culture, Media and Sport, 25 May 2021: https://committees.parliament.uk/publications/6025/documents/68088/default/
108 Letter from Caroline Dinenage MP, Minister for Digital and the Creative Industries, to the Chair, 16 June 2021: https://committees.parliament.uk/publications/6336/documents/69560/default/
having terms and conditions which prohibit particular views providing their systems and processes apply those terms and conditions consistently.

78. **Moderating social media platforms is a very difficult task.** Huge volumes of content are posted every day. Algorithms cannot understand context, nuance or irony; these also pose challenges for human moderators. However, platforms’ moderation decisions are often unreasonably inconsistent and opaque, and sometimes seem to be influenced by commercial and political considerations.

79. **The largest platforms have monopolised the digital public square.** The private companies which run them have unprecedented control over what citizens can say online and the power to censor views with which the companies disagree. We agree with the principle underlying clause 13 of the draft Online Safety Bill that category 1 platforms should have duties to be impartial in their moderation of political content.

80. **However, the definition of ‘content of democratic importance’ in the draft Bill is too narrow.** It should be expanded to ensure that contributions to all political debates—not only those debates which are about, or initiated by, politicians and political parties, and about policy, rather than social change—would be covered. The protections should also be extended to cover the content of platforms’ terms and conditions, in addition to the “systems and processes” with which they apply them.

81. **We are concerned that platforms’ approaches to misinformation have stifled legitimate debate, including between experts. Platforms should not seek to be arbiters of truth. Posts should only be removed in exceptional circumstances.**

**Proposed safety duties**

82. **The Government seeks to make the UK “the safest place in the world to go online”**. To this end, the draft Online Safety Bill includes three safety duties. The first two duties, in clauses 9 and 10 of the draft Bill, apply to all platforms and relate to illegal content and content which may be harmful to children. Clause 11 imposes duties on the largest (category 1) platforms in relation to legal content which may be harmful to adults.

83. Although clause 12 imposes a duty on platforms in relation to freedom of expression and privacy when implementing the safety duties, they are only required to “have regard to the importance of” freedom of expression and privacy. Dr Edina Harbinja, Senior Lecturer in Media and Privacy Law, Aston University, described this as duty “quite disjointed”, suggesting that it seemed like an ‘add on’ and amounts to saying “please think of freedom of expression and privacy sometimes”. The largest (category 1) platforms

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111 Edina Harbinja (@EdinaRl), tweet on 12 May 2021: [https://twitter.com/EdinaRl/status/1392471015314366464](https://twitter.com/EdinaRl/status/1392471015314366464) [accessed 16 July 2021] and Edina Harbinja (@EdinaRl), tweet on 12 May 2021: [https://twitter.com/edinarl/status/1392478172550234649](https://twitter.com/edinarl/status/1392478172550234649) [accessed 16 July 2021]
are also required to publish risk assessments in relation to this duty and to explain in their terms and conditions what steps they have taken as a result.

84. In response to the Government’s claim that “these measures remove the risk that online companies adopt restrictive measures or over-remove content in their efforts to meet their new online safety duties”, Graham Smith, Of Counsel at Bird & Bird, explained: “No obligation to conduct a freedom of expression risk assessment could remove the risk of collateral damage by over-removal. That smacks of faith in the existence of a tech magic wand. Moreover, it does not reflect the uncertainty and subjective judgement inherent in evaluating user content, however great the resources thrown at it.”

85. Although the Government’s approach has been described as a ‘duty of care’, there are considerable differences between it and the concept of a duty of care which has developed in tort law. The ‘duty of care’ principle was developed by *Donoghue v Stevenson* in 1932, involving a woman who found a snail in a bottle of ginger beer she had drunk from. There is a general duty to take reasonable care to avoid acts or omissions that could reasonably be foreseen as likely to injure one’s neighbour, meaning someone who may be reasonably contemplated as closely and directly affected by an act.

86. Google noted that the concept of a duty of care “has developed incrementally over hundreds of years, and is largely associated with establishing liability in negligence. Therefore, there is a significant risk that the use of that term in this context will create the misconception that platforms face tortious liability and that users may avail themselves of remedies for breach of the duty ‘owed’ to them and not the regulator.”

87. Similarly, Guardian News & Media warned of the term ‘duty of care’ being “confused and conflated with the tortious duty of care.”

88. The Carnegie UK Trust, which first proposed a ‘duty of care’ approach, explained: “Neither Carnegie nor the UK Government is proposing using a common law duty of care, but a regulatory scheme set out in statute based which uses the concept in a different way.” The Trust noted the precedent of the Occupiers Liability Act 1957 and the Health and Safety at Work Act 1974.

89. Professor Lorna Woods, who developed the Carnegie UK Trust’s proposals, told us that it had based them on the Health and Safety at Work Act 1974. She said:

“That is about a risk assessment. When you do a risk assessment, you do not think, “How do I stop people getting broken arms?” You look at it the other way round and say, “Oh, that floorboard at the top of the stairs is sticking up. Somebody might trip and really hurt themselves”.

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114 Written evidence from Google (FEO0047)
115 Written evidence from Guardian News & Media (FEO0093)
You are looking at the features of the environment and at how that adds to or creates the conditions for harm arising.”

90. Professor Andrew Murray, Deputy Head of the Department of Law at London School of Economics and Political Science, opposed this analogy: “I do not trip over speech—I value speech—and I do not think that we can treat it in the same manner as we do a loose floorboard.” He explained that whereas everyone can agree that loose floorboards are harmful, speech is subjectively given and subjectively received.

91. Graham Smith, Of Counsel at Bird & Bird, has also argued that tripping over an object is not analogous to being harmed by speech. He explained:

“The kind of duty of care that would be most relevant to a social media platform is different: a duty to take steps to prevent, or reduce the risk of, one site visitor harming another. While that kind of duty is not unheard of in respect of physical public places, it has been applied in very specific circumstances: for instance a bar serving alcohol, a football club in respect of behaviour of rival fans or a golf club in respect of mishit balls. These related to specific activities that created the danger in question. The duties apply to safety properly so called—risk of personal injury inflicted by one visitor on another—but not to what visitors say to each other.”

92. Professor Murray warned against giving broad powers to Ofcom to determine what platforms should reasonably be expected to do in relation to harm arising from speech: “the locus of the authority making here will be away from the publicly accountable Members of Parliament, and the locus of the accountability is not naturally within scope of the courts and proper processes, although there would be judicial review, no doubt.” We heard from Caroline Dinenage MP that the Government’s plan is to “scoop up all this work up in secondary legislation”, potentially giving wide powers to Ofcom.

93. Graham Smith added: “the regulator is not an alchemist. It may be able to produce ad hoc and subjective applications of vague precepts, and even to frame them as rules, but the moving hand of the regulator cannot transmute base metal into gold. Its very raison d’etre is flexibility, discretionary power and nimbleness. Those are a vice, not a virtue, where the rule of law is concerned, particularly when freedom of individual speech is at stake.”

94. Index on Censorship has warned that applying a duty of care to online content would “mark the most significant change in the role of the state over free speech since 1695”.

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117 Q 183
118 Ibid.
120 Q 183
121 Q 232
The White Paper preceding the draft Online Safety Bill proposed that a reduction in online harms could best be achieved through the introduction of a statutory ‘duty of care’. This would require social media companies to design and operate safer systems, developed in a proportionate and risk-based way, in partnership with the regulator. This focus on companies taking reasonable steps to prevent reasonably foreseeable harms that occur in the operation of their services examines systems would remove the need to regulate individual pieces of content. However, there are legitimate concerns about how a statutory duty of care would interact with freedom of expression on the internet.

The duty of care approach should inform a flexible framework for digital regulation, guided by underlying principles, including freedom of expression, which is able to adapt to the rapidly developing digital world while setting clear expectations for platforms. We discuss how this can be achieved—including the necessary parliamentary scrutiny and co-operation between regulators—in our subsequent conclusions and recommendations.

Illegal content

Offences

Many online harms are illegal. UK law already applies both online and offline. Under the draft Online Safety Bill, all platforms would have to take down “swiftly” content which the provider “has reasonable grounds to believe” is illegal after being made aware of it.\(^{124}\)

The Malicious Communications Act 1988 (section 1) criminalises messages which are indecent or grossly offensive, a threat or false and with the intention of causing distress or anxiety. The Communications Act 2003 (section 127) criminalises messages of a “grossly offensive or of an indecent, obscene or menacing character” as well as those which are both known to be false and sent for the purpose of causing “annoyance, inconvenience, or needless anxiety”. Other laws which may be particularly relevant to online communication are listed in Box 3.

Box 3: Relevant criminal offences

In addition to communications offences, the following may be especially relevant to the online world:

- stirring up hatred on the grounds of race, religion or sexual orientation, contrary to sections 18 to 23 and 29A to 29G of the Public Order Act 1986 (which the Law Commission is consulting on reforming and extending);
- harassment, contrary to section 2 of the Protection from Harassment Act 1997;
- breach of a restraining order, contrary to section 5 of the Protection from Harassment Act 1997;
- making a threat to kill, contrary to section 16 of the Offences Against the Person Act 1861;

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\(^{124}\) Draft Online Safety Bill, clauses 9 and 41
encouraging or assisting an offence, contrary to Part 2 of the Serious Crime Act 2007;  
controlling or coercive behaviour, contrary to section 76 of the Serious Crime Act 2015;  
blackmail, contrary to section 21 of the Theft Act 1968;  
publishing material which may lead to the identification of a complainant of a sexual offence, contrary to section 5 of the Sexual Offences (Amendment) Act 1992;  
possessing ‘extreme pornography’, depicting serious physical harm or rape, contrary to section 63 of the Criminal Justice and Immigration Act 2008;  
sharing private sexual images without consent, contrary to section 33 of the Criminal Justice and Courts Act 2015;  
causing sexual activity without consent, or causing or inciting a child to engage in sexual activity, or sexual communication with a child, contrary to sections 4, 8, 13 or 15A of the Sexual Offences Act 2003;  
taking, distributing, possessing or publishing indecent photographs of a child, contrary to section 1 of the Protection of Children Act 1978.

Civil law also protects against:
- defamation  
- malicious falsehood  
- misuse of data and private information (including the “right to be forgotten”)  
- breach of confidence  
- infringement of copyright

99. In February 2018, the then Government asked the Law Commission to “review the laws around offensive communications and assess whether they provide the right protection to victims online”. The Commission consulted between September and December 2020 on replacing the communications offences in the Malicious Communications Act 1988 and the Communications Act 2003. The Commission has suggested that the current offences do not target the harms arising from online abuse, over-criminalising in some situations and under-criminalising in others.125 In 2012, the Communications Act 2003 was used to prosecute a man for a tweet joking about blowing up Robin Hood airport.126

100. The Law Commission consulted on a new offence to criminalise sending a communication which the defendant knows, or should have known, is likely to cause emotional or psychological harm—amounting to at least serious emotional distress—to a likely audience.127 The Commission has argued: “some abusive communications should be criminal, even though there is no intention to cause harm.”128

126 Ibid., p 18
127 Ibid., p 106
128 Ibid., p 110
101. The Commission’s proposals attracted criticism. English PEN warned that the Commission’s definition of harm “would allow an effective veto of controversial or offensive content by anyone willing to claim that they are ‘seriously distressed’ by it”, noting that the proposed standard appears to have no medical basis.¹²⁹ ARTICLE 19 noted that it appears to undermine the protection confirmed by the European Court of Human Rights in Handyside v the United Kingdom of the right to say things that “offend, shock or disturb the State or any sector of the population”.¹³⁰

102. The proposed offence would not require evidence that harm had been done, only that it had been likely to be done. ARTICLE 19 disagreed with this approach, highlighting the possibility that people could be sent to prison despite having no actual victim.¹³¹

103. Professor Penney Lewis, Commissioner for Criminal Law at the Law Commission, told us: “If there was an actual harm requirement, the point at which you know whether an offence has been committed is when someone is harmed. We think that it would be better if you could tell whether this offence was committed before the message was sent.”¹³² The Law Commission has also suggested that proving harm would place too great a burden on the victim.¹³³

104. The proposal focuses on the likely audience of a communication. ARTICLE 19 raised “serious concerns” about this, explaining:

“Internet users might come across deeply upsetting content as a result of recommender systems on platforms, quite apart from any intent on the part of the speaker … we wonder whether this means that the speaker should factor in that its speech may travel well beyond its intended audience. It is unclear how the proposed would work in this context.”¹³⁴

105. English PEN argued that there is a significant difference between posts targeted at—or messages sent to—individuals and posts ‘broadcast’ on social media, with ‘likely audience’ “extremely difficult to predict” in the latter case.¹³⁵

¹³¹ Ibid., p 4
¹³² Q 162
106. When asked to respond to this criticism, Dr Nicholas Hoggard, Lead Lawyer (Protection of Official Data and Online Communications) at the Law Commission said:

“How you determine the likely audience will depend in large part on exactly how the post appears online, so we would be looking necessarily at the number of followers somebody had and where the post appeared. Was it, for example, a post on a very prominent article or very well-followed tweet?”

ARTICLE 19 suggested that the proposals would penalise people with large numbers of followers on social media.

107. The Commission proposes that the likely audience should not be held to any standard of reasonableness. English PEN disagreed with this, stating: “holding a communication to the standard of the most sensitive audience member would be unfair and a disproportionate infringement on freedom of expression.”

108. The Open Rights Group argued that the proposed offence “opens up the potential for a wide range of legitimate communications to be deemed criminal.” ARTICLE 19 warned of “a very serious chilling effect on freedom of expression”. It argued that the Commission’s decision to exempt the media from the proposed offence was indicative of the threat it poses to freedom of expression.

109. We asked the Law Commission how platforms’ algorithms and content moderators could be expected to identify posts which would be illegal under its proposals. Professor Lewis told us: “We generally do not design the criminal law in such a way as to make easier the lives of businesses that will have to follow it.”

110. On 20 July 2021, two days before the publication of this report, the Law Commission announced its final recommendations. The Commission revised its original proposal by adding a requirement for intent to cause harm and removing ‘emotional’ from the reference to ‘emotional or psychological harm’.

111. We support the Law Commission’s aim of reforming communications offences. Although we heard compelling concerns about the appropriateness for social media of criminalising sending a communication which the defendant knew or should have known

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136  Q 161
141  Q 164
was likely to harm a likely audience, the Law Commission has now revised its proposal to require intent to harm—providing a clearer standard. However, we are concerned about the ability of social media platforms—in complying with their duties under the draft Online Safety Bill—to identify and remove content covered by the offence without also removing legal content.

**Enforcement**

112. The Carnegie UK Trust, DMG Media, Louise Perry and the Open Rights Group told us that enforcing laws online is beyond the police’s capacity and expertise. The Carnegie UK Trust criticised “patchy and uneven enforcement.” In 2017/18, 1,605 online hate crimes were recorded in England and Wales. However, the flag used by police forces to signify that the offence was committed on a computer is underused and the actual figure is therefore likely to be higher. The rate of arrest is about 10 per 10,000 people.

113. The availability of illegal pornography has received particular attention. An investigation by *The Sunday Times* found illegal videos on Pornhub, the UK’s most visited pornographic website, some of which had been online for as long as three years and received over 350,000 views. The company told *The Sunday Times* that videos which appeared illegal were “oftentimes” legal and consensual and invoked freedom of expression when asked by the BBC why it hosted videos with titles such as “teen abused while sleeping” and “drunk teen abuse sleeping”.

114. A recent study in the British Journal of Criminology found that, even when bondage, domination, submission and masochism (BDSM) content was excluded, one in eight videos on the homepages of XVideos, Pornhub and XHamster depicted sexual violence or non-consensual conduct, including unconscious women and girls being raped and footage from ‘spy cams’. All three are among the UK’s top 25 most visited websites. In September 2020, 75 per cent of 18–24-year-old men visited Pornhub.

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143 Written evidence from the Carnegie UK Trust (FEO0044); written evidence from DMG Media (FEO0055); Q 77 (Louise Perry) and written evidence from Open Rights Group (FEO0091)

144 Written evidence from the Carnegie UK Trust (FEO0044)


146 House of Commons Library, *Hate Crime Statistics, Briefing Paper*, number 8537, December 2020, p 20. Due to the unreliability of the data more recent data have not been published.


115. We heard from CEASE UK that pornographic websites effectively have “virtually total freedom” to host and monetise depictions of child sexual abuse, ‘revenge porn’, footage of extreme sexual violence, public sexual harassment, rape and sexual assault.\(^{153}\)

116. An investigation by the *New York Times* found evidence of search engines such as Google and Bing, which are responsible for around half of traffic to XVideos, returning search results which may be illegal: “A Google search for schoolgirl sex turned up video results of teenagers having sex of all kinds (on a bus, with a “stepbrother,” etc.) on XVideos and XNXX. Most of the people in the videos are probably 18 or over, but who knows?”\(^{154}\)

117. Katie O’Donovan, UK Director of Government Affairs and Public Policy, Google, told us: “where a site is hosting illegal content, we will not lead through to that content.”\(^{155}\) Ms O’Donovan did not deny that Google would link to legal content on sites hosting illegal content.

118. Laila Mickelwait, a prominent campaigner against illegal pornography, accused Google of lying about not linking to illegal content and tweeted screenshots of Google search results for Pornhub videos with titles referencing ‘junior high school’ (the US equivalent of the first three years of secondary school), ‘revenge blackmail’ of a teenage ex-girlfriend and hidden camera footage from toilets at a prom.\(^{156}\)

119. A paper by the Centre for Policy Studies argued that better police enforcement of the existing law was preferable to a new regime in which the regulator would largely rely on the platforms for enforcement.\(^{157}\) Similarly, Richard Wingfield, Head of Legal and Global Partners Digital, told the Committee:

> “The solution is not to create new kinds of prohibited speech online, but to look at our existing legal frameworks and what is prohibited in society, and make sure that is enforced online through proper resourcing of the police, and better upskilling of law enforcement agencies to collect the evidence they need”.\(^{158}\)

120. Professor Andrew Murray told the Committee that the police should be given “a lot more money” to enforce the law online.\(^{159}\) Seyi Akiwowo, Founder and Executive, Glitch, echoed this view and proposed using proceeds from the digital services tax.\(^{160}\)

121. Retrieving deleted evidence places particular strain on police resources.\(^{161}\) While deleted posts can often be recovered, we heard from David Tucker, Faculty Lead for Crime and Criminal Justice, College of Policing, that “it

\(^{153}\) Written evidence from CEASE UK (FEO0016)


\(^{155}\) Q 236

\(^{156}\) Laila Mickelwait (@LailaMickelwait), tweet on 29 May 2021: https://twitter.com/LailaMickelwait/status/1398640013760469550 [accessed 21 June 2021]


\(^{158}\) Q 42

\(^{159}\) Q 184

\(^{160}\) Q 96

\(^{161}\) Q 192
creates that extra problem and extra work for the technology to recover it. What might be a simple process becomes much more difficult.”

122. Ruth Smeeth, CEO of Index on Censorship, suggested that the Government should compel social media companies to maintain ‘digital evidence lockers’ for posts they have removed. She explained: “A lot of the conversation is about potentially removing evidence of rape or of war crimes. Once it is deleted, our security and police agencies can no longer access that material.”

123. Police face many challenges, including from the scale of online content, anonymity, and the dark web. We are concerned that they do not have sufficient resources they need to enforce the law online. It is essential that the police can bring criminals to justice. The draft Online Safety Bill cannot be the only answer to the problem of illegal content. The Government should ensure that existing laws are properly enforced and explore mechanisms for platforms to fund this.

124. Retrieving deleted evidence places particular strain on police resources. The Government should require category 1 platforms to preserve deleted posts for a fixed period. Ofcom should also have the right to impose this requirement on category 2 platforms where appropriate.

Compliance

125. The draft Online Safety Bill would require platforms to use proportionate systems and processes swiftly to take down illegal content on being notified of its presence by a user or other party. Illegal content designated by secondary legislation as in a ‘priority category’ is the subject of further obligations. Platforms must use proportionate systems and processes to minimise the presence and dissemination of such content.

126. Professor David Kaye and Ruth Smeeth both warned that penalising companies for failing to remove prohibited content would create an incentive for them to err on the side of caution and remove legitimate content. Google agreed: “out of fear of legal liability, many platforms would likely calibrate their pre-vetting and ongoing monitoring systems to lean towards blocking/removal in borderline cases.”

127. techUK referred to Germany’s Network Enforcement Act (NetzDG), which came into force in January 2018. The Act requires social media companies with more than two million users in Germany to remove ‘obviously illegal’ content within 24 hours of notification. Other illegal content must be blocked within seven days of receiving a complaint. Companies can be penalised—with fines of up to €50 million—for failure to delete illegal content. There is no penalty for deleting legal content. techUK told us: “Technology companies have no doubt acted cautiously under NetzDG by removing infringing content to avoid possible sanctions, which has led to satire material being incorrectly removed.”

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162 Q 189
163 Q 41
164 Draft Online Safety Bill, clause 9
165 Q 170 (David Kaye) and Q 44 (Ruth Smeeth)
166 Written evidence from Google (FEO0047)
167 Written evidence from techUK (FEO0062)
128. On the first day of the Act being in force, Twitter temporarily suspended the account of Beatrix von Storch, the deputy leader of Alternative für Deutschland (AfD), after she posted anti-Muslim tweets, and deleted tweets from other AfD politicians. It subsequently suspended for two days the account of Titanic, a German satirical magazine, for parodying von Storch. The German newspaper Bild said that the law made AfD “opinion martyrs” and called for it to be repealed.\textsuperscript{168}

129. Renate Künast, a member of the Bundestag, added: “there is no formal, transparent and comprehensible put-back procedure for users who want to complain about the removal of their content. There is still a debate in the federal Parliament about changing this so that you can complain and have a put-back procedure.”\textsuperscript{169}

130. Global Partners Digital noted: “High-profile cases relating to online content have shown that even the courts have found it difficult to draw the lines as to what is legal or illegal, with convictions by lower courts overturned.”\textsuperscript{170}

131. Julia Reda had similar concerns in relation to the enforcement of copyright online, arguing: “we need to ask, ‘What is the right incentive for companies or others who are taking material down to make sure that they have good behaviour?’ Without that, we will get bad behaviour, as we are seeing.”\textsuperscript{171}

132. We support the principle in the draft Online Safety Bill that platforms should be required to remove illegal content. \textit{In implementing clause 9(3)(d) Ofcom should set strict timeframes within which platforms must remove content which is clearly illegal.}

133. We support the Government’s proposal that Ofcom should judge platforms’ compliance on a systemic basis, rather than adjudicating all content removal decisions. \textit{The Bill should make clear that a platform would not be compliant if its systems to remove illegal content either systematically fail to remove illegal content or systematically remove legal content. This would ensure that platforms do not have an incentive to remove legal content.}

\textit{Protecting children}

134. Those born from around 2000 onwards are often referred to as ‘digital natives’. They have grown up surrounded by user-friendly digital technology and learnt to use it intuitively.\textsuperscript{172}

135. Figure 2 show children’s social media use by age.

\textsuperscript{169} Q 147
\textsuperscript{170} Written evidence from Global Partners Digital (FEO0094)
\textsuperscript{171} Q 141
\textsuperscript{172} Oral evidence taken before the Communications Committee, 22 November 2016 (Session 2016–17), Q 113 (Dr Akil Awan)
136. Despite the centrality of the internet to children’s lives, internet policy has tended to focus on adults. The New Economics Foundation has argued that, while one in three internet users is a child, “they are using a digital environment that was not designed with them in mind”.\(^{173}\) John Carr, Secretary of the UK Children’s Charities’ Coalition, commented: “Young people are easily the biggest single distinguishable or definable constituent group of internet users. You would not know that if you looked at the internet governance institutions.”\(^{174}\)

137. Fundamental rights under the United Nations Convention on the Rights of the Child, such as access to information, freedom of expression and privacy, need to be considered when implementing measures such as age verification, filtering, blocking and monitoring.\(^{175}\)

138. Richard Wingfield advocated different measures for different age groups. He noted:

“What is inappropriate for a four or five year-old to watch on YouTube may be quite important for a teenager to watch, if they are looking at information about sexual identity, for example, or information about alcohol and drugs. If there are restrictions, we should make sure that it is not under-18s versus over-18s but that they are appropriate for the young people accessing the platform.”\(^{176}\)

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174 Oral evidence taken before the Communications Committee, 19 July 2016 (Session 2016–17), Q 5 (John Carr)


176 Q 41
139. While providing children with an unprecedented range of information and opportunities to learn, the internet presents risks; children can see violent, pornographic or disturbing content. Forty-eight per cent of parents are concerned about the content on sites or apps that their children visit and 54 per cent are concerned about their children seeing content which encourages them to hurt or harm themselves.177

140. Children viewing such content can have a wider impact on school culture. During Ofsted visits, girls told Ofsted that sexual harassment and online sexual abuse, such as being sent unsolicited explicit sexual material and being pressured to send nude pictures, are much more prevalent than adults realise. Nearly 90 per cent of girls and nearly 50 per cent of boys said being sent explicit pictures or videos of things they did not want to see happens “a lot” or “sometimes” to them or their peers.178

Box 4: Protections for children in the draft Online Safety Bill

The draft Online Safety Bill requires all platforms to protect children from harm, although it does not make specific provision for age verification.

All companies in scope will be required to assess the likelihood of children accessing their service. Only services likely to be accessed by children will be required to provide additional protections for children accessing them, starting with conducting a specific child safety risk assessment.

The Government will in secondary legislation set out priority categories of legal but harmful content and activity affecting children. Companies will be required to address these priority categories as a minimum. The regulator will be required to have regard to the fact that children have different needs at different ages when preparing codes of practice relevant to the protection of children.

Age assurance and age verification technologies are expected to play a key role in fulfilling platforms’ duties.

Source: Draft Online Safety Bill

141. Age verification offers a solution, allowing children to see the vast majority of online content while excluding age-inappropriate material. There is currently widespread flouting of age restrictions.179 For example, despite having a minimum age requirement of 13, Ofcom found in 2020 that 42 per cent of 8 to 12-year-olds used TikTok.180 The most egregious case is that of online pornography. A survey by the British Board of Film Classification (BBFC) found that 51 per cent of 11 to 13-year-olds and 66 per cent of 14- and 15-year-olds had seen pornography.181

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179 Oral evidence taken before the Communications Committee, 22 November 2016 (Session 2016–17), Q 117 (Simon Milner)


A significant proportion of children see pornography unintentionally, impacting their freedom over what they see online. According to a BBFC survey, 60 per cent of 11- to 13-year-olds said their viewing of pornography was mostly “unintentional” and 56 per cent agreed that they should be locked out of websites that are for 18-plus-year-olds. Other respondents were as young as seven years old.182

CEASE UK explained that children’s underdeveloped prefrontal cortex makes them particularly susceptible to pornography’s addictive qualities.183

All witnesses to our predecessor committee’s inquiry Growing up with the Internet supported the principle of age verification, as did 83 per cent of parents surveyed by the BBFC and 81 per cent of adults surveyed by Savanta, although views differed on how mechanisms to penalise non-compliant websites should work.184 According to the New Economics Foundation, age verification could be implemented on websites via ID, the use of behavioural data or biometrics.185

The Digital Economy Act 2017 provided for a requirement on websites to verify that their users are over 18 years old if more than one-third of their content is pornographic.186 The BBFC was given responsibility for regulating the age-verification controls in February 2018. The BBFC’s proposals would have required users to register with an online age verification service or purchase a pass from a newsagent. Implementation was delayed until the end of 2018, then until July 2019, before being cancelled in October 2019 by Baroness Morgan of Cotes, the then Secretary of State.187 The relevant provision of the Act would be repealed by the draft Online Safety Bill.

We heard from Professor Andrew Murray that “it is clear that the Government do not intend to reintroduce age verification tools as a blanket approach.”188

Some have expressed concern that, whereas the Digital Economy Act 2017 applies to all pornographic websites, the draft Online Safety Bill applies only to search engines and those platforms which facilitate user-to-user interaction. John Carr, Secretary of the Children’s Charities’ Coalition on Internet Safety, has warned that the largest pornographic websites are either already out of scope or could easily put themselves out of scope.189

Caroline Dinenage MP, Minister for Digital and the Creative Industries, said: “I have heard the concerns about commercial pornography sites which
do not host user generated content or facilitate online user interaction and will keep an open mind on further measures to protect children.”

149. In our report *Growing up with the Internet*, we supported the then Government’s inclusion in the Digital Economy Act 2017 of a requirement on websites to verify that their users are over 18 years old if more than one-third of their content is pornographic. More than four years after the Act received Royal Assent, this provision has not been commenced and the Government now plans to repeal it. The Government’s inaction has severely impacted children. *The Government should ensure that all pornographic websites are in scope of the online safety regime and held to the highest standards.*

150. A supposed inability to enforce age verification is no excuse, though we recognise that there were legitimate concerns about privacy and the effectiveness of the measures themselves. Other protections for children exist, such as on licensing of alcohol or restrictions on gambling, despite enforcement issues. Since the Digital Economy Act, age recognition technology has advanced. Websites are now able to use biometric age estimation technology, databases, mobile phone records and algorithmic profiling, alongside the ID based verification tools envisaged at the time of the Digital Economy Act. *Such technological advances suggest it has been a missed opportunity for the Government to make clear on the face of the draft Bill that websites hosting pornographic content will be blocked for children. Children deserve to enjoy the full benefits of being online and still be safe.*

‘Legal but harmful’ content

151. The draft Online Safety Bill imposes duties on the largest (category 1) platforms in relation to content which is legal but may be harmful to adults. Such platforms must conduct risk assessments to identify potential risks from types of legal but harmful content on their service. In their terms and conditions, they must set out clearly how they will deal with harms they have identified—as well as ‘priority categories’ of harm designated in secondary legislation. Platforms will be expected to consult civil society and expert groups when developing their terms and conditions. They must apply these consistently.

152. Many witnesses disagreed with the principle of the state regulating legal content without criminalising it. Guardian News & Media argued: “if the Government and Parliament believes that an activity is sufficiently harmful to criminalise that activity, it should do so through primary legislation.” Google agreed. As did Professor Murray, who suggested that Westminster was “passing the buck”.

153. Robert Colvile, Director of the Centre for Policy Studies, told us:

> “we seem to be, very clumsily, awkwardly and haphazardly, inventing a middle ground as we go about things that we would prefer people not to

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190 Letter to the Chair from Caroline Dinenage MP, Minister for Digital and the Creative Industries, 16 June 2021: https://committees.parliament.uk/publications/6336/documents/69560/default/
191 Written evidence from Guardian News & Media (FEO0093)
192 Written evidence from Google (FEO0047)
193 Q 183
say and would like them to stop being able to say, even if it is not actually illegal. That is quite a dangerous tendency.”

He added: “The idea that there should be separate rules for what you can say online and what you can say offline does not make any sense.”

154. Similarly, DMG Media argued:

“What is not compatible with freedom of expression is a regime which gives a regulatory body the power to determine that facts or opinions which are otherwise legal, should nevertheless not be published, and that publication should be prevented by the threat of serious penalties. We appreciate there are those who would argue that this is necessary for the good of society—but that is the argument used by the Chinese government.”

155. Global Partners Digital cautioned: “Were the equivalent measures [on legal but harmful content] proposed in the offline world, they would be terrifying and unquestionably violations of the right to freedom of expression.”

156. Equivalence of regulation in online and offline contexts was one of 10 principles for digital regulation we recommended in Regulating in a Digital World.

157. Witnesses in our oral evidence sessions, conducted before the publication of the draft bill, were concerned about vagueness in the definition of harm, its enforceability, and its consequences for freedom of expression. Mehwish Ansari, Head of Digital at ARTICLE 19, warned: “If the definition of harmful content is expanded, it is more likely that the volume of removed content will go up. At the same time, it is more likely that legitimate content will be removed.”

158. Richard Wingfield noted that even moderation of illegal content is challenging:

“Making decisions about what is illegal speech is incredibly difficult. It takes time to gather evidence and to talk to witnesses, and it is most likely there will be a trial at the end of it, yet we are asking content moderators to understand our legal system and make decisions in minutes about whether somebody’s speech is illegal or not.”

159. Guardian News & Media told us: “If a harm is too vague to be defined by policymakers, it is not reasonable to impose an obligation on platforms to make decisions as to whether a piece of content or activity reaches an unclear threshold.”

160. Under the draft Bill, there are two ways in which content could be designated as ‘legal but harmful’. The first is if it is of a type which the platform has identified in its latest risk assessment. The second is if it corresponds to

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194 Q 199
195 Written evidence from DMG Media (FEO0055)
196 Written evidence from Global Partners Digital (FEO0094)
197 Communications Committee, Regulating in a digital world (2nd Report, Session 2017–19, HL Paper 299), p 15
198 Q 31
199 Q 42
200 Written evidence from Guardian News & Media (FEO0093)
a ‘priority category’ of content set out in secondary legislation. Different thresholds apply. In the first case, the duty is triggered when “the provider of the service has reasonable grounds to believe that the nature of the content is such that there is a material risk of the content having, or indirectly having, a significant adverse physical or psychological impact on an adult of ordinary sensibilities.” The Secretary of State is not constrained by this standard in designating ‘priority categories’ in secondary legislation. These need only relate to harm—defined as “physical or psychological impact”—to adults.201

161. We asked the Government: “Please could you clarify whether the draft Bill’s definition of psychological impact has any clinical basis? If not, who would be qualified to make judgements about such impacts?” The Minister for Digital and the Creative Industries confirmed that the definition of psychological impact in the draft Bill has no clinical basis and suggested that the Government considers platforms qualified to make judgements about such potential impacts.202

162. We heard that there is significant variation in what different people find harmful, both online and offline.203 Professor Murray raised the example of tweets by J.K. Rowling on women’s rights and transgender issues: “the definition that we are going to have of ‘harmful’ would clearly cover this, because some recipients of that were very clearly harmed by it, yet her essay on this was also shortlisted for the Russell prize.”204

163. Ayishat Akanbi agreed.205 As did, Clare Alexander, Chair of Aitken Alexander Associates, who noted the importance of differences of opinion between generations.206 A survey by Ipsos Mori in 2020 found that 38 per cent of 16–24-year-olds believed that political correctness had gone too far, compared with 76 per cent of over-55s. Whereas 60 per cent of over-55s opposed the ‘no-platforming’ of speakers with controversial views, only 32 per cent of 16–24-year-olds opposed it.207 University students who participated in an engagement event also noted differences of opinion between generations.208

164. Debates on what is ‘harmful’ have been particularly acute in universities. In 2017, the Christian Union at Balliol College, Oxford, was banned from its freshers’ fair as its presence could “harm” some attendees.209 In the US, some have questioned whether a famous Supreme Court case—Dred Scott v Sandford, in which the court ruled that the constitution did not give slaves a right to citizenship—should be taught. One constitutional law professor

201 Draft Online Safety Bill
202 Letter from Caroline Dinenage MP, Minister for Digital and the Creative Industries, to the Chair, 16 June 2021: https://committees.parliament.uk/publications/6336/documents/69560/default/
203 Q 216 (David Shelley)
204 Q 183
205 Q 2
206 Q 216
207 King’s College Policy Institute, Culture wars in the UK: political correctness and free speech (June 2021): https://www.kcl.ac.uk/policy-institute/assets/culture-wars-in-the-uk-political-correctness-and-free-speech.pdf [accessed 1 July 2021]
208 Summary of virtual roundtable discussion with students, 14 April 2021: Appendix 6
did not wish to show his students the judgment as he felt that its language “gratuitously traumatises” readers.210

165. Alan Rusbridger, a member of the Facebook Oversight Board, warned:

“If you went along with establishing a right not to be offended, in the end that would have huge implications for the ability to discuss almost anything, yet there have been one or two cases where Facebook, in taking something down, has essentially invoked something like that.”211

166. The draft Bill states that the adult believed to be at risk of harm must be assumed to be “of ordinary sensibilities” and to have any characteristics or combination of characteristics, or be a member of a group, which would make them particularly susceptible to harm.212 The draft Bill defines neither “ordinary sensibilities” nor “characteristics”.

167. To clarify these terms and their relationship to each other, we asked the Government whether being a survivor of sexual abuse would count as a relevant characteristic and, if so, whether such a survivor being more sensitive to particular types of content due to their experiences would mean that they could not be considered “of ordinary sensibilities”.213

168. The Minister for Digital and the Creative Industries said: “The proposition that a survivor of such an experience cannot as a result be considered as having “ordinary sensibilities” would not be consistent with the approach taken in the Bill.” She told us that platforms would be expected to judge the likely impact of content on a person of ordinary sensibilities who had experienced sexual abuse.214

169. The Minister added that ‘characteristic’ should be understood as meaning “a distinguishing trait or quality”. This does not appear to include phobias, which the Minister gave as an example of a sensibility.215

170. The previous use of the legal fiction of the person of ordinary sensibilities—in Campbell v. MGN Limited—referred to the reasonable person of ordinary sensibilities. Graham Smith, Of Counsel at Bird & Bird, has suggested that the omission of ‘reasonable’ is intended to widen the draft Bill’s scope. He gave the example of disinformation which claims that the world is about to end. A person of ordinary sensibilities would be harmed by it. A reasonable person of ordinary sensibilities would not believe it.216

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211 Q 118

212 Draft Online Safety Bill, clause 46

213 Letter from the Chair to the Rt Hon Oliver Dowden MP, Secretary of State for Digital, Culture, Media and Sport, 25 May 2021: https://committees.parliament.uk/publications/6025/documents/68088/default/ (see Appendix 5)

214 Letter from Caroline Dinenage MP, Minister for Digital and the Creative Industries, to the Chair, 16 June 2021: https://committees.parliament.uk/publications/6336/documents/69560/default/ (see Appendix 5)

215 Letter from Caroline Dinenage MP, Minister for Digital and the Creative Industries, to the Chair, 16 June 2021: https://committees.parliament.uk/publications/6336/documents/69560/default/ (see Appendix 5)

171. Clause 46(6) of the draft Bill sets out platforms’ duties in relation to a known individual who may be at risk of harm. In this case, that adult and their sensibilities replace the adult of ordinary sensibilities. 217

172. The draft Bill covers not only harm to an individual on seeing content but ‘indirect harm’ to a third party. Dr Edina Harbinja described this concept as “particularly vague”. 218 It is defined as content which the platform has reasonable grounds to believe would cause an individual to do or say things to another adult that would have a significant adverse physical or psychological impact on them, or to act in a way that would increase the likelihood of such an impact on that adult. This is a lower standard than the stirring-up hatred offences in the Public Order Act 1986 and the offences of encouraging or assisting an offence in the Serious Crime Act 2007. 219

173. The Minister for Digital and the Creative Industries told us:

“The service provider would not have the necessary reasonable grounds to believe that there was such a risk if the content could only have such an effect by triggering an unexpected response in an unreasonable person (for example innocuous content leading to risky or violent behaviour).”

However, she did not deny that the duty would be triggered if the platform expected such a response by an unreasonable person. 220

174. The draft Bill would require platforms to have easily accessible and transparent systems for users to complain about the presence or removal of ‘legal but harmful’ content which contravenes its terms and conditions. 221

175. We heard that platforms’ appeals processes often do not meet this standard. Helen Staniland, a software developer, was banned from Twitter in January 2021 for hateful conduct after asking whether “male-sexed people should have the right to undress in a communal changing room with teenage girls?” 222 Ms Staniland, who lodged a number of unsuccessful appeals, told us that she found the process “dreadful” and did not know whether a human moderator had been involved. 223 She added: “If you look at Twitter’s examples of content moderation, they are quite straightforward. However, when it moderates and bans people, especially women, the tweets that it bans them for are not anywhere near as straightforward.” 224 Her account was reinstated in June 2021. 225

176. Graham Linehan, a TV writer who was also banned from Twitter, said that Twitter had told The Guardian why he had been banned but not told him directly. He said “there is no transparency” and he did not know whether

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218 Dr Edina Harbinja (@EdinaRl), tweet on 12 May 2021: https://twitter.com/EdinaRl/status/139247239328981953 [accessed 16 July 2021]
219 Serious Crime Act 2007, sections 44–46
220 Letter from Caroline Dinenage MP, Minister for Digital and the Creative Industries, to the Chair, 16 June 2021: https://committees.parliament.uk/publications/6336/documents/69560/default/ (see Appendix 5)
221 Draft Online Safety Bill, clause 24
223 Q 134
224 Q 132
225 Helen Staniland (@HelenStaniland), tweet on 21 June 2021: https://twitter.com/helenstaniland/status/1406911080635547649 [accessed 15 July 2021]
he had been banned for multiple tweets or only his final tweet, in which he replied “men aren’t women tho” to a post by the Women’s Institute wishing their transgender members a happy Pride festival.226

177. Facebook has set up an ‘Oversight Board’ to act as the ultimate arbiter of content moderation decisions (see Box 5). Kate Klonick, Assistant Professor of Law at St John’s University, New York, told us that the Board was a response to users’ “absolute frustration at not knowing specifically what rule was broken, how to avoid breaking the rule again, what they did to get there, or to be able to tell their side of the story.”227

**Box 5: Facebook Oversight Board**

Users of Facebook and Instagram may appeal to the Oversight Board if they disagree with Facebook’s decision to delete or not to delete a post and with the result of their initial appeal. However, the Board considers only “a very small number” of appeals. Facebook can also refer cases to the Board.

The Board has 20 members. These include Helle Thorning-Schmidt, former Prime Minister of Denmark, Tawakkol Karman, a Yemeni Nobel Peace Prize Laureate, and Endy Bayuni, Senior Editor at *The Jakarta Post*.

Decisions are binding on Facebook except where this could break the law. However, Facebook is not bound to apply the judgement to similar cases.

The Oversight Board has so far reached 13 decisions, overturning Facebook’s decision in nine of them.

In one case, the Board overturned the removal from Instagram of eight photographs showing breast cancer symptoms, including five with uncovered nipples. In another, the Board upheld the removal of a video showing white people with blackface.

178. Professor David Kaye argued: “There are elements in the Oversight Board that are quite appealing. Unfortunately, only Facebook and perhaps Google could do it, because it is extremely expensive; it is a trust of over $150 million, I believe. It is not replicable, except by government intervention or government support.”228

179. Guardian News & Media argued: “Individuals should be able to appeal to an independent regulator where a decision to take down content, delete accounts, or curb online activity, is overzealous or wrong.”229 Dr Fiona Vera-Grey agreed and the Information Commissioner’s Office and the Select Committee on Democracy and Digital Technologies have made similar recommendations.230

180. Dr Kim Barker and Dr Olga Jurasz argued that such a body should be “independent, specific, staffed by experts, and not funded directly by online platforms.”231

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226 Q 134
227 Q 117
228 Q 172
229 Written evidence from Guardian News & Media (FEO0093)
231 Written evidence from Dr Kim Barker and Dr Olga Jurasz (FEO0099)
181. Under the draft Online Safety bill, only ‘super-complaints’ to Ofcom—made by organisations representing users, or groups of users—would be possible. Seyi Akiwowo, Founder and Executive Director of Glitch, warned: “people with social or cultural capital are the only ones who can do a class suit.”

182. We do not support the Government’s proposed duties on platforms in clause 11 of the draft Online Safety Bill relating to content which is legal but may be harmful to adults. We are not convinced that they are workable or could be implemented without unjustifiable and unprecedented interference in freedom of expression. If a type of content is seriously harmful, it should be defined and criminalised through primary legislation. It would be more effective—and more consistent with the value which has historically been attached to freedom of expression in the UK—to address content which is legal but some may find distressing through strong regulation of the design of platforms, digital citizenship education, and competition regulation. We discuss these in Chapters 3 and 4.

183. If the Government does not accept our recommendation on an alternative approach to clause 11, it should improve the draft Bill in the following ways:

- The draft Bill provides two mechanisms by which content can be identified as harmful. The first is if a platform determines that it is of a type which the platform has, in its latest risk assessment, identified as posing a material risk of a significant adverse physical or psychological impact on an adult of ordinary sensibilities. The second is if it corresponds to a ‘priority category’ of content which the Secretary of State has, through regulations, deemed “harmful to adults”. The latter mechanism should be removed from the draft Bill. It is superfluous and sets an unreasonably low threshold for harm.

- The provisions of the draft Bill on content which is legal but may be harmful to adults should apply when the provider of the category 1 service has reasonable grounds to believe that content presents a significant risk to an adult’s physical or mental health, such that it would have a substantial adverse effect on usual day-to-day activities. This is in line with the definition of serious distress in the Serious Crime Act 2015 and would provide greater clarity.

- The reference in the draft Bill to indirect harm is particularly vague and could lead to the removal of legitimate content due to possible reactions to it by unreasonable people. It should be replaced with a reference to content which appears to be intended to encourage users to harm themselves or others.

- The draft Bill states that adults at risk of harm must be assumed to be “of ordinary sensibilities”. This brings greater objectivity. However, whereas case law refers to the ‘reasonable person of ordinary sensibilities’, the Government has removed the reference to reasonableness. We are concerned that this makes the standard too low to bring the necessary objectivity.

232 Q 92
The Online Safety Bill should refer to the reasonable person of ordinary sensibilities.

- The attempt to introduce objectivity is undermined by the requirement in the draft Bill that adults at risk of harm should be assumed to have any characteristics which might make them more susceptible to harm. The draft Bill does not define characteristics and the Government told us that it should be understood to mean any distinguishing traits or qualities. These are not clearly distinguishable from sensibilities as both can be the product of life experiences.

- Under clause 46(6) of the draft Bill, where a particular adult is thought to be at risk they and their sensibilities replace the adult of ordinary sensibilities. This subjectivity should be removed.

- No user appeals process can be 100 per cent effective. Even a compliant system will get many decisions wrong. In the most serious cases, where a user has been banned from a category 1 platform, had their posts consistently removed or been forced off by abuse, they should have the right to appeal directly to an independent body, funded by but independent of the platforms, after exhausting the platform’s own processes.

184. In Regulating in a Digital World, we recommended that a joint committee of both Houses of Parliament should be established to consider regulation of the digital environment. This committee would be responsible for scrutinising the adequacy of powers and resources in digital regulation. This would bring consistency and urgency to regulation. In addition, we found in this inquiry that there is a lack of scrutiny of delegated powers given to the Secretary of State and Ofcom. In relation to the latter, this raises serious concerns about democratic accountability.

185. We reiterate our recommendation that a joint committee of Parliament should be established to scrutinise the work of digital regulators. This joint committee should also scrutinise the independence of Ofcom and statutory instruments relating to digital regulation.

**Journalistic content**

186. News publishers’ websites are not in scope of the draft Online Safety Bill. Nor would platforms be expected to apply their duties on content which is legal but may be harmful to adults to the sharing of links to news publishers’ websites. This exemption does not apply to quotations or screenshots from articles or to individual journalists’ accounts. 233

187. Clause 14 of the draft Online Safety Bill imposes duties on category 1 platforms in relation to their treatment of journalistic content. They will have to take into account the free expression of journalistic content in their application of terms and conditions and create a dedicated and expedited appeals process against the removal of journalistic content.

188. The draft Bill defines journalistic content as “generated for the purposes of journalism” which is “UK-linked”. It does not need to have been generated by a recognised media organisation. The Government’s press release described this as a protection for citizen journalists.234

189. We asked the Government whether there was any prospect of Ofcom or platforms being able consistently to distinguish citizen journalism from other forms of expression by individuals without citizen journalism being clearly defined. Failure to do so could lead to expedited appeals processes intended for news organisations being overwhelmed by members of the public and therefore not offering the intended protection.235

190. Twitter told us:

“there are accounts we have suspended for Hateful Conduct and other violations of our rules who have described themselves as ‘journalists.’ If the Government wishes for us to treat this content differently to other people and posts on Twitter, then we would ask the Government to define it, through the accountability of the Parliamentary process. Without doing so, it risks confusion not just for news publishers and for services like ours, but for the people using them.”236

191. The Minister for Digital and the Creative Industries told us: “Ofcom will recommend steps for complying with this duty in codes of practice and platforms themselves will need to clearly set out how they intend to identify journalistic content, including citizen journalism”.237

192. News organisations supported the principle that they should receive special treatment. Gill Phillips, Director of Editorial Legal Services at Guardian News & Media, raised concern about Twitter’s and Facebook’s censorship of a New York Post article about Hunter Biden. She said:

“If the publisher has decided to publish this piece and has taken its editorial decision to do so, it is somewhat worrying that someone else, for reasons you do not know, who does not know anything about the background to it or the decision-making process, and definitely has a different take on what public interest is, takes these things down. There is a big problem of censorship there, if you are not very careful.”238

193. The Government has stated that the purpose of its “robust protections” for journalistic content is “to protect media freedom”.239

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235 Letter from the Chair to the Rt Hon Oliver Dowden MP, Secretary of State for Digital, Culture, Media and Sport, 25 May 2021: https://committees.parliament.uk/publications/6025/documents/68088/default/

236 Supplementary written evidence from Twitter (FEO0121)

237 Letter from Caroline Dinenage MP, Minister for Digital and the Creative Industries, to the Chair, 16 June 2021: https://committees.parliament.uk/publications/6336/documents/69560/default/ (see Appendix 5).

238 Q154

194. Peter Wright, Editor Emeritus of DMG Media, supported the exemption for news organisations. We asked him whether any regime from which news organisations had to be exempt to protect media freedom could be compatible with individual users’ freedom of expression. He conceded: “The answer is not really, truthfully.”240 His preference would be for harms to be clearly defined and criminalised, with the police given the necessary resources to enforce the law, rather than regulating legal content.241

195. Professor Andrew Murray noted that journalists no longer have a monopoly on holding power to account. He said: “I do wonder whether we need robustly to protect journalists in a world where we are all playing part of that role.” Professor Murray questioned why a journalist should be protected but he, as an academic with 25 years’ expertise, should not, arguing that journalists do not have a sufficiently strong professional framework, such as that of doctors or lawyers, to justify an exemption.242

196. We support the Government’s approach to journalistic content in the draft Online Safety Bill. As news publishers’ websites are out of scope, it would not be appropriate for the sharing of their content on social media to be subject to the online safety regime. They are already legally liable for their content. We support the principle that there should be protections for citizen journalism. However, we are concerned by the vagueness of the draft Bill about what constitutes citizen journalism. The Government should clearly define citizen journalism in the draft Bill.

Censorship abroad

197. Democracies such as the UK are not the only countries seeking to regulate content on the internet. Professor David Kaye noted: “Over the past several years there has been a real rise in regulation by authoritarian Governments who get very intricate and granular in what they demand of the companies.”243

198. We heard concern that UK regulation of the internet, including of ‘legal but harmful’ content, could provide precedent for authoritarian regimes. Jimmy Wales told us: “I know for sure that, in jurisdictions where there is very little freedom of expression, they watch very carefully things that go on in the western world.”244

199. Venezuela, Russia, Belarus and Honduras are among the regimes which have justified their regulation of the internet with reference to Germany’s NetzDG Act.245

200. Repression of online speech is not only a threat to freedom of expression; it can be a threat to life. In December 2019, after Li Wenliang, a doctor at Wuhan Central Hospital in China, warned on social media about a new virus and urged people to take precautions, he was forced to sign a police document to admit he had breached the law and had “seriously disrupted

240 Q 156
241 Ibid.
242 Q 185
243 Q 171
244 Q 87
social order.” When Li raised the alarm there had been seven confirmed cases. Since then, almost 200 million cases of COVID-19 have been reported. More than 4 million people have died, including Li.

201. As an anonymous contributor wrote in *The Guardian*:

“If Li had lived in a society where citizens could speak freely without fear of being punished for exposing problems the authorities would rather not see, and if his warning had been heeded and action swiftly taken, the virus could have been contained.”

202. Dr Sharath Srinivasan suggested that platforms primarily view regulation by authoritarian regimes through the prism of their business interests rather than their users’ human rights.

203. The question of whether to comply with censorship as a condition of market access has a longer history in the publishing industry. David Shelley, Chief Executive Officer of Hachette UK, told us that Hachette refuses to cut the text of books at the behest of authoritarian regimes. He said: “there are a lot of great examples in publishing of people refusing to change books, particularly for China, and then those books not being available in China as a result.”

204. Analysis by the *New Statesman* shows that between January 2019 and June 2020 Google, Facebook and Twitter removed almost 40,000 posts at the request of Russian authorities. They removed fewer than 5,000 posts for UK authorities.

205. Between January and June 2020 Apple received 46 requests to remove 152 apps in mainland China for legal violations and complied in full with all of them. We asked whether Apple had ever infringed its users’ freedom of expression to comply with national law. The company told us: “we’re convinced the best way we can continue to promote openness is to remain engaged, even where we may disagree with a country’s laws.”

206. Companies’ submission to censorship can affect citizens’ access to information in democracies. Wix, an Israeli website hosting service, removed a website advocating democracy for Hong Kong after receiving a request by the Hong Kong Police Force under the region’s National Security Law to

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249 Q 168

250 Q 218


253 Written evidence from Apple (FEO0107)
“take disabling action”. Wix reversed its decision three days later, after the case was publicised on Twitter.

207. Ross LaJeunesse, who resigned from Google partly in protest at its plans to re-enter the Chinese market, told us: “of all the big tech platforms, only Microsoft has, I believe, a real human rights programme and a senior person in charge of it—that is it.” He suggested that others were “marketing fluff”. However, Facebook said: “since 2018 we are the only large tech company to have publicly disclosed our human rights due diligence.”

208. A student at an engagement event suggested that human rights impact assessments should be mandatory for a platform to operate in a particular market.

209. Clause 12 of the draft Online Safety Bill requires the largest platforms to publish impact assessments on the effect of their policies and procedures on freedom of expression. However, this applies only to their operations in the UK.

210. Freedom of expression online is a threat to authoritarian regimes. Afraid of what their citizens might say if allowed to speak for themselves, these regimes are seeking to censor the internet. The online safety regime should require category 1 platforms to report annually on content they have been obliged to remove in other jurisdictions, whether by law or political authorities. This would allow UK users to know whether they are giving their custom to a platform which is complicit in censorship by authoritarian regimes. Users may wish to boycott platforms which value their profits more highly than human rights. The interventions we recommend in Chapter 4 to increase competition would make it easier for users to do so.

254 Nathan Law (@nathanlawkc), tweet on 3 June 2021: https://twitter.com/nathanlawkc/status/1400392731189514243 [accessed 29 June 2021]
255 Nathan Law (@nathanlawkc), tweet on 3 June 2021: https://twitter.com/nathanlawkc/status/1400445221540749314 [accessed 29 June 2021]
256 Q 173
257 Written evidence from Facebook (FE00095)
258 Summary of virtual roundtable discussion with students, 14 April 2021: Appendix 6
259 Draft Online Safety Bill
CHAPTER 3: EMPOWERING USERS

211. Social media platforms do not simply provide users with a neutral means of communicating with one another. Their design shapes what users see, what they say, and how they interact, as does the extent to which users are educated in good digital citizenship.

Platform design

212. In Regulating in a Digital World we raised the importance of ethical design and noted: “Many problems associated with the digital world originate in the way in which services are designed. Some internet technology is deliberately designed to take advantage of psychological insights to manipulate user behaviour.”

213. Rachel Coldicutt, a technology expert and former CEO of Doteveryone, explained the importance of design to debates about platform regulation:

“While the regulatory focus is often on content, the focus of the platforms is on influencing user behaviour. This mismatch means that regulatory efforts can have, at best, a superficial impact on the way platforms operate; for instance, focusing on changing content and moderation policies will place restrictions on what people can say and do online, without removing the incentives to create harmful and abusive content. While such measures might treat the symptom, they do not cure the underlying disease.”

214. The Government has identified ‘literacy by design’ as a priority in its online media literacy strategy.

Encouraging civility

215. Professor David Beer, Professor of Sociology, University of York, described the current environment as the “like economy”: users are driven “to get attention, to get heard, to get amplified through shares and likes, to do well in the visible metrics, to have a lifestyle image that fits, to draw attention and to obtain replies, reactions, and so on.”

Robert Colvile, Director, Centre for Policy Studies, said that users “get likes and retweets for being forceful, provocative, punchy and rude” and that the easiest way to gain followers “is to turn yourself into a caricature of a human being.”

216. An analysis of more than 2.7 million Facebook and Twitter posts from US media and politicians found that divisive posts that derided, rebuked and belittled opponents were the best way of engaging an audience. Ayishat Akanbi advocating plugins which remove like and retweet features.

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260 Communications Committee, Regulating in a digital world (2nd Report, Session 2017–19, HL Paper 299), p 19
261 Written evidence from Rachel Coldicutt (FEO0122)
263 Written evidence from Professor David Beer (FEO0120)
264 Q 199
265 Rhys Blakely, ‘Hostile posts are more likely to go viral’, The Times, (22 June 2021): https://www.thetimes.co.uk/article/hostile-posts-are-more-likely-to-go-viral-zwg3j39m8 [accessed 22 June 2021]
266 Q 11
217. Dr Jeffrey Howard told us that ‘slowing down’ social media is the key to improving online discussion, pointing to Twitter’s system whereby users are prompted to read an article before retweeting. Dr Howard suggested that these mechanisms “throw some sand in the gears and introduce a bit more friction so that people have to stop, think and reflect”.267

218. Twitter’s prompts have led to an increase of 33 per cent in people opening articles before retweeting them.268 Twitter is also trialling a feature whereby users who post a potentially harmful reply are shown a prompt saying “Want to review this before Tweeting? We’re asking people to review replies with potentially harmful or offensive language?”269 Katy Minshall, Head of UK Public Policy, Twitter, told us that initial results are “promising”; a third of people either revised their tweet or did not post it.270

219. Robert Colville noted that encouraging civility and thoughtfulness can be contrary to platforms’ business interests: “when Facebook got started, it explicitly redesigned everything around reducing friction because it found that that promoted engagement. There is a fundamental tension between metrics there, between what the commercial imperatives point you towards, what the technological imperatives point you towards and what is good for debate.”271

220. Witnesses explained that dominant platforms are incentivised to encourage content which holds people’s attention, so that they will see more advertising and reveal more information on their interests which can be monetised.272 Ross LaJeunesse, former Global Head of International Relations at Google, which owns YouTube, told us:

“Quite frankly, the business drives everything. YouTube’s singular mission for many years has been simply to increase the amount of watch time. That was the singular directive from YouTube leadership and everything has been designed to do that. We now know—that there have been numerous studies—that that has led to viewers often being driven to “watch next”. That feature sends them often to even more extremist views … it is all about eyeballs on screens because that means higher advertising revenue.”273

221. In 2020, 90 per cent of revenue in the social media market was from advertising—including 98 per cent of Facebook and Instagram’s revenue.274

267 Ibid.
268 Twitter Comms (@TwitterComms), tweet on 24 September 2020: https://twitter.com/TwitterComms/status/1309178716988354561 [accessed 17 June 2021]
270 Q 207; Twitter, ‘‘Tweeting with consideration’’ (5 May 2021): https://blog.twitter.com/en_us/topics/product/2021/tweeting-with-consideration [accessed 17 June 2021]; Facebook plans on introducing tools for group administrators to help them tackle poor behaviour in their groups, for instance an AI powered feature that helps administrators identify “contentious or unhealthy conversations”: , ‘Facebook’s AI moderator will tell group admins when users are beefing in the comments’, The Verge (16 June 2021): https://www.theverge.com/2021/6/16/22534643/facebook-group-admin-moderation-tools-ai-flag-comments-fighting [accessed 21 June 2021]
271 Q 200
272 Q 68 (Dr Sharath Srinivasan); Q 169 (Professor David Kaye)
273 Q 169 (Ross LaJeunesse)
222. Jimmy Wales described some content on social media as “the modern version of the loud, obnoxious, screaming tabloid headline.” He argued: “It is about a company responding to the baser human instincts, and that is unfortunate.”

223. Rachel Coldicutt argued: “platforms must adopt new metrics and business goals that prioritise good citizenship, trust and generosity above engagement.” She explained: “Every tweak made at every stage of product development is judged by whether it will help or hinder achieving the desired metrics; as such, doing anything other than changing these metrics is a cosmetic change.”

224. Richard Earley said that showing “sensationalist or extremist” content was in Facebook’s interest, telling us that it repels users and advertisers. He argued:

“If we were to build our systems in a way that encouraged people to spend 10 or 20 minutes longer on our services, that might be good for our bottom line in the short term. In the long run, if people leave our services with a negative impression of Facebook, they are less likely to want to use it or any other services that we develop in future.”

225. This view found some support, at least in relation to the worst kinds of content. Benedict Evans told us: “toxic content tends to push people off the platform and draws in the kinds of people who advertisers do not like and are not interested in.” Kate Klonick, Assistant Professor of Law at St John’s University, New York, gave the example of videos of the mass shootings in Christchurch, New Zealand, to illustrate this.

226. Heated and uncivil content is not only encouraged but, once it has been posted, amplified. Julia Reda, Researcher at the Society for Civil Rights, and former MEP, said that social media algorithms can skew what users see away from their own preferences and towards what it is good business for them to see. Algorithms distribute, amplify and suppress the visibility of content in opaque ways, meaning that users often have limited control over what they see.

227. We heard from Dr Carissa Véliz, Associate Professor in Philosophy, University of Oxford, that content curation algorithms are designed to engage, and “it turns out that the most engaging content is really toxic content, from fake news to hate speech.”

228. Jimmy Wales used the example of the “crazy uncle”. He said that if that uncle posts obnoxious but legal opinions on Facebook it is a family problem, not Facebook’s—the same thing happens at local pubs and Facebook should not be expected to control it. However, he argued that if Facebook’s algorithm amplifies the reach of the post the platform has some moral culpability for

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275 Q 81
276 Written evidence from Rachel Coldicutt (FEO0122)
277 Q 207
278 Q 17
279 Q 120
280 Q 144
282 Q 106
the consequences: “the next thing you know crazy uncle has 5,000 followers and is storming the Capitol in Washington”.283

229. Platforms have been reluctant to subject their design and business models to scrutiny. Mehwish Ansari, Head of Digital at ARTICLE 19, told us: “platforms are actively thwarting researchers conducting independent research from being able to make inquiries into design features, even down to the fundamentals of the platforms and what makes them work.” She said that this is because they prioritise their profits over improving design.284 Dr Edina Harbinja, Senior Lecturer in Media and Privacy Law at Aston University, expressed the same concern.285

230. Facebook has refused to give information to its own Oversight Board. Although it allowed the Oversight Board the final say on its content moderation decision to ban President Trump:

“The Board sought clarification from Facebook about the extent to which the platform's design decisions, including algorithms, policies, procedures and technical features, amplified Mr Trump’s posts after the election and whether Facebook had conducted any internal analysis of whether such design decisions may have contributed to the events of 6 January. Facebook declined to answer these questions.”286

231. Richard Wingfield, Head of Legal at Global Partners Digital, noted that users generally only have a binary choice over how they see social media content: they can view it chronologically or they can use the platform’s algorithm, which decides which content is promoted.287

232. Approaches which give users more control over what they see can reduce the power of algorithms to shape online discussion. They can also better accommodate both freedom of expression and the diverse range of vulnerabilities and preferences users have than approaches which focus on removing objectionable legal content.

233. Professor Lorna Woods told us:

“for lesser harms, it is more about allowing customisation and ensuring information flows than taking stuff down. In a way, that is also a way of mitigating concerns about freedom of speech: you are allowing speakers to continue, but you are also allowing people to protect themselves and to exercise their own choices about what they choose to engage with in terms of speech.”288

234. This approach is consistent with concerns we heard about the consequences of banning content. Alan Rusbridger worried that banned speech “will go underground or into encrypted channels … the way to tackle bad speech is to produce good speech, and you are not really solving anything by pushing it underground.”289 Similarly, a student at our engagement event worried

283 Q 81
284 Q 31
285 Q 63
287 Q 45
288 Q 183
289 Q 117
that deleting content stops other users from calling out perpetrators for their behaviour and challenging bigoted views.\footnote{290}

\section{We found some support for the user-control approach among platforms. Richard Earley, UK Public Policy Manager at Facebook, said:}

“there is a big chunk of posts and speech on our platform that, while not breaking our rules, some people might find objectionable or offensive. A lot of the work we have done has been trying to give our users the ability to create their own spaces, where they can see things they want to see and protect themselves from posts they do not want to see.”

He gave the example of users being able to opt out of seeing Instagram comments and messages containing particular ‘muted’ words, to choose who can comment on their Facebook posts, and to provide feedback to Facebook’s algorithm about the types of content they like to be shown.\footnote{291} TikTok and Twitter also allow users to mute words they do not want to see.\footnote{292}

\section{Where users are given control, Louise Perry suggested that the safest settings should be the default. She warned that some people would be unaware of safety tools or lack the technological skills to use them.\footnote{293} We recommended in \textit{Regulating in a Digital World} that the highest safety and privacy settings should always be set as default.\footnote{294}}

\section{Julia Reda and Richard Wingfield suggested that social media companies should be required to allow users to use third-party algorithms to curate content.\footnote{295} This would give them an alternative to the platforms’ algorithms and allow users to prioritise the content they want to see.\footnote{296} Twitter has already created limited scope for third-party applications through its Developer Platform\footnote{297} and is exploring further ways to give users more control over content curation.\footnote{298}

\section{We heard from Dr Liza Lovdahl Gormsen that social media platforms have attempted to create barriers to entry for third parties by both hosting and curating content. She suggested that platforms should provide “fair and non-discriminatory access to third-party players”.\footnote{299}}

\section{The design of platforms shapes how users behave online. Too often, users are rewarded with ‘likes’ and other forms of engagement when they behave unkindly towards others. Although the worst forms of content repel users and advertisers, it can be in platforms’ interests to encourage heated and uncivilised exchanges to hold users’ attention. We welcome design changes which encourage users to behave in a
more responsible way, such as Twitter prompting users to read articles before retweeting them.

241. **Platforms must be held responsible for the effects of their design choices.** The Government should replace the duties on category 1 platforms in relation to ‘legal but harmful’ content in clause 11 of the draft Online Safety Bill with a new design duty. Platforms would be obliged to demonstrate that they have taken proportionate steps to ensure that their design choices, such as reward mechanisms, choice architecture, and content curation algorithms, mitigate the risk of encouraging and amplifying uncivil content. This should apply both to new and existing services. The duty should include a requirement for platforms to share information about their design with accredited researchers and to put in place systems to share best practice with competitors.

242. **Giving users more control over the content they are shown is crucial.** This is more consistent with freedom of expression and the wide range of vulnerabilities and preferences users have than focusing on removing legal content. **As part of the design duty we propose, the Online Safety Bill should require category 1 platforms to give users a comprehensive toolkit of settings, overseen by Ofcom, allowing users to decide what types of content they see and from whom. Platforms should be required to make these tools easy to find and use. The safest settings should always be the default. The toolkit should include fair and non-discriminatory access to third-party content curation tools.**

243. **Ofcom should allow category 2 platforms to opt in to the design duty on category 1 platforms, with a kitemark scheme to show users which meet this higher standard.**

**Anonymity**

244. Online anonymity—including the use of a false name, also known as pseudonymity—can facilitate objectionable behaviour.

245. A survey by YouGov for Clean up the Internet in February 2020 found that 83 per cent of people think that the ability to post anonymously makes social media users ruder.300 In a debate on 24 March 2021 MPs spoke about anonymous abuse they and their constituents have received.301

246. Dr Jeffrey Howard told us that although anonymity emboldens some users to be abusive it has important benefits for vulnerable people.302 Twitter explained that pseudonymity can allow users to explore their identity, to find support as victims of crimes or to highlight issues faced by their community. The company noted:

> “many of the first voices to speak out on societal wrongdoings, have done so behind some degree of pseudonymity—once they do, their experience can encourage others to do the same, knowing they don’t

300 Rosa Ellis, ‘Should people be allowed to be anonymous online?’, The Times (24 March 2021): [https://www.thetimes.co.uk/article/should-people-be-allowed-to-be-anonymous-online-qykvzlsdl](https://www.thetimes.co.uk/article/should-people-be-allowed-to-be-anonymous-online-qykvzlsdl) [accessed 1 July 2021]

301 HC Deb, 24 March 2021, cols 956–987

302 Q 13
have to put their name to their experience if they’re not comfortable doing so.”

247. The 5Rights Foundation said that anonymity has important benefits for children:

“anonymity can be a means of exploration, a way of avoiding judgement, stereotypes and assumptions based on age. The ability to be ‘invisible’ is an important part of play for children. Where a child can be anonymous online and remain safe, they can enjoy the freedoms that anonymity brings and exercise their rights to privacy and play.”

248. We heard that anonymity allows individuals to dissent from orthodoxies. Ayishat Akanbi told us:

“A lot of the time, people only feel comfortable saying what they truly mean, and being direct without sugar coating it, through anonymity. There are a few anonymous accounts that I have come across that are really insightful, and I understand why they would not express those ideas under their own names.”

Dr Edina Harbinja and Dr Carissa Véliz agreed. Dr Véliz noted that many important works, including by John Locke, Karl Marx, and Søren Kiekegaard, were first published anonymously or pseudonymously.

249. We heard about concern about speaking publicly in one’s own name in relation to our inquiry. Following our evidence session with David Shelley and Clare Alexander, Alison Flood wrote in *The Guardian*:

“speaking to publishing staff for this article—particularly those at the big conglomerates, and more junior staff worried for their jobs—most are wary of speaking on the record regardless of their perspective, fearful of what one described as the ‘raging binfire’ which followed on social media after the House of Lords hearing.”

250. A petition by Katie Price, whose disabled son has been the target of anonymous abuse, called for social media companies to be required to maintain a record of users’ identities. It has received more than 170,000 signatures. YouGov found that while most men (52 per cent) thought that this would reduce abuse, only a plurality of women did (39 per cent).

251. David Tucker from the College of Policing told us that in 96 per cent of cases police efforts to trace anonymous users were successful.

252. Chi Onwurah suggested: “people should have a choice about whose comments they see or whom they see. The platform needs a way to guarantee

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303 Supplementary written evidence from Twitter (FE00121)
304 Written evidence from the 5Rights Foundation (FE00042)
305 Q 13
306 Q 106
307 Alison Flood, ‘If publishers become afraid, we’re in trouble’: publishing’s cancel culture debate boils over’, *The Guardian* (3 June 2021): https://www.theguardian.com/books/2021/jun/03/if-publishers-become-afraid-were-in-trouble-publishings-cancel-culture-debate-boils-over [accessed 1 July 2021]
308 Petition: Make verified ID a requirement for opening a social media account, Session 2019–21
309 Rosa Ellis, ‘Should people be allowed to be anonymous online?’, *The Times* (24 March 2021): https://www.thetimes.co.uk/article/should-people-be-allowed-to-be-anonymous-online-qvkzilsdl [accessed 1 July 2021]
310 Q 192
that, if you decide to be trusted and to share your identity, you interact only with people who have also done that.” 311 Similarly, the Select Committee on Democracy and Digital Technologies recommended: “Ofcom should encourage platforms to empower users with tools to remove unverified users from their conversations and more easily identify genuine users.” 312

253. Students at our engagement event gave the example of mass abuse suffered by black footballers to illustrate how the ability to block individual users is inadequate. 313

254. Twitter already allows users to opt out of receiving notifications about tweets from users who have a default profile picture, have not confirmed their email address or have not confirmed their phone number. Facebook has a real name policy but asks for ID only when a user is suspected of infringing it.

255. Anonymity can allow individuals, including those in vulnerable positions, to express themselves more freely and to challenge orthodoxies. This is crucial. However, it can also embolden people to abuse others. Under the draft Online Safety Bill, as part of the user toolkit we propose, category 1 platforms should be required to allow users to opt out of seeing content from users who have not verified their identity.

User privacy and profiling

256. The right to privacy can enable users to express themselves freely. Carly Kind, Director of the Ada Lovelace Institute and former Legal Director for Privacy International, has argued that the right to privacy is an important prerequisite of the right to freedom of expression. 314 We heard from Mehwish Ansari that other freedoms flow from the right to privacy, such as freedom of assembly and association. 315 Privacy allows people freedom from intrusion and creates space for individuals and communities to flourish. It can be understood as the right not to express oneself in particular ways or to particular audiences. 316

257. The proliferation of online communication has created concerns about individuals’ privacy. Ms Kind has argued that when governments and human rights organisations speak of promoting free speech and the importance of access to the internet and new technologies, they rarely admit the effect of new technologies on the right to privacy. While they want to see more people communicate and express themselves, particularly in countries where freedom of expression is at risk, they turn a “blind eye to how they are placing themselves at greater risk of identification, profiling, and persecution.

311 Q 203
313 Summary of roundtable discussion with students, 14 April 2021: Appendix 6
315 Q 33
for having done so because of the surveillance that is now all too possible and probable.”

258. Many witnesses talked about the impact that commodifying and profiling users’ data has on freedom of expression. This is often referred to as “ad tech”, although the issue goes beyond advertising. We heard from Dr David Erdos, University Senior Lecturer in Law and the Open Society, University of Cambridge, that “the mining of personal data has, in many respects, become the quasi-currency and quasi-commodity for these platforms and for search engines.”

259. Profiling can lead to a chilling effect through users’ perceived lack of privacy. Dr Erdos explained how users “may think twice about expressing” themselves if it results in commercial commodification and profiling. It is therefore important that users are given control over how their data are used. In Regulating in a Digital World we recommended: “Maximum privacy and safety settings should be included in services by default. The Information Commissioner’s Office should provide guidance requiring platforms to provide greater choice to users to control how their data are collected and used.”

260. Improvements in privacy features should not come at the cost of entrenching the market power of dominant platforms. In the search platform arena, Simeon Thornton used the example of Google’s Privacy Sandbox, which is yet to be implemented, and which the CMA is investigating with respect to effects on competition. The Privacy Sandbox would disable third-party cookies on the Chrome browser and Chromium browser engine and replace them with a new set of tools for targeting advertising and other functionality. Google claims these tools will better protect consumers’ privacy by enabling users to move between websites without revealing information that could be used to identify them. Simeon Thornton explained that Google’s removal of third-party cookies could boost Google’s market power by further consolidating its control over the digital advertising market.

261. We heard of the importance of end-to-end encryption of online messages for privacy. Mehwish Ansari argued that holding platforms liable for user-generated content could encourage them to break end-to-end encryption.

262. The need for end-to-end encryption in all circumstances has been questioned by the Government. In January 2015, the then Prime Minister David Cameron said:

“In extremis, it has been possible to read someone’s letter, to listen to someone’s call, to mobile communications … The question remains:

318 Q 58 (Dr David Erdos)
319 Ibid.
320 Communications Committee, Regulating in a digital world (2nd Report, Session 2017–19, HL Paper 299), p 32
322 Q 172 (Simeon Thornton)
323 Q 33
are we going to allow a means of communications where it simply is not possible to do that? My answer to that question is: no, we must not.”

263. In October 2020, a joint statement by the governments of the UK, Australia, Canada, India, Japan, New Zealand and the United States called on technology companies to help find ways to ensure that those committing serious crimes such as terrorism and child sexual abuse were not protected, while protecting privacy more generally. The statement argued that comprehensive end-to-end encryption creates risks for public safety by undermining a company’s ability to identify and respond to violations of their terms of service and by precluding law enforcement agencies accessing content when necessary to investigate serious crimes and protect national security.

264. The right to privacy can enable users to express themselves freely. Privacy can also affect competition, which itself affects freedom of expression.

265. Strong privacy standards should form part of the design duty we propose be added to the draft Online Safety Bill.

266. It is essential that regulators, including the Information Commissioner’s Office, Ofcom, and the Competition and Markets Authority, co-operate to protect users’ rights.

Education

267. A digital citizen is someone who has the knowledge and skills effectively to use digital technologies to communicate with others, participate in society, and create and consume digital content. This includes knowledge of concepts such as digital literacy, internet safety, privacy and security, cyberbullying and digital etiquette.

268. Dr Jeffrey Howard, Associate Professor in Political Theory, University College London, described digital citizenship in terms of a pair of ‘civic virtues’: the ability to think critically about what one reads online and the ability to talk to people with whom one disagrees. Kenny Ethan Jones, a transgender model, activist and entrepreneur, suggested that the latter is a rare skill among users of social media: “We do not know how to deal with opinions that differ from our own”.

269. We heard from Ayishat Akanbi, a cultural commentator, that the lack of established digital etiquette is a barrier to effective digital citizenship: “We have an etiquette for using the Tube. We do not have one for social media”. She described social media “as a big, open plan-house”: “we all live there...”

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326 Ibid., p 1
328 Q 5
329 Q 90
together but we cannot stand each other”. 330 Ruth Smeeth proposed a code of conduct for social media users. 331

270. Microsoft, which has created a digital civility index based on survey respondents’ reported annual exposure to behavioural, reputational, sexual and intrusive/personal risks, has found that the digital civility index has generally declined in the UK since 2016 (see Figure 3). However, out of 32 countries, the UK is still ranked second best for digital civility, after the Netherlands. 332

![Figure 3: UK Digital Civility Index](image)


271. Ayishat Akanbi suggested that users need to be encouraged to treat people online as they would in person. 334 The BT Group agreed with the principle that “the online world is as real as the offline world, and that considering what you would find acceptable offline can be a helpful starting point when considering how to be a good digital citizen”. 335

272. Lord Williams of Oystermouth argued that poor digital citizenship is reflective of larger societal problems. These “abrasive and confrontational” styles of discussion “do not come from nowhere”. 336 Henry Turnbull, Head of Public Policy, UK and Nordics, Snap Inc, noted that the “vast majority” of online harms are perpetrated by “ordinary citizens” rather than “hardened

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330 Q 5
331 Q 40
333 Participants were asked ‘Which of these has ever happened to you or to a friend/family member online?’ Actions included: doxing (the process of collecting and distributing or posting information about a person); swatting (the act of deceiving emergency services); hate speech; revenge pornography; sextortion (when someone threatens to distribute your private and sensitive material if you do not provide them images of a sexual nature, sexual favours, or money); cyberbullying; treated mean; trolling (a deliberate act to make someone angry using online or social media comments in a clever, but deceitful manner); discrimination; unwanted sexting sent or received; sexual solicitation; terrorism recruiting; unwanted contact; damage to personal reputation; damage to professional reputation; online harassment; hoaxes, scams, frauds; microaggression (casual insults made towards any marginalized group in society); misogyny; and unwanted sexual attention.
334 Q 5
335 Written evidence from the BT Group (FEO0049)
336 Q 51
criminals”. Lord Williams argued that these behaviours can be partially rectified by digital citizenship education and the promotion of positive digital culture.

273. Some witnesses were sceptical of such initiatives. Benedict Evans, an independent analyst, “would be really sceptical about the idea that you can just persuade people not to be unpleasant online or that you could do a course for that”, instead pointing to improved platform design. Rachel Coldicutt, while accepting that education is necessary, thought it is not enough on its own “to empower the majority of people to uphold standards and ways of being that run counter to the success metrics of the platforms they are using.” Other critiques of digital citizenship initiatives include that an educational model of “kindness” obscures the importance of debate, disagreement and conflict for democracy and that focusing on citizens’ education individualises the problem of hostile online environments, obscuring its structural causes.

274. However, most witnesses thought that education had at least some role to play in fostering digital citizenship. Ulises A Mejias, Professor of Communication Studies at State University of New York at Osewgo, and Nick Couldry, Professor of Media, Communications and Social Theory, London School of Economics and Political Science, argued that governments spending money on education, collected by taxes on platforms, “can make an even bigger difference” than, in their view, the limited impact of changing platform design. They argued that, unlike education, “no algorithm” can form citizens who are equipped to respond to speech “they don’t want to hear” in a respectful manner.

275. Professor Sonia Livingston, Professor of Social Psychology, London School of Economics and Political Science, also cited the importance of funding for digital education, saying the media and digital literacy “world is a bit like a start-up culture without the venture capitalists”. The “small, enthusiastic, even idealistic initiatives” which provide much of the education lack sustained funding or infrastructure.

276. We heard that schools have a crucial role to play. As put by Dr Michael Ribble, an author and educator, “teachers are the core element in creating a digital citizenship culture and assisting with student growth”. This view was echoed at an engagement event with members of the public. Ayishat Akanbi argued that it is important that young people are taught that their social media accounts are public records rather than just “frivolous entertainment”. They may then reconsider what they post.
277. Dr Gianfranco Polizzi, PhD Researcher, Department of Media and Communications, London School of Economics and Political Science, argued that digital citizenship education should be both “competence” and “virtue” based. This means it should cover both formal digital literacy as well as character education aimed at cultivating virtues such as “compassion, honesty and wisdom” in relation to the use of digital technologies.347

278. Ruth Smeeth warned against focusing on educating young people at the expense of adults. She pointed out that, as a former Member of Parliament, “my typical abusers are not children … They are typically men in their 40s.”348

279. Ayishat Akanbi said that education would give adults the ability to be “more savvy on the internet” and help them realise that what they say online and offline have equal weight.349 Dr Jeffrey Howard described the importance of developing citizens’ ability to engage in respectful disagreement, warning against “the idea that those with whom we disagree are obviously stupid and in the grip of some evil or false view”.350

280. We heard of the challenges of educating adults. As put by Lord Williams: “As with other forms of adult education, magic bullets are in short supply”.351 Mark Scott agreed, suggesting that civic education was a medium- to long-term solution.352

281. Seyi Akiwowo, Founder and Director of Glitch, suggested that adult education should take the form of a public education campaign.353 She praised the approach of the Government’s drink-driving campaign as a model of how such a public education campaign might work, as it resulted in drink-driving being perceived as a public problem: “We made clear that everyone has a part to play”.354

282. Ruth Smeeth also supported a national education campaign, pointing to the example of a “national programme for civic engagement for silver surfers and how to get older people online” in the early 2000s. This was done through library networks, the Women’s Institute and community groups. She suggested involving social media platforms in a similar scheme.355

283. Similarly, the Church of England’s Mission and Public Affairs Committee told the Joint Committee on Human Rights that civil society campaigns have the ability “to change the nature of their conversations and interactions to cool the temperature while not rendering important debates off limits”.356 Such campaigns have the advantage of “not relying on legislation to try and police civility”.357

284. In our report *Breaking News? The Future of UK Journalism* we referred to CLEMI, the French national media literacy body. We heard from Anaïs

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347 Written evidence from Dr Gianfranco Polizzi (FE00123)
348 Q 40
349 Q 8
350 Q 5
351 Q 51
352 Q 24
353 Q 90
354 Q 95
355 Q 40
356 Written evidence to the Joint Committee on Human Rights inquiry into Freedom of Expression from the Church of England Mission and Public Affairs Council (FOE00065)
357 Ibid.
Adriaens-Allemand, International Project Manager at CLEMI, that CLEMI produces a ‘family guide’ which aims to “create debate within the family, with parents and grandparents, on the importance of our own practices. The idea behind our guide is to help parents question their own social media practice and screen use.”

285. Vulnerable adults are often ignored in the debate around digital citizenship education. A vulnerable person is someone who is unable to look after themselves, protect themselves from harm or exploitation or are unable to report abuse. This covers a wide range of people, such as those of with physical disabilities or illnesses, neurodiverse individuals, care leavers, people with mental health difficulties, those with addictions, and homeless people.

286. This exclusion from debate is despite the additional risks that the internet poses to vulnerable people: there is significant scope for harassment, bullying, exposure to harmful content, sexual grooming, exploitation, encouragement of self-harm, and access to dangerous individuals or information. Creating an inclusive online environment is therefore especially important for vulnerable adults to ensure they can express their views freely online. The Government has identified a lack of support for vulnerable adults as a barrier to improving their literacy.

287. TikTok and Google emphasised the importance of involving a range of organisations, covering government, industry and civil society in digital citizenship education. Google recommended that the Government should “promote a wide-ranging approach”, working in partnership with industry. It argued that public institutions have a “key role to play in establishing norms”, for example by providing online citizenship education through PSHE lessons and through the Department for Education and Ofsted ensuring that online safety lessons are prioritised at school.

288. Ruth Smeeth, CEO, Index on Censorship, pointed to the benefits of involving civil society, referring to the example of the Scout Association, which introduced a digital citizenship badge.

289. There are over 170 online platforms, academics, civil society organisations, news organisations, and education providers undertaking media and

358 Oral evidence taken on 17 March 2020 (Session 2019–21), Q 49 (Anaïs Adriaens-Allemand)
359 Care Check, ‘The definition of ‘vulnerable adults’ and the services they receive’: https://www.carecheck.co.uk/the-definition-of-vulnerable-adults-and-the-services-they-receive/ [accessed 7 July 2021]
360 UK Safer Internet Centre, ‘Supporting vulnerable groups online’, (7 August 2017): https://www.saferinternet.org.uk/blog/supporting-vulnerable-groups-online [accessed 7 July 2021]
363 Written evidence from TikTok (FEO0117)
364 Written evidence from Google (FEO0047)
365 Ibid.
366 Ibid. Google is involved in this process though their PSHE-accredited programmes, Be Internet Legends and Be Internet Citizens, respectively aimed at teenagers and 7–11 year olds.
367 Q 40
digital literacy activity and research in the UK. In contrast to Google, Ruth Smeeth suggested that social media platforms’ engagement in media literacy can result in a lack of co-ordination. Social media platforms “are commercial endeavours and do not necessarily talk to each other about what they are doing”. We also heard of a lack of co-ordination in our report *Breaking News? The Future of UK Journalism*, in relation to media literacy. We therefore recommended that an existing regulatory body should work on co-ordination of media literacy across Government, media organisations, platforms, academia and charities. The need for co-ordination has been reinforced in a report on misinformation and media literacy by academics at the London School of Economics and Political Science, which recommended regular and consistent dialogue between social media platforms and media literacy practitioners. The Government has recognised the need for coordination in the sector.

290. An example of this approach is the Australian government’s nationwide education plan. Online safety programmes have been created throughout Australia by the federal government, targeting school-aged children and the wider public. Presentations are delivered by a range of stakeholders, including the police, school liaison officers and crime prevention officers. We heard from Ross LaJeunesse that he has been “impressed by Australia’s focus on user empowerment and safety”.

291. Ruth Smeeth thought the Government should coordinate digital citizenship education: the Department for Digital, Culture, Media and Sport “is probably the most sensible vehicle for collecting information about best practice, and what is working and what is not”.

292. Ofcom already has a limited role in digital citizenship education under its duty to “promote media literacy” in the Communications Act 2003, although the Government plans to strengthen this in the Online Safety Bill (see Box 6).

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369 Ibid.


373 Written evidence from Dr Laura Higson-Bliss (FEO0013)


376 Q 171

377 Q 40

378 Communications Act 2003, section 11(1)

379 Explanatory Notes to the Online Safety Bill [Bill CP 405-EN] and Draft Online Safety Bill
Box 6: The draft Online Safety Bill and media literacy

The Government plans to replace the existing duty on Ofcom to promote media literacy under the Communications Act 2003 with a strengthened duty in the draft Online Safety Bill. This strengthened duty will mean that:

- Ofcom must take action to improve the media literacy of UK users and encourage regulated service providers and broadcasters to use and develop tools which can improve people’s digital media literacy;
- Ofcom must deliver, commission or encourage education initiatives aimed at improving media literacy rates for UK citizens. This could include, for example, public awareness campaigns or providing training to improve the skills of teachers;
- Ofcom must issue guidance on how to evaluate media literacy initiatives and actions. The aim of the guidance is to help improve the quality of evaluations of media literacy initiatives;
- Ofcom’s annual report must contain a summary of the steps that they have taken to fulfil their expanded duty to promote media literacy.

293. **Digital citizenship should be a central part of the Government’s media literacy strategy, with proper funding. Digital citizenship education in schools should cover both digital literacy and conduct online, aimed at promoting civility and inclusion and how it can be practised online. This should feature across subjects such as Computing, PSHE and Citizenship Education. The latter is particularly crucial as it emphasises why good online behaviour is important for our society, our democracy and for the freedom of expression.**

294. **It is not enough to focus efforts to improve digital citizenship on young people. The Government should commission Ofcom to research the motivations and consequences of online trolling[^380] and use this to inform a public information campaign highlighting the distress online abuse causes and encouraging users to be good bystanders.**

295. **Digital citizenship education suffers from a lack of co-ordination. We recommend that the strengthened duties in the draft Online Safety Bill on promotion of media literacy should include a duty on Ofcom to assist in co-ordinating digital citizenship education between civil society organisations and industry.**

296. **Effective digital citizenship education requires contributions from both the Government and platforms. Social media companies should increase the provision and prominence of digital education campaigns on their platforms.**

CHAPTER 4: PROMOTING CHOICE

297. A small number of companies dominate the social media and search engine markets. Users have little choice to go elsewhere. This has implications for freedom of expression online.

298. Figure 4 shows the reach of social media platforms.\(^{381}\) As Figure 5 shows, Facebook and its platforms (including Instagram and WhatsApp) have a 73 per cent share of the social media market by time spent by users.\(^{382}\) Participants in our engagement event with students lamented this lack of choice.\(^{383}\)

Figure 4: Social media platforms’ reach in the UK, July 2015 to February 2020

![Social media platforms' reach in the UK](https://assets.publishing.service.gov.uk/media/5fe49506e90e0712011cb4ea/Appendix_C_-_Market_Outcomes_v.12_WEB_.pdf)

Source: Comscore MMX Multi-Platform, Total Digital Population, Desktop aged 6+, Mobile aged 13+, July 2015–February 2020, UK: [https://assets.publishing.service.gov.uk/media/5fe49506e90e0712011cb4ea/Appendix_C_-_Market_Outcomes_v.12_WEB_.pdf](https://assets.publishing.service.gov.uk/media/5fe49506e90e0712011cb4ea/Appendix_C_-_Market_Outcomes_v.12_WEB_.pdf) [date accessed 19 July 2021]

* Including Messenger. This is a custom list of organisations.

Notes: In November 2018 and September 2019, Comscore altered its methodology which contributes to the discontinuities in the data around these dates.

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381 Competition and Markets Authority, *Online platforms and digital advertising: Market study final report* (1 July 2020), Appendix C, p 26: [https://assets.publishing.service.gov.uk/media/5fe49506e90e0712011cb4ea/Appendix_C_-_Market_Outcomes_v.12_WEB_.pdf](https://assets.publishing.service.gov.uk/media/5fe49506e90e0712011cb4ea/Appendix_C_-_Market_Outcomes_v.12_WEB_.pdf) [accessed 22 June 2021]

382 Ibid., Appendix C, p 29

383 Summary of virtual roundtable discussion with students, 14 April 2021: Appendix 6
Figure 5: Shares of supply by user time spent on social media, July 2015 to February 2020

Source: Comscore MMX Multi-Platform, Total Digital Population, Desktop aged 6+, Mobile aged 13+, July 2015 to February 2020, UK: https://assets.publishing.service.gov.uk/media/5fe49506e90e0712011cb4ea/Appendix_C_-_Market_Outcomes_v.12_WEB_.pdf [accessed 19 July 2021]

*Including Facebook, Messenger, Instagram and WhatsApp. ** Including Messenger. This is a custom list of organisations.

Note: In November 2018 and September 2019, Comscore altered its methodology which contributes to the discontinuities in the data around these dates.

299. Benedict Evans, an independent analyst, described Facebook as a “quasi-utility”. He argued: “If Instagram bans you, that is your loss but it is not the end of the world. If you are banned from Facebook, it is a little bit more like being told that you will not be allowed a telephone any more.”384 The CMA has described Facebook as a “must have” platform for users.385

300. The search engine market is even less competitive than the social media market. Google supplies 93 per cent of searches in the UK search engine market and has had a share of 89 per cent or more for the last 10 years. Its closest rivals are Microsoft’s ‘Bing’ and Yahoo Search, with 5 per cent and 1 per cent respectively.386

301. Ross LaJeunesse, former Global Head of International Relations at Google, explained that the share of search results produced by Google “is just astounding and it needs to change.”387

384 Q 41
385 Competition and Markets Authority, Online platforms and digital advertising: Market study final report (1 July 2020), p 130: https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf [accessed 21 June 2021]
386 Ibid., pp 80–82
387 Q 169
302. 39 per cent of the time UK adults spend online is on websites and apps owned by Facebook and Google.388

303. The importance of competition to freedom of expression was explained by Mehwish Ansari, Head of Digital and ARTICLE 19, who described it as “a critical tool”. She said:

“In a competitive market, individuals would be able to shift to other platforms that offer better terms of service, which may better protect their freedom of expression, in the same way that consumers of any other product might shift to a competing product that offers higher quality.”389

304. The 5Rights Foundation, which campaigns for children’s rights online, argued:

“In a more competitive market, services would compete to offer better alternatives to users who prefer not to share their data, to reduce exposure to distressing material, to respond to user reports more quickly and better uphold community standards. These benefits will be enjoyed by all, but their impact will be felt most by those for who the asymmetry of power between service and user is most pronounced.”390

The International Observatory of Human Rights agreed.391

305. Dr Sharath Srinivasan, David and Elaine Potter Lecturer in Governance and Human Rights at the University of Cambridge, warned that dominant platforms, which he described as “oligopolistic”, can buy up smaller rivals which bring different approaches to the market.392 These new companies and innovations would otherwise act as a “buffer” to the power of major platforms, explained Dr Roxane Farmanfarmaian, Director of ‘Protecting Freedom of Expression in Religious Context’ at the University of Cambridge.393 She suggested that Twitter and other large platforms have become like utilities.394

306. Due to its effect on innovation and competition, Chi Onwurah MP, Shadow Minister for Science, Research and Digital, argued that consolidated market power should always be considered harmful.395

307. These companies’ dominance has been the subject of growing attention. In 2019, in Regulating in a Digital World, we warned that competition regulators were struggling to keep pace with the concentration of market power in the hands of a small number of companies.396

308. In 2018, in UK Advertising in a Digital Age, we recommended that the Competition and Markets Authority (CMA) should launch a market

388 Tom Knowles, ‘Britons spend an hour longer online each day than French or Germans, Ofcom says’, The Times (9 June 2021): https://www.thetimes.co.uk/article/britons-spend-an-hour-longer-online-each-day-than-french-or-germans-ofcom-says-liq9fzi89 [accessed 14 July 2021]
389 Q 32
390 Written evidence from the 5Rights Foundation (FEO0042)
391 Written evidence from the International Observatory of Human Rights (FEO0046)
392 Q 69
393 Q 71
394 Q 69
395 Q 206
396 Communications Committee, Regulating in a digital world (2nd Report, Session 2017–19, HL Paper 299), p 43
study into the online advertising market on which platforms rely.\textsuperscript{397} After \textit{Which?}, Dame Frances Cairncross and the Furman review made the same recommendation, Jeremy Wright MP, the then Secretary of State for Digital, Culture, Media and Sport, asked the CMA to conduct the market study, which ran from July 2019 to July 2020.\textsuperscript{398}

309. The market study report supported the recommendation of the Furman review that the Government should legislate for a new \textit{ex ante} competition regime. Such a regime would be able to prevent harm before it has occurred and would be enforced by a new Digital Markets Unit (DMU). The DMU would have power to enforce codes of conduct for platforms with ‘strategic market status’ and make ‘pro-competitive interventions’.\textsuperscript{399}

310. The Digital Markets Unit was set up in April 2021 but has no statutory powers. The Government will not introduce legislation to empower the Digital Markets Unit (DMU) until the third session of this Parliament (i.e. 2022–23), whereas the Online Safety Bill will be introduced in the current session.\textsuperscript{400} This has attracted criticism. Professor Damien Geradin told us that the competition legislation should be prioritised as it “would have much more significant consequences”.\textsuperscript{401} Similarly, Matt Rogerson, Director of Public Policy at the Guardian Media Group, described the DMU legislation and the Online Safety Bill as the “the yin and yang of how we restore some competition and order back in the digital economy” and told us that the former should be prioritised.\textsuperscript{402}

311. Dr Liza Lovdahl Gormsen, Senior Research Fellow in Competition Law and Director of the Competition Law Forum at the British Institute of International and Comparative Law, called for the DMU to be “bold and decisive” and to avoid “becoming a think tank like the CMA”, producing reports without acting on them.\textsuperscript{403} She explained: “you can give the DMU as much power as you like; the important question is whether the DMU is going to use those powers. We have seen how little the CMA has used its enforcement powers.”\textsuperscript{404}

312. Professor Geradin told us: “these companies move fast and break things, as per the motto that Facebook had. But when it comes to regulation, they would expect regulators to move slowly and not break anything.” He advocated that regulators should instead “increase pain” inflicted on these companies.\textsuperscript{405}

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399 Competition and Markets Authority, \textit{Online platforms and digital advertising: Market study final report} (1 July 2020) p 5: https://assets.publishing.service.gov.uk/media/5f3e57668fa85f788db46e2/final_report_1_july_2020_.pdf [accessed 21 June 2021]

400 Oral evidence taken before the Digital, Culture, Media and Sport Select Committee, 13 May 2021 (Session 2021–22), Q 22 (Rt. Hon. Oliver Dowden MP)

401 Q 128

402 Q 159

403 Supplementary written evidence from Dr Liza Lovdahl Gormsen (FEO0102)

404 Q 128

405 Q 129
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313. Ms Ansari and Senator Marsha Blackburn stressed the need for competition regulators to consider quality, including in terms of privacy and freedom of expression, in the consumer welfare standards they use, rather than solely considering the price consumers pay.406

314. Dr Lovdahl Gormsen told us that competition regulators had not used freedom of expression as a parameter when assessing possible harm to consumers from lack of competition.407

315. Ross LaJeunesse said:

“It has always been about short-term consumer financial harm. There is now a recognition that this simply is not sufficient and that we are broadening the focus of the harm to include competitors to the market itself and to society. I believe that the US process will be successful in that redefinition, although the companies will fight it with everything that they have.”408

316. However, Daniel Gordon, Senior Director of Markets at the Competition and Markets Authority, said that the CMA takes a broader view of consumer welfare than is taken in some other jurisdictions: “It is definitely not just prices and quantity, which some jurisdictions do keep quite slavishly to. We spend a lot of time focusing on quality and innovation, which is so important in these markets.”409 Simeon Thornton, Director at the Competition and Markets Authority, suggested that the regulator’s role was to “facilitate informed choice by consumers and ensure there are legitimate choices that consumers can exercise”, including on privacy and freedom of expression.410

317. Daniel Gordon and Simeon Thornton told us that the CMA would like the Digital Markets Unit to be able to consider individuals’ interests as citizens as well as their economic interests as consumers.411

318. Increasing competition is crucial to promoting freedom of expression online. In a more competitive market, platforms would have to be more responsive to users’ concerns about freedom of expression and other rights.

319. The Government should introduce legislation to give statutory powers to the Digital Markets Unit during the current parliamentary session. This is if anything more important than the Online Safety Bill. Given the impact of competition on freedom of expression and privacy standards, the Digital Markets Unit should include human rights in its assessments of consumer welfare alongside economic harm.

Social media

320. Witnesses agreed that competition would help to improve users’ experience on social media platforms and those platforms’ respect for freedom of expression. For example, Jim Killock, Executive Director of the Open Rights Group, told us “If we had competitors that were moderating and prioritising

406 Q 32 (Mehwish Ansari) and Q 196 (Senator Marsha Blackburn)
407 Q 125
408 Q 169
409 Q 177
410 Q 185
411 Q 177
in a way that users felt was reasonable, we would have competition on user experience and we would be able to solve these problems at least partly through the market.\textsuperscript{412}

321. Jimmy Wales, founder of Wikipedia, said: “We need to be careful to make sure that consumers have a choice to leave services that are causing damage to society through bad moderation policies.”\textsuperscript{413} Although the company has been criticised for its moderation practices and vulnerability to interference by the Chinese state, TikTok told us that that taking a ‘safety by design’ approach brought a competitive advantage.\textsuperscript{414}

322. Network effects are a major barrier to entry in the social media market. As Mehwish Ansari explained: “the more people join a platform, the more value or—a less charged term—utility it has for its users.”\textsuperscript{415}

323. Simeon Thornton suggested:

“users should be allowed to choose the social media platform that works best for them and their needs—whether that is quality, privacy or freedom of speech—rather than obliging them to choose the platform that their friends and family currently happen to use.”\textsuperscript{416}

324. Interoperability—increasing the compatibility of platforms so that it is easier to move between them—is a possible solution to this problem. Jim Killock asked: “Why is it that I have to use Twitter to interact with other Twitter users? I do not have to have a Vodafone phone, a BT phone, an EE phone and an O2 phone to talk to people across those networks, but when it is social media we do.”\textsuperscript{417} He suggested that this lack of interoperability was a barrier to competition and diversity in the market.

325. Robert Colvile, Director of the Centre for Policy Studies, described interoperability as “fantastically important” but warned that privacy regulations which limit the sharing of users’ data could act as a barrier.\textsuperscript{418}

326. Interoperability has already been mandated in banking. Open Banking was introduced following a CMA market investigation which found low levels of innovation in banking services and low levels of customer engagement in shopping around and switching banks. Banks were required to enable their customers to share their financial data with third parties, such as budgeting apps. The CMA told us: “It has opened up competition to new entrants offering banking services and it has created a new ‘ecosystem’ of innovative new services.”\textsuperscript{419}

327. In the social media market, the CMA has found a strong case for the DMU mandating interoperability through a functionality to find one’s contacts
from one service on another. It explained: “tools that make it easier for consumers to access their existing networks across multiple platforms and to invite contacts to competing platforms could make new or smaller platforms more attractive to consumers.”

328. The CMA supported the DMU having the power to mandate cross-posting functionality: “This could enable users who wish to share content with a wide audience to spend more time on (and share more content from) a platform that best suits them overall, rather than a platform that has the largest number of users.”

329. Full content interoperability, allowing users to engage with content from a range of platforms in one place, would be more ambitious. The CMA did not favour this option, suggesting that although it would lead to greater competition it could also lead to greater standardisation and reduce innovation.

330. There is already some interoperability between platforms owned by the same company, to the exclusion of rivals. For example, Facebook allows users to exchange messages between Messenger and Instagram, with plans to extend this to WhatsApp. Professor Geradin told us: “Instagram was acquired. WhatsApp was acquired. You should stop these acquisitions because some of these companies, such as Instagram, could have been a very serious challenge to Facebook if they had been allowed to be.” Facebook acquired Instagram in 2012 and WhatsApp in 2014 for $1 billion and $22 billion respectively.

331. We heard that gatekeepers can exclude new social media platforms. Reset, an organisation which seeks to make the internet better support democracy, raised the example of Google, Apple and Amazon Web Services (AWS) removing Parler, a social media service, from their app stores and web hosting services, arguing that this shows that “market dominance enables a small number of companies to decide not only what content people see on the internet, but also to crush competitors overnight.”

332. Guardian News & Media suggested that the decision to block Parler was “purely political” and added: “Given that reporting on the use of Parler to incite the January 6th attack [on the US Congress] was the basis for removing services, it is not clear why AWS did not also terminate services provided to Facebook group companies.”

333. Social media services offer citizens unparalleled opportunities to share their opinions with others. However, this market is dominated by a small number of very powerful companies. Rather than allowing these platforms to monopolise the digital public square, there should be a range of interlinked services between which users can freely

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420 Ibid.
421 Ibid.
422 Ibid.
423 Salvador Rodriguez, ‘More than 60% of Instagram users have linked up to Facebook Messenger, exec says’, CNBC (1 May 2021): https://www.cnbc.com/2021/05/01/facebook-messenger-head-stan-chudnovsky-on-interoperability-progress.html [accessed 21 June 2021]
424 Q 130
426 Written evidence from Reset (FEO0035)
427 Written evidence from Guardian News & Media (FEO0093)
choose and move. The Digital Markets Unit should make structural interventions to increase competition, including mandating interoperability. Where necessary, it should work with international partners—including to block mergers and acquisitions which would undermine competition.

Search engines

334. Google’s dominance is such that it has a 90 per cent share of the £7.3 billion market for search advertising (paid-for listing in search results). CMA analysis shows that Google’s revenue per search in the UK has more than doubled since 2011 and Google’s prices are 30–40 per cent higher than Bing’s. The CMA concluded: “This is consistent with Google exploiting market power in its search auctions. It is also consistent with Google benefiting from data or scale advantages arising from its market power on the user side.”

335. Professor Geradin suggested:

“Google does not care that much about privacy while some others do. DuckDuckGo and other search engines are more privacy conscious. If you had more competition, and allowed these other players to be real players and have a place on the market, perhaps some of the unfortunate aspects of … Google’s business model could be challenged.”

336. In its market study, the CMA concluded: “general search is now subject to significant barriers to entry and expansion, which together limit the current and potential competitive threat faced by Google.”

337. Simeon Thornton explained:

“The more users you have of a search engine, the more click and query data you have access to and the more you can use that data to train and improve your search algorithms, attracting more users to your search engine. There is a virtuous cycle there or, from the perspective of rivals, a vicious cycle.”

338. The CMA recommended that the DMU should have the power to force Google to share these data on past searches with rivals, allowing rivals to train their algorithms to produce more relevant results.

339. Simeon Thornton argued: “the next few people with a great idea in a garage somewhere cannot really hope to compete with Google, unless you implement this sort of regime that allows Google’s benefits in data to be shared with others.”

428 Competition and Markets Authority, Online platforms and digital advertising: Market study final report (1 July 2020) p 10: https://assets.publishing.service.gov.uk/media/5efc57cd3a6f4023d242ed56/Final_report_1_July_2020_.pdf [accessed 21 June 2021]
429 Ibid., p 313, 235
430 Ibid., p 235
431 Q 125
432 Competition and Markets Authority, Online platforms and digital advertising: Market study final report (1 July 2020) p 112: https://assets.publishing.service.gov.uk/media/5fa557668f577884b4e6c8/Report_Digital_ALTEXT.pdf [accessed 21 June 2021]
433 Q 180
434 Supplementary written evidence from the Competition and Markets Authority (FEO0114)
435 Q 180
340. Google benefits from often being the default search engine on mobiles, such that it enjoys a 97 per cent share of the mobile search market. This is in part due to its control over Android and Chrome, an operating platform and web browser Google developed. Dr Lovdahl Gormsen explained that on Android devices “if you want to change the search engine on your phone, you would have to click at least 15 times to change to an alternative search engine or alternative browser.” However, Google has also been able to become the default search engine on rivals’ systems. It is estimated that Google pays Apple between $8 billion and $12 billion per year for this purpose.

341. Google’s payments to Apple are the subject of an antitrust lawsuit in the U.S., filed by the Department of Justice and 11 state Attorneys-General.

342. Simeon Thornton told us that Google spends over £1 billion a year on securing default positions in the UK market.

343. Dr Lovdahl Gormsen suggested that the DMU should mandate a ‘search engine preference menu’ so that “when you buy a new phone, you are faced with a choice of all the various search engines in the market, including Ask, Bing, DuckDuckGo and eco-friendly ones. This would empower consumers to make the choice.” She noted that a study testing such an intervention found that 24 per cent of UK users would choose a search engine other than Google.

344. The CMA believes there is a “good case” for such measures.

345. Search engines play a key role in facilitating freedom of expression, both through disseminating individuals’ and publishers’ content and providing access to information from which opinions can be formed. The lack of competition in this market is unacceptable.

346. The Digital Markets Unit should make structural interventions to increase competition in the market, where necessary working with international partners. This should include forcing Google to share click-and-query data with rivals and preventing the company from paying to be the default search engine on mobile phones.

**Draft Online Safety Bill**

347. Witnesses expressed concern that the burden of regulation imposed by the draft Online Safety Bill could further limit competition in these markets.

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436 Competition and Markets Authority, *Online platforms and digital advertising: Market study final report* (1 July 2020) p 112: [https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf](https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf) [accessed 21 June 2021]

437 Supplementary written evidence from Dr Liza Lovdahl Gormsen (FEO0102)

438 Ibid.


441 Q 180

442 Q 125

443 Supplementary written evidence from Dr Liza Lovdahl Gormsen (FEO0102)

444 Q 180 (Simeon Thornton)
348. The draft Bill would require all platforms to conduct risk assessments, minimise the presence of illegal content and take appropriate steps to protect children from harm. Additional duties—relating to content which is legal but may be harmful to adults, content of democratic importance and journalistic content—apply to the largest (category 1) platforms.

349. Jimmy Wales told us:

“Imposing regulations that are feasible to comply with only if you are already a big player can be a huge problem ... We do not want to get into a situation where no one can launch something new to compete with Facebook, Twitter and so forth simply because we have passed some regulations that are impossible for small start-ups to comply with.”

350. Ross LaJeunesse suggested: “the big platforms might see government regulation in this space as a competitive advantage because they have trillions of dollars to spend on it and deal with it and the smaller ones do not”. Robert Colvile described Facebook’s openness to stricter liability for platforms as “an entirely self-interested, cynical move in many ways.”

351. Benedict Evans warned that smaller platforms might be forced to outsource content moderation: “You can imagine going down that path and ending up in a situation where the first thing any new social network has to do is sign up with Amazon for storage and Facebook for content moderation.” Professor Andrew Murray, Deputy Head of the Department of Law at London School of Economics and Political Science, raised the same concern.

352. Lord Allan of Hallam, a former visiting fellow at the Oxford Internet Institute, has suggested that the biggest risk from content regulation is to “medium-sized entities who are big enough to attract attention and so have to take compliance seriously but who do not have the abundant resources of the internet giants.” He warned that such platforms could pull out of countries in which the risk of being penalised by a regulator was too high: “this in turn would mean fewer services for consumers and less competition for the large established players in non-core markets.”

353. Several witnesses discussed the impact of the European Union’s General Data Protection Regulation (GDPR). Senator Marsha Blackburn explained:

“Very few small businesses have the legal department and the resources to absorb such large compliance costs as they are seeing from GDPR. It caused the tech giants such as Facebook less pain. If anything, it appears to have solidified their dominance in the marketplace, while increasing barriers to entry for these new entrants.”

354. Jimmy Wales told us: “there are some 800 newspapers, small-town newspapers for the most part, that you cannot access from Europe.” He explained: “They
do not do much business in Europe and have very few readers there. They found it easier to say, ‘We just will not serve Europe.’"452

355. Like GDPR, the draft Online Safety Bill applies to all accessible websites regardless of where in the world they are based or how many UK users they have. All websites which facilitate web searching or user-to-user interaction would be required to carry out and keep up-to-date risk assessments, remove illegal content (regardless of its legality in the country in which the website is based), “have regard to the importance of” freedom of expression and privacy, follow prescribed standards relating to users’ complaints and (unless exempted by Ofcom) maintain written records of risk assessments and compliance.453

356. Professor Murray warned of a possible situation under the online safety regime in which “small-to-medium-sized enterprises just decide that the UK is not the place to do business and that the cost of compliance outdoes the benefits of doing business here, and we end up seeing some form of GDPR-style blocks, which say, ‘This is not available in your jurisdiction’.”454

357. Germany’s NetzDG Act—which requires platforms to remove illegal content—exempts platforms with fewer than 2 million registered users in the country.455

358. The online safety regime must not entrench the market power of the largest platforms by increasing barriers to entry for competitors. Ultimately, this would harm consumers. The Government should require Ofcom to give due consideration to—and report on the impact on—competition in its implementation of the regime. Ofcom should work closely with the Digital Markets Unit in this area.

359. Including all platforms which are accessible from the UK in scope of the online safety regime risks reducing user choice. It is likely that small platforms based abroad with very few UK users will block access to their services from the UK rather than take on the burden of compliance. The draft Online Safety Bill only distinguishes between the largest, category 1, platforms and a second category containing all others.

360. To avoid UK users losing access to these websites, the Government should introduce a third category for platforms which are based abroad and have very few UK users. This would include websites such as local newspapers and message boards for people with niche interests. We expect that Ofcom would set a threshold for the number of UK visitors per year to allow platforms to know whether they are in category 2 or 3. Although category 3 platforms would be held to the same safety standards as category 2 platforms, to reduce the regulatory burden on them category 3 platforms would have no duties proactively to prove compliance unless Ofcom notified the company—after completing its own risk assessment, or receiving complaints from users or a third-party—of further steps it should
take in relation to illegal content or content which may be harmful to children.

News organisations

361. Building on our previous report, *Breaking News? The Future of UK Journalism*, we considered how lack of competition affects the freedom of expression of news organisations. Pluralism in the media is vital for freedom of expression as publishers help citizens to receive information and express their views.

*Online advertising*

362. Approximately £14 billion was spent on digital advertising in the UK in 2019, of which around 80 per cent was spent on Google and Facebook.\(^\text{456}\) The CMA found: “Google and Facebook’s collective share of digital advertising revenues is significantly greater than the share of time spent by users on these platforms, suggesting that their ability to monetise through advertising is not simply a function of scale.”\(^\text{457}\) Google and Facebook “are now protected by such strong incumbency advantages—including network effects, economies of scale and unmatchable access to user data—that potential rivals can no longer compete on equal terms.”\(^\text{458}\)

363. News publishers compete to sell their advertising space in the open display market, which is worth around £1.8 billion a year in the UK.\(^\text{459}\) Publishers and advertisers rely on a series of intermediaries to manage the process of ‘real time bidding’. When a consumer clicks on a webpage, there is an auction—which takes place in milliseconds—for the advertising they will see. Publishers and advertisers cannot observe directly what all intermediaries are doing or the proportion they take as a fee.\(^\text{460}\)

364. The CMA found that intermediaries take 35p of every £1 advertisers spend and concluded:

> “Although intermediaries are undoubtedly performing valuable functions, including targeting advertising and evaluating bids from multiple demand sources in real time, it is striking that collectively they are able to take more than a third of the total amount paid by advertisers.”\(^\text{461}\)

365. As Figure 6 shows, Google is dominant at every stage of the intermediation process. We heard that this creates conflicts of interest and that Google has used its position to engage in anti-competitive behaviour. Tom Morrison-Bell, UK Government Affairs and Public Policy Manager at Google, was unable to name any other market in which one company would be allowed to play these multiple roles on both the demand and supply sides.\(^\text{462}\)

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\(^\text{456}\) Competition and Markets Authority, *Online platforms and digital advertising: Market study final report* (1 July 2020) p 9: [https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf](https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf) [accessed 21 June 2021]

\(^\text{457}\) *Ibid.,* p 212

\(^\text{458}\) *Ibid.,* p 5

\(^\text{459}\) *Ibid.,* p 63

\(^\text{460}\) *Ibid.,* pp 263–64

\(^\text{461}\) *Ibid.,* p 65

Figure 6: Intermediation in the online advertising market

Source: Competition and Markets Authority, Online platforms and digital advertising: Market study final report (1 July 2020) p 271: https://assets.publishing.service.gov.uk/media/5efc57ed3a64d4023d242ed56/Final_report_1_July_2020_.pdf [accessed 21 June 2021]

366. In our previous inquiry, we heard that delays to giving the Digital Markets Unit power to introduce appropriate remedies—including separation remedies, forcing Google to sell-off services or run them independently—could be “lethal” for some news publishers and they faced “a very bleak immediate future.”

367. These concerns were repeated in this inquiry. The News Media Association told us: “Any delay in setting up the DMU could prove fatal for some publishers who are facing existential challenges that have only been accelerated by the current pandemic.”

368. In June 2021, the French Competition Authority fined Google €220 million after concluding that its Ad Manager platform favoured AdX, its marketplace service. The European Commission has opened an antitrust investigation in the same area.

369. The open-display advertising market is opaque and unfair. Google’s dominance throughout the intermediation chain, on both the demand and supply side, would not be permitted in any other market. The broken market has made it more difficult for news publishers to survive, let alone thrive. Having a wide range of viable news publishers is essential for freedom of expression.

370. The Digital Markets Unit should make structural interventions to increase competition, including through separation remedies.

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463 Ibid., pp 61–62
464 Written evidence from the News Media Association (FE0058)
Mandatory bargaining

371. In *Breaking News? The Future of UK Journalism*, we found that there is a fundamental imbalance of power between platforms and publishers. Platforms derive significant indirect value from the presence of news on their services as it holds users’ attention, encouraging them to spend more time on the platform, which generates more data about their preferences and exposes them to more adverts. Due to their market dominance, Facebook and Google can dictate terms on which they use publishers’ content—including whether and how much they pay for it. Publishers rely on Facebook for 13 per cent of their traffic and Google for 25 per cent, so cannot withdraw their content.467

372. The Australian Competition and Consumer Commission (ACCC) was instructed by the federal government in April 2020 to develop a mandatory bargaining code for platforms and news publishers. After consultation, the ACCC favoured compulsory independent arbitration as a last resort when platforms and publishers cannot reach an agreement.

373. In January 2021, Google threatened to withdraw its search engine from Australia if the bill establishing the code passed.468 The company described the bill as “unworkable” and said that it would change “the fundamental operation of the open and free internet”.469 On 19 February, Facebook blocked Australian users from sharing or viewing news content on its platform in protest at the bill, before reversing the ban on 23 February in response to government amendments.470 The bill became law on 2 March.471

374. Since the introduction of the legislation for a code in Australia, Google and Facebook have reached deals with some UK publishers. Google told us “We are a really important part of that news ecosystem and want to be a positive player in it.”472 Matt Rogerson of the Guardian Media Group noted: “The Australian code has definitely changed the dynamic and the mood around payment for content.”473 However, these deals apply only to the new ‘Google News Showcase’ and ‘Facebook News Tab’ services, not Google search results or the main Facebook News Feed.474

375. Dr Lovdahl Gormsen said that a mandatory bargaining code was necessary because platforms can “totally dictate” how they use publishers’ content due to the imbalance of power between them.475 The CMA agreed that publishers “have very little choice but to accept the terms offered by these platforms, given their market power”.476

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469 Q 239 (Katie O’Donovan)
472 Q 238 (Katie O’Donovan)
473 Q 157
475 Q 131
376. To illustrate the imbalance of power, Lizzie Greene, Legal Adviser at DMG Media, raised the example of when the government of France sought to require platforms to negotiate with publishers on their use of publishers’ content:

“The outcome of that negotiation was that the publishers agreed, ‘You can have it for free’, because that is the nature of the bargaining power that the platforms have. It was only when the competition authority got involved that more meaningful deals began to be struck.”

377. In July 2021, the French competition regulator fined Google €500 million for failing to negotiate “in good faith” with news organisations over the use of their content.

378. Peter Wright, Editor Emeritus at DMG Media, revealed that a large regional publisher had to take the deals Facebook and Google offered because it was so short of money. He warned: “they are certainly not going to save it from the possibility of eventual collapse. In any case, [the deals] run across only about 15 per cent to 20 per cent of its bigger titles. Facebook and Google are not interested in doing deals that cover weekly newspapers.”

379. Matt Rogerson added that due to the code the platforms’ payments in Australia are significantly higher than the voluntary payments they make in the UK.

380. Peter Wright suggested that the platforms’ payments to UK publishers were an attempt to avoid a mandatory code. He argued:

“We need a code here. Google and Facebook have unlimited money. Without a code, where they see a possible regulatory threat, they will throw it around. If that means that the regulatory threat goes away again, they will take the money back and use it on something else.”

381. Daniel Gordon told us that the CMA sees the Australian code as “definitely a good place to start” for the Digital Markets Unit because it is statutory and focuses on determining whether processes are fair.

382. Matt Rogerson suggested: “the Australian code takes a big step forward, but, ultimately, it is a baton that will be passed to the next regulator that looks at it and then the next regulator. I think there will be a constant iteration on what the Australians have done to find a better outcome.”

383. One such possible improvement on the Australian code is to cover how platforms’ algorithms curate publishers’ content. The Australian code requires platforms only to give notice of changes.

477 Q 157
479 Q 157
480 Ibid.
481 Ibid.
482 Q 181
483 Q 157
384. We heard in our previous inquiry that Google’s design of its search algorithm was as problematic as changes being made without notice. News UK and DMG Media argued that their websites did not receive prominence in search results commensurate with their relevance and popularity.\(^485\)

385. DMG Media produced evidence that Mail Online has less than a fifth of the search visibility of The Guardian and BBC News, despite being the UK’s most visited non-broadcaster news website.\(^486\)

386. Figures 7 and 8 show Mail Online’s search visibility for two celebrity news stories. Its scores for searches on ‘Boris Johnson’, ‘Covid/coronavirus’ and ‘lockdown’ were even lower, ranging from 0.00 to 0.45 per cent of the share of visibility. These compare with scores of 10.23 to 21.83 for the BBC News UK website and 7.35 to 24.62 for The Guardian.\(^487\)

**Figure 7: Publishers’ share of visibility of articles about the Duke and Duchess of Sussex, 1 March to 11 March 2021**

<table>
<thead>
<tr>
<th>Publisher</th>
<th>Visibility Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>bbc.co.uk</td>
<td>16.62%</td>
</tr>
<tr>
<td>theguardian.com</td>
<td>15.73%</td>
</tr>
<tr>
<td>telegraph.co.uk</td>
<td>10.45%</td>
</tr>
<tr>
<td>hellomagazine.com</td>
<td>6.43%</td>
</tr>
<tr>
<td>sky.com</td>
<td>6.33%</td>
</tr>
<tr>
<td>independent.co.uk</td>
<td>4.50%</td>
</tr>
<tr>
<td>thesun.co.uk</td>
<td>4.11%</td>
</tr>
<tr>
<td>townandcountrymag.com</td>
<td>3.75%</td>
</tr>
<tr>
<td>bbc.com</td>
<td>2.83%</td>
</tr>
<tr>
<td>dailymail.co.uk</td>
<td>1.65%</td>
</tr>
<tr>
<td>various others</td>
<td>27.62%</td>
</tr>
</tbody>
</table>

Source: Supplementary written evidence from DMG Media (FEO0110)
Figure 8: Publishers’ share of visibility of articles about Piers Morgan, 1 March to 11 March 2021

Source: Supplementary written evidence from DMG Media (FEO0110)

387. The Guardian Media Group also said that platforms’ use of algorithms should be considered by competition regulators. However, it believed that there were good reasons for The Guardian’s high visibility. It stated: “we believe objective analysis shows that ranking in search engine results pages is overwhelmingly determined by specific, technical factors relating to websites—their speed, quality of links and other related factors”.

388. Google told us that its algorithm is designed to rank pages on relevance, prominence, authoritativeness, freshness, location and usability, but denied that the human judgements behind these amounted to editorial decisions. In a letter, we asked Google: “How do you ensure that there is diversity of thought among those designing the algorithm?” We did not receive a response to this point.

389. We reiterate our recommendation for a mandatory bargaining code to ensure fair negotiations between platforms and publishers. Google’s and Facebook’s voluntary initiatives to pay some publishers for some of the use of their content are welcome. However, such agreements reflect the fundamental imbalance of power between the two sides. As the Competition and Markets Authority has noted, publishers have little choice but to accept the terms they are offered. Only a mandatory bargaining code, with the possibility of independent arbitration, can ensure that publishers—particularly smaller and local publishers—get a fair deal. The code should also cover how platforms use and curate publishers’ content.

488 Written evidence from the Guardian Media Group (FOJ0114)
SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Below is a list of all of the Committee’s conclusions and recommendations (recommendations appear in italics).

**Regulating content**

1. Moderating social media platforms is a very difficult task. Huge volumes of content are posted every day. Algorithms cannot understand context, nuance or irony; these also pose challenges for human moderators. However, platforms’ moderation decisions are often unreasonably inconsistent and opaque, and sometimes seem to be influenced by commercial and political considerations. (Paragraph 78)

2. The largest platforms have monopolised the digital public square. The private companies which run them have unprecedented control over what citizens can say online and the power to censor views with which the companies disagree. We agree with the principle underlying clause 13 of the draft Online Safety Bill that category 1 platforms should have duties to be impartial in their moderation of political content. (Paragraph 79)

3. However, the definition of ‘content of democratic importance’ in the draft Bill is too narrow. It should be expanded to ensure that contributions to all political debates—not only those debates which are about, or initiated by, politicians and political parties, and about policy, rather than social change—would be covered. The protections should also be extended to cover the content of platforms’ terms and conditions, in addition to the “systems and processes” with which they apply them. (Paragraph 80)

4. We are concerned that platforms’ approaches to misinformation have stifled legitimate debate, including between experts. Platforms should not seek to be arbiters of truth. Posts should only be removed in exceptional circumstances. (Paragraph 81)

5. The White Paper preceding the draft Online Safety Bill proposed that a reduction in online harms could best be achieved through the introduction of a statutory ‘duty of care’. This would require social media companies to design and operate safer systems, developed in a proportionate and risk-based way, in partnership with the regulator. This focus on companies taking reasonable steps to prevent reasonably foreseeable harms that occur in the operation of their services examines systems would remove the need to regulate individual pierces of content. However, there are legitimate concerns about how a statutory duty of care would interact with freedom of expression on the internet. (Paragraph 95)

6. The duty of care approach should inform a flexible framework for digital regulation, guided by underlying principles, including freedom of expression, which is able to adapt to the rapidly developing digital world while setting clear expectations for platforms. We discuss how this can be achieved—including the necessary parliamentary scrutiny and co-operation between regulators—in our subsequent conclusions and recommendations. (Paragraph 96)

7. We support the Law Commission’s aim of reforming communications offences. Although we heard compelling concerns about the appropriateness for social media of criminalising sending a communication which the defendant knew or should have known was likely to harm a likely audience,
the Law Commission has now revised its proposal to require intent to harm—providing a clearer standard. However, we are concerned about the ability of social media platforms—in complying with their duties under the draft Online Safety Bill—to identify and remove content covered by the offence without also removing legal content. (Paragraph 111)

8. Police face many challenges, including from the scale of online content, anonymity, and the dark web. We are concerned that they do not have sufficient resources they need to enforce the law online. It is essential that the police can bring criminals to justice. The draft Online Safety Bill cannot be the only answer to the problem of illegal content. The Government should ensure that existing laws are properly enforced and explore mechanisms for platforms to fund this. (Paragraph 123)

9. Retrieving deleted evidence places particular strain on police resources. *The Government should require category 1 platforms to preserve deleted posts for a fixed period. Ofcom should also have the right to impose this requirement on category 2 platforms where appropriate.* (Paragraph 124)

10. We support the principle in the draft Online Safety Bill that platforms should be required to remove illegal content. *In implementing clause 9(3)(d) Ofcom should set strict timeframes within which platforms must remove content which is clearly illegal.* (Paragraph 132)

11. We support the Government’s proposal that Ofcom should judge platforms’ compliance on a systemic basis, rather than adjudicating all content removal decisions. *The Bill should make clear that a platform would not be compliant if its systems to remove illegal content either systematically fail to remove illegal content or systematically remove legal content. This would ensure that platforms do not have an incentive to remove legal content.* (Paragraph 133)

12. In our report *Growing up with the Internet*, we supported the then Government’s inclusion in the Digital Economy Act 2017 of a requirement on websites to verify that their users are over 18 years old if more than one-third of their content is pornographic. More than four years after the Act received Royal Assent, this provision has not been commenced and the Government now plans to repeal it. The Government’s inaction has severely impacted children. *The Government should ensure that all pornographic websites are in scope of the online safety regime and held to the highest standards.* (Paragraph 149)

13. A supposed inability to enforce age verification is no excuse, though we recognise that there were legitimate concerns about privacy and the effectiveness of the measures themselves. Other protections for children exist, such as on licensing of alcohol or restrictions on gambling, despite enforcement issues. Since the Digital Economy Act, age recognition technology has advanced. Websites are now able to use biometric age estimation technology, databases, mobile phone records and algorithmic profiling, alongside the ID based verification tools envisaged at the time of the Digital Economy Act. *Such technological advances suggest it has been a missed opportunity for the Government to make clear on the face of the draft Bill that websites hosting pornographic content will be blocked for children. Children deserve to enjoy the full benefits of being online and still be safe.* (Paragraph 150)

14. We do not support the Government’s proposed duties on platforms in clause 11 of the draft Online Safety Bill relating to content which is legal but may be harmful to adults. We are not convinced that they are workable or could
be implemented without unjustifiable and unprecedented interference in freedom of expression. If a type of content is seriously harmful, it should be defined and criminalised through primary legislation. It would be more effective—and more consistent with the value which has historically been attached to freedom of expression in the UK—to address content which is legal but some may find distressing through strong regulation of the design of platforms, digital citizenship education, and competition regulation. We discuss these in Chapters 3 and 4. (Paragraph 182)

15. If the Government does not accept our recommendation on an alternative approach to clause 11, it should improve the draft Bill in the following ways:

- The draft Bill provides two mechanisms by which content can be identified as harmful. The first is if a platform determines that it is of a type which the platform has, in its latest risk assessment, identified as posing a material risk of a significant adverse physical or psychological impact on an adult of ordinary sensibilities. The second is if it corresponds to a ‘priority category’ of content which the Secretary of State has, through regulations, deemed “harmful to adults”. The latter mechanism should be removed from the draft Bill. It is superfluous and sets an unreasonably low threshold for harm.

- The provisions of the draft Bill on content which is legal but may be harmful to adults should apply when the provider of the category 1 service has reasonable grounds to believe that content presents a significant risk to an adult’s physical or mental health, such that it would have a substantial adverse effect on usual day-to-day activities. This is in line with the definition of serious distress in the Serious Crime Act 2015 and would provide greater clarity.

- The reference in the draft Bill to indirect harm is particularly vague and could lead to the removal of legitimate content due to possible reactions to it by unreasonable people. It should be replaced with a reference to content which appears to be intended to encourage users to harm themselves or others.

- The draft Bill states that adults at risk of harm must be assumed to be “of ordinary sensibilities”. This brings greater objectivity. However, whereas case law refers to the ‘reasonable person of ordinary sensibilities’, the Government has removed the reference to reasonableness. We are concerned that this makes the standard too low to bring the necessary objectivity. The Online Safety Bill should refer to the reasonable person of ordinary sensibilities.

- The attempt to introduce objectivity is undermined by the requirement in the draft Bill that adults at risk of harm should be assumed to have any characteristics which might make them more susceptible to harm. The draft Bill does not define characteristics and the Government told us that it should be understood to mean any distinguishing traits or qualities. These are not clearly distinguishable from sensibilities as both can be the product of life experiences.

- Under clause 46(6) of the draft Bill, where a particular adult is thought to be at risk they and their sensibilities replace the adult of ordinary sensibilities. This subjectivity should be removed.

- No user appeals process can be 100 per cent effective. Even a compliant system will get many decisions wrong. In the most serious cases, where a user has been banned from a category 1 platform, had their posts consistently
removed or been forced off by abuse, they should have the right to appeal directly to an independent body, funded by but independent of the platforms, after exhausting the platform’s own processes. (Paragraph 183)

16. In Regulating in a Digital World, we recommended that a joint committee of both Houses of Parliament should be established to consider regulation of the digital environment. This committee would be responsible for scrutinising the adequacy of powers and resources in digital regulation. This would bring consistency and urgency to regulation. In addition, we found in this inquiry that there is a lack of scrutiny of delegated powers given to the Secretary of State and Ofcom. In relation to the latter, this raises serious concerns about democratic accountability. (Paragraph 184)

17. We reiterate our recommendation that a joint committee of Parliament should be established to scrutinise the work of digital regulators. This joint committee should also scrutinise the independence of Ofcom and statutory instruments relating to digital regulation. (Paragraph 185)

18. We support the Government’s approach to journalistic content in the draft Online Safety Bill. As news publishers’ websites are out of scope, it would not be appropriate for the sharing of their content on social media to be subject to the online safety regime. They are already legally liable for their content. We support the principle that there should be protections for citizen journalism. However, we are concerned by the vagueness of the draft Bill about what constitutes citizen journalism. The Government should clearly define citizen journalism in the draft Bill. (Paragraph 196)

19. Freedom of expression online is a threat to authoritarian regimes. Afraid of what their citizens might say if allowed to speak for themselves, these regimes are seeking to censor the internet. The online safety regime should require category 1 platforms to report annually on content they have been obliged to remove in other jurisdictions, whether by law or political authorities. This would allow UK users to know whether they are giving their custom to a platform which is complicit in censorship by authoritarian regimes. Users may wish to boycott platforms which value their profits more highly than human rights. The interventions we recommend in Chapter 4 to increase competition would make it easier for users to do so. (Paragraph 210)

Empowering users

20. The design of platforms shapes how users behave online. Too often, users are rewarded with ‘likes’ and other forms of engagement when they behave unkindly towards others. Although the worst forms of content repel users and advertisers, it can be in platforms’ interests to encourage heated and uncivilised exchanges to hold users’ attention. We welcome design changes which encourage users to behave in a more responsible way, such as Twitter prompting users to read articles before retweeting them. (Paragraph 240)

21. Platforms must be held responsible for the effects of their design choices. The Government should replace the duties on category 1 platforms in relation to ‘legal but harmful’ content in clause 11 of the draft Online Safety Bill with a new design duty. Platforms would be obliged to demonstrate that they have taken proportionate steps to ensure that their design choices, such as reward mechanisms, choice architecture, and content curation algorithms, mitigate the risk of encouraging and amplifying uncivil content. This should apply both to new and existing services. The duty should include a requirement for platforms to share information about their design
with accredited researchers and to put in place systems to share best practice with competitors. (Paragraph 241)

22. Giving users more control over the content they are shown is crucial. This is more consistent with freedom of expression and the wide range of vulnerabilities and preferences users have than focusing on removing legal content. As part of the design duty we propose, the Online Safety Bill should require category 1 platforms to give users a comprehensive toolkit of settings, overseen by Ofcom, allowing users to decide what types of content they see and from whom. Platforms should be required to make these tools easy to find and use. The safest settings should always be the default. The toolkit should include fair and non-discriminatory access to third-party content curation tools. (Paragraph 242)

23. Ofcom should allow category 2 platforms to opt in to the design duty on category 1 platforms, with a kitemark scheme to show users which meet this higher standard. (Paragraph 243)

24. Anonymity can allow individuals, including those in vulnerable positions, to express themselves more freely and to challenge orthodoxies. This is crucial. However, it can also embolden people to abuse others. Under the draft Online Safety Bill, as part of the user toolkit we propose, category 1 platforms should be required to allow users to opt out of seeing content from users who have not verified their identity. (Paragraph 255)

25. The right to privacy can enable users to express themselves freely. Privacy can also affect competition, which itself affects freedom of expression. (Paragraph 264)

26. Strong privacy standards should form part of the design duty we propose be added to the draft Online Safety Bill. (Paragraph 265)

27. It is essential that regulators, including the Information Commissioner’s Office, Ofcom, and the Competition and Markets Authority, co-operate to protect users’ rights. (Paragraph 266)

28. Digital citizenship should be a central part of the Government’s media literacy strategy, with proper funding. Digital citizenship education in schools should cover both digital literacy and conduct online, aimed at promoting civility and inclusion and how it can be practised online. This should feature across subjects such as Computing, PSHE and Citizenship Education. The latter is particularly crucial as it emphasises why good online behaviour is important for our society, our democracy and for the freedom of expression. (Paragraph 293)

29. It is not enough to focus efforts to improve digital citizenship on young people. The Government should commission Ofcom to research the motivations and consequences of online trolling and use this to inform a public information campaign highlighting the distress online abuse causes and encouraging users to be good bystanders. (Paragraph 294)

30. Digital citizenship education suffers from a lack of co-ordination. We recommend that the strengthened duties in the draft Online Safety Bill on promotion of media literacy should include a duty on Ofcom to assist in co-ordinating digital citizenship education between civil society organisations and industry. (Paragraph 295)

31. Effective digital citizenship education requires contributions from both the Government and platforms. Social media companies should increase the
provision and prominence of digital education campaigns on their platforms. (Paragraph 296)

Promoting choice

32. Increasing competition is crucial to promoting freedom of expression online. In a more competitive market, platforms would have to be more responsive to users’ concerns about freedom of expression and other rights. (Paragraph 318)

33. The Government should introduce legislation to give statutory powers to the Digital Markets Unit during the current parliamentary session. This is if anything more important than the Online Safety Bill. Given the impact of competition on freedom of expression and privacy standards, the Digital Markets Unit should include human rights in its assessments of consumer welfare alongside economic harm. (Paragraph 319)

34. Social media services offer citizens unparalleled opportunities to share their opinions with others. However, this market is dominated by a small number of very powerful companies. Rather than allowing these platforms to monopolise the digital public square, there should be a range of interlinked services between which users can freely choose and move. The Digital Markets Unit should make structural interventions to increase competition, including mandating interoperability. Where necessary, it should work with international partners—including to block mergers and acquisitions which would undermine competition. (Paragraph 333)

35. Search engines play a key role in facilitating freedom of expression, both through disseminating individuals’ and publishers’ content and providing access to information from which opinions can be formed. The lack of competition in this market is unacceptable. (Paragraph 345)

36. The Digital Markets Unit should make structural interventions to increase competition in the market, where necessary working with international partners. This should include forcing Google to share click-and-query data with rivals and preventing the company from paying to be the default search engine on mobile phones. (Paragraph 346)

37. The online safety regime must not entrench the market power of the largest platforms by increasing barriers to entry for competitors. Ultimately, this would harm consumers. The Government should require Ofcom to give due consideration to—and report on the impact on—competition in its implementation of the regime. Ofcom should work closely with the Digital Markets Unit in this area. (Paragraph 358)

38. Including all platforms which are accessible from the UK in scope of the online safety regime risks reducing user choice. It is likely that small platforms based abroad with very few UK users will block access to their services from the UK rather than take on the burden of compliance. The draft Online Safety Bill only distinguishes between the largest, category 1, platforms and a second category containing all others. (Paragraph 359)

39. To avoid UK users losing access to these websites, the Government should introduce a third category for platforms which are based abroad and have very few UK users. This would include websites such as local newspapers and message boards for people with niche interests. We expect that Ofcom would set a threshold for the number of UK visitors per year to allow platforms to know whether they are in category 2
or 3. Although category 3 platforms would be held to the same safety standards as category 2 platforms, to reduce the regulatory burden on them category 3 platforms would have no duties proactively to prove compliance unless Ofcom notified the company—after completing its own risk assessment, or receiving complaints from users or a third-party—of further steps it should take in relation to illegal content or content which may be harmful to children. (Paragraph 360)

40. The open-display advertising market is opaque and unfair. Google’s dominance throughout the intermediation chain, on both the demand and supply side, would not be permitted in any other market. The broken market has made it more difficult for news publishers to survive, let alone thrive. Having a wide range of viable news publishers is essential for freedom of expression. (Paragraph 369)

41. The Digital Markets Unit should make structural interventions to increase competition, including through separation remedies. (Paragraph 370)

42. We reiterate our recommendation for a mandatory bargaining code to ensure fair negotiations between platforms and publishers. Google’s and Facebook’s voluntary initiatives to pay some publishers for some of the use of their content are welcome. However, such agreements reflect the fundamental imbalance of power between the two sides. As the Competition and Markets Authority has noted, publishers have little choice but to accept the terms they are offered. Only a mandatory bargaining code, with the possibility of independent arbitration, can ensure that publishers—particularly smaller and local publishers—get a fair deal. The code should also cover how platforms use and curate publishers’ content. (Paragraph 389)
APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTERESTS

Members

Lord Allen of Kensington (to January 2021)
Baroness Bull
Baroness Buscombe
Viscount Colville of Culross
Baroness Featherstone (from January 2021)
Lord Gilbert of Panteg (Chair)
Baroness Grender
Lord Griffiths of Burry Port (from January 2021)
Lord Lipsey (from February 2021)
Lord McInnes of Kilwinning (to July 2021)
Baroness McIntosh of Hudnall (to January 2021)
Baroness Quin (to January 2021)
Baroness Rebuck
Lord Stevenson of Balmacara (from January 2021)
Lord Storey (to January 2021)
Lord Vaizey of Didcot
The Lord Bishop of Worcester

Declarations of interest

Lord Allen of Kensington
   **Chairman, Global Media & Entertainment Group**
   **Advisory Chairman, Moelis & Company (a leading M&A advisory bank whose clients include media companies)**
Baroness Buscombe
   **No relevant interests declared**
Baroness Bull
   **Director, No Bull Productions Limited (media and broadcasting; arts consultancy)**
   **Vice President and Vice Principal (London), King’s College London**
Viscount Colville of Culross
   **Series producer, World War II in Color for Smithsonian Channel**
Baroness Featherstone
   **No relevant interests declared**
Lord Gilbert of Panteg
   **No relevant interests declared**
Baroness Grender
   **No relevant interests declared**
Lord Griffiths of Burry Port
   **No relevant interests declared**
Lord Lipsey
   **No relevant interests declared**
Lord McInnes of Kilwinning
   **No relevant interests declared**
Baroness McIntosh of Hudnall
   **No relevant interests declared**
Baroness Quin
   **No relevant interests declared**
Baroness Rebuck  
*Non-executive Director, Guardian Media Group*  
*Director, Penguin Random House UK (book publishing)*

Lord Stevenson of Balmacara  
*No relevant interests declared*

Lord Storey  
*No relevant interests declared*

Lord Vaizey of Didcot  
*Member, Advisory Board, NewsGuard Technologies Inc (company which rates websites)*  
*Ambassador, Digitalis (online reputation company)*  
*Consultant, LionTree LLC (telecommunications, media and technology); member advises on potential business opportunities*  
*Member, FTI Consulting’s Technology Media and Telecommunications Advisory Board (business advisory)*  
*Adviser, Common Sense Media (not for profit education charity)*

The Lord Bishop of Worcester  
*No relevant interests declared*

A full list of Members’ interests can be found in the Register of Lords’ Interests:  
[https://members.parliament.uk/members/lords/interests/register-of-lords-interests](https://members.parliament.uk/members/lords/interests/register-of-lords-interests)

**Specialist adviser**

Dr Ella McPherson  
*Founder and Principal Investigator, The Whistle (academic start-up for digital human rights reporting)*
APPENDIX 2: LIST OF WITNESSES

Evidence is published online at https://committees.parliament.uk/work/745/freedom-of-expression-online/publications/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral evidence and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

* Ayishat Akanbi, cultural commentator QQ 1–13
* Dr Jeffrey Howard, Associate Professor of Political Theory, UCL QQ 14–26
* Benedict Evans, independent analyst QQ 27–37
* Mark Scott, Chief Technology Correspondent, POLITICO QQ 38–45
* Mehwish Ansari, Head of Digital, ARTICLE 19 QQ 46–55
* Ruth Smeeth, Chief Executive Officer, Index on Censorship QQ 56–64
** Richard Wingfield, Head of Legal, Global Partners Digital QQ 65–71
* Lord Williams of Oystermouth QQ 72–78
** Dr David Erdos, Senior Lecturer in Law and the Open Society, University of Cambridge QQ 79–87
** Dr Edina Harbinja, Senior Lecturer in Media and Privacy Law, Aston University QQ 88–96
* Dr Roxane Farmanfarmaian, Director, Protecting Freedom of Expression in Religious Context, University of Cambridge QQ 97–105
* Dr Sharath Srinivasan, Lecturer in Governance and Human Rights, King’s College, University of Cambridge
* Louise Perry, freelance writer and campaigner QQ 106–113
* Dr Fiona Vera-Gray, Assistant Professor, Department of Sociology, Durham University QQ 114–121
* Jimmy Wales, Founder, Wikipedia and WT Social QQ 122–129
* Seyi Akiwowo, Founder and Executive Director, Glitch QQ 130–137
* Kenny Ethan Jones, transgender activist QQ 138–145
* Dr Lucas Graves, Research Associate, Reuters Institute for the Study of Journalism QQ 146–153
* Will Moy, Chief Executive Officer, Full Fact
* Professor Carissa Véliz, Associate Professor, Faculty of Philosophy, Institute for Ethics in AI, Hertford College, University of Oxford

** Professor Sandra Wachter, Associate Professor, Oxford Internet Institute, University of Oxford

* Alan Rusbridger, Member, Facebook’s independent Oversight Board

* Kate Klonick, Assistant Professor of Law, St John’s University, New York

* Professor Damien Geradin, Founding Partner, Geradin Partners, and Professor of Competition Law and Economics, Tilburg University

** Dr Liza Lovdahl Gormsen, Senior Research Fellow in Competition Law and Director, Competition Law Forum, British Institute of International and Comparative Law

** Graham Linehan, Television Writer

* Helen Staniland, Software Developer

** Julia Reda, Researcher, Society for Civil Rights, and former MEP

** Jim Killock, Executive Director, Open Rights Group

* Renate Künast MP, Alliance 90/The Greens

** Peter Wright, Editor Emeritus and Lizzie Greene, Legal Adviser, DMG Media

** Matt Rogerson, Director of Public Policy, Guardian Media Group and Gill Phillips, Director of Editorial Legal Services, Guardian News & Media

* Professor Penney Lewis, Commissioner for Criminal Law and Dr Nicholas Hoggard, Lead Lawyer (Protection of Official Data and Online Communications), Law Commission

* Ross LaJeunesse, former Global Head of International Relations, Google

* David Kaye, Clinical Professor of Law, University of California, Irvine

** Daniel Gordon, Senior Director of Markets and Simeon Thornton, Director, Competition and Markets Authority

* Professor Lorna Woods, Professor of Internet Law, School of Law, University of Essex

* Professor Andrew Murray, Professor of Law, Department of Law, London School of Economics and Political Science
* David Tucker, Faculty Lead for Crime and Criminal Justice, College of Policing  
  QQ 189–193
* Senator Marsha Blackburn, US Senator for Tennessee, Republican  
  QQ 194–198
* Chi Onwurah MP, Shadow Minister for Digital, Science and Technology, Department for Digital, Culture, Media and Sport  
  QQ 199–206
* Robert Colvile, Director, Centre for Policy Studies
** Katy Minshull, Head of UK Public Policy, Twitter  
  QQ 207–213
** Richard Earley, UK Public Policy Manager, Facebook
* David Shelley, Chief Executive Officer, Hachette UK  
  QQ 214–220
* Clare Alexander, Chair, Aitken Alexander Associates
** Her Majesty’s Government: Caroline Dinenage MP, Minister of State for Digital and Culture, Department for Digital, Culture, Media and Sport; and Sarah Connolly, Director for Security and Online Harms, Department for Digital, Culture, Media and Sport  
  QQ 221–233
** Katie O’Donovan, UK Director of Government Affairs and Public Policy, Google  
  QQ 234–242
* Becky Foreman, UK Corporate Affairs Director, Microsoft
* Henry Turnbull, Head of Public Policy, UK and Nordics, Snap Inc  
  QQ 243–251
* Elizabeth Kanter, UK Director of Policy and Government Relations, TikTok

Alphabetical list of all witnesses
5Rights Foundation  
  FEO0042
* Ayishat Akanbi (QQ 1–13)
* Seyi Akiwowo (QQ 88–96)
* Clare Alexander (QQ 214–220)
Rachel Mary Allen  
  FEO0076
The All-Party Parliamentary Group for the Ahmadiyya Muslim Community  
  FEO0041
Amazon UK  
  FEO0118
Anonymous 1  
  FEO0065
Anonymous 2  
  FEO0069
Anonymous 3  
  FEO0073
Anonymous 4  
  FEO0081
Anonymous 5  
  FEO0108
Antisemitism Policy Trust  
  FEO0007
Apple

* ARTICLE 19 (QQ 27–37)

Ms S J Atherton
Chara Bakalis
Dr Kim Barker
Professor David Beer
Dr Garfield Benjamin

* Senator Marsha Blackburn (QQ 194–198)

BT Group
Matt C
Cairns
Dr Chico Q Camargo
Carnegie Trust UK
CEASE UK
Dr Marta E. Cecchinato (joint submission)
Mr Chamberlain
The Chartered Institute of Journalists
Clean Up The Internet
Prof. Raphael Cohen-Almagor
Rachel Coldicutt OBE

* College of Policing (QQ 189–193)

* Robert Colvile (QQ 199–206)

** Competition and Markets Authority (QQ 174–181)

David Cook (joint submission)
Nick Couldry (joint submission)
Professor Anna L Cox (joint submission)
Crown Prosecution Service
Demos
Ranbir Dhaliwal

** DMG Media (QQ 153–159)

N Doe
Mr R Dunster
Diana Durham
English PEN

** Dr David Erdos (QQ 56–64)
* Benedict Evans (QQ 14–26)
** Facebook (QQ 207–213)
* Dr Roxane Farmanfarmaian (QQ 65–71)
  Caroline Ffiske
  Associate Professor Heather Ford
* Full Fact (QQ 97–105)
* Professor Damien Geradin (QQ 124–131)
  Sara Ghariani
** Global Partners Digital (QQ 38–45)
** Google (QQ 234–242)
  Dr Sandy J J Gould (joint submission)
  Dr Lucas Graves (QQ 97–105)
* Guardian Media Group (QQ 153–159)
** Guardian News & Media (QQ 153–159)
** Dr Edina Harbinja (QQ 56–64)
** Her Majesty’s Government: Department for Digital, Culture, Media and Sport (QQ 221–233)
  Mrs Eileen Higham
  Dr Laura Higson-Bliss
* Dr Jeffrey Howard (QQ 1–13)
* Index on Censorship (QQ 38–45)
  International Observatory on Human Rights
  Internet Association
  Michael Johnson
  Dr Olga Jurasz
* Kenny Ethan Jones (QQ 88–96)
  Dr David Kaye (QQ 166–173)
  Keep Prisons Single Sex
* Kate Klonick (QQ 114–123)
  Renate Künast MP (QQ 147–152)
* Ross LaJeunesse (QQ 166–173)
* Law Commission (QQ 160–165)
  Andrew Lea
  Hannah Leeming
  LGB Alliance
** Graham Linehan (QQ 132–138)  
Mrs Claire Loneragan  

** Dr Liza Lovdahl Gormsen (QQ 124–131)  
Maxted  
Ulises A Mejias (Joint submission)  

* Microsoft (QQ 234–242)  
Carsten Müller MP  

* Professor Andrew Murray (QQ 182–188)  
National Union of Journalists  
Dr Joseph Newbold (Joint submission)  
The News Media Association  

* Chi Onwurah MP (QQ 199–206)  

** Open Rights Group (QQ 139–146)  
Rachel Palmer  

* Louise Perry (QQ 72–78)  
Dr Gianfranco Polizzi  

** Julia Reda (QQ 139–146)  
RELX  
Reset  
Dr Mike Ribble  
Professor Jacob Rowbottom  
Dr Anna Rudnicka (Joint submission)  

* Alan Rusbridger (QQ 114–123)  
Safe Schools Alliance UK  

* Mark Scott (QQ 14–26)  
Sex Matters  
Robert Sharp  

* David Shelley (QQ 214–220)  
Shout Out UK  
Simkins LLP  
Felix M. Simon  

* Snap Inc (QQ 243–251)  

* Dr Sharath Srinivasan (QQ 65–71)  
Helen Staniland (QQ 132–138)  
Terence David Stock  
Stonewall  


Associate Professor Damian Tambini  

Michael Taylor  
technUK  
Tech Against Terrorism  
Ian Tighe  

* TikTok (QQ 243–251)  
** Twitter (QQ 207–213)  

* Professor Carissa Véliz (QQ 106–113)  
* Dr Fiona Vera-Gray (QQ 72–78)  
** Professor Sandra Wachter (QQ 106–113)  
Simon Wadsworth  

* Jimmy Wales (QQ 79–87)  
* Lord Williams of Oystermouth (QQ 46–55) 
WITNESS  

* Professor Lorna Woods (QQ 182–188)  
Ms J Wright  

WITNESS
APPENDIX 3: CALL FOR EVIDENCE

The House of Lords Communications and Digital Committee, chaired by Lord Gilbert of Panteg, is to hold an inquiry into freedom of expression online. The committee invites written contributions by Friday 15 January 2021.

The committee expects to hear from invited contributors in public sessions from December 2020 to March 2021 inclusive before publishing a report. The Government responds in writing to select committee reports.

Aim of the inquiry

The Communications and Digital Committee wishes to investigate how the right to freedom of expression should be protected online and how it should be balanced with other rights.

Background

Debates and exchanges of information and content increasingly take place online. The internet has enabled ways of searching, publishing and sharing information with others that were not previously possible.

Freedom of expression is a fundamental right protected by Article 10 of the European Convention on Human Rights. It is also protected under common law and in the International Covenant on Civil and Political Rights. Historically, this right has been understood in terms of what is spoken by individuals or what is written or said in the media. Content posted online arguably occupies an ambiguous middle ground between these two. The right to freedom of expression includes people’s ability to freely search for, receive and communicate information, whether this is face-to-face or mediated across time and space. It comes with responsibilities related to avoiding harm to individuals and groups.

The founders of Facebook and Twitter have both described their platforms as a digital equivalent of the public square. As the U.S. Supreme Court has noted, such websites “can provide perhaps the most powerful mechanisms available to a private citizen to make his or her voice heard.” Yet these ‘public squares’ are controlled by private companies, which are free to ban or censor whomever or whatever they wish and whose platforms shape both the nature and visibility of communications transmitted across them.

Huge volumes of user-generated content are uploaded to platforms each day, making artificial intelligence increasingly important in moderation decisions. This raises questions about algorithms’ effectiveness and possible biases, including the diversity of their designers and whether they should be subject to external audits. For example, two studies in the U.S. found evidence of widespread racial bias, with algorithms more likely to identify posts by African-Americans as


492 David Kaye, Speech Police: The Global Struggle to Govern the Internet (June 2019) p 64: [accessed 16 July 2021]
hateful. Google has been found to rank racist and sexist content highly in search results, which may have the effect of excluding and silencing individuals accessing online spaces.

In recent years, there have been many high-profile controversies about action taken by platforms. These include Twitter banning Graham Linehan, creator of *Father Ted* and *The IT Crowd*; Twitter preventing users from tweeting a story by the *New York Post*; Facebook banning the famous ‘napalm girl’ photograph from the Vietnam War before reversing its decision; YouTube taking down videos which “go against World Health Organisation recommendations” on COVID-19; and Instagram limiting the visibility of posts by black and plus-size women.

Websites have also been criticised for not doing enough to remove content which breaks the law or community standards. More than 1,200 companies and charities, including Adidas, Unilever and Ford, suspended their advertising on Facebook in July 2020 to pressure the company to “stop valuing profits over hate, bigotry, racism, antisemitism, and disinformation.” Facebook has set up a 40-member oversight board. The board will have the final say in its review of ‘highly emblematic’ content moderation decisions on Facebook’s platforms. Members include Alan Rusbridger, former Editor of *The Guardian*, Helle Thorning-Schmidt, former Prime Minister of Denmark, and Endy Bayuni, Senior Editor at *The Jakarta Post*.

The Government aims, through its upcoming Online Harms Bill, to make the UK the safest place in the world to go online. How this legislation should balance responding to harms with protecting freedom of expression is contentious. Other developments include the Government’s plans to establish a Digital Markets Unit to strengthen digital competition regulation, the Law Commission’s consultation on reform of online communications offences, and the growing global debate

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about whether platforms should be liable for the content they host in the same way as publishers such as over Section 230 of the Communications Decency Act of 1996 in the United States.\(^5\)

**Questions**

The committee seeks responses to the following questions to form the written evidence for its report. Contributors need not address every question and experts are encouraged to focus on their specialism. Other issues may be discussed provided that their relevance is explained. Submissions which have been previously published will not be accepted as evidence. However, published material may be referenced where relevant.

The committee encourages people from all backgrounds to contribute and believes that it is particularly important to hear from groups which are often under-represented. The committee’s work is most effective when it is informed by as diverse a range of perspectives and experiences as possible.

(1) Is freedom of expression under threat online? If so, how does this impact individuals differently, and why? Are there differences between exercising the freedom of expression online versus offline?

(2) How should good digital citizenship be promoted? How can education help?

(3) Is online user-generated content covered adequately by existing law and, if so, is the law adequately enforced? Should ‘lawful but harmful’ online content also be regulated?

(4) Should online platforms be under a legal duty to protect freedom of expression?

(5) What model of legal liability for content is most appropriate for online platforms?

(6) To what extent should users be allowed anonymity online?

(7) How can technology be used to help protect the freedom of expression?

(8) How do the design and norms of platforms influence the freedom of expression? How can platforms create environments that reduce the propensity for online harms?

(9) How could the transparency of algorithms used to censor or promote content, and the training and accountability of their creators, be improved? Should regulators play a role?

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(10) How can content moderation systems be improved? Are users of online platforms sufficiently able to appeal moderation decisions with which they disagree? What role should regulators play?

(11) To what extent would strengthening competition regulation of dominant online platforms help to make them more responsive to their users’ views about content and its moderation?

(12) Are there examples of successful public policy on freedom of expression online in other countries from which the UK could learn? What scope is there for further international collaboration?
APPENDIX 4: 10 PRINCIPLES FOR REGULATION

In *Regulating in a Digital World* the Committee recommended 10 principles to guide the development of regulation online:

- Parity: the same level of protection must be provided online as offline
- Accountability: processes must be in place to ensure individuals and organisations are held to account for their actions and policies
- Transparency: powerful businesses and organisations operating in the digital world must be open to scrutiny
- Openness: the internet must remain open to innovation and competition
- Privacy: to protect the privacy of individuals
- Ethical design: services must act in the interests of users and society
- Recognition of childhood: to protect the most vulnerable users of the internet
- Respect for human rights and equality: to safeguard the freedoms of expression and information online
- Education and awareness-raising: to enable people to navigate the digital world safely
- Democratic accountability, proportionality and evidence-based approach
APPENDIX 5: DRAFT ONLINE SAFETY BILL CORRESPONDENCE WITH MINISTERS

Letter to the Chair from Rt Hon Oliver Dowden CBE MP, Secretary of State for Digital, Culture, Media and Sport to the Chair, 12 May 2021

I am writing to you as chair of the Communications and Digital Committee.

Today, DCMS and the Home Office are publishing the draft Online Safety Bill for pre-legislative scrutiny. In 2019 we committed in our manifesto to make the UK the safest place in the world to be online, to protect users from online abuse and to defend freedom of expression. This groundbreaking legislation delivers on that commitment.

The need for this legislation is clear. In recent weeks we have seen the sporting community hold a mass boycott of social media to demonstrate the cost of abhorrent online racist abuse, while at the same time we have heard legitimate concerns that social media platforms have arbitrarily removed content or blocked users online. It is crucial that we bring consistency, transparency and fairness into the online sphere.

Overview

In December 2020 we published the full government response to the Online Harms White Paper consultation, which set out the online harms regulatory framework in detail. The aims of this legislation are to ensure platforms keep their promises by:

- Protecting children
- Tackling criminal activity
- Upholding freedom of expression

Our new laws will close the gap between what companies say they do, and what they will actually do. The draft legislation is proportionate and risk-based, with exemptions for low risk businesses, such as online retailers who simply have a comment function.

The strongest protections in the Bill are for children. All companies in scope of this legislation will need to consider the risks that their sites may pose to the youngest and most vulnerable members of society, and take steps to protect children from inappropriate content and harmful activity online. Our legislation also makes clear that all in-scope companies must tackle criminal content and activity on their platforms, and remove and limit the spread of illegal and harmful content such as terrorist material and suicide content.

This legislation tackles harmful content, whilst protecting our core democratic rights—in particular the right to free expression. For the first time, the major platforms will be held to account for the effective enforcement of their terms and conditions. This legislation will not prevent adults from accessing or posting legal content. Companies will not be able to arbitrarily remove controversial viewpoints, and users will be able to seek redress if they feel content has been removed unfairly.

The draft legislation establishes the statutory duties of care that will require companies to take reasonable steps to improve safety online, whilst also supporting innovation and a thriving digital economy. It gives flexible and future-proofed definitions of the services and harms that will be in scope. It provides for ‘duties
of care’ on platforms which will apply to both users’ safety, and their users’ rights online.

The draft legislation also provides for the functions and powers of OFCOM to oversee and enforce the regulatory framework. OFCOM will have a suite of investigatory and enforcement powers available to ensure their effective oversight of the regime, and to ensure the regime can remain flexible to future challenges.

We have engaged extensively on our proposals, and following feedback after the publication of the full government response in December 2020, have made some changes to the legislation.

**User generated fraud**

In particular, there has been real concern about the exclusion of online fraud from the legislation. This government understands the devastating effect that online fraud can have on its victims, so today we are announcing that the Online Safety Bill brings user-generated fraud into the scope of the regulatory framework.

This change will aim to reduce some specific types of damaging fraudulent activity, including romance scams. In tandem, the Home Office will be working with other departments, law enforcement and the private sector to develop the Fraud Action Plan, including the potential for further legislation if necessary. DCMS is also leading the Online Advertising Programme, which will look at, among other things, changes to the regulation of advertising to reduce the prevalence of online fraud. We will be consulting on this issue later this year.

**Journalistic & democratic content**

The draft Bill also sets out further detail on the new protections included for journalistic content, as well as content of democratic importance. These protections will defend media freedom and ensure that there is space for robust debate online.

**Next steps**

I am pleased to confirm that the draft legislation will be subject to pre-legislative scrutiny in this session. I would like to thank all colleagues across both Houses for their continued engagement and valuable contributions that they have made to the policy debate.

The threat posed by harmful and illegal content and activity is a global one and the government remains committed to building international consensus around shared approaches to improve internet safety. Under the UK’s presidency of the G7, the world’s leading democracies committed to a set of Internet Safety Principles in line with the main themes in the UK Government’s Online Harms White Paper. This is the first time that an approach to internet safety has been agreed in the G7. During the remainder of the UK’s presidency of the G7, I will take forward agreed action to share information and best practice on safety technology with G7 partners and invited guests to improve international internet safety. We will continue to engage with international partners to learn from their experiences and build consensus around shared approaches to tackling online harms that uphold our democratic values and promote a free, open and secure internet. I also look forward to continued engagement with you and your committee as we shape this legislation over the coming months.
Response from the Chair to Rt Hon Oliver Dowden CBE MP, Secretary of State for Digital, Culture, Media and Sport, 25 May 2021

Thank you for your letter of 12 May. I am writing on behalf of the Communications and Digital Select Committee. We welcome the publication of the draft Online Safety Bill and share the Government’s aim of making the internet safer for UK citizens.

Our recent reports on Growing up with the Internet501 and Regulating in a Digital World502 considered a range of issues relating to internet regulation. We have recently finished taking evidence in our inquiry, on freedom of expression online. We are grateful to Ministers and officials in your department for their engagement on this. Our report will make detailed recommendations relating to the draft Bill, as well as on other areas, including competition policy and digital citizenship.

The Committee discussed our initial conclusions last week, and although we still have some work to do to flesh out our thinking, I was asked to flag up to you that the evidence we have received on four issues which are in the draft Bill would seem to us to point to different legislative solutions than the ones currently selected by the Government. It would, I think, be helpful if you could provide more information on the following specific points to inform our report. A letter would be sufficient, but if it were possible for us to discuss these issues with the Bill Team, that might also be helpful in understanding better the policy decisions you have reached.

Protection of children

We maintain the strong conviction expressed in our report on Growing up with the Internet that keeping children safe online is an essential and urgent task. We are therefore pleased that the draft Bill contains protections for children against content which may be harmful to them.

However, we are concerned that pornographic websites which do not offer user-to-user services are not in scope of the draft Bill. In this respect, the draft Bill offers a lower standard of protection for children than the unimplemented provisions in the Digital Economy Act 2017 which it repeals. Ensuring that these websites take appropriate steps to prevent children from accessing them—and ensuring that they do not host illegal content—is crucial.

Definition of harm

We agree with the principle that Ofcom should have a role in protecting adults from content which, though legal, would harm them.

Clause 46 of the draft Bill states that its provisions on ‘legal but harmful’ content on category 1 platforms apply where “the provider of the service has reasonable grounds to believe that the nature of the content is such that there is a material risk of the content having, or indirectly having, a significant adverse physical or psychological impact on an adult of ordinary sensibilities.”

It is unclear what the draft Bill means by “ordinary sensibilities”. It is even less clear when read in conjunction with subsection (4), which specifies that “in the case of content which may reasonably be assumed to particularly affect people with

501 Communications Committee, Growing up with the Internet (2nd Report, Session 2016–17, HL Paper 130)
502 Communications and Digital Committee, Regulating in a digital world (2nd Report, Session 2017–19, HL Paper 299)
a certain characteristic (or combination of characteristics), or to particularly affect a certain group of people, the provider is to assume that [the adult] possesses that characteristic (or combination of characteristics), or is a member of that group (as the case may be)

For example, would being a survivor of sexual abuse count as a relevant characteristic? If so, would such a survivor being more sensitive to particular types of content due to their experiences mean that they could not be considered “of ordinary sensibilities”? Please could you also tell us how the Government envisions these provisions applying to vulnerable adults, as defined in existing law?

These are complex issues, which we know you and your department will have considered at length. It would be of great help to us to understand better the thinking behind the definitions in the Bill. In particular, please could you clarify whether the draft Bill’s definition of psychological impact has any clinical basis? If not, who would be qualified to make judgements about such impacts?

The definition of ‘indirect’ impact in subsection (7) appears vague and overly broad. We are concerned that this will lead to content which is legitimate and well-intentioned being censored due to speculation about the influence it might have on an unreasonable person’s actions towards a third party. No platform could reasonably be expected to enforce this provision without significant interference in their users’ freedom of expression.

In addition to the definition in clause 46, the draft Bill contains a shorter definition of harm as “physical or psychological harm” in section 137. This is the standard for the designation of priority content. We would find it helpful to understand why the Government decided to use these two different standards.

**Content of democratic importance**

Clause 13 of the draft Bill introduces previously unannounced protections for ‘content of democratic importance’. In principle, we welcome the proposal that powerful social media companies should not be able to suppress opinions they disagree with. However, we believe that the clause as currently drafted has two flaws.

The first is definitional. This category is defined as content which “is or appears to be specifically intended to contribute to democratic political debate in the United Kingdom or a part or area of the United Kingdom.” The explanatory notes to the draft Bill add: “Examples of such content would be content promoting or opposing government policy and content promoting or opposing a political party.”

The narrow focus on “democratic political debate”—and the explanation that this refers to government policies and political parties—privileges debates initiated by elected representatives and political parties over those initiated by members of the public. Citizens campaigning on issues which are not—as described in the Government’s press release—“live” do not appear to be protected. Nor do those campaigning for social rather than policy change.

Furthermore, we question whether the proposed duty would be effective as it only focuses on “systems and processes”. The provision requires platforms to apply their terms and conditions consistently and in a manner which does not discriminate against particular political opinions. For example, a platform would not be allowed to state in its terms and conditions that hateful content was not allowed but then only remove hateful content from one side of the political spectrum and not the
other. However, the draft Bill does not appear to prevent platforms from having terms and conditions which prohibit particular views providing they then apply those terms and conditions consistently. We worry that social media companies—perhaps under pressure from their staff or activist advertisers—would be free to write terms and conditions which ban viewpoints they dislike on controversial issues.

**Journalistic content**

We welcome the principle in clause 14 of the draft Bill that journalistic content should receive special protection, although we remain to be convinced that the draft Bill would not lead to access to such content being restricted.

Nor are we convinced that the Government’s proposals to apply these protections to ‘citizen journalism’ are workable in their current form. We question whether there is any prospect of Ofcom or platforms being able consistently to distinguish citizen journalism from other forms of expression by individuals without citizen journalism being clearly defined. This raises the prospect of expedited appeals processes intended for news organisations being overwhelmed by members of the public and therefore not offering the intended protection.

We welcome the Government’s decision to subject the draft Bill to pre-legislative scrutiny and hope to contribute to that committee’s work. In our forthcoming report we will set out in detail how we believe the Government can protect freedom of expression while also protecting users from harm. The UK has an opportunity to lead the world in human-rights based internet regulation. We must get this right. We look forward to a continuing dialogue on these important issues.

Response from Caroline Dinenage MP, Minister for Digital and Culture to the Chair, 16 June 2021

Thank you for your letter of 25 May to the Secretary of State for Digital, Culture, Media and Sport. I am responding as the Minister responsible for the Online Safety Bill.

I was pleased to speak with your Committee recently, for your inquiry into freedom of expression online, and look forward to seeing your report when it is published. Thank you for setting out where you think further detail would be of benefit to the inquiry.

You have noted four areas in particular and I have responded to each of your points in turn below. My officials would be happy to attend a meeting, and will be in touch separately in the coming days.

**Protection of children**

Your letter raises concerns regarding the level of protection for children in comparison with the Digital Economy Act 2017. The online safety regime will ensure a comprehensive approach to protecting children. It will deliver the objectives of Part 3 of the Digital Economy Act to protect children from accessing online pornography, and go further to protect children from a broader range of harmful content on all services in scope.

Where pornography sites host user generated content or facilitate online user interaction (including video and image sharing, commenting and live streaming) and meet the test of being ‘likely to be accessed by children’, they will be subject to the safety duties set out in clause 10. Similar duties will apply in relation to search
services under clause 22. The online safety regime will capture both the most visited pornography sites and pornography on social media, therefore covering the vast majority of sites where children are most likely to be exposed to pornography.

I am confident that the legislation will provide much greater protection to children than the Digital Economy Act would have done, by bringing into scope social media companies where a considerable quantity of pornographic material is available to children.

Research by the British Board of Film Classification, published in 2020, found that only 7% of children accessed pornography through dedicated pornography sites alone. Most children intentionally accessing pornography were doing so across a number of sources, including social media, as well as video sharing platforms, forums, and via image or video search engines. The majority of these sources would not fall within scope of the Digital Economy Act, but will fall within the scope of online safety legislation. Our proposals will therefore achieve a more comprehensive approach and allow us to address children’s access to pornography in the round.

I have heard the concerns about commercial pornography sites which do not host user generated content or facilitate online user interaction and will keep an open mind on further measures to protect children. Pre-legislative scrutiny will be a good opportunity to hear a range of views on this topic, and I hope that this will begin shortly.

Definition of harm

With regards to your comments on clause 46, I have addressed each point in turn below.

Firstly, the use of the term “ordinary sensibilities” is intended to make clear that the test of whether legal content is harmful does not include content that only people with an unusual sensitivity (such as a phobia) would be harmed by. This concept is already well-established in law, for example in case law concerning the tort of misuse of private information. The inclusion of such a constraint is considered necessary to ensure that, when making the assessment of whether there are reasonable grounds to believe that the nature of the content or the fact of its dissemination gives rise to a material risk of a significant adverse physical or psychological impact on an adult or child, service providers are not required to consider the possible effect of that content on people whose responses may be unpredictable.

The requirement to assume that the person in question has the relevant characteristic or is a member of a group particularly affected by content is to ensure that content does not fall outside the scope of the relevant provisions simply because a typical member of the public in the UK does not have that characteristic or is not a member of the group in question. These characteristics are not restricted to those protected under the Equality Act 2010, ensuring that harmful content concerning other qualities (such as personal appearance) is also covered. Employing a narrower term than “characteristic” (which should be understood as simply having its ordinary English meaning of ‘a distinguishing trait or quality”) would have the unwanted effect of excluding some content which gives rise to a material risk of a significant adverse physical or psychological impact on an adult or child from the protections afforded by the Bill.
You have asked whether being a survivor of sexual abuse would count as a relevant characteristic. As you have correctly recognised, these are complex issues and we would expect Ofcom’s codes of practice and any supplementary guidance to assist service providers to fulfil their obligations in relation to such points. However, in cases relating to experiences that can have a profound effect on victims, I think it is right to require service providers to take that effect into account when assessing the risk of harm posed by online content to individuals. The proposition that a survivor of such an experience cannot as a result be considered as having “ordinary sensibilities” would not be consistent with the approach taken in the Bill. Where content could potentially give rise to a material risk of a significant adverse physical or psychological impact on survivors of an experience (such as sexual abuse), service providers should assess whether the test for harmful content is met by reference to the likely impact of that content on a person of ordinary sensibilities who has had that experience.

Regarding protections for vulnerable adults, companies will be required to consider various relevant user characteristics, including age and learning disabilities.

Provisions relating to user reporting and redress have also been designed to enable a carer (or other adults providing assistance to a vulnerable adult) to make complaints on behalf of an adult who may need this. Ofcom’s existing duty to consider the vulnerability of users whose circumstances appear to put them in need of special protection (under section 3(4)(f) of the Communications Act 2003) will also apply to its exercise of its online safety functions.

Your letter also asks for clarifications on the draft Bill’s definition of psychological impact. As noted above, the service provider will have to have reasonable grounds to believe that content gives rise to a material risk of a significant adverse psychological impact on a person of ordinary sensibilities. There is no requirement that that psychological impact should have a clinical basis. It could include causing feelings such as serious anxiety and fear; longer-term conditions such as depression and stress; and medically recognised mental illnesses, both short-term and permanent. Your letter also references the definition of indirect impact in clause 46(7). When read with subsection (3), this provides that a service provider will have reasonable grounds to believe that there is a material risk of the content indirectly having a significant adverse impact on a person of ordinary sensitivities where that content could cause an individual to do or say harmful things to a targeted person.

The service provider would not have the necessary reasonable grounds to believe that there was such a risk if the content could only have such an effect by triggering an unexpected response in an unreasonable person (for example innocuous content leading to risky or violent behaviour).

Finally, your letter asks about the definition of harm in clause 137. To confirm, the shorter definition of “harm” as “physical or psychological harm” in clause 137 is there to make clear what “harm” refers to wherever it is used throughout the Bill. The provisions in clauses 45 and 46 regarding what will constitute “a material risk of a significant adverse physical or psychological impact” do not provide a different definition of harm; instead they establish the test to be applied by service providers when determining what is to be treated as legal but harmful content for the purposes of this legislation.

**Content of democratic importance**

With regards to your concerns about clause 13, I would like to reassure you that the democratic content provisions apply to the content and not the actor. Content
of democratic importance is any content which seeks to contribute to democratic political debate in the UK at a national and local level. As such it does not seek to privilege communications from certain actors over others.

The definition is intended to cover a wide range of policy and political issues in the UK. The protections set out in the draft Bill ensure that the largest and riskiest platforms set a higher bar for removing content of democratic importance. These protections will apply equally to different political viewpoints and are specifically provided for in subsection (3) of this clause. This subsection imposes a duty to ensure that the systems and processes designed to ensure that the importance of the free expression of content of democratic importance is taken into account apply in the same way to a diversity of political opinion. A platform therefore should not decide to have a higher level of protection for left wing over right wing views, or vice versa. The importance of protecting democratic debate was similarly reflected in the Data Protection Act 2018 in its provisions on democratic engagement being in the public interest.

Journalistic content

Finally, your letter sets out your concerns for protections for journalistic content. To reassure you, news publishers’ content is not in scope of this legislation, so Ofcom cannot penalise a platform for keeping news publishers’ content on their site, even when the platform might normally be required to remove similar content under its new duties for mitigating harm. This removes any incentive for in-scope companies to remove news publishers’ content and, alongside the new safeguards for journalistic content, is a significant improvement on the status quo, where social media companies can remove journalistic content with no accountability and little recourse for journalists to appeal.

There may be instances when journalistic content shared on a Category 1 service poses such a great risk to that platform’s users, or is in such clear breach of the service provider’s terms and conditions, that the provider will wish to remove it. In such instances the provider will need to justify the removals against a clear and properly enforced policy and make sure those who have posted journalistic content have a swift avenue of appeal. If platforms do not do this, Ofcom will be able to take appropriate enforcement action against them.

Journalistic content, for the purposes of this legislation, includes the full range of content created for the purpose of journalism and which is UK-linked. As you note, our intention is that any content that an individual shares for journalistic purposes should be given the same protections as that shared by a full-time journalist. To implement this and ensure it is enforceable, Ofcom will recommend steps for complying with this duty in codes of practice and platforms themselves will need to clearly set out how they intend to identify journalistic content, including citizen journalism, so that only those who have posted or created journalistic content have access to the expedited appeals process and other protections.

I hope the above responses provide the further detail needed for your inquiry, and I look forward to discussing these issues with you and members of your Committee during pre-legislative scrutiny on this Bill in due course.

I’m also copying this letter to my colleague Baroness Barran, the Minister for Civil Society.
APPENDIX 6: COMMUNICATIONS AND DIGITAL COMMITTEE ENGAGEMENT EVENTS

Summary of virtual roundtable discussion, 11 March 2021

On 11 March the Committee held a roundtable discussion with a mix of people from different regions of the UK, predominately people over the age of 40 without a specialist interest in freedom of expression issues. Eight members of the public attended.

The aim of the roundtable was to hear about the public’s use of social media, their perceptions of platforms and their experiences of content moderation and discussion online. Participation was open to anyone interested who had registered to attend through an event management website. Publicity about the event was targeted to local community groups.

The Chair and Rob Baldry, Senior Engagement Officer, opened the session. This was followed by a discussion facilitated by the Chair, with contributions from each member of the public and Committee Members. This note summarises the discussion.

Discussion

Participants gave their initial thoughts on freedom of expression online, and whether users are being censored by social media platforms. One participant suggested that this is a misconception and that those claiming they are being silenced often have a large platform to air their views. Another participant agreed and added that those with a platform sometimes use their platform to offend, seemingly without any regret or apology.

One participant suggested that using a platform to offend is not a new development, pointing to the letters section of local newspapers. They noted that “people have always been beastly to each other”. Some participants felt that anonymity could be used by those seeking to abuse online and that they should be prepared to “put their face behind” their abuse rather than hide behind an anonymous account.

Many participants saw age as a key factor, with different generations having different views of what is appropriate to say publicly. One participant expressed optimism at the ability of political and digital literacy to create understanding between generations, pointing to a programme in Finland which provides universal education on these issues. Another participant agreed that digital literacy should be taught in schools, although some participants were more concerned at the ability of older rather than younger people.

One participant noted that the desirability of anonymity is contextual: some, such as members of a targeted minority, have a legitimate need for anonymity online. They therefore felt that a blanket ban on anonymity would be detrimental to these groups.

Participants were sceptical of handing control of what is acceptable to post on social media to a single body, as well as the ability of legislation to control speech online. Two participants suggested that a body of lay people should contribute to drafting content moderation standards. Some also felt that social media platforms should have more content moderators, saying that Facebook’s 17,000 is too few.
Summary of virtual roundtable discussion with students, 14 April 2021

On 14 April the Committee held a roundtable discussion with students from a range of universities, including Strathclyde, Essex, City, Birmingham, Cardiff and Durham. 18 students attended.

The aim of the roundtable was to hear about students’ use of social media, their perceptions of platforms, their experiences of content moderation and discussion online, and their approach to ‘cancel culture’. Participation was open to anyone interested who had registered to attend through an event management website. Publicity about the event was targeted at non-political student interest societies.

Lord Gilbert and Rob Baldry, Senior Engagement Officer, opened the session. Following this students and Committee Members were split into three breakout rooms, each including around six students and three Committee Members. Lord Gilbert, Viscount Colville and Lord Stevenson facilitated the respective groups. After an hour of discussion, the groups reconvened with each facilitator summarising the key points of their discussion. This note summarises these discussions.

Discussion

Group 1-Lord Gilbert

Participants used a range of social media platforms for a range of purposes, including interacting with friends, campaigning, and networking. Although it is the UK's most-used social media platform, most felt that Facebook was ‘not for young people’.

Participants held different views on whether there is a generational divide in attitudes to free speech. One felt that this idea is used by the Government to attack young people. Others felt that differences, to the extent that they exist, are a product of the different mediums through which young people communicate.

Participants agreed that education should play a greater role in improving the safety of online spaces, although one said that their school had taught them well in this area. There was a consensus that this should focus on cultivating a sense of responsibility for one’s posts—and an understanding of their impact on others—rather than anything more prescriptive. The group felt that people too often behave as if Twitter is a private space, like WhatsApp, rather than a part of the public sphere. Some doubted, though, that education would reform the worst offenders.

The group was sceptical about content regulation. One questioned whether there was sufficient evidence that online harms justify regulation. Most felt that due to the volume of online content only regulation of systems, rather than individual posts, was practicable, although one student disagreed.

Participants approved of warning users before clicking on harmful content as an alternative to deleting it. One objected to the deletion of legal but harmful content because it stops other users from calling out perpetrators for their behaviour and challenging bigoted views.

There was concern that regulation could lead to minority groups being disproportionately censored if their attacks on oppression were wrongly considered hateful. More generally, one participant suggested that there were often double-standards in the policing of speech. They gave the example of anti-Semitism going unpunished in universities while legitimate commentary on the Israel—
Palestine conflict is labelled as Islamophobic. Participants felt that anonymity was particularly valuable for minority groups such as ethnic minorities and LGBT people. They recognised, though, that anonymity can also embolden people to behave badly, concluding that anonymity should be allowed on some but not necessarily all platforms.

Most participants lamented the lack of competition and user choice in the social media market. They felt that the consequence of this is too much power being vested in the hands of a few companies. It was argued that the ‘court of public opinion’ should determine what can and cannot be said online, not big tech companies or regulators, and that decisions should be made transparently so they can be debated.

_Group 2-Viscount Colville_

Most participants mentioned they use a range of social media platforms, although two said they avoided use of social media.

Participants suggested that freedom of expression online should be considered a fundamental right, being covered by the UN Universal Declaration of Human Rights, although accepted the need to balance it with other rights. One participant drew an analogy with physical public spaces, suggesting that because an individual shouting abuse in a shop would not be tolerated then an individual posting abuse online should also not be tolerated.

Participants expressed concern about the targeting of women online, arguing that threats of or jokes about sexual assault and rape should not be allowed online. Likewise, there should be extra protection for those who hold protected characteristics.

Participants discussed ‘cancel culture’. One participant suggested that, for most people, cancel culture does not exist; they suggested that people who are cancelled tend to be cancelled from privileged platforms, and therefore already hold power. Another participant expressed the importance of being able to share different opinions and stated that whether people are cancelled should come down to the intent behind their views, rather than the views themselves; discussion should always be in good faith. Another added that cancellation should not occur because those engaged in the debate feel emotionally attacked.

One participant raised concern about the targeting of black people online, using the example of targeting of black footballers. They mentioned that while they can block as many abusers as they like, abuse is so widespread that it is difficult to completely block out. They suggested that had they been younger and had not built up a tolerance of abuse, they would have removed themselves from social media.

Participants discussed the desirability of regulating tech platforms. One participant thought that regulation could be unfair, given that it is not possible for platforms to be in control of everything posted. However, they thought more moderators should be employed by platforms rather than the widespread use of algorithms.

Other participants were more in favour of regulation. They thought platforms could not be trusted to self-regulate, and in particular that there needs to be more transparency around the terms and conditions of using a platform. One participant stressed that a regulator should be in charge of ongoing regulation, given the possibility of new entrants to the market.
One participant raised the problem of how to regulate internationally. Another suggested that this could be tackled using mandatory human rights impact assessments in order for a platform to operate in a particular market.

While accepting that platforms should not abuse their dominant market positions, one participant stated that it is “not a crime” to be a powerful company; ultimately, large platforms are convenient for consumers and this is more important to consumers than choice. The participant was in favour of targeted advertising on grounds of convenience. Another participant agreed that they were not concerned about use of personal data by platforms. One participant alluded to the ‘network effect’, stating that “the point of social media is to be social” and therefore certain platforms will inevitably become dominant.

Other participants disagreed, with two having completely removed themselves from Facebook due to privacy concerns. They stated that they would actively choose a platform that offers increased privacy. Participants also expressed concern over the ‘take it or leave it’ approach by platforms towards their terms and conditions; consumers are unable to opt out of certain clauses. Likewise, terms and conditions are normally incomprehensible to users.

The participants discussed digital literacy and etiquette. One participant expressed scepticism at the ability of media literacy to reach older generations, given the lack of adults who undertake adult education. Another suggested that strict age verification should be introduced on all platforms. One participant was sceptical of the ability of online spaces for children to be free from harmful content, noting how such content can appear on YouTube Kids.

**Group 3–Lord Stevenson**

The group mentioned that society in general is still yet to fully mature into the internet—they felt personally responsible for helping to bring this process about. As social media platforms become more ‘absolute,’ especially for young people, the group agreed there is an urgent need to question the role they themselves play in empowering and enabling social media platforms, as well as considering what they could do differently to help bring about positive change online and set the standard for maturity.

Participants felt that freedom of speech is not the same as freedom of expression. One participant emphasised that this difference is significant in relation to social media as it is speech that is scrutinised in particular. The group agreed that more needs to be done in educating people what is right and wrong to say, and how opinions and comments can be expressed in a more responsible manner.

Some of the group said it was difficult to evaluate the risk to freedom of expression online as many people who use social media platforms are silent and do not post. They cautioned that the vocal minority, those with the biggest platforms, should not be taken as a reflection of everyone who uses and views social media. One participant brought up the theme of ‘cancel culture’ as a misrepresentation of what social media users think and what they are really concerned about in relation to freedom of speech.

One participant brought up the fact that social media companies make money through advertising—a major part of their business model—and that this can often incentivise controversial content with a focus on argument in order to gain attention and draw people into the platform. A consequence of this is that freedom of speech can be manipulated in the pursuit of ‘clicks.’
Another participant was concerned about the rise of a surveillance culture—the increasing prevalence of people watching one another as well as being watched by the platforms. The consequence of this, they said, was that dissent is censored, when often society progresses through dissent of some kind.

The group agreed that social media platforms have differing methods and policies of self-regulation that were not transparent. They mentioned that regulations, whether algorithmic or through community guidelines, were not free from bias. They said it is algorithms which are especially difficult to understand in terms of what content is allowed and why, which can sometimes lead to innocuous content being removed.

Most of the group agreed that there should be basic rules and guidelines that all social media platforms should align with, since they cannot be relied on to be impartial, apolitical or unbiased. One participant suggested that these guidelines should be unionised.

Some participants remarked on the fact that social media companies are not seen publishers in the same way that traditional media outlets are (e.g. newspapers). They felt that they could choose traditional media based on its obvious political alignment, but that the problem with social media platforms was that their underlying political values were obscure and users can only operate in this obscurity, removed from any political context to the platform and not knowing whether it is a ‘safe space’ or not—the issue is made worse by social media platforms insisting (falsely) that they are neutral.

One participant proposed that the social media environment be treated like a public square, in which there could be various ‘levels’ of policing, supervision or moderation with different expectations of how controversial or risky the interactions might be for each platform—people might then opt to visit a certain platform depending on their own tolerance for controversial or risky content. They suggested that there would be no need to have universal rules or guidelines that all platforms must abide by. This was challenged by another participant who claimed that social media companies are corporations, not applicable to the ‘public square’ interpretation, and that users do not have equal voices; people are silenced and some views will be privileged over others.

One participant strongly believed that social media platforms would be more interesting, balanced and healthy as a democratic tool if there was an emphasis in listening to and tolerating other points of view rather than shouting them down. They said there was a tendency for more ‘right-wing’ views not to be expressed because they clash with the ‘left-wing’ predispositions of many platforms, sometimes even to the point of removal or censorship. One form of censorship currently taking place which they were concerned with was ‘shadow-banning.’ Instead of censorship of any sort, it was suggested that content could be ‘flagged’ without having to be removed, and that when necessary temporary bans from social media platforms were better than permanent bans.